

BOYD, C.

DECEMBER 5TH, 1904.

TRIAL.

NASMITH CO. v. ALEXANDER BROWN MILLING
AND ELEVATOR CO.*Contract—Sale of Goods—Statute of Frauds—Memorandum
—Signature—Conflicting Evidence.*

Action for damages for breach of a contract for the delivery of flour.

G. F. Shepley, K.C., for plaintiffs.

E. E. A. DuVernet and A. A. Miller, for defendants.

BOYD, C.—The contract sued on by plaintiffs is not proved as against defendants according to the requirements of the Statute of Frauds. The writings relied on are: (1) the paper of 30th December, 1903, signed by plaintiffs and addressed to defendants, to enter order for 2,000 barrels of flour and to have option for 3,000 barrels more, with delivery as required; and (2) the entry made in the contract book of defendants in these words: "1904, Dec. 30. By 2,000, P. Rose, \$4.10—cash discount of one per cent." This appears as one of a series of orders under heading on the page of Nasmith Co., and forms an item of an account which begins in the book in 1899. On the fly sheet of the book is stamped the name of defendants, with words in red ink above it, "New account 1st June, 1902"—the whole surrounded with a circular flourish. The meaning of this is that the company changed its organization at the date mentioned. The book began in 1899, and was carried on as the book of the new concern, and that is why the name and date of the new company appears on the fly sheet.

The statement of the facts carries its own refutation of the name being stamped as a signature. Besides being placed there years before this transaction, it was not put there as in any sense a signature—but as a mark of time when the new proprietorship began. . . . The latest case I have found is *Hucklesby v. Hook*, [1900] W. N. 45. . . . In brief, the printed name at the beginning of the book cannot be, in Lord Ellenborough's phrase, appropriated to the particular contract as a signature, and it was not placed there in recognition of the contract sued upon: *Schneider v. Norris*, 2 M. & S. 286, 289. See also *Evans v. Hoare*, [1892] 1 Q. B. 593; *Bluck v. Gompertz*, 7 Ex. 862, 866; *Torret v. Cripps*, 27 W. R. 706.