

the fact—whether the story of the plaintiff or that of the defendant, told in the witness-box, was the true story of all that took place.

It must be considered that, by mutual assent, the trial Judge was to determine all matters of fact not submitted to and found by the jury.

The trial Judge found and determined, having regard to the facts found by the jury, that the acceptance and appropriation to his own use of the bull by the defendant was an acceptance and actual receiving of part of the goods bought under the contract, as found by the jury, so as to give the plaintiff the right to enforce that contract notwithstanding a plea of the Statute of Frauds.

The evidence adduced at the trial was sufficient to support that finding—whatever might be said of the case if the defendant had promptly returned the bull after the dispute in regard to his rights as to the other animals arose. According to the finding of the jury, there was but one entire contract; and so the defendant could rightly accept and receive the animal only as a part performance of that contract; otherwise his retention of it was unlawful. In all the circumstances of the case, it could not be said that the Judge was wrong in this respect: see *Page v. Morgan* (1885), 15 Q.B.D. 228; *Taylor v. Smith*, [1893] 2 Q.B. 65; and *Abbott & Co. v. Wolsey*, [1895] 2 Q.B. 97.

The question whether the property in the cattle passed to the purchaser was one of intention; and, upon the finding of the jury, the only proper conclusion was, that the property passed to the buyer before action brought. There was no evidence as to when payment was to be made; but it should be found that payment was to be made at the time of delivery, the next day after the sale.

The Statute of Frauds did not make the contract illegal or otherwise void; it but prevented the enforcement of it if either party chose to resist enforcement under its provisions. The delivery of the bull being a compliance with the provisions of that enactment, the property in the cattle passed to the defendant; and, there having been a delivery of all of them at the time and place agreed upon, the plaintiff was right in suing for money payable by the defendant to him for goods sold by him to the defendant; and so the appeal should be dismissed.

*Appeal dismissed with costs.*