

chines, after the doubtful quality of the iron had been brought to their notice, and without the consent of the plaintiffs, a considerable quantity of what had been delivered to them as part of an entire contract, had precluded themselves from objecting to the remainder of that which came into their possession.

*Held*, also, that the property in the part of the iron which was not delivered to the defendants, must be taken to remain in the plaintiffs; for the defendants had never exercised their right to test it, and had refused to receive it, and until tested the plaintiffs could not compel the defendants to accept it.

The action was treated as one for the price of iron, which the defendants accepted, and for damages arising from their refusal to accept the remainder, and, in accordance with the findings of the jury, which in the opinion of the Court were sustained by the evidence, judgment was entered for the plaintiffs for the actual value of the part of the iron delivered only, (the damages having been negatived by the jury); and for the defendants upon their counterclaim for damages sustained from the breach of contract, other than by reason of the inferior quality of the iron; and the plaintiffs were allowed the costs of the action, and the defendants the costs of their counterclaim. *Bertram & Co. v. The Massey Manufacturing Company et al.*, 516.

*Agreement to sell—Property not to pass—Stipulation for taking possession—After-acquired property—Registration—R. S. O. ch. 125.* J. R. by an instrument in writing, agreed to sell his business and stock-in-trade to his sons, and by it provided that all the existing stock was

to remain his property until it was paid for; that all after-acquired property brought in by way of substitution for existing stock, was to become his property by way of security for the purchase money, and that on default he should have the right to re-enter and take possession. Some seven years afterwards, default having been made, he took possession and began by selling off by auction. The sons then made an assignment for the benefit of creditors. In an action brought by the assignee and some creditors of the sons to restrain J. R. from selling, it was

*Held*, that the legal operation of the instrument of sale was to retain the property in the existing stock in the vendor, and to confer upon him an equitable title in the stock to be afterwards acquired, and to give him the right to take possession for default in payment. Default having been made, and possession taken before the rights of the assignee or of any execution creditor arose, that act clothed J. R. with the legal title in the after-acquired goods, which was not affected by the assignment; for creditors subsequently executed.

*Held*, also that the instrument did not need to be registered, to make it operative against subsequent creditors: the Bills of Sale and Chattel Mortgages Act, R. S. O. ch. 125, not covering the case of agreements creating equitable interests in non-existing and future-acquired property.

The effect of the transaction in this case and the advisability of making provision for giving publicity by registration commented on. *Banks et al. v. Robinson et al.*, 618.

See CONTRACT, 2.