Hirdey and Dariao received the share in suit and held it in trust on an agreement to return it when reclaimed: and should that issue be decided affirmatively to try and determine (iii) whether in 1923 Sambat (March 1866—April 1867) the defendant had offered to return it to the plaintiff, but that the latter had refused to have anything to do with it, and to submit its findings.

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July 31.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

WHYMPER AND CO. (PLAINTIFFS) *v.* BUCKLE AND CO. (DEFENDANTS).*

Contract—Condition Precedent—Formally signed contract.

Where two parties have come to a final agreement, the mere fact that at the time of their doing so they intend to embody the terms of such agreement in a formal instrument does not make such agreement less binding on them.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Spankie, J.

Messrs. *Howard* and *Hill*, for the appellants.

Messrs. *Conlan* and *Quarry*, for the respondents.

The following judgments were delivered by the High Court:—

SPANKIE, J.—This was a suit to recover Rs. 32,284-12-0 on the part of Messrs. Whymper and Co. of the Crown Brewery, Mussoorie, against Messrs. Buckle and Co., merchants of Saharanpur and Mussoorie, for whom the senior partner, Mr. Stowell, one of the defendants, is agent at Mussoorie. The action is brought upon an alleged contract made between the parties on or about the 20th December, 1877. The defendants deny that any contract was actually made, but admit that Rs. 2,539-8-6, are due by them as regular customers of the plaintiffs. The main issue between the parties was whether, as averred by the plaintiffs, there was a binding and complete contract, or, as contended by the defendants, there was a precedent condition that the contract should not be considered complete and binding until a written agreement had been formally executed by the parties? The issues in the entire case were thus settled by the lower Court:—" (i). Was such a

* First Appeal, No. 143 of 1878, from a decree of F. B. Bullock, Esq., Subordinate Judge of Dehra Dún, dated the 3rd September, 1878. Reported under the special orders of the Hon'ble the Chief Justice.

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contract as that alleged by the plaintiffs to have been made ever entered into between the plaintiffs and defendants? (ii). If so, is its validity affected by any representations made by the plaintiffs to induce defendants to enter into it? (iii). If entered into, and if valid, has there been a breach of the contract, and if so, by whom was the breach effected? (iv). Should the sum of Rs. 6,000 stated as liquidated damages be awarded, and to whom? (v). If there was a contract, what was the amount of beer supplied under it, and what was the value of it"? The lower Court thus sets out the whole circumstances that led up to the point at which it is alleged a contract was made between the contending parties.

The Crown Brewery was started by Messrs Whymper and Co. in the latter half of the year 1876, and Messrs. Buckle and Co., even before the Brewery was established, had some desire to become agents for the sale of the beer. Nothing however came of the first proposals made in 1876, and Whymper and Co. disposed of the first year's brew, that of 1876-77, themselves. Buckle and Co. bought considerable quantities on their own responsibility as general dealers. In the beginning of November, 1877, there was a conversation between J. W. Whymper and Stowell, of which the result was a letter from the plaintiffs embodying the terms of a proposed agreement. The defendants after some delay sent a reply declining the terms proposed. On the 7th December J. W. Whymper and Stowell had another conversation, in the course of which it would appear that the latter remarked that he was afraid to take so large a quantity as one hundred hogsheads a month, as had been suggested by the former. On being reassured by Whymper as to the quantity of the sales made by him in the previous year, Stowell thought that he might take sixty hogsheads or a little more. This interview led to another letter, written by the defendants, dated the 8th December, to the plaintiffs, saying that they were prepared to take sixty hogsheads for six months, and ninety hogsheads for the second period of six months, monthly. This letter the Judge rightly calls an important one. It contains a clause that before signing any covenant Stowell and Co. would like a more explicit agreement about beer that may be returned &c. There was also another to this effect: "We would also ask you to insert a clause saying

&c." The plaintiffs on the 9th December, 1877, (not 1878 as stated in the printed book), replied agreeing to certain points mentioned in the letter of defendants, and proposing to consult Mr. Quarry (a pleader) as to the liquidated damages in case of failure to carry out the contract by either party. On the 20th December Whymper and Stowell met at the office of Buckle and Co. in Mussoorie, and Whymper gave to Stowell a letter containing a guarantee that the beer supplied should stand sound and saleable for twelve months from delivery, and agreeing that Quarry should settle the liquidated damages. At the same time Stowell wrote to plaintiffs:—"We will at once have the agreement made out on the terms proposed." On the 21st Stowell wrote to Whymper saying that he had seen Quarry and had given instructions as to the drafting of an agreement. This letter must have been in reply to one of the same date from Whymper asking that the guarantee as to the beer standing good should be modified, so as to refer to that supplied in hogsheads only and kept at Rajpur, Dehra, or Mussoorie. From this letter, the lower Court observes, it is quite evident that Whymper considered that he was at liberty to modify or alter agreements subject to the signing of an agreement. On the 22nd December Whymper went to Dehra and had an interview with Stowell and Quarry, and Rs. 6,000 were fixed as liquidated damages, and Quarry was instructed to draw up an agreement. Whymper left for Murree. On the 4th January, immediately on his return from Murree, Whymper wrote to defendants, asking for a list of agencies which defendants proposed to start, as he wished to alter the advertisements in the papers. Defendants reply on the 7th January, saying that they think it will be as well to let matters remain as they are until Quarry has made out the necessary deed. On the 12th January Whymper sent an order for beer from Umballa to defendants saying: "We should supply it direct ourselves, but for our agreement with you." He also sent a letter to the effect that he had altered his advertisement in the "Pioneer" and "Delhi Gazette." Stowell replied to these letters that until they had "actually entered into an agreement they would much prefer letting matters stand as they are." On the 13th January plaintiffs wrote that they were losing business in not supplying orders, and "they presumed that defendants

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would have no objection to their supplying orders in stations in which defendants had not yet established agencies." Defendants replied at once on the 16th January: "By all means supply any orders you may get, for we do not consider we have entered into any agreement until we have actually signed the one Mr. Quarry is making out." On the 16th January plaintiffs wrote to defendants: "We are very much surprised at the view you express: we consider the agreement as already entered into &c., &c." On the 17th January Whymper received a rough draft of the agreement drawn up by Quarry with Stowell's remarks on it. Whymper made remarks on the draft agreement, as well as Stowell, and the Judge observes that it is evident from their remarks that several important points required further consideration; one of these was whether the guarantee regarding the beer standing good should hold generally or only in respect to beer kept in Dehra, Rajpur, and Mussoorie. Whymper wrote on the 18th January denying Stowell's right to make any alteration in the agreement, and again on the 21st January saying that he considered "a contract was now existing". Up to this time the Judge considers that Stowell most undoubtedly had been anxious to enter into an agreement, but complaints received in the latter end of January led him to believe that the brew of the year was not very good. The correspondence between the parties almost ceased from the 20th January to 1st February, and it is evident that there was a period of indecision in Stowell's mind as to the advisability of entering into a contract. After the 1st February Stowell appears to have recovered his former temper with regard to the contract, and the correspondence through February and March points to a mutual desire on the part both of plaintiffs and defendants to do business as though a contract would be eventually entered into, though for some reason, which does not clearly transpire in the evidence or in the correspondence, the draft deed was never finally made into a deed for signature by the contracting parties. Complaints during March became a little more frequent as to the quality of the beer. On the 2nd April Stowell wrote to plaintiff "reluctantly declining to receive any more beer." All negotiations were closed on the 11th April by a letter from Quarry in the character of the legal adviser of defendants. Such, remarks the lower Court,

is a resumé of the whole negotiation between the plaintiffs and defendants, as shown by a lengthy correspondence and sustained by the evidence of the two principals. The lower Court now proceeds to its judgment. The Judge observes that it is admitted by plaintiffs as well as by defendants that from the first it was agreed that the agreement should be reduced to a formal deed, and moreover that this was the subject of their conversation on the 7th December, 1877. Whymper, however, in his oral evidence says that he did not make this agreement as a condition precedent to the acceptance of the agreement, though he admits that he alluded to this deed in that correspondence. Stowell on the contrary most distinctly says that on the 7th December he gave Whymper to understand that he considered the execution of a formal deed a necessary and vital preliminary to the completion of the contract. As both those gentlemen are parties to the suit and interested in this important point, it was necessary to note how far their statements are borne out by the correspondence and probabilities of the case. For this purpose the lower Court refers to Stowell's letter of the 8th December, to Whymper's letters of the 14th December and 20th December, and to the letter of the defendants dated the 20th December, which in the opinion of the Court was a most important one. These letters are referred to above. The plaintiffs' counsel contended that this letter of the 20th December was an acceptance of all the previous proposals, including the guarantee, and that it was the final agreement and acceptance of the contract. But the Judge thought otherwise, as the very wording of the letter—"We will at once have the *agreement* made out on the terms *proposed*"—shows that it alludes to the *agreement* or covenant or deed which had been in the defendant's mind from the date of his letter of the 8th December. The word "agreement" is the word that has been used by both parties when alluding to a written deed. The lower Court then refers to Whymper's letter of the 4th January, which it calls Stowell's first opportunity of saying that he considered a deed necessary to the agreement in the correspondence, and he at once took advantage of it. The Judge also remarks that defendants are still insisting upon the necessity for a written agreement as was shown from Stowell's letter of the 16th January. It is evident, the Court observes, that Stowell from the very first con-

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sidered the signing of an agreement as essential to the completion of the contract and took every opportunity of pointing this out to Whymper in his letters. Whymper disregarded the first two or three expressions of this opinion made by Stowell, and it was not until Stowell, in so many words, wrote that he did not consider that he had entered into an agreement that he expressed his surprise at the opinion. The lower Court then says:—"So far this Court is of opinion that the correspondence and evidence both point to the conclusion that the signing of an agreement was antecedent to the completion of a contract. Taking the probabilities of the case, the same opinion must be arrived at. Mr. Stowell is an old man of business, having had 20 years experience; he knew well the importance of a definite agreement on all points, and was not likely to commit himself to an agreement rashly. If this contract is to be looked upon as entered into and in operation from the 1st January, 1877, we must imagine Mr. Stowell rushed into it, without a single agency open in the down-country stations, and prepared to receive sixty hogsheads a month without any immediate means of disposing of his beer. Again the draft agreement is open to objection to both contracting parties from their own point of view, and it is evident from their memoranda that the agreement was neither definite nor complete. Mr. Whymper, a young, pushing, but inexperienced man of business, was naturally eager to conclude the agreement and to consider it concluded, having, as he thought, got rid of a large quantity of his year's brew, and from the first his sanguine view of the matter led him into this belief. But taking the probabilities of this question into consideration, it appears improbable that Mr. Stowell should have so committed himself as it is urged by the plaintiffs he did by his letter of the 20th December." In order to convert a proposal into a promise the acceptance must be (i) absolute and unqualified, (ii) be expressed in some usual and reasonable manner unless the proposal prescribes the manner of acceptance. As to the first condition it was evident that the acceptance of the 20th was qualified by the plaintiff's letter regarding the guarantee, which was a qualification of an essential character, and though the qualification was embodied in the draft agreement, this was quite consistent with the defendant's position that the draft agreement was open to discussion and amendment. As to

the second condition, the lower Court referred to a case in the House of Lords in which it was held that "the sending of an agreement to a solicitor to reduce it into form is rather evidence that the parties do not intend to bind themselves until it is reduced into form (1)." He also cites Mr. (now Mr. Justice) Cunningham's edition of the Indian Contract Act, in which it is stated that the reasonable rule seems to be that the intention to reduce terms into a formal writing is some evidence that the parties do not consider the contract concluded. These rulings the lower Court accepts and holds that the facts of the case are such that the rule applies to them. In regard to the good faith of the parties the Judge entertained no doubt. He states that the only point that could be open to misconstruction throughout the proceeding was the delay between the 21st January and the final breaking off the negotiations in April, and in signing the agreement. Mr. Stowell had explained this delay, saying that he got complaints as to the quality of the beer, and the smallness of the sales led him to hesitate. The Judge remarks that he was particularly struck by the straight-forward manner in which Mr. Stowell gave his answers throughout his examination. The lower Court thus states its conclusion on the point that "there was no final contract entered into by the plaintiffs and defendants, inasmuch as it was agreed from the first that the agreement should be reduced into a formal deed and be signed by the contracting parties, as a condition antecedent to the completion of a contract." This conclusion, the Judge observes, practically disposes of the remaining issues. But on the second issue the lower Court gives its opinion that Stowell made his modified offer to take sixty hogsheads and ninety hogsheads on Whymper's assurance that the previous year he had disposed of forty hogsheads a month. The plaintiff (Whymper) thinks that he said thirty hogsheads a month. But the Court had very little doubt that Stowell was right and Whymper said forty hogsheads. For Whymper had actually written a memorandum in which he entered his sales to the public as three hundred and ten hogsheads in ten months; whereas the issue book of the plaintiffs shows by an abstract made by defendants this was more than three times the amount of the actual sales to the public, which in reality amounted

(1) *Ridgway* v. *Wharton*, 6 H. L. C., 238.

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to ninety-two hogsheads only. So that even if there had been a contract this misrepresentation would have been sufficient to render it void. There remained for consideration the value of the beer actually taken by the defendants as customers of plaintiffs under the former arrangements. In spite of Stowell's repeated declarations that he wished matters to remain as they were till a deed was signed, the plaintiffs without orders in accordance with the terms of the agreement continued to send down beer in hogsheads to Rajpur, without sending an invoice or notice to defendants, addressed to the defendants, at the rate of sixty hogsheads a month. The beer was stored in Whymper's godown, and delivery of it was never given to or taken by defendants. The despatch of beer continued from the 1st January to the 15th April, and the plaintiffs have claimed the value of this beer, supplied as it had been in an irregular way. The Court could not allow the value of this beer to plaintiffs. It was in their godown and they could resume it. As regards beer supplied outside the contract, and for which defendants are willing to pay, it appeared to the Court inconvenient to fix (?) any specific price, as there had been no separate accounts filed by plaintiffs, and any decree that could be given would be on the one-sided statement of defendants. The lower Court dismissed the claim altogether and with costs.

The plaintiffs contend in appeal (i) that the Judge has erred in holding that no contract subsisted between the parties to the suit; (ii) that the Judge has erred in holding the execution of a written agreement to have been a condition precedent to the formation of a contract between the parties; (iii) that the Judge has erred in finding that the agreement between the parties was based upon misrepresentations made by the plaintiffs to the defendants; (iv) that, assuming the contract between the parties to have been based upon misrepresentation, the defendants were not justified in refusing to perform their part of the contract; and (v) that the Judge was wrong in finding that there had been no effectual delivery of the beer supplied under the contract. The learned counsel on behalf of appellants has cited various authorities in support of his argument, that the mere mention of a deed of agreement in the written acceptance of a tender

would not relieve the parties from the obligation to carry out the terms of an agreement once come to, if they had the intention of entering into an agreement, and if the object of a subsequently prepared written contract was simply for the purpose of putting the agreement already arrived at into formal shape (1). He regarded the letter of the 20th December as the acceptance, pure and simple, of the proposal made by plaintiffs. The written agreement was to embody those minor points, which it would be convenient to have recorded for future guidance, being either ancillary to the main agreement already reached, or explanatory of the way in which it was to be carried out. He relied on the authority of the Master of the Rolls to the effect that, where a proposal or agreement made in writing is not expressly stated to be subject to a formal contract, it becomes a question of construction whether the parties intended that the terms agreed on should merely be put into form, or whether they should be subject to a new agreement the terms of which are not expressed in detail (2). Mr. Justice Fry has remarked that a long series of cases had established the proposition that the mere reference to a future contract is not enough to negative the existence of a present one (3). In all the cases cited to us the principle is substantially the same. We notice in *Rossiter* v. *Miller* (4) that Lord Chief Justice Coleridge refers to some remarks of Lord Westbury upon some cited cases which, he said, "establish that if there had been a final agreement, and the terms of it are evidenced in a manner to satisfy the Statute of Frauds, the agreement shall be binding, although the parties may have declared that the writing is to serve only as instructions for a formal agreement, or although it may be an express term that a formal agreement shall be prepared and signed by the parties. As soon as the fact is established of the final mutual consent of the parties to certain terms, and those terms are evidenced by any writing signed by the party to be charged, or his agent lawfully authorised, there exist all the materials which this

(1) *Lewis* v. *Brass*, L. R., 3 Q. B. D., 667; *Winn* v. *Bull*, L. R., 7 Ch. D., 29; *Bonnewell* v. *Jenkins*, L. R. 8 Ch. D., 70; *Crossley* v. *Maycock*, L. R., 18 Eq., 180; *Jones* v. *The Victoria Graving Dock Co.*, L. R., 2 Q. B. D., 314; *Rossiter* v. *Miller*, L. R., 5 Ch. D., 648; *Chinnock* v. *Marchioness of Ely*, 4 D. J. & S. 638.

(2) *Winn* v. *Bull*, L. R., 7 Ch. D., at p. 32.

(3) *Bonnewell* v. *Jenkins*, L. R. 8 Ch. D., at p. 72.

(4) L. R., 5 Ch. D., 648.

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Court requires to make a legally binding contract. But if to a proposal or offer an assent be given subject to a provision as to a contract, then the stipulation as to the contract is a term of the assent, and there is no agreement independent of that stipulation."

It was also urged that circumstances in the conduct of the parties may establish a binding contract between them, although the agreement reduced to writing in a draft has not been formally executed by either. This argument is supported by the authority cited (1), and it would apply to the case before us if it be shown by evidence that defendants had by their course of dealing during the continuance of their correspondence practically acted under the contract alleged by the plaintiffs. In the case cited Lord Cairns remarks:—"I must say that having read with great care the whole of this correspondence, there appears to me clearly to be pervading the whole of it the expression of a feeling on the one side and on the other that those who were ordering the coals were ordering them, and those who were supplying the coals were supplying them, under some course of dealing which created on the one side a right to give the order, and on the other side an obligation to comply with the order * * * *. Those are the grounds which lead me to think that there having been clearly a *consensus* between these parties, arrived at and expressed by the document signed by Mr. *Brogden*, subject only to approbation, on the part of the company, of the additional term which he had introduced with regard to an arbitrator, that approbation was clearly given when the company commenced a course of dealing which is referable in my mind only to the contract, and when that course of dealing was accepted and acted upon by Messrs. *Brogden & Co.* in the supply of coals."

With all this authority before us we may safely conclude that, unless the defendants can show that by mutual consent there was a condition antecedent to a contract to the effect that there should be no binding agreement until a written contract had been executed by the parties, or that the assent communicated in their letter of the 20th December, 1877, was subject to the provision as to a written contract, then, assuming that any agreement has been proved,

(1) *Brogden* v. *The Directors of the Metropolitan Railway*, L. R. 2 Ap. Ca., N. S., 666.

that agreement would be binding upon the parties. The case therefore must stand or fall to pieces on the evidence. We must look to the evidence, the correspondence which passed between the parties, and to their conduct and course of dealing as shown by the evidence and during the correspondence, in order to determine the propriety of affirming or reversing the decision of the Court below on the merits. (The learned Judge then proceeded to consider the correspondence which had passed between the parties and the oral evidence on the record and then continued as follows:)—There cannot, with all the evidence before us, be, I think, any reasonable doubt that there was no antecedent condition to a binding treaty that there should be a written deed of contract executed by the parties, and that any assent to the proposed terms, even if agreed to, should be subject to the proviso that there must be a written instrument signed before the contract would begin to operate. Applying therefore the authorities already cited to this case, I must hold that defendants have failed to establish their defence that there was no subsisting agreement between themselves and plaintiffs on and after the 1st January, 1878. I will now show that, whilst one party is doing all he can to carry out the contract, the other is hanging back and throwing difficulties in the way of a faithful performance of it. (After examining the evidence showing these facts, the learned Judge continued:)—Thus far I have established that there was no condition antecedent to the contract; that there was a binding agreement made on the 20th December; and that it was acted upon; and finally that it was repudiated by defendants altogether. We have now to consider whether there was any misrepresentation on the part of the plaintiffs which induced defendants to accept the proposals of the former, and if there was whether the defendants were or were not justified in refusing to perform their part of the contract. (After considering the question of misrepresentation and the question whether the defendants were justified in putting an end to the agreement on the ground that the beer supplied to them was bad in quality, and deciding these questions against the defendants, the learned Judge concluded his judgment in the following terms:)—As I find that defendants broke the contract, and I consider that plaintiffs have fully established their case, I think that they are

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entitled to a decree as claimed with costs against the defendants. Since I prepared this judgment I have had an opportunity of seeing that of the Hon'ble the Chief Justice which appears to agree with the conclusion at which I have arrived.

STUART, C. J.—In this case the Subordinate Judge has gone clearly wrong. He appears to have been of opinion that no contract of the kind alleged in the plaint could be made and completed without a formal agreement in writing, and that such writing, and nothing else, was the contract itself. This mistaken notion on the part of the Subordinate Judge unfortunately took strong possession of his mind, and it not only colors but explains his judgment. For instance, the first issue he framed was this:—"Was such a contract, as is alleged by the plaintiffs to have been made, ever entered into between the plaintiffs and defendants;" and in reference to this issue his first observation is:—"The first of these issues is the point on which the case turns, and to consider it properly it is necessary to analyse and bring together the whole circumstances that led up to the transaction which it was alleged formed the contract between the contending parties as it is shown in the evidence." It would have been more correct if he had said that it was necessary to consider the evidence of the circumstances, not that led up to, but actually constituted, the transaction which was the contract. The contract was evidently something which in his mind was yet to come, and he could not see that the agreement or contract relied upon by the plaintiffs had been made and was a complete contract in itself. That such a view of the law of contracts is altogether erroneous cannot be doubted. The Indian Contract Act, IX of 1872, embraces the greater part of the recognized law of contracts, but it does not, within itself, adopt the whole body of that law, for true to its preamble, which declares that, "whereas it is expedient to define and amend *certain parts* of the law relating to contracts," it excludes from its provisions all those subtleties to which the English Statute of Frauds has given rise, and certain classes of contracts which are scarcely necessary for the business of this country, but which, should occasion so require, might be applied here, and which this preamble clearly saves. In fact the Indian Contract Act may be said to deal with two large classes of

transactions, those which fall under the wide and general definition contained in s. 2 and the first part of s. 10, and those other transactions or agreements in writing referred to and saved by the latter portion of s. 10, and those written agreements which have to be considered under s. 25. S. 2 defines a contract to be an agreement enforceable by law, a rather wide definition, which if taken by itself does not add much to our information on the subject, but if read in connection with other parts of the same section it can be seen that that contemplates such a contract as we have in this case, and which is also an agreement and contract within the meaning of the first part of s. 10 of the Act, which provides that "all agreements are contracts if they are made with the free consent of parties competent to contract for a lawful consideration and with a lawful object," what in fact is known as one of that large class of agreements which in the law of England go under the definition of simple contracts. The contract in the present case is such a simple contract, not an express contract in writing, but *rebus ipsis et factis*, in other words, a contract made by the conduct of the parties, by their correspondence, by evidence of their personal intercourse on the subject of the contract, and by any facts and circumstances showing an agreement of mind in the matter. And any formal or written agreement which *may have been ultimately intended is to be looked* at merely as the record of that which had already been agreed upon, and not as the agreement or contract itself. Several cases in support of this view of the law were referred to at the hearing. In the case of *Brogden* v. *The Directors of the Metropolitan Railway* (1), decided on the 16th July, 1877, the law on this subject is very clearly laid down by the Lord Chancellor (Cairns) in the following terms:—"My Lords, there are no cases upon which difference of opinion may more readily be entertained, or which are always more embarrassing to dispose of, than cases where the Court has to decide whether or not, having regard to letters and documents which have not assumed the complete and formal shape of executed and solemn agreements, a contract has really been constituted between the parties. But, on the other hand, there is no principle of law better established than this, that even although parties may intend to have their agreement expressed in the most

(1) L. R., 2 Ap. Ca., N. S., 666.

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solemn and complete form that conveyancers and solicitors are able to prepare, still there may be a *consensus* between the parties far short of a complete mode of expressing it, and that *consensus* may be discovered from letters or from other documents of an imperfect and incomplete description; I mean imperfect and incomplete as regards form." To the same effect is the ruling in *Lewis* v. *Brass* (1). In this case it was held that a tender and letter of acceptance formed a complete contract although a written deed of agreement was contemplated by the letter conveying the acceptance. The same was ruled in *Bonnewell* v. *Jenkins* (2). In *Jones* v. *The Victoria Graving Dock Co.* (3) it was held that a draft agreement modified by another paper was a valid contract within s. 4 of the Statute of Frauds, although a resolution was at the same adopted that the said agreement be endorsed in duplicate, signed, sealed, and executed. In *Crossley* v. *Maycock* (4), before the Master of the Rolls (Sir George Jessel), the agreement between the parties was qualified by certain conditions, and the Court accordingly held that no final agreement had been made which could be enforced, but in delivering judgment Sir George Jessel laid down the principle of the law of contracts entirely in accordance with the other cases to which I have referred. He said: "The principle which governs these cases is plain. If there is a simple acceptance of an offer to purchase, accompanied by a statement that the acceptor desires that the arrangement should be put into some more formal terms, the mere reference to such a proposal will not prevent the Court from enforcing the final agreement so arrived at." In *Winn* v. *Bull* (5), before the Master of the Rolls, a written agreement relating to a lease of a dwelling-house and premises for a term of seven years was made "subject to the preparation and approval of a formal contract," and applying that condition to the case Sir George Jessel held that no final agreement had been made. But in delivering judgment His Lordship referred with approbation to the decision in the case of *Chinnock* v. *Marchioness of Ely* (6) of Lord Westbury in which His Lordship said:—"I entirely accept the doctrine * * * that, if there had been a final agreement and the terms of it are evidenced in

(1) L. R., 3 Q. B. D., 667.
(2) L. R. 8 Ch. D., 70.
(3) L. R., 2 Q. B. D., 314.
(4) L. R., 18 Eq., 180.
(5) L. R., 7 Ch. D., 29.
(6) 4 D. J. & S. 638

a manner to satisfy the *Statute of Frauds*, the agreement shall be binding, although the parties may have declared that the writing is to serve only as instructions for a formal agreement, or although it may be an express term that a formal agreement shall be prepared and signed by the parties." In *Winn* v. *Bull* (1) the case of *Rossiter* v. *Miller* (2) was referred to. Lord Coleridge, Chief Justice, laid down with the approbation of Lord Justice James and Lord Justice Baggallay, who heard the case with him, that, "as soon as the fact is established of the final mutual assent of the parties to certain terms, and those terms are evidenced by any writing signed by the party to be charged, or his agent lawfully authorised, there exist all the materials which this Court requires to make a legally binding contract." The law therefore on the subject of these contracts is perfectly clear, and applying it to the present case we have to consider whether on the facts and evidence before us there is to be found a contract or agreement binding on the parties. (The learned Chief Justice then proceeded to consider the correspondence which had passed between the parties and the oral evidence on the record, and then continued as follows:)— There being therefore no room for objection on the score of the inferior quality of the beer, nor any sufficient ground for the plea of misrepresentation, the only question for serious consideration is whether the facts and the evidence which I have detailed show a legal contract between the parties which may be enforced. I am clearly of opinion that such a contract is shown and that the facts come within the principle of the authorities to which I have already adverted. I would therefore allow the plaintiffs' claim with interest thereon at twelve per cent. up to the date of the decree of this Court and thereafter and till realization at six per cent. per annum, the particulars of which appear to be correctly stated in the plaint, and Rs. 6,000 as the liquidated damages agreed to be paid by the party guilty of breach of the contract, and reversing the judgment of the Subordinate Judge decree the present appeal with costs in both Courts.

Appeal allowed.

(1) L. R., 7 Ch. D., 29. (2) L. R., 5 Ch. D., 648.