

limit as to time. It was held incumbent on the grantees or their assignees to cut and remove such timber within a reasonable time from the sale, and that on failure to do so their interest ceased and determined; and further, that what would be a reasonable time for so doing was a question of fact to be passed upon and decided in the light of all the facts and circumstances surrounding the transaction. This decision was affirmed in a later case in the same volume of *Goethe v. Lane*, at p. 400. The same statement of law was made in Pennsylvania in a case decided in 1899, *Patterson v. Graham*, 164 Pa. St. 235, where the Court said: "Undoubtedly in a contract for the sale of timber where the parties intend a severance, and no time is fixed within which it is to be removed, the law implies that the grantee will remove it within a reasonable time, and what is a reasonable time is to be determined by all the circumstances:" p. 241. In that case the delay of eleven years was held unreasonable. And again in Tennessee in 1902 was decided *Carron v. Three States Co.*, wherein the holding was that a sale of standing timber without stipulation as to time of removal gives only a reasonable and not an unlimited time: 29 S. W. R. 320. I think that the germ of what is now under consideration may be found in the words of Parke, B., in *Hewitt v. Johns*, 7 Exch. 79 (1857), in which he says: "Wherever trees are excepted from a demise, there is by implication a right in the landlord to enter the land and cut the trees at all reasonable times. If indeed, he leaves them on the land for an unreasonable time he does more than the law authorizes him to do."

More than a reasonable time elapsed in this case before anything was done by the purchaser. There was a conditional grant of so much suitable timber for saw logs as the purchaser might see fit to cut—it was contemplated that there should be the selection and cutting and removal of substantially the same growth of timber as was then on the land, and not trees subsequently maturing as timber—not, it may be, an immediate severance, but one not unreasonably remote; operations on both sides were contemplated forthwith, and the inaction of the purchaser is cogent evidence of his abandonment of the right to enter and cut.

I do not consider the case having regard to the application of the Statute of Limitations; on the other ground of unexplained and unreasonable delay, I think the judgment should be affirmed with costs.

ANGLIN and MAGEE, JJ., severally gave reasons in writing for the same conclusion.