

JAMES E. BIGELOW (DEFENDANT) . . . APPELLANT;

AND

THE CRAIGELLACHIE - GLEN-
LIVET DISTILLERY COMPANY } RESPONDENTS.
(PLAINTIFFS) }

1905

*Nov. 30,

Dec. 1.

*Dec. 22.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Sale of goods — Contract by correspondence—Statute of Frauds—
Delivery — Principal and agent — Statutory prohibition—Illicit
sale of intoxicating liquors—Knowledge of seller—Validity of
contract.*

B., a trader, in Truro, N.S., ordered goods from a company in Glasgow, Scotland, through its agents, in Halifax, N.S., whose authority was limited to receiving and transmitting such orders to Glasgow for acceptance. B.'s order was sent to and accepted by the company and the goods delivered to a carrier in Glasgow to be forwarded to B. in Nova Scotia.

Held, affirming the judgment appealed from (37 N.S.R. 482) Idington J. dissenting, that the contract was made and completed in Glasgow.

Where a contract was made and completed in Glasgow, Scotland, for the sale of liquor by parties there to a trader in a county in Nova Scotia where liquor was forbidden by law to be sold on pain of fine or imprisonment and the vendors had no actual knowledge that the purchaser intended to re-sell the liquors illegally, the contract was not void and the vendors could recover the price of the goods.

APPEAL from the judgment of the Supreme Court of Nova Scotia (1) affirming the judgment at the trial by which the plaintiffs' action was maintained with costs.

The plaintiffs carried on business at Glasgow, in

*PRESENT:—Sir Elzéar Taschereau C.J. and Girouard, Davies, Idington and MacLennan JJ.

(1) 37 N.S. Rep. 482.

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.
—

Scotland, as distillers, and appointed sales agents at Halifax, in Nova Scotia, with authority restricted to receiving and transmitting orders, the acceptance of such orders being in the discretion of the plaintiffs' officers in Glasgow. The defendant carried on a trade in liquors in Nova Scotia without the license provided by the "Liquor License Act," R.S.N.S. 1900, ch. 100, and had a place of business at Truro, in the County of Colchester, where the "Canada Temperance Act" was in force. The defendant placed orders for whisky by written memoranda with the plaintiffs' agents at Halifax, and his orders were transmitted in the regular course of business to the plaintiffs in Glasgow. The plaintiffs accepted the orders and shipped the whisky from Glasgow to the defendant at Truro, N.S., and, after he had received the goods, passed drafts upon him for the price with freight added, which were accepted by the defendant upon presentation, but were dishonoured at maturity. The plaintiffs brought the action on the drafts for the price of the liquors sold and the defendant pleaded that the contract was void, having been made in Nova Scotia with the object of enabling him to re-sell the liquors there in contravention of the statutes prohibiting such sales under penalty of fine and imprisonment.

The judgment appealed from affirmed the decision of the judge at the trial maintaining the action and holding that the contract was completed only at Glasgow, upon the acceptance of the orders and delivery of the goods to the carrier, and that there was no evidence to shew that the plaintiffs had any knowledge of the intention of the defendant to re-sell the liquors contrary to law.

Lovett for the appellant. The contract was made at Halifax, N.S., where the agents received appellants'

orders and, after communicating with the respondents, notified the appellant of the acceptance of the orders on the part of the respondents. See *Leake on Contracts* (4 ed.) pp. 18, 19, 20, 25. At any rate, the order was never accepted by the respondents except at Truro, N.S., where the goods were delivered. *Taylor v. Jones* (1).

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.

The contract comes within the Statute of Frauds, and the place of contract is the place where the written agreement or memorandum was signed, or where there is a delivery and acceptance. *Coombs v. Bristol and Exeter Ry. Co.* (2); *Aris v. Orchard* (3); *Alderton v. Archer* (4). The written memorandum was signed by the appellant in Nova Scotia; the receipt and acceptance of the goods took place at Truro, likewise the acceptance of the drafts with bills of lading attached. The acceptance of the order, if any, was given and despatched by the agents of the respondents from Halifax.

The word "sell" in section 86, chapter 100, R.S. N.S., 1900, should be given its ordinary and popular meaning; and, if any part of the transaction took place in Nova Scotia, the transaction is within that statute. The provision is pointed not only at the contract but at the performance of the contract, including all negotiations leading up to the final delivery of the property purchased. The court should not strain it in order to enforce any other view as to the place where part of the agreement was carried out, if the contract violates the policy of its forum. *Hope v. Hope* (5), *per Turner L.J.* See also *Rousillon v.*

(1) 1 C.P.D. 87.

(3) 6 H. & N. 160.

(2) 3 H. & N. 510.

(4) 14 Q.B.D. 1.

(5) 8 DeG. M. & G. 731.

1905 *Rousillon*(1); *Kaufman v. Gerson*(2); *Green v. Van*
BIGELOW *Buskirk*(3).

v.
CRAIGEL- The authority to the agent was, by its express
LACHIE- terms, an authority to sell, and the only limitation
GLENLIVET (if any) ever placed on that authority, was an
DISTILLERY understanding that the agents should submit orders
Co. to their principal and have the principal's approval
— before accepting the orders. The evidence does not
warrant even this restriction, but, even if granted, it
does not affect the sale initiated between the pur-
chaser and the agents, and closed eventually by a
communication from the agents to the purchaser.

The payment of freight at Glasgow is of no conse-
quence as regards the place of the contract: *Fragano*
v. Long(4), *per Holroyd J.*; *Dunlop v. Lambert*(5),
per Cottenham L.C.; *Ross v. Morrison*(6); *Werle &*
Co. v. Colquhoun(7). The acceptance of an offer
must be communicated to the offerer or some one
authorized by him to receive acceptance; Benjamin
on Sales (1891) p. 43; *Emerson v. Graff*(8); and
where an acceptance is transmitted through an agent
the place from which the agent despatches such accept-
ance is the place of contract; *Ivey v. Kern County*
Land Co.(9). A carrier is not an agent to accept
goods in sales covered by the Statute of Frauds; *Han-*
son v. Armitage(10); *Norman v. Phillips*(11); *Mere-*
dith v. Meigh(12); and where goods are to be shipped
by water and vendor does not insure or notify vendee
so that he has an opportunity to insure goods they

(1) 14 Ch. D. 351.

(2) [1904] 1 K.B. 591.

(3) 5 Wall. 307; 7 Wall. 139.

(4) 4 B. & C. 219.

(5) 6 C. & F. 600.

(6) 36 N.S. Rep. 518.

(7) 20 Q.B.D. 753.

(8) 29 Pa. St. 358.

(9) 115 Cal. 196.

(10) 5 B. & Ald. 557.

(11) 14 M. & W. 277.

(12) 2 E. & B. 364.

remain at risk of vendor; Chalmers (1902), p. 72; Bell's Law of Sales, p. 89.

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.

The contract is invalid if contrary to the laws of the place where it is to be performed; Minor, Conflict of Laws, 401-2 and 418; Westlake, p. 258, sec. 212. Such a sale made in Nova Scotia is invalid as being in contravention of penal statutes prohibiting the re-sale of the whisky; *Brown v. Moore*(1). If there was knowledge in the agents or circumstances which fairly put them on inquiry, the principal is affected with that knowledge. They were, by the express terms of the appointment, the sole agents of the principals in respect to the sale of their liquors in Nova Scotia. The orders for such liquors were obtained by these agents and accepted by them and knowledge acquired by them in the course of such duties is the knowledge of their principals; *Ross v. Morrison*(2); *Suit v. Woodhall*(3); *Backman v. Wright*(4).

W. B. A. Ritchie K.C. for the respondents. The evidence proves a contract of sale made in Scotland. The agency did not extend beyond the receiving and transmitting of such orders as might be handed to the agents by persons wishing to purchase goods from the plaintiffs, and no other act was performed. Delivery of the goods was made by the respondents directly to the appellant at Glasgow, and bills drawn upon appellant for the freight as well as the price of the goods. This was the usual course of business between the parties; *Grainger & Son v. Gough*(5). Until the prin-

(1) 32 Can. S.C.R. 93.

(3) 113 Mass. 391.

(2) 36 N.S. Rep. 518.

(4) 27 Vt. 187.

(5) (1896) A.C. 325.

1905
 BIGELOW
 v.
 CRAIGEL-
 LACHIE-
 GLENLIVET
 DISTILLERY
 Co.

cipal received the orders and accepted or agreed to accept there was no contract; *Finch v. Mansfield* (1).

Even persons intimate with defendant's business might not know that he was conducting it illegally, by reason of the fact that he was a wholesaler and conducting a licensed liquor business in Halifax; that he had a perfect right to warehouse his goods in Truro and even to deliver to customers there if sales were made in Halifax; *Pletts v. Beattie* (2); and that he also had a right to sell from Truro for delivery in any county in Nova Scotia or the adjoining provinces where there was no prohibitory law in force. Illegality is not to be presumed and there is evidence that defendant carried on his business throughout the Maritime Provinces. Giving the fullest possible effect to the evidence of defendant, it does not shew knowledge on the part of plaintiffs of the existence of the laws in force in Nova Scotia restricting the sale of intoxicating liquors or that the appellant was buying goods for the purpose of re-selling in violation of any law. As the sales were made in Scotland, the respondents were under no obligation to consider whether or not the appellant intended to re-sell the goods in Nova Scotia with or without a license, and, at all events, the sales were not illegal unless made with the intent on the vendor's part that the property, when sold, was to be applied to an illegal purpose; *Pellecat v. Angell* (3); *Clark v. Hagar* (4); *Finch v. Mansfield* (1); *Stephenson v. W. J. Rogers, Limited* (5).

(1) 97 Mass. 89.

(2) (1896) 1 Q.B.D. 519.

(3) 2 C. M. & R. 311.

(4) 22 Can. S.C.R. 510 at pp. 531-541.

(5) 80 L.T.N.S. 193.

THE CHIEF JUSTICE.—I would dismiss this appeal. Mere knowledge by the respondents, in Glasgow, if they had any, that the appellants might, perhaps, intend to re-sell this liquor in defiance of the law of Nova Scotia, is no bar to this action, and the finding by the two courts below that this sale took place in Glasgow is unimpeachable.

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.
The Chief
Justice.

A case of *Magann v. Auger* (1) in this court, in addition to those cited at bar, may be referred to on this point.

GIROUARD J. concurred in the judgment of the majority of the court.

DAVIES J.—I am of opinion that the appeal should be dismissed and the judgment below affirming that of the trial judge confirmed.

The action was brought to recover the amount of certain bills of exchange drawn by the respondents upon the appellant and accepted by him for the purchase price of certain whisky ordered and received by him from the respondents.

The respondents are Glasgow merchants carrying on business there in the spirits and wine trade. The defendant is a trader carrying on business in Truro, Nova Scotia.

The respondents had agents in Halifax, N.S., whose duties were to receive orders for goods and forward them on to the respondents at Glasgow by whom they were either accepted or refused.

The orders in question in this case were given by the appellant to these agents verbally and were by them transmitted to the respondents who accepted them and shipped the goods as ordered to the appel-

1905

BIGELOW

v.

CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.

Davies J.

lant in Truro, Nova Scotia, by whom they were afterwards received and used.

The freight and charges upon the goods were included with the price of them in a draft drawn upon appellant, accepted by him and returned by him to respondents in Glasgow.

No questions are raised as to the quality or condition of the goods or as to the acceptance of the draft in the usual course of business by the respondents.

The learned trial judge held that under the contract as proved the delivery of the goods to the carrier in Glasgow was a completion of the contract and that the property in them passed on such delivery to the appellant and gave judgment accordingly.

The Supreme Court of Nova Scotia affirmed that finding and judgment.

On appeal here it was contended that the contract was not complete until there was an *acceptance* of the goods by the defendant in Truro and that, under the Statute of Frauds, there was no binding contract until after such acceptance, which having taken place in Nova Scotia the contract must be held as having been *made there*, and being a sale there of alcoholic spirits in violation of the laws in force in that province was void.

I have no difficulty whatever under the facts in holding that the judgments of the courts below were correct.

The Statute of Frauds is invoked, but as there was both an acceptance of the goods and a signature of the purchaser to the acceptance of the draft this statute was complied with.

The only question that was arguable, and it was put with great ingenuity by Mr. Lovett, was that that signature to the acceptance having been made and

the goods accepted in Nova Scotia the contract must be held to have been made there.

On the argument I put this question to the learned counsel. Supposing the defendant had gone to Boston and had accepted the draft there, could it be held that the contract was made in Massachusetts, or, if the defendant had met the plaintiff on the high seas on board one of the transatlantic steamers and had given him \$1 as earnest money to bind the contract, would the contract have been held to have been made at sea and governed by the law of the nationality of the ship.

At common law there was undoubtedly, on the acceptance of the order and the shipping of the goods, a good binding contract and the property in the goods immediately passed to the grantee.

The mere fact that the requisites of the Statute of Frauds were complied with elsewhere than in Glasgow did not, in my opinion, operate to change the place where the contract was originally made.

The acceptance of the draft by the defendant and its transmission by him to the plaintiffs in Glasgow operated as a compliance with one of the requisites of the Statute of Frauds, but did not alter in any respect its terms or the liabilities of either of the parties under it. It merely enabled those liabilities to be enforced.

I have read the different authorities cited by the appellant, but cannot find in any of them authority for the position that the mere fact of one of the requisites of the Statute of Frauds being complied with at a place other than that where the contract was made and completed, operated to change the place where that contract was made or defendant's liability under it according to the law of that place.

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.
Davies J.

1905

BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.

Davies J.
—

The effect of the words in the 17th section of the Statute of Frauds, "no contract," etc., "shall be allowed to be good" is not to make a contract void which does not comply with the provisions of the Statute of Frauds, but merely to render certain evidence indispensable when it is sought to enforce it.

In *Maddison v. Alderson* (1), at p. 488, Lord Blackburn says:

I think it is now finally settled that the true construction of the Statute of Frauds, both the 4th and the 17th sections, is not to render contracts within them void, still less illegal, but is to render the kind of evidence required indispensable when it is sought to enforce the contract.

For these reasons I am of opinion that the appeal must be dismissed with costs.

IDINGTON J. (dissenting).—The case of *Grainger & Son v. Gough* (2), so much relied upon in the courts below, and in argument here, does not, I think, touch the point to be decided here.

The point of that decision was that the foreign merchants could not be said to have, within the meaning of the Income Tax Act, carried on business in England though employing agents to solicit orders there.

Lord Herschell put that, at p. 336, thus:

How does a wine merchant exercise his trade? *I take it, by making or buying wine and selling it again with a view to profit.* If all that a merchant does in any particular country is to solicit orders I do not think he can reasonably be said to exercise or carry on his trade in that country.

These sentences point out clearly what the court there had to decide and did decide.

The questions to be considered there were entirely different from those raised here.

(1) 8 App. Cas. 467.

(2) [1896] A.C. 325.

Incidentally some of the questions here presented had to be looked upon there as part of a larger whole.

But the decision of the questions raised here either one way or the other could not have affected the decision there or the reasoning that led up to it.

In this case we have to determine whether or not the plaintiffs' claim rests, in any sense, upon a sale or delivery, by respondents, of liquor in Nova Scotia.

If the entire contract and its performance can be taken out of Nova Scotia then there cannot be said to have been in the contract any violation of the License Act of that province.

The business was done through an agent in Halifax, who had but limited authority.

No matter what the respondents set up now; clearly they thought when establishing the present agent in the Nova Scotia agency in question that he was an agent to *sell*. Their letter authorizing him expressly says:

We, therefore, hereby appoint you to act as our agents in the sale of our Gaelic and other brands of whisky for the whole of the Province of Nova Scotia on the same terms on which your father, Mr. Eagar, worked.

It is said there was a flat rate price from which the agent could not depart. But respondents might accept, reject or modify, and submit such modification for the customer's acceptance. Four months' credit seems to have been understood. I presume this was from verbal understanding.

There was no written order by letter, cable or in any way, from the appellant to the respondents. Orders both oral and written were given to the agent. None are produced. If any such had been directed to the respondents they would have been produced, no doubt, because the third difficulty the respondents

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.
Idington J.

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.

had and have is want of compliance with the Statute of Frauds. The agent clearly was not the agent of the appellant, but of the respondents. When he got orders he cabled his principals, in such form as he saw fit, the substance of them.

Neither agent nor customer signed the cables sent. The specimen letter from the agent, produced in evidence, is directed to the respondents, but signed by the agent as if he were a principal.

In no way do these communications bear out the suggestion of the Halifax agent being like a messenger or the post-office formally transmitting what had been entrusted merely for transmission. The agent was not the messenger or other agent of the appellant.

The transformation of the orders, the course of transmission and method of business must be borne in mind in seeking to understand the evidence of the respondents' witness, Holm, which is as follows:

I say the contract for the sale of said goods was made by defendant, tendering the order to plaintiffs' agents for transmission by them (the agents) to the plaintiffs in Glasgow, and by the plaintiffs' acceptance in writing conveyed through their agents in Halifax. The goods were sold in Glasgow, Scotland.

This seems to imply clearly that this was the usual mode of dealing and the acceptance so notified might be either unconditional or with a modification from the usual terms and until such notification to the appellant there was no acceptance of the order and no contract.

Upon notification according to this custom of the appellants, if the acceptance were unconditional they became bound and the contract was complete. Can it be said that a contract so arrived at was not formed in Nova Scotia?

It would seem too plain for argument that such

was the result in that case. And as a result the contract would be void. The witness's swearing in effect to the law does not change the facts.

The next alternative presented is that the respondents did not forward any communication, but proceeded to ship the goods to Truro or Halifax, as indicated either by the order or the course of business-dealing between the parties.

But if the usual course of dealing was, as the respondents, by the evidence I quote, indicate it was, then they were shipped in the absence of a memo.

signed by the parties *to be charged* by such contract or *their* agents thereunto lawfully authorized

solely upon the chance of the appellant's acceptance of the goods on arrival.

They had, by the established course of business as sworn to, no authority from the appellant to rest upon in so shipping.

The appellant, in default of any acceptance notified to him (in the way and manner established between him and the respondents to carry on their business), closing the bargain could have rescinded his order. There was nothing to bind him. There could be no bargain, binding or otherwise, till the notification or the actual acceptance of the goods.

Then such an acceptance ended in the completion as well as the beginning of a bargain in Nova Scotia. It was also the performance of the contract there.

In any way one looks at the matter, either as a contract or its performance, the result is in law fatal to the contract as the basis of an action.

It seems idle to suggest a bargain at common law, as was argued, whereby the Statute of Frauds would or might be excluded.

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.
Idington J.

1905

It seems clearly settled law that

BIGELOW

v.

CRAIGEL-

LACHIE-

GLENLIVET

DISTILLERY

Co.

the receipt of goods by a carrier or wharfinger appointed by the purchaser does not constitute an acceptance, these agents having authority only to receive not to accept the goods for their employers.

See Benjamin on Sales, p. 153, and cases there

Idington J. cited.

Norman v. Phillips(1), where the order was to send the goods to a specified station of the Great Western Railway to be forwarded to him *as on previous occasions*, seems to go much further than needed here, but in common with this includes the element of former course of dealings so pressed upon us in argument.

It is to be observed that the evidence of the respondents' witness already referred to, in answer to the 6th question of cross-examination, states that

during the business connection between plaintiffs and defendant part of the goods supplied were addressed and delivered at Halifax and part at Truro.

The case of *Coombs v. Bristol & Exeter Railway Co.*(2) seems to be conclusive on the point. The purchaser under a verbal agreement to buy of the vendor all the whalebone he could procure at a certain price to be sent by a particular railway, the purchaser agreeing to pay the carriage, it was held that the purchaser could not sue as consignee because the contract was void as within the Statute of Frauds and no title had passed.

The distinction urged here that at common law the contract was good notwithstanding the absence of writing or other requirement of the statute and because the railway could not invoke the statute as it

(1) 14 M. & W. 277.

(2) 3 H. & N. 510.

would be presumed the title had passed, was urged and considered there.

It was pointed out in answer in the judgment delivered that the statute expressly says that the contract shall not be good.

There the obvious distinction is also pointed out between such cases, and the cases where, the contract being in writing and therefore valid, the consignee had been held entitled to sue the carrier for the loss of the goods.

Alderton v. Archer(1), and *Taylor v. Jones*(2), are instructive as tests of where a contract is to be held as made when signed in one place and sued upon in another, or the converse case of a signature to a letter ordering, that *was only accepted*, as in one alternative here, by delivery of the goods ordered at the place where the letter was written.

On the whole I see no reason to doubt that in any way one can look at this claim of the respondents the contract was made and performed in Nova Scotia, and that being void when so made there the appellant should succeed.

The appeal ought, therefore, to be allowed with costs and the action be dismissed with costs of the appeal and in all the courts below.

MACLENNAN J.—The principal question on this appeal is whether or not the goods, for which the bills sued upon were accepted, were sold in Nova Scotia by the plaintiffs, they having no license as required by the provincial law, or whether the sale was made in Glasgow, Scotland.

The goods having been received by the appellant, and he having accepted the bills therefor drawn upon him by the respondents for the price, it was for him,

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.
Idington J.

(1) 14 Q.B.D. 1.

(2) 1 C.P.D. 87.

1905

BIGELOW

v.

CRAIGEL-

LACHIE-

GLENLIVET

DISTILLERY

Co.

MacLennan J

when now refusing to pay for them, to make out his defence by clear evidence that the sale was void, having been made in Nova Scotia.

I am of opinion that he has not done so, and that the judgment appealed from is quite right.

The plaintiffs were distillers and dealers in whisky, and carry on their business in Glasgow, Scotland, and the defendant is resident and does business at Truro, in Nova Scotia. The plaintiffs had agents at Halifax, in Nova Scotia, named Eager & Son, whose authority was limited to the receiving and transmitting of orders for goods, but having no authority to bind the plaintiffs by accepting them. The orders for the goods in question were received by Eager & Son and transmitted to the plaintiffs. Of these there were three, the first in March, the second in April and the third in May, 1903. The respective shipments were made on the 26th March, the 30th April and the 16th May. The orders were sent by cable. These cables were printed in the case, in cypher, without translation, and we have no means of ascertaining their purport. It appears, however, that the orders were for the specified quantities of goods to be shipped to the defendant at Truro with the required number of capsules and labels, on usual terms and shipping instructions. The goods were shipped according to instructions, freight prepaid, and bills of lading taken, no doubt consigning the goods to the defendant. A bill was drawn for the price of the goods, including the freight, and a small charge for the bill of lading, and, finally, a bill of exchange was drawn on the defendant for the whole and accepted by him.

Now, I think the effect of all this was, in each case, a sale of the goods to the defendant at Glasgow; that the moment the goods were thus shipped the property

therein passed to the purchaser, and the sale became complete.

It is said that the purchaser had a right to inspect the goods on arrival, and to reject them. No doubt, if the goods were not the goods ordered, he could reject. Otherwise not.

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.

In *Brogden v. Metropolitan Railway Co.* (1) Lord MacLennan J. Blackburn says:

But I have always believed the law to be this, that when an offer is made to another party, and in that offer there is a request, express or implied, that he must signify his acceptance by doing some particular thing, then, as soon as he does that thing, he is bound. If a man sent an offer abroad, saying, "I wish to know whether you will supply me with goods at such and such a price, and, if you agree to that, you must ship the first cargo as soon as you get this letter," there can be no doubt that, as soon as the cargo was shipped, the contract would be complete and, if the cargo went to the bottom of the sea, it would go to the bottom of the sea at the risk of the orderer.

It is said, however, that there is no evidence that the defendants' orders were in writing or conformed to the Statute of Frauds and that, therefore, there was no sale of these goods until they were accepted and received by the defendant at Truro.

I think that is not the effect of the evidence. The defendants lived and did their business at Truro; Eager & Son were at Halifax. The defendant in his evidence says:

All business done with the plaintiffs was done through him (Eager): I did it all. All our orders were given to Eager, either at his office or man at Halifax. These two letters are from Eager—M1 and M2. I received the goods referred to in them and the drafts sued on * * * were for these goods.

The letters referred to are written from Halifax and addressed to the defendant at Truro. The first says:

1905
 BIGELOW
 v.
 CRAIGEL-
 LACHIE-
 GLENLIVET
 DISTILLERY
 Co.

We (Eager & Son) have received from your Halifax office the following order for 10 one-quart casks of Gaelic with the required number of capsules for shipment on through bill of lading to Truro, N.S. We have forwarded the order to Messrs. The Craigellachie Glenlivet Distillery Co.

The other says:

MacLennan J. We have forwarded your memos to the following firms asking them to ship to you, etc., etc.

I think the fair inference from the defendants' evidence and from these letters is that the orders referred to were in the form of letters from the defendant, duly signed by him, and which were transmitted to the plaintiffs and the effect of which is stated in these two letters of acknowledgment, marked M1 and M2.

In another passage of his testimony, the defendant says:

The goods for the earlier draft were ordered from our Halifax office. The order, though given in Halifax, I think was given from Truro to our man in Halifax. All the orders for the goods in question were ordered from company's office in Halifax or *by letter* from Bigelow & Hood, Truro, to Eager. I cannot tell which method was employed in these instances.

I think it would be entirely contrary to usage and experience to suppose that these orders were not in writing and signed by the defendant.

Then, it is said that the sale was made in Halifax, inasmuch as the acceptance of the defendant's order was made through Eager, and the evidence of Mr. Holm, a director of the plaintiff company, is relied on, in which he says:

I say the contract for the sale of said goods was made by defendant tendering the order to the plaintiffs' agents for transmission by them (the agents) to the plaintiffs in Glasgow, and by the plaintiffs' acceptance in writing, conveyed through their agents in Halifax. The goods were sold in Glasgow, Scotland.

This is not contradicted either by the defendant or by Eager, and, no doubt, if the sale in question was completed as thus described, it must be held to have been made in Halifax, for there could be no completion while the acceptance of the orders was still in the hands of the plaintiffs' agent and uncommunicated to the defendant. There is, however, no such acceptance in writing produced or proved by the defendant in relation to either of the three shipments in question.

We have seen that the orders were transmitted to the plaintiffs by cable, and it also appears that the shipments were made promptly. The first order was on the 21st of March; shipment, 26th March. The second order, 28th April; shipment, 30th April. And the defendant says the order for the shipment of 16th May was given about that date. Now, if what Mr. Holm speaks of as *acceptance of orders in writing* was transmitted by letter, it could not possibly have been received or conveyed to the defendant until after the goods had been shipped and after the property in them had passed to the defendant by the shipment. On the other hand, even if the acceptance had reached the defendant before the goods had been shipped, still the acceptance would pass no property. The sale would not be complete until goods of the kind sought to be purchased had been appropriated to the contract.

What the statute, section 86, enacts, is that "No person shall sell * * * any liquor * * * without * * * license." Until the goods were shipped there was no *sale*. There was or may have been an *agreement* for the sale of a named quantity, but there was no *sale* of liquor, and, therefore, no completed offence. And the sale must be taken to have been made where the goods were when the property passed

1905
BIGELOW
v.
CRAIGEL-
LACHIE-
GLENLIVET
DISTILLERY
Co.
MacLennan J

1905 from the plaintiffs to the defendant, and that was
BIGELOW when they were appropriated to the contract at Glas-
v. gow.
CRAIGEL-
LACHIE-
GLENLIVET But, even if there had been no signed orders given
DISTILLERY by the defendant, a verbal contract of sale is not void,
Co. but is good, if followed by acceptance and receipt of
MacLennan J. the goods.

I am, therefore, of opinion that the appellant's first ground of appeal wholly fails.

But the appellant relies on another ground, that the goods were sold for the purpose of enabling the appellant to re-sell the same in Nova Scotia contrary to law.

I think the vague evidence on which it is sought to support this proposition is wholly insufficient, and I agree with the reasons given by the learned judges in the courts below on this point.

The appellant also placed some reliance on section 173 of the "Liquor License Act," but that section merely makes it unlawful for a *licensee* to sell to an *unlicensed* person if he knows that it is purchased for the purpose of re-selling.

The appeal must be dismissed.

Appeal dismissed with costs.

Solicitor for the appellant: *H. V. Bigelow.*

Solicitor for the respondents: *Thomas Notting.*