towards its execution, Jones v. *Hardesty, 10 G. & J. 404. Many **542** instances, indeed, where parol evidence is admissible, may be referred to a general distinction between agreements which come within the Statute of Frauds, and agreements that are without it. As to the latter, Lord Denman observed in Goss v. Lord Nugent, 5 B. & Ad. 58, that after an agreement, not coming within the Statute, has been reduced to writing, it is competent to the parties at any time before breach of it, by a new contract not in writing, either altogether to waive or dissolve the former agreement, or in any manner to add to, or subtract from, or vary, or qualify the terms of it, and thus to make a new contract, which is to be proved partly by the written agreement, and partly by the subsequent verbal terms engrafted upon what will thus be left of the written agreement.[90]

To cases within the Statute the contrary rule is, at law, rigidly applied.[91] Thus in Stoddert v. Vestry of Port Tobacco Parish, 2 G. & J. 227, in an action to recover the price of a pew, a witness who had acted as auctioneer proved the sale, and that he put down in pencil, at the time of the sale, on paper, the name of the purchaser (the defendant), and the price at which the pew was bid off. The paper was lost, and the witness then proved by parol a sale of the pew for $300 at a credit of twelve months, with interest from the day of sale, but the Court held that the parol evidence thus offered was inadmissible, because it established a contract different from that contained in the lost memorandum, and see as to the sale of goods, Batturs v. Sellers, 6 H. & J. 249. So in equity, in Hunt v. Gist, 2 H. & J. 498, where A., seised of 275 acres of land, by a writing agreed to convey to B. 120 acres, parol evidence was held inadmissible to shew that it was the intention of the parties that the 120 acres were to be set off out of any particular part of the land (although the doctrine of election might apply), and see Marshall v. Haney *supra*. In Kent v. Carcaud *supra*, it was held that the vendor could not shew by parol, that the purchaser agreed to take a quantity of land as so many acres *more or less*, where the written contract did not contain that term. These, and a number of like instances of which the books are full, and to which it is not necessary more particularly to refer, are cases where the attempt has been made to vary the written agreement by a prior or contemporaneous verbal contract or understanding.

Parol evidence to show subsequent discharge or variation of contract.—With respect to a subsequent discharge or variation of written contracts,

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[90] Allen v. Sowerby, 37 Md. 410; Maryland Ins. Co. v. Gusdorf, 43 Md. 506. And the same is true of a contract within the 17th section which is taken out of the Statute by delivery and acceptance. Kribs v. Jones, 44 Md. 408.

[91] Lazear v. Union Bank, 52 Md. 120; Frank v. Miller, 38 Md. 450. But if parol evidence of the contract is admitted by the lower court without exception, no objection to it can be made on appeal. Gunby v. Sluter, 44 Md. 237; Sentman v. Gamble, 69 Md. 293; Slingluff v. Builders Co., 89 Md. 562.