the respondents to dispute it; and, if the latter be the correct position, the appellant should succeed.

The absence of the minutes is not conclusive against the actual testimony or against the other circumstances which appear in evidence. Three machines were acquired afterwards, the title to which did not depend upon this transfer.

The appeal should be allowed, the judgment below set aside, and judgment entered for the appellant, with costs, for delivery of all the machinery and chattels claimed by him.

GARROW and MACLAREN, JJ.A., concurred.

MAGEE, J.A., agreed in the result.

MEREDITH, C.J.O., dissented, for reasons stated in writing. In all the circumstances, he was unable to say that the conclusion of fact which was reached by the trial Judge was erroneous.

Appeal allowed; MEREDITH, C.J.O., *dissenting.*

FIRST DIVISIONAL COURT. JANUARY 24TH, 1916.

*CRANE v. HOFFMAN.

Sale of Goods—Conditional Sale of Machine—Contract—Provision for Sale upon Default of Payment and Application of Proceeds upon Promissory Notes Given for Price—Liability of Person Endorsing as Surety — Repossession of Machine by Vendor and Use in Business—Action by Vendor upon Notes—Conditional Sales Act, R.S.O. 1914 *ch.* 136, *secs.* 8, 9—*Fixture—Rights where Vendor of Land and Machine same Person—Waiver—Estoppel—Discharge of Surety.*

Appeal by the plaintiff from the judgment of MIDDLETON, J., 8 O.W.N. 500.

The appeal was heard by GARROW, MAGEE, and HODGINS, JJ.A., and KELLY, J.

W. M. McClemont, for the appellant.

S. H. Bradford, K.C., for the defendant, respondent.

GARROW, J.A., said that the action was brought to recover $1,924 and interest due upon two promissory notes made by