C. C.] [March 2.

OCKLEY v. MASSON.

Agency—Evidence—Statute of Frauds, sec. 17.

Held, upon the evidence, that one K., who had made a sale for the defendants to the plaintiff, had been held out as the agent of the defendants for making sales. K. entered the plaintiff's order in a book, and reported the sale to the defendants by letter which was not produced at the trial, though called for. The defendants wrote the plaintiffs that "K. reports a sale that we cannot approve in full but will accept for" a certain number of articles. On the plaintiffs insisting on the whole order, the defendants cancelled it.

Held, that the letter of K. to the defendants was a sufficient memorandum to satisfy the 17th section of the Statute of Frauds, which requires it for evidence only, and that it made no difference that it had passed between the defendants' agent and themselves; and at any rate the letter of the defendants to the plaintiff was a sufficient memorandum of their agent's sale, and its effect was not impaired by the partial disapproval expressed in it.

Reversing the judgment of the County Court.

C. Robinson, Q.C., for appellant.

T. Ferguson, Q.C., for respondent.

Ch'y.] [March 2.

KEEFER v. MERRILL.

Mortgage of freehold—Unattached machinery—Fixtures.

A mortgagee of vacant lands adjacent to his stone factory erected thereon a frame building as a lean-to to the factory, and placed in it, for the purposes of carrying on his manufacturing business, three lathes, an iron planer, two drills, a crane, and a shaper, all of which were kept in position by their own weight without being fastened to any part of the building, with the exception of one drill which was bolted to the framework, the latter being bolted to the girders. The land was vacant when the mortgage was given, and not worth the money, but building was contemplated, and there was the statutory covenant in the mortgage to insure for $4,000.

Held, reversing the decision of the Chancellor, that the machines were not put into the building with the intention of improving the freehold, and that they did not become fixtures.

Per BURTON, J. A. The question of intention is mainly to be looked at in all cases, the distinctions between them being as to what is sufficient evidence of the intention. The mere fact that machines are brought upon the land by the owner of the freehold raises no presumption that he intends to make them part of the realty, though annexation thereto would raise such presumption.

Per PATTERSON J. A. The weight of authority is against construing as fixtures anything which is not annexed in fact to the realty, except where the articles form part of the fabric, as an integral portion of the architectural design.

Cassels and *Walker*, for appellant.

Delamere and *Black*, for respondent.

Ch'y.] [March 2.

EARLS v. MCALPINE.

Devise—Restriction upon alienation—Forfeiture.

A testator willed that his wife should have the use and control of all his property, real and personal, until his two sons should become twenty-one, or until the said property should be disposed of as thereinafter mentioned. Then followed a devise to his son W. of half his farm, "to be possessed by him when twenty-one," subject to legacies; and a devise to his son H. of the other half of his farm, "to be possessed by him when twenty-one," subject to legacies. The testator then says, "My two sons, H. and W., give to my wife a comfortable support, or the sum of £10 each, annually, during her natural life. * * * I also will that my sons H. and W. do not sell or transfer the said property without the written consent of my said wife during her life." The will was duly registered after the testator's death. H., after attaining twenty-one, mortgaged his share, without the knowledge and consent of the widow, to the defendants, C. and M., who sold, on default in the mortgage, to O., who bought with notice of the condition as trustee for M. The heirs-at-law then filed their bill for partition, claiming that H. had forfeited his estate under the will by violation of the condition.