

bark so measured and classified; the contract could have been satisfied by the delivery of that bark only; other bark, even if of the like quality, would not have done, because not so measured and classified.

Unless a different intention appears from the terms of the contract, the conduct of the parties, and the circumstances of the case, it is a general rule that when there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed.

That rule is quite applicable to this case, so far as the 550 cords of bark in question is concerned.

The words "agree to sell," which were a part of the prepared form, and the added words "or more," do not take the case out of the rule, or shew a different intention. According to the testimony the words "or more" were inserted so as to cover an additional small quantity of bark of the plaintiffs, which had not been measured and classified, and the contract in reality was one evidencing an actual sale of the 550 cords, and an agreement to sell the additional quantity, if the words "or more" had any legal effect at all. Had the words "agree to sell" been added by the parties instead of being part of the form, the same result would be reached; they are quite applicable to the "or more" quantity; and the parties were not persons from whom literary exactness could be expected.

There is indeed but one circumstance pointing against the passing of the property, and that is the fact that plaintiffs had yet to haul the bark from the place where it was measured and classified to the railway and to load it upon the railway company's cars. The whole contract was fully completed, as to the 550 cords, on both sides, except as to the delivery of the goods, in that manner, and the payment of the balance of their price. . . .

Cases may be imaginable in which the fact that the seller is yet to deliver the goods would indicate an intention that the property was not to pass until delivery; but here the general rule applies, and there is really nothing to indicate a different intention.

It is satisfactory to know that this conclusion is in accord with the testimony of the persons who made the contract, as well as with the entries made by defendants in their books giving plaintiffs credit, at the time of the making of the contract, for the full price of the 550 cords of bark.