

1810.

Colvin  
vs  
Williams

says, that "no contract for the sale of any *goods, wares or merchandises*," shall be good, &c. The question is, whether bank stock was contemplated by that statute? It speaks of *goods*, in contradiction to *real estate*. Would it embrace *lease-hold estate*? The term *goods* is to be taken in a restricted sense. If the word *goods* was alone used it might be doubtful; but the three words are to be taken together, and they were not intended to apply to stock in a Bank. This point has not been finally settled, and is open for decision. The judges in *England* are divided in opinion. 1 *Com. on Contr.* 88 to 91. This was a contract executed—There was a complete sale, and such an one as the defendant could be enforced to perform in a court of equity. The formality was only to be complied with, but the sale was complete, and the stock was vested without a delivery. The sale of a horse at a stable is good without a delivery, and an action may be brought for the horse, if there is no delivery. The defendant had such a right which he could enforce the performance of. The offer to sell was accepted and agreed upon. It was a complete sale. The transfer could only be made in a particular way, and was not a condition precedent to the payment of the money. If the sale of bank stock is within the statute, then here is a note or memorandum in writing. The bill of parcels was in the hand-writing of *Barklie*, the agent of both parties. The defendant filled up the blanks, and though he put it in his pocket, will it be said that it would bind the plaintiff and not the defendant? The defendant, by filling up the blanks, made it his writing. The statute does not say any thing about a *signature* or a *delivery*.

THE COURT said, that the sale of bank stock is within the statute of frauds; and that *Barklie* was the common agent of both the appellee and appellant.

JUDGMENT AFFIRMED.