

set up was that there had been no acceptance of the goods, nor any sufficient memorandum in writing within s. 17 of the Statute of Frauds. The defendant carried on business in Manchester, and orally agreed with the plaintiffs to buy from them a quantity of spruce deals to be forwarded to the defendants from Liverpool by a carrier nominated by the defendants. An invoice of the goods was sent by the plaintiffs to the defendant, and the carrier also sent the defendant an advice note to inform him of the arrival of the goods. This note specified the number of the deals, and stated them to be consigned by the plaintiffs to the defendant, but did not state the price, nor refer to the invoice or any other document. On the day of their arrival and the following day the defendant inspected them, and subsequently wrote and signed the following memorandum on the advice note: "Rejected. Not according to representation," and a few days afterwards he wrote to the plaintiffs rejecting the goods as not being according to contract. The Court of Appeal (Lord Herschell, L.C., and Lindley and Kay, L.JJ.) agreed with Wright, J., that there was no sufficient memorandum within s. 17 of the Statute of Frauds, and also that there had been no such dealing by the defendant with the goods as to constitute an acceptance of them by him within the same section. We may remark that this is a case which shows that the Court of Appeal may refuse to disturb the finding of a jury on a question of fact, and yet, when it is itself acting as a jury, may refuse, on similar evidence, to come to the same conclusion. For instance, in *Page v. Morgan*, 15 Q.B.D. 228, the Court of Appeal refused to disturb the finding of a jury that there had been an acceptance within the statute, although the evidence on which that acceptance was based was simply that the defendant had examined the goods to see whether they agreed with the sample, and refused to accept them because they did not; while in the present case the court, as judges of fact, finds on almost identical evidence that such an act does not amount to acceptance within the statute.

PRACTICE—SERVICE OUT OF JURISDICTION—CONTRACT "WHICH ACCORDING TO THE TERMS OF IT OUGHT TO BE PERFORMED WITHIN THE JURISDICTION"—ORD. XL, R. 1 (E)—(ONT. RULE 271 (E)).

In *Thomson v. Palmer*, (1893) 2 Q.B. 80, an appeal was had from a Divisional Court (Wills and Charles, JJ.) refusing to set