MORGAN and others *v.* EGGERS.

(Circuit Court, D. Indiana. June 24, 1884.)

1. EJECTMENT—FINDING AND JUDGMENT AS TO PART OF PREMISES.
In an action of ejectment tried by the court, the finding and judgment may be given (in one sentence) for the plaintiff for a *part* of the premises described in the complaint, and such finding will not be construed to be an unqualified finding for the plaintiff in respect to the entire premises.
2. SAME—USE OF THE WORD "FENCE."
It is competent for the court, under the issue in ejectment, to find to what extent the defendant is guilty, and if, under the evidence, it appears that a fence has become the boundary of the unlawful occupation, it is proper that such fact should be mentioned in the finding and judgment of the court.

Motion to Amend Judgment.

U. J. Hammond, for plaintiff.

A. C. Harris, for defendant.

WOODS, J. Morgan and Smith sued Eggers in ejectment for the recovery of real estate, described as follows: All of the north part of lot 2, in section 36, etc., which lies west of the track of the Lake Shore & Michigan Southern Railroad, and north of a line parallel with the north line of said lot 2, and 753 feet south therefrom. The defendant answered by a general denial; and, upon the issue so joined, a jury being waived and trial had by the court, a finding and judgment of the tenor following were entered:

"Come the parties, and, by agreement, this cause is submitted to the court for trial; and the court, having heard the evidence, and being fully advised, finds for the plaintiff, and orders and adjudges that they are entitled to, and shall have and recover of defendant, the possession of so much of said lot two (2) as lies south of the south line of lot one, (1,) as indicated by a fence constructed and maintained by the defendant as and on on said south line," etc.

The plaintiffs now insist that there is an unqualified general finding for the plaintiff, and that in conformity with this the judgment should have been for the recovery of the land as described in the complaint, and that so much of the description set forth in the judgment as refers to the fence constructed by the defendant should be expunged. It was competent for the court, under the issue, to find to what extent the defendant was guilty, or had held unlawful possession of the premises described, and if, under the evidence, it appeared that a fence had become or was the boundary of such occupation, it was proper that the fact should be stated in the finding and judgment of the court. The finding and judgment in this instance are not separate and distinct, as perhaps it would have been better to have had them. The meaning however is clear. It is as if the entry read in this way: "And the court having heard the evidence, etc., finds and orders and adjudges that the plaintiffs are entitled to and shall have and recover of the defendant," etc.

The motion for correction is therefore overruled.

BANKS v. CHAS. P. HARRIS MANUF'G CO.

(*Circuit Court, D. Vermont.* March 20, 1884.)

STATUTE OF FRAUDS—CONTRACT FOR SALE OF GOODS—MEMORANDUM.

The traveling agent of the defendant company addressed to his principals an order, "Send to C. W. S. Banks; terms, net 30 days; freight allowed," signed by him as agent and followed by a list of the merchandise desired, with prices and directions for shipping, signed by Banks, the plaintiff. *Held*, that the paper was upon its face merely an order, and not a memorandum of sale signed by the defendant or his agent, within the terms of the statute of frauds.

At Law.

Alduce F. Walker, for plaintiff.

Walter C. Dunton and *Elenzer R. Hard*, for defendant.

WHEELER, J. One Berry, representing the defendant, a manufacturer of chairs, either as salesman or as a solicitor of orders, bargained to the plaintiff, a dealer in chairs at Baltimore, Maryland, two lots of unfinished chairs at an agreed price, to be delivered there, amounting respectively to $4,274 and $2,458, and by manifold writing filled duplicates of blank orders for each, which were substantially alike, and when filled, read: "Messrs. C. P. Harris M'f'g Co., order No. —. Send to C. W. S. Banks, of 59 South St., Baltimore, Md.; terms, net 30 days; freight allowed. M. D. BERRY, Agent." Then followed a list of goods, with prices, and "to be shipped after two months from date of this order," and the orders were signed at the foot by the plaintiff. One of each he left with the plaintiff, the other he sent to the defendant, and a copy of the written parts he kept himself. The defendant received the orders, refused to send the goods because the prices were so low, and the plaintiff brings this suit for the non-delivery.

A principal question is whether this order is a sufficient memorandum in writing of the bargain to charge the defendant, within the statute of frauds (29 Car. 2, *c.* 3) still in force in Maryland. There is no real question but that these instruments sufficiently set forth the terms of the sale, if they show a sale, nor but that the name of the agent is sufficiently signed to the memorandum, if it is a memorandum of a bargain of sale and he had authority to bind the defendant to a contract of sale. *Drury* v. *Young*, 58 Md. 546. The memorandum must set forth on its face enough to gather a contract of sale from, as against the party to be charged with the consequences of such a contract in the action. *Egerton* v. *Mathews*, 6 East, 307; *Cooper* v. *Smith*, 15 East, 103; *Bailey* v. *Bogert*, 3 Johns. 399. This memorandum appears to be of an order, and not of a sale, and would, so far as it shows for itself, fail to make out a sale without acceptance of the order. Chit. Cont. 349. The acceptance of the order might be by a delivery or forwarding of the goods, according to its terms, so as to charge the purchaser with the price without ac-