

JOHN HALLAM LIMITED v. BAINTON—MIDDLETON, J.—OCT. 16.

Sale of Goods—Sale by Sample—Inferior Goods Delivered—Damages—Measure of—Right of Vendor to Take over Goods at Reduced Price.]—Action for damages upon a purchase of about 50,000 lbs. of wool. It was alleged by the plaintiffs, the purchasers, that the sale was by sample, and that the bulk was not equal to the sample. The action was tried without a jury at a Toronto sittings. MIDDLETON, J., in a written judgment, said that the sale was made by a telephone conversation after a sample had been asked for and sent. For the defendants it was alleged that the sale was subject to inspection and acceptance of quality at Blyth, where the defendants did business. The learned Judge found that the transaction was a sale by sample. It was admitted that the goods sent were not in accordance with the sample, but much inferior. The damages should be fixed at 15 cents per lb. or \$7,500, estimating this as the difference in value between the thing contracted for and the thing delivered. The defendants should have the right to take over the goods on hand (on paying the amount of the judgment) within a reasonable time, at the reduced price, plus interest at 7 per cent. and a fair allowance for freight, storage, etc. If they elect to do this, and the amount is not agreed upon, the learned Judge may be spoken to. If the matter is not mentioned within 10 days, this will form no part of the judgment. Judgment for the plaintiffs for \$7,500 with costs. W. N. Tilley, K.C., and J. P. White, for the plaintiffs. L. E. Dancey, for the defendants.

BENSTEIN v. JACQUES—MASTEN, J.—OCT. 18.

Building Contract—Extras—Variation—Notice by Contractor—Condition Precedent—Architect—Building-owner—Waiver—Independent Piece of Work not Subject to Terms of Contract—Reference—Report—Appeal—Costs.]—An appeal from the report of an Official Referee in an action for moneys due upon a building contract. The appeal was heard in the Weekly Court, Toronto. On the hearing the learned Judge disposed of the appeal except as to two items and the question of costs, which he now dealt with in a written judgment. The first item was "Building and partition in basement \$26." This, the learned Judge said, was an independent piece of work, not forming part of the original contract, and the terms of the contract did not apply to it. As to this item the appeal should be dismissed. The second item was