by the Excelsior company, came back to the plaintiff, by virtue of his original and superior title as owner of the land, was not in itself an answer to the claim. The Conditional Sales Act had little or no application. The law of fixtures had been altered by sec. 9, but only to the extent of giving the seller a right to follow the goods, with a corresponding right in the owner of the land to keep them on paying what was unpaid upon them. But the seller here was also the owner of the land—a case not provided for by the statute.

The plaintiff no longer holds the machine as security for the debt. The title to it, as a chattel, merged by the annexation, with the defendant's consent, to the freehold. It stood much upon the same footing as if it had been lost or destroyed without fault on the plaintiff's part: see Goldie and McCulloch Co. v. Harper (1899), 31 O.R. 224.

But, in any event, the defendant, by his conduct, had in advance waived any right to complain: Hollier v. Eyre (1842), 9 Cl. & F. 1, 52; Woodcock v. Oxford and Worcester R.W. Co. (1853), 1 Drew. 521.

The appeal should be allowed, and the plaintiff should have judgment for the amount of the notes with interest and his costs throughout.

MAGEE, J.A., concurred.

HODGINS, J.A., said that the Excelsior company obtained the machine upon giving the agreement which permitted the plaintiff to retake possession upon default and to sell. The company placed it upon its land and attached it so as to make it a fixture, so far as it could do so. This annexation did not, however, determine the case. The annexation was subject to sec. 9 of the Conditional Sales Act. The land was in equity the land of the company; and, while the statute operated, neither the company as owner nor a purchaser from it nor a mortgagee or other incumbrancer, even without notice, could claim the machine as against the seller without paying the price: Joseph Hall Manufacturing Co. v. Hazlitt (1885), 11 A.R. 749. Reference also to Hobson v. Gorringe, [1897] 1 Ch. 182, 192, 195; Stark v. Reid (1895), 26 O.R. 257.

The actions of the plaintiff indicated an intention not to realise his security, according to its terms, but to treat the contract in a way not authorised. His continued use of the machine for his own profit and as part of his own possessions, and his