

I allow both the plaintiff and defendants to set up pleas of estoppel.

I allow all the amendments both of the plaintiff and defendants attached to the record.

The defendants say that the contract is a contract for the sale of goods and is not to be performed within a year; that there is no sufficient memorandum; that part performance does not take the case out of the statute, citing for this proposition, *Prested v. Garner*, [1910] 2 K.B. 776. It was there held that the 4th section of the Statute of Frauds was not repealed by the Sales of Goods Act, and therefore, that in such case part performance as set forth in section 6 of our Sales of Goods Act does not avail. This principle was recognized without discussion on appeal: *Prested v. Garner*, [1911] 1 K.B. 425. The defendants also say that there was no *consensus ad idem*; that if there is a sufficient memorandum it does not embody the mutual understanding; and that there is consequently no contract.

Of course, were the facts and circumstances similar, I would have no hesitation in applying the principle laid down in *Prested v. Garner*, but, while expressing no opinion on the application of that case here, I think there are many circumstances in this case which would tend a Court of Equity towards a different conclusion. It is true that in *Prested v. Garner* there was part performance; but how? By a shipment of a certain portion of a lot of carburetors. Each of these carburetors is a complete article in itself. The balance of the lot of carburetors, I think I may safely assume, were for sale upon the open market and the deficiency would be easily replaced, while here the work is copyrighted and cannot be procured elsewhere. Then Butterworth & Co. knew the plaintiffs would, in the ordinary course of business, incur obligations with its customers to provide them with the complete sets, and that the remaining volumes could be procured only from Butterworth & Co. Not only with the knowledge, but with the consent and assistance of Butterworth & Co., the plaintiffs did proceed as though there was a contract, sold more than the 400 sets before