ployed at the respondents' wharf; but, according to the testimony of Hugh Young, the traffic manager of the appellant company, the agreement was for the years 1908, 1909, and 1910 only, and there was no agreement as to the quantity of freight to be unloaded at the respondents' wharf, and no agreement that the appellant company should pay any part of the checker's wages. . . .

It was argued by Mr. Bicknell that the agreement, being, as it was, one not to be performed within a year, and not being, as he contended, in writing, was not enforceable, and he applied for leave to set up the Statute of Frauds as a defence to the action.

I am inclined to think that there was a sufficient memorandum in writing to satisfy the statute. According to Young's testimony, the agreement sent to the respondents was signed by the appellant company. The alterations were made on the face of one of the duplicates, which was signed also by the respondents, and there was a sufficient assent to the alterations made by the appellant company. The documents were not under seal; and, although an unauthorised material alteration of them would have vitiated them, I apprehend that a verbal assent to the alterations which were made would be sufficient to make the document as altered binding on the appellant company, and that re-execution was not necessary.

If, however, that is not the proper conclusion, I do not think that the appellant should be allowed to amend by setting up the Statute of Frauds as a defence. If, however, such leave to amend had been asked at the trial, it should have been granted. The respondents in their pleading rely upon a written agreement; and if, at the trial, they failed to prove such an agreement, and sought to rely on the parol agreement of which they gave evidence, the authorities are clear that the appellant should have been allowed to amend by setting up the statute if application to amend had then been made.

This Court, no doubt, has power to allow the amendment; but the exercise of the power is in its discretion, and an amendment should not be allowed except to secure the advancement of justice, the determining of the real matter in dispute, and the giving of judgment according to the very right and justice of the case (Rule 183); and in Sales v. Lake Erie and Detroit River R.W. Co. (1890), 17 P.R. 224, acting on the corresponding rule then in force, the Court of Appeal refuse to permit the defendants to set up a defence which they had not raised at the trial.

I may point out here that one of the cases cited in the judg-