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HINGLEY v. LYNDS.

Ritchie, E. J.

cullings on the lot. Part of them were severed and removed before the deed to the plaintiff and in my opinion the property in the goods sold passed to the defendant before the deed to plaintiff.

In *Marshall* v. *Green*, 1 C.P.D. 35, there was (as here) a verbal contract for the sale of certain trees; the defendant cut down some of them when the plaintiff countermanded the sale; the defendant, however, cut down the balance of the trees, and carried the whole away. It was held that the case was within s. 17 of the Statute of Frauds, and that before the sale was countermanded there was an acceptance and actual receipt of part of the goods sold within that section. Lord Coleridge, C.J., said, p. 38:—

> If there was a valid contract for the sale of trees, the plaintiff must fail: the trees had been sold, and the property had passed.

In vol. 25, Hals., p. 177, note (*g*), it is said:—

> The position of the buyer seems to be that he has a chattel interest in the thing before severance.

As to the question of when the title passes under a contract for sale of specific or ascertained goods, the crucial point is when did the parties intend it to pass? In order to ascertain the intention, r. 1, at p. 10, of the Sale of Goods Act was passed. It is as follows:—

> When there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

This contract is unconditional. It is for the sale of specific goods, namely, all the cullings on the lot. The goods were in a deliverable state; that is to say, there was nothing to be done by the seller to put them in a deliverable state; the purchaser was to go and get them. I think the title to the trees passed to the defendant when the contract was made.

The result is that the plaintiff has a deed of property on which the goods of the defendant are situate. She cannot, I think, prevent the defendant from going on the land to get his goods; more particularly as, when she got the deed of the land, she had actual notice of a contract in respect of the goods on the land. I am inclined to go further and say that she had constructive notice of the real contract because, after being put on inquiry, she did not act as a prudent purchaser would have done under the circumstances.

I would allow the appeal with costs and dismiss the action.

Longley, J.

LONGLEY, J.:—I concur with Ritchie, E.J.