delivery was to be made to them on payment of a sight draft for the price. The captain of the vessel gave the plaintiff a bill of lading describing him as the consignor, and in it, under the heading "consignees" was written "Order of Bank of Montreal, advise Melady & McNairn (defendants)." A draft for the price, drawn by the plaintiff upon the defendants, was attached to the bill of lading and discounted, but the defendants refused to accept this draft.

Held, that there was, upon these facts, no final appropriation of the wheat or delivery thereof to the defendants, and that the property therein would not pass to them until acceptance of the draft, or payment or tender of the price.

Held, also, that neither the shipment in the vessel provided by the defendants, nor the taking by the defendants of samples of the cargo for inspection, constituted an acceptance within the statute. Judgment of STREET, J., affirmed.

Aylesworth, Q.C., and *Rankin*, Q.C., for appellants. *Charles Millar*, for respondents.

From Robertson, J.]. ARMSTRONG *v.* LYE (No. 2).

Merger—Equitable right to a charge—Subsequent acquisition of the fee—R.S.O. c. 121, ss. 8, 9, 10.

In taking the accounts under the judgment reported, 27 O.R. 511, and 24 A.R. 543, it was held that the defendant Lye had no right to an equitable charge, in priority to the plaintiff's claim, for sums paid by Lye to prior encumbrances before the conveyance of the land to him, his potential equity not bringing him within ss. 8, 9 and 10, of R.S.O. c. 121, and there being no evidence of intention to preserve the right to the equitable charge. Judgment of ROBERTSON, J., affirmed.

Aylesworth, Q.C., and *Hilton*, for appellant. *Osborne*, for respondent.

From Divisional Court.] [March 27.

MCINTOSH *v.* PORT HURON PETRIFIED BRICK COMPANY.

Conversion—Tenant in common—Removal of chattel to foreign country.

An action for conversion of his interest in a chattel lies by one tenant in common against his co-tenants in common if the chattel owned in common is destroyed by them, or so dealt with by them as, in effect, to put an end to his rights.

In this case the removal of a brick making machine to a foreign country was held sufficient to support the right of action, the plaintiff's power of enforcing his rights in the courts of this province being thus interfered with. Judgment of a Divisional Court reversed,

S. H. Blake, Q.C., and *D. S. McMillan*, for appellants. *Aylesworth*, Q.C., and *J. H. Moss*, for respondents.