

1810.

Colvin
vs
Williams

five of the shares mentioned in the bill of parcels were the property of *Benjamin Williams*, and that the remaining two shares were the property of the plaintiff, and that at the time of the delivery of the bill of parcels to the defendant, *Barklie* did not inform the defendant to whom the seven shares belonged, but that *Barklie*, on the 23d of February 1804, informed him that five of the shares were the property of *Benjamin Williams*, and the remaining two shares the property of the plaintiff; and that *B. Williams* and the plaintiff, on that day, offered to transfer to the defendant the seven shares; that is, the plaintiff his two shares, and *B. Williams* his five shares, upon the respective payment of \$450 for each of the shares; but the defendant refused to pay for the seven shares, declaring that he would neither accept of a transfer of the said shares, nor pay for the same. That the plaintiff was at that time a stockholder of two shares in the said bank, and *B. Williams* was at that time also a stockholder of five shares, and that the plaintiff did tender to the defendant the two certificates of his two shares, and *B. Williams* the five certificates of his five shares, on the morning of the 23d of February 1804, which the defendant refused to receive. The plaintiff then moved the court to direct the jury, that this testimony was sufficient to maintain the *first*, *fourth* and *fifth* counts of the plaintiff's declaration. The court, (*Nicholson*, Ch. J. and *Hollingsworth*, A. J.) gave the direction. The defendant excepted; and the verdict and judgment being against him, he appealed to this court.

The case was argued before CHASE, Ch. J. BUCHANAN, GANTT, and EARLE, J.

W. Dorsey, for the Appellant. 1. The plaintiff below ought not to have recovered on the *first* and *fifth* counts of his declaration, and it is doubtful whether he could recover on the *fourth* count. In the first count it is not stated that there was a *tender* of the shares. 2. By the statute of frauds the contract was not binding, unless part of the goods was received, or some note or memorandum in writing given. There must be a contract signed by the party to entitle the plaintiff to recover. Here is a mere sketch of a writing, neither filled up, nor the shares delivered. It is clear that the requisitions of the statute have not been complied with. The intention of that statute was to