N. S.

S. C.

HINGLEY v. LYNDS.

Mellish, J.

formance, because he "sold" as real estate the timber which he had previously "agreed" to sell as personal property. I think the property in the "goods" could not pass till the goods came into existence, *i.e.*, until the trees were severed. *Perry* v. *Fitzhowe* (1846), 8 Q.B. 757 at 778, 115 E.R. 1057,.

Under these circumstances, I do not think that the agreement could be enforced by the defendant to the detriment of the plaintiff's interest in the land which she held under the deed from Orlen Hingley, except as to the extent of the 15,000 ft., as to which she had notice, and for these reasons would dismiss the appeal with costs.

Harris, C.J. HARRIS, C.J.:—I agree with Mellish, J.

Drysdale, J. DRYSDALE, J.:—I also agree.

On equal division, appeal dismissed.

CAN.

Ex. C.

BRITISH AMERICAN FISH Co. v. THE KING.

Exchequer Court of Canada, Cassels, J. April 30, 1918.

CROWN LANDS (§ I B—11)—LEASE—ORDER-IN-COUNCIL—LEASE CONTAINING CLAUSE FOR RENEWAL—ULTRA VIRES—VOID—WHETHER RENEWAL CLAUSE SEVERABLE.

In 1904, pursuant to an order-in-council recommending the granting of a lease for 21 years to the suppliant of certain fishery privileges in waters described in the order-in-council, the Minister of Marine and Fisheries executed a lease to the suppliant for the said term. The lease contained a provision that upon complying with certain terms and conditions that the suppliants would be entitled to have the option of renewing the lease for a future period of 21 years.

In 1913 the deputy minister notified the suppliants that the lease was *ultra vires*, as not being in virtue of any statute of Canada, and as being repugnant to the common law and that the lease was *ab initio* void. *Held*, on a stated case to determine the rights of the suppliants under said lease, that the provision for the renewal of the lease was void and inoperative, and beyond the power of the minister under said order-in-council, but that the clause as to the renewal could be severed, and while that clause was void the lease itself for the term of 21 years was valid and binding.

[*Pickering* v. *Ilfracombe R. Co.* (1868), L.R. 3 C.P. 235, 250; *Re Burdett* (1888), 20 Q.B.D. 310, followed.]

Statement. ACTION claiming a declaration that a lease granted by the respondent to the suppliant is a good, valid and subsisting lease.

A. W. Anglin, K.C., for suppliant.

Cassels, J. CASSELS, J.:—The argument before me was on a special case, the facts having been agreed to by counsel for the suppliant and respondent.

On July 12, 1915, the suppliant brought this action claiming