

If a sold note is sent to the seller, signed by the broker, and if the buyer authorized the broker to make the contract for him, and to send out bought and sold notes, the note is a sufficient note or memorandum to satisfy the Statute of Frauds as against the buyer<sup>1</sup>.

If bought and sold notes are sent out, each signed by the broker, but varying from each other in a material point, and if the original contract was verbal, neither of the notes is a note or memorandum in writing within the meaning of the Statute of Frauds<sup>2</sup>. The burden of proving such a variance lies on the defendant as soon as the plaintiff has produced a bought note or a sold note sufficient as against the defendant, according to the rules hereinbefore stated<sup>3</sup>.

JAMES FITZJAMES STEPHEN.  
FREDERICK POLLOCK.

P. S.—My part of this paper was written some, I think upwards of seven, years ago. I have not revised or indeed seen it since, nor have I brought down the digest to the present day<sup>4</sup>. My judicial experience for the last six years has confirmed the opinions expressed in the paper. I may add that the Statute appears to me to have fallen practically into disuse. I have hardly ever been called upon to decide a case on the 17th Section. I am informed that in some large towns, in Liverpool for instance, mercantile men repudiate it in practice.

J. F. S.

November 25, 1884.

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<sup>1</sup> *Thompson v. Gardiner*, 1 C. P. D. 777.

<sup>2</sup> *Sievwright v. Archibald*, 17 Q. B. 103; 20 L. J., Q. B. 529, and several earlier cases.

<sup>3</sup> This Article and Article 13 differ in appearance from the eight propositions which Mr. Benjamin submits (255, 3rd ed.) as the result of the cases on the subject, but they will be found, on a careful comparison, to coincide substantially with them.

<sup>4</sup> It was composed in 1877-8, as part of a plan afterwards abandoned. I do not find that any cases of importance on s. 17 have been reported since that time.—F. P.