Rules are not exactly in the same words, but C.R. 578-580, which deal in effect with the same branch of practice, would no doubt receive a similar construction. The effect of the decision is to limit the operation of the Rules above referred to, to the case of third parties called as witnesses to give evidence upon interlocutory motions, and not to permit them to be used for the purpose of obtaining discovery or inspection of documents in the hands of third parties. Wills, J., says at p. 265: "In my opinion the rule was intended by those who framed it to be strictly construed, and I think it gives the Court or a judge power to order the production of documents for the purpose of the preliminary examination of witnesses before the trial, but does not give the Court or a judge power to order inspection, properly so called, before the trial, of documents in the hands of persons who are not parties to the action."

PRACTICE—TIME—DELIVERY OF PLEADINGS—COUNTER CLAIM—REPLY—ORDS. 19, R. 2; 21, R. 6; 23, RR 1, 4 (C.R 380, 381).

Rumley v. *Winn*, 22 Q.B.D. 265, is a case which shows that where a defendant delivers both a statement of defence and a counter claim, the plaintiff has twenty-one days to deliver and reply to the defence and counter claim under Ord. 23, r. 1 (C.R. 381), notwithstanding that if a counter claim alone had been pleaded the plaintiff must, under Ord. 21, r. 6 (C.R. 380), have delivered his defence thereto within the same time as is allowed for delivering a defence to a statement of claim.

PRACTICE—APPEAL—LEAVE TO APPEAL—APPEAL FROM DECISION REFUSING LEAVE TO APPEAL.

In *Kay* v. *Briggs*, 21 Q.B.D. 343, the Court of Appeal (Lord Esher, M.R., and Fry, L.J.) held that where a Divisional Court refused leave to appeal from their decision given in an appeal from a County Court, no appeal would lie to the Court of Appeal from the refusal to grant such leave.

SALE OF GOODS—MEMORANDUM IN WRITING—STATUTE OF FRAUDS (29 CAR. 2, C. 3), S. 17.

Lucas v. *Dixon*, 22 Q.B.D. 357, was an action brought to recover damages for the non-acceptance of goods on a contract coming within sec. 17 of the Statute of Frauds. At the trial the plaintiff put in an affidavit made by the defendant in the course of the action, as being a note in writing sufficient to satisfy the statute. Stephen, J., though of opinion that the affidavit sufficiently proved the contract, nevertheless rejected the evidence because the affidavit was not in existence at the commencement of the action, and this decision was upheld by the Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.) Fry, L.J., says, at p. 363: "The statute requires the memorandum as evidence, but requires that evidence to be in existence at the commencement of the action which is brought to enforce the contract. If, then, it only comes into existence after the commencement of such an action, and the plaintiff desires to avail himself of it, he can only do so by discontinuing the action and commencing another.