defendants on the 21st refused to accept, erroneously, as they afterwards admitted, asserting that two carloads, price $333, had not been received, and adding, "You should deliver the balance due on contract before asking us to pay any more money. The time has so far gone by the date when we expected the whole amount that we think it not unreasonable to ask this." There was a silence for some time, though the parties were in correspondence about another contract, and on the 5th June, 1880, the plaintiffs wrote: "We shall now soon be able to complete the delivery of the old rails," and they went on to refer to the contemplated contract. In answer the defendants' agent referred to the other contract, but said nothing about the completion of the present one. On August 20th the plaintiffs again drew for the price of the amount delivered, and acceptance was refused for the same reasons as before. The plaintiffs sued for the price of the iron delivered, and the defendants counter-claimed for damages for the non-delivery of the difference between the iron delivered and 1300 tons.

Held, reversing the judgment of Osler, J., on this point, at the trial, HAGARTY, C. J., dissenting, that the plaintiffs were not justified in treating the defendants' letter of the 21st and their conduct as shewing that they considered the contract at an end, and refused further performance of it, for they could not, after the letter of the 21st February have sued for breach thereof, in not accepting the remaining 150 tons; and that while the defendants were liable for the price of the amount delivered, they were entitled to judgment on their counter-claim for damages caused by the failure of the plaintiffs to deliver the balance.

The plaintiffs claimed damages for non-acceptance of iron under another contract.

Held, per OSLER, J., upon the evidence and correspondence, set out in the case, that no concluded contract was shewn, and if it had been, the plaintiffs could not have recovered; for 1. They had transferred the contract, and 2. They made default in delivery at the time agreed upon. *Midland R. W. Co.* v. *Ontario Rolling Mills Co.*, 1.

[Appealed and stands for argument.]

See BILLS OF SALE AND CHATTEL MORTGAGES, 1.

SALE OF LAND.

Statute of Frauds — "Vendor."]—Where a written agreement for the sale of land contained following condition of sale: "The vendor shall have the option of a reserved bid, which is now placed in the hands of the auctioneer," and the reserved bid was worded as follows: "*Re* sale of Allan Wilmot's farm; reserved bid, $105 per acre."

Held, that the above words, even though read together, as they should be, did not so identify the vendor as to satisfy the Statute of Frauds.

"Vendor" is not a sufficient description of the party selling to satisfy the requirements of the said statute. *Wilmot* v. *Stalker*, 78.

2. *Agreement — Uncertainty—Recovery of instalment—Tender of conveyance—Title.*]—By an agreement for the sale of land for $60,000, $4,000 was to be paid on the execution of the agreement, $40,795 with-