were addressed to J. Mc.G., Caledonia, and properly so, because, as I find, a parcel previously addressed the same way was received by the defendant, and that he held out this address as the proper one, not instructing plaintiffs to address these goods differently; that no invoice or advice from the plaintiffs reached the defendant, none having been proved to have been sent to him, except by the very unreliable evidence of the plaintiffs' general custom; that the defendant, however, knew of their arrival by information received from the W. A. R. R. Co., through the coach driver between Annapolis and Liverpool, whom he made his agent for the purpose of enquiry, but did not notify the plaintiffs of his refusal to accept until the price of the goods became due and a bill had been drawn on him for their price five months after arrival.

It was contended that the letter of the defendant constituted a sufficient "note or memorandum" of the bargain to satisfy the statute, and in many cases such letters have been so held, especially in the notable cases of *Bailey* v. *Sweeting*, 9 C.B. N.S. 1843, and *Wilkinson* v. *Evans*, L. R. 1 C. P. 407, and the very recent case of the *Leather Cloth Co.* v. *Hiernomus*, L. R. 10 Q. B. 140, the latest case, I think, in which the clause of the English Act corresponding to this has occupied the attention of the English Common Law Courts, a case, by the way, very very similar to this one in some of its leading features. But all the cases referred to differ from this in the circumstance that the letters of the defendants referred to the voice furnished to the buyer in such a way that it could be read with them, or in some other manner indicated the entire contract, leaving nothing to be supplied *dehors* the writing. Here the letters contain nothing to show the particular articles purchased or their prices, either intrinsically or by reference to other documents, and point to a contract to send goods by a different mode of conveyance from that employed by the plaintiffs.

The only other point raised is whether there was an actual acceptance and receipt. Had the plaintiffs proved the sending of an invoice to the defendant, or a letter of advice that the goods were despatched as ordered, which would have placed him under an obligation to reply, accepting or repudiating them, I would have thought that the case came fully within those of *Bushel* v. *Wheeler*, 15 Q. B., p. 442, and *Morton* v. *Tibbett*, 15 Q.B., p. 428, the principle underlying which is illustrated by the cases of *Lucy* v. *Mouflet*, 5 H. & N. 229; *Richardson* v. *Dunn*, 2 Q. B. 218, and *Gaskill* v. *Skene*, 14 Q. B. 664. The authority of *Morton* v. *Tibbett*, and *Bushel* v. *Wheeler*, has been somewhat questioned in the Court of Exchequer; but the former has been very distinctly ratified and approved of in some important cases in the Queen's Bench, especially *Currie* v. *Anderson*, 2 E & E. 592, per Crompton, J., page 598; and both cases in *Meredith* v. *Meigh*, 2 E. & B. 364, per Campbell, C. J., on page 370. If the facts brought the case within that of *Bushell* and *Wheeler*, I should have felt bound to put to myself the question whether the defendant had not practically accepted the goods within the meaning of the statute, and whether under the circumstances the Windsor and Annapolis Railroad Company were not the defendant's agent to accept and receive the goods for him, on which point an affirmative decision would have no little colour from the course of dealing between the parties, the W. & A. R. Co. not being carriers to to the defendant's place of residence but to Annapolis only, and the goods not being ordered to be merely *carried* by them, but to be consigned to their *care*. The case of *Norman* v. *Phillips*, 11 M. & W. 211, relied on strongly by the learned counsel for the defendant, only goes to show that the question of an acceptance by a tacit acquiescence is one of degree; that although where the silence is long and unreasonable, a jury might be justified in inferring an acceptance, yet where it is otherwise there may be a scintlla of evidence, but not enough to sustain a finding. But in the absence of an invoice, or some other communication from the plaintiffs, informing him of the fulfilment of the contract on their part, I fail to see any obligation on the defendant to be otherwise than silent, and I can draw from his silence no inference of his acquiescence. Therefore, in the absence of a sufficient note or memorandum of the bargain signed by the defendant, and of sufficient evidence to justify the conclusion that the defendant in any sense accepted the goods, I think the plaintiffs must become non-suit.

I must confess to a disposition to uphold this contract if possible; but I believe I have consulted every case bearing on the subject in the English reports since 1850, and all the Nova Scotia and New Brunswick cases, and cannot bring myself to extend the doctrine of inferential or constructive acceptance beyond the case of *Bushel* v. *Wheeler*, which has, as I have indicated, an important and, I think, essential ingredient which this lacks. I do not think the Appellate Court would hold me justified in doing so. Judges are naturally anxious not to construe a statute designed for the prevention of fraud in such a way as to promote fraud; but I cannot give any statute an unnatural construction, and the policy of this one clearly