1854.

Fuller v. Richmond.

In *Woods* v. *Russell* (*a*), and *Clark* v. *Spence* (*b*), an agreement that the property in the chattel should vest in the vendee, for his security, was implied in the absence of any express stipulation in the contract, and indeed contrary to what seemed its natural construction. In the present case that conclusion is fairly deducible not only from the nature of the agreement between the parties, but from the express stipulation of the contract.

But it is unnecessary to decide the case on that ground alone, for there is express evidence, I think, that it was the intention of these parties to vest the property in these logs in the plaintiff. *Robertson*, it is said, negatives that; but I do not so understand him. He swears, indeed that he had no instructions from *Fuller* to insert a clause in the agreement giving him security upon the logs. That, no doubt, must have been so, for he had no instructions from *Fuller* of any kind. He subsequently explains himself by saying that *Fuller's* instructions to *Craig* were not such as to warrant the introduction of such a clause. It is difficult to understand that explanation, for the witness was *Fuller's* professional adviser, from whom the suggestion would naturally have come: and it is hardly probable that *Fuller's* instructions would have forbidden so simple a security for the fulfilment of the contract. The evidence of this witness is somewhat unintelligible throughout; but it is clear upon the whole that *Craig* consulted him as to security, and that he advised the parties that *Fuller* would acquire what he calls a possessory right by having his initials marked on the logs. This is stated clearly more than once. In his re-examination he says, "I considered that the principal recourse of *Fuller* against the parties, in the event of a breach of the contract, would be against themselves personally; but that if the marking of the logs was carried out in pursuance of

Judgment

(*a*) 5 B. & Al. 942. (*b*) 4 Ad. & E. 448.