

they were bound by their contract to do so, supply any other pease. They were not to be had. There being only one crop, that of the defendants, in esse, and the samples having all been drawn from this crop, the plaintiffs, when, by their letter of the 7th February, 1918, they rejected the samples of this one crop, rejected the defendants' pease in toto, and thus relieved the defendants from their agreement.

The plaintiffs then, having exercised their undoubted right to reject the samples and with them the bulk, could not now be heard to ask for something better for which they had not contracted.

*Action dismissed with costs.*

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ESSEX GROWERS LIMITED v. G. J. LEMON & Co.—MIDDLETON, J.  
—OCT. 14.

*Contract—Sale of Goods—Memorandum of Sale not Containing all Terms of Bargain—Action for Damages for Non-delivery—Defence—Statute of Frauds—Dismissal of Action—Costs.*]—Action by the purchasers of 4 car-loads of potatoes against the vendors for damages for failure to deliver. The action was tried without a jury at Orangeville. MIDDLETON, J., in a written judgment, said that upon the issue of fact the plaintiffs succeeded, but the Statute of Frauds was a conclusive answer to the action. The memorandum of sale found in the telegram of the 4th March was not sufficient, because it did not contain all the terms of the bargain. It was part of the bargain that the potatoes should be packed in 150 lb. bags, suited to the United States market, instead of 90 lb. bags, as usual in Canada—though the price was to be computed on the basis of 90 pounds per bag. It was also agreed that 300 bags, 45,000 lbs., should constitute a "car." It was now too late to dispute the proposition that all the terms of the bargain must be found in the memorandum, either expressly or by necessary implication. While the action failed by reason of this statutory defence, there was more than enough in the defendants' conduct in the transaction and in the litigation to warrant the refusal of costs. R. L. Brackin, for the plaintiffs. C. R. McKeown, K.C., for the defendants.