

which was argued on the appeal but not pleaded on the record, should also if pleaded be submitted to the jury and the judgment dismissing the action was set aside and a new trial ordered with liberty to the defendant to amend by adding a plea of leave and license.

Judgment of the County Court of Hastings reversed.

E. Guss Porter, for the appeal. *J. H. Moss*, contra.

Boyd, C.]

[Dec. 5, 1904.

NASMITH CO. v. ALEXANDER BROWN MILLING CO.

*Statute of Frauds—Contract by letter signed by plaintiff—
Entry in defendants' book.*

The essence of a signature whether made by writing or stamp or print must be to authenticate or identify the contract by the party to be charged.

In action for breach of a contract in the form of a letter from the plaintiff to the defendant to "enter our order for two thousand barrels Prairie Rose flour at \$4.10 per barrel xxx cash discount $\frac{1}{2}$ of 1 per cent.—we to have option of another three thousand barrels xx provided option is taken up by . . . Delivery as required" in which it was shewn that an entry was made in the defendants' contract book among other orders "1904, Dec. 30, by 2,000 P. Rose \$4.10, cash dis. $\frac{1}{2}$ of 1 per cent." under the head of the plaintiffs' company name and that the fly sheet of this book had the defendants' company name stamped on it.

Held, that, the contract was not proved according to the requirements of the Statute of Frauds.

Shepley, K.C., for plaintiffs. *DuVernet*, and *A. Miller*, for defendants.

Britton, J.]

GILBERT v. IRELAND.

[Dec. 8, 1904.

Action to establish will—Costs.

In an action to establish a will in which the defendants set up an unsuccessful defence of fraud and undue influence.

Held, under the circumstances of the case that all parties should have their costs out of the estate.

Clark, K.C., and *Kerns* for plaintiffs. *Watson*, K.C., and *Kirwan Martin*, for defendants.