

N. S.

S. C.

HINGLEY

v.

LYNDS.

Russell, J.

case and must be reckoned with. As between the immediate parties to the contract there would, I think, be a clear equity to have the contract specifically performed, because of its part performance on both sides, the vendor having put the purchaser in possession and the purchaser having cut and removed part of the timber. The authorities are clear that the acts of part performance for this purpose, while they must be exclusively referable to a contract between the parties and not to some other title, need not be such as to prove the terms of the contract. They merely have the effect of letting in the evidence of the actual oral contract between the parties. If it be said that this is merely an equitable right and not binding upon the plaintiff without notice, then I think that the plaintiff had notice. She had notice, not merely constructive, but actual, that there was some contract under which the defendant had a right to enter upon the land and take the trees, and it was her duty to inform herself as to the actual terms of the contract. But she admits that she made no inquiries:—

Q. Before you bought that property from Orlen, before you got a deed, did you go to Lynds about it? A. No.

Q. To find out whether it was true or not true? A. No, I did not ask him at all.

The plaintiff having been put upon inquiry by the actual notice of a contract between her grantor and the defendant, was bound to inquire of the latter as to the extent of his rights and must hold the property subject to the priority of those rights even if merely equitable and not legal.

For these reasons I think that the appeal should be allowed and the plaintiff's action dismissed.

Ritchie, E. J.

RITCHIE, E.J.:—I am of opinion that s. 2 of the Sale of Goods Act, 1910, has changed the law with reference to the sale of standing trees and that such trees must now, in determining the rights of parties, be treated as, and held to be, goods. I think it sets at rest a question which has long been a vexed one, giving rise to much difference of judicial opinion. Our Act is in the same terms as the English Act. In this case the trees were to be severed under the contract. In 25 Hals., p. 112, it is said:—

The Sale of Goods Act, 1893, relates only to goods as thereby defined, and the sale or transfer of other personal chattels is left to be regulated by ordinary law. For this purpose, unless the context or subject-matter otherwise requires, "goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops,