of lumber, could evade supplying to the respondents any of the sizes specified in the contract—which was absurd.

The judgment appealed from was absolutely right, subject only to an admitted deduction of $105.

The judgment below should be varied by deducting $105 from the amount, and as varied should be affirmed with costs.

MIDDLETON, J., agreed with LATCHFORD, J.

MEREDITH, C.J.C.P., agreed in the result, for reasons stated in writing.

RIDDELL, J., also agreed in the result.

Judgment below affirmed with variation in amount.

SECOND DIVISIONAL COURT. JANUARY 2ND, 1920.

BROWN v. CRAWFORD.

Contract—Sale of Shares in Mining Company—Delivery "when Stock shall be Issued"—Stock Held by Directors under Pooling Agreement—Failure of Consideration—Action by Vendee for Specific Performance of Agreement.

Appeal by the plaintiff from the judgment of SUTHERLAND, J., 16 O.W.N. 369.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

Frank Denton, K.C., and A. Lemieux, K.C., for the appellant.

S. R. Broadfoot, for the defendant, respondent.

MIDDLETON, J., in a written judgment, said that he agreed with the conclusions of the trial Judge.

The defendant held 30,000 shares of the stock of a company, subject to the terms of a pooling agreement. He sold half his holding to the plaintiff, but this was intended by both parties to remain subject to the agreement. The agreement provided that the assignment should be completed "when stock shall be issued" —meaning when received by the trustees the under pooling agreement. The whole venture proved a failure, and the stock was worthless. Now—10 years later—the plaintiff sought to