and that he should not be obliged to accept or pay for them. The defendant also counterclaimed damages in respect of pease purchased from the plaintiff under an earlier agreement and (as alleged) not according to sample. The learned Judge said that the initial difficulty was to determine what was the "sample taken by Mr. S. J. Hogg," referred to in the agreement of the 22nd November; the pease to be supplied by the plaintiff were to be "fully up to" this sample. The learned Judge finds as a fact that the sample mentioned in the agreement was the sample taken by Hogg about the 1st October, and was the sample mentioned in the first agreement. It was made up of a number of samples, all of uncleaned pease, the produce of several different farms. The pease were, however, to be cleaned. This term was not expressed in the contract; but it was understood by both the parties that cleaning was to be done. The pease which the plaintiff procured from the farmers, placed in the defendant's bags, and stored for him at his request at Wiarton, were fully equal to the sample taken by Hogg. The price agreed to be paid by the defendant was much above the market-value of the pease. The defendant resold some of the pease, through a broker at Montreal, and these were rejected by buyers, not, however, because they were not clean, but because, as the learned Judge finds, they were not "good boilers." There was no representation or undertaking by the plaintiff that these pease should be suitable for domestic purposes. All the pease were "cleaned," within the meaning of the arrangement between Hogg and the plaintiff. The defendant's counterclaim failed, and should be dismissed with costs. The plaintiff was entitled to recover the price of the pease at Wiarton, $3,469.50, with costs of storage and interest and his costs of suit. If the parties should not agree as to the cost of moving pease from one store-house to another at Wiarton and of the storage in the elevator there, there should be a reference, at the defendant's expense, to the Local Master. The fact that the plaintiff had been obliged to borrow money from a bank on the security of the pease stored at Wiarton did not preclude him from bringing this action. The defendant could obtain the pease at any time by paying for them. The Statute of Frauds had no application. S. H. Bradford, K.C., and T. H. Wilson, for the plaintiff. H. Cassels, K.C., for defendant.

CORRECTION.

REX v. BOOTH, ante 549. RIDDELL, J., did not dissent; he concurred in the judgment delivered by CLUTE, J.