MINING INDUSTRY CO. v. GODSON CONTRACTING CO.—MIDDLETON, J.—SEPT. 30.

Sale of Goods—Refusal to Accept—Contract—Parties not ad Idem—Written Order—Quantity not Specified—Statute of Frauds—Untenable Defences—Costs.]—Action to recover $1,062, the price of goods sold and delivered; tried without a jury at Toronto. MIDDLETON, J., said that the action was misconceived in form, as the goods were never delivered; the action must be regarded as one for damages for failure to accept delivery. The plaintiff company was a Swiss concern, producing high-grade tool steel. The officers of the defendant company were canvassed for orders; they had no knowledge of the plaintiff company's steel; but they finally consented to place a sample order, and gave a written order for 33 bars of steel, 3 bars of each of 11 dimensions shewn to the plaintiff company's agents. The order contained no specification as to the length of the bars to be supplied. The original order was sent to Switzerland; it was produced at the trial, and was then found to contain, in addition to what was originally written, the words "fifteen feet long." No explanation was given as to how, when, or where these words were added. The steel sent forward from Switzerland was in accordance with this altered order. The defendant company refused to accept, and repudiated the giving of any such order—the principal officer's idea of a sample order being an order for about $100 worth of steel. The quantity sent was greatly in excess of any possible requirement of the business. The idea of the principal officer of the defendant company was that short sample bars would be sent, not over two feet in length. He said—and his was the only evidence—that the length of the bars to be sent was not discussed. In these circumstances, the plaintiff company failed: the parties were never ad idem as to the quantity of goods sold; and the quantity of goods sold did not appear in the memorandum relied upon to take the case out of the Statute of Frauds. The action should be dismissed; but, the defendant company having at first raised untenable defences, should have no costs. Action dismissed without costs. A. N. Morine and A. R. Cochrane, for the plaintiff company. G. H. Watson, K.C., for the defendant company.

RE ELLIOTT & SON LIMITED—BRITTON, J., IN CHAMBERS—OCT. 1.

Company—Winding-up—Petition for—Dismissal—Leave to Appeal—Refusal of — Winding-up Act, R.S.C. 1906 *ch.* 144, *sec.* 101 (*a*), (*b*).]—Application by the Martin Secour Company Limited, creditors, for leave to appeal from an order of Middle-