

conveying it to B. in trust that when he paid for it, it should be transferred to him, but if he failed, then to be held in trust for H.—T. also covenanted that all the machinery which should be placed in the mill during the continuance of the deed in addition or substitution for the original machinery should be subject to the same trusts. T. sold some of the machinery and bought other machinery instead, which he brought into the mill. H. did not take possession: T. got in low water and a creditor of his seized under a *fi. fa.* H. filed his bill. Stuart, V.-C., held the *fi. fa.* invalid as against the deed in respect of the added and substituted articles: the L. C. (Lord Campbell) reversed this decree: 2 DeG. F. & J. 596; and an appeal was had to the House of Lords. Judgment was reserved for more than a year, and a second argument heard.

The L. C. (Lord Westbury) said, p. 211: "If a vendor . . . agrees to sell . . . property, real or personal, of which he is not possessed at the time, and he receives consideration for the contract and afterwards becomes possessed of property answering the description, there is no doubt . . . that the contract would in equity transfer the beneficial interest to the purchaser immediately on the property being acquired . . . immediately in the new machinery . . . being . . . placed in the mill, they . . . passed in equity to the mortgagees and T was bound to make a legal conveyance and for whom he in the meantime was a trustee of the property in question." Lords Wensleydale and Chelmsford concurred in dismissing the appeal.

In that case there was not unlike this a covenant that T. should "do all necessary acts for assuring such added or substituted machinery, implements, and things so that the same may become vested accordingly." It was strongly argued that this express covenant must be taken as shewing that the property did not pass without a deed (see p. 225). On p. 224 Amphlett on the first argument is reported as saying *arguendo*: "Nothing whatever has been done, for so vesting the added machinery and, therefore, it has not vested," and on the second argument (on p. 207): "There must be a real (or if that was impossible) a constructive delivery of these new chattels in order to vest them in the appellants. There had not been any such delivery here. There ought to have been a new bill of sale of them, and a new registration of it." But the L. C. said, p. 209: "In equity it is not neces-