

the commencement of the action having been deferred until plaintiff thought he was fully prepared to prove his case and the damages sustained.

Per MEAGHER, J., dubitante: Plaintiff having been in a position to have the case tried and the questions of fact disposed of at an earlier date, and having left his house and not being likely to return thereto before the trial, defendant company should have the option of filing a bond to respond such damages as it should be determined that plaintiff had sustained in the interval between the hearing of chambers and the date of the perpetual injunction in case plaintiff obtained one.

*W. H. Convent and H. Mellish, for appellant. R. E. Harris, Q.C., for respondent.*

Full Court.]

JOHNSON v. LOGAN.

[March 1.

*Contract for future delivery of goods—Appropriation under conversion by sheriff—Seizing under execution—Title—Special right of property.*

Plaintiff and P. entered into an agreement in writing whereby plaintiff agreed to purchase and P. agreed to sell all the deals that P. should cut and manufacture during 1897. Under the terms of the contract the deals were to be cut to certain dimensions and were to be hauled out and ready to be delivered on board the cars at Thompson Station about the last of July, 1897. The deals were manufactured according to the contract and were hauled out and piled alongside the railway siding ready to be loaded on board the cars. A large quantity of the deals delivered at the siding were placed upon the cars by plaintiff with the assent of P. and were sent to Halifax for shipment, and some days after the last of the deals were brought out and deposited at the station, P. was present and went over the deals with plaintiff. Subsequent to the making of the contract and prior to the delivery of the deals, plaintiff made advances to P. on account of the contract to the amount of about \$500, and, after the delivery of the deals was commenced, he paid several further sums amounting to nearly, if not the whole amount to which P. was entitled under the contract. The balance of deals remaining at the station having been levied upon by the defendant sheriff under an execution and absent or absconding debtor process against P.,

*Held*, allowing plaintiff's appeal with costs that there was an irrevocable appropriation of the deals under which plaintiff became possessed of the right to receive and to have them under the contract and was vested with a special right of property in them, which was destroyed or interfered with by the seizure and sale by defendant, and that defendant was guilty of a conversion.

*Held*, also, that after the delivery of the deals at the railway siding the court would have restrained P. from diverting them to any purpose foreign to the contract and that the mere fact that the complete legal title had not passed would not give an execution creditor a right which P. himself could not claim to exercise.

*H. A. Lovitt, for appellant. H. McKenzie, for respondent.*