of in a summary way. A perusal of the cross-examination led one to believe that the defendant was an astute and not altogether a satisfactory witness; but if, notwithstanding that circumstance and notwithstanding any admission by him, there still remained material questions or a material question open to contention, for the determination of which further evidence was necessary, it would be going outside of the Rules to refuse a trial in the usual way. The action was for the recovery of land, and the defence set up and the facts and circumstances sworn to as supporting that defence went to the merits of the whole claim. These, if substantiated, would afford some reasonable answer to the plaintiff's claim; and an opportunity should be given to try out the contentious question thus raised The appeal should be allowed; costs of the motion and appeal to be costs in the cause. C. W. Livingston, for the defendant. W. D. McPherson, K.C., for the plaintiff.

STEVENS v. BROWNLEE—LATCHFORD, J.—DEC. 21.

Sale of Goods—Action for Price—Rejection by Purchaser—Goods not Answering to Description in Contract—Unmerchantable Goods—Inspection—Notice of Rejection.]—Action for the price of three car-loads of reclaimed coke, sold by the plaintiff, a Detroit merchant, to the defendant, a coal-dealer at Galt, in December, 1918. The action was tried without a jury at Kitchener. LATCHFORD, J., in a written judgment, said that fuel was so scarce in the fall of 1918 that use was made of almost any material that would burn. In the three car-loads of coke shipped to the defendant there was such a quantity of cinders and, especially, fire-brick, that for that reason, if for no other, the defendant was justified in rejecting the shipments. The defendant was indeed warned that the reclaimed coke could not be used for certain purposes. He had, however, no reason to think that what he was buying was anything but coke, and coke that was composed of pieces not less than half an inch in diameter. The coke itself failed to conform to the contract. While it might, as stated by the plaintiff's witnesses, have been passed over a half-inch screen, it was not properly passed over such a screen. The purpose of passing material over a screen is that particles smaller than the mesh shall fall through. But the stuff from the piles, where some of it had lain for years, was carried over the screen in a thick bed, probably wet or at least moist, and more or less adhesive, with the result that a large percentage was not screened at all, but came over the screen unchanged, and, apart from the associated cinders