

his agreement to sell. Upon the construction I am obliged to put upon the agreement, the plaintiff fails in this action.

Many cases were cited by counsel for the respective parties, not only upon the question of the plaintiff's right to succeed in this action of trover, but upon the many points discussed at bar. No useful purpose will be served by referring to the great majority of these. *Lord v. Price*, L.R. 9 Ex. 54, *Milgate v. Keble*, 3 M. & G. 100, and *Brown v. Dulmage*, 10 O.W.R. 451, establish the defendant's contention.

The defendant Whalen had notice of the plaintiff's claim; and, after such notice and after an unsuccessful attempt to buy from the plaintiff, bought from Niemi. It would be with great reluctance that I would hold, if I found myself bound by authority so to do, that a purchaser under such circumstances would be a purchaser in good faith, within the meaning of the Bills of Sale and Chattel Mortgage Act.

The third party, up to the time of the sale by him to Whalen, was a consenting party to the plaintiff's delay in removing the piling. So far as appears, he made no demand upon the plaintiff, nor did he give any notice requiring payment for or removal of the piling. A tempting offer was made to Niemi to break what he thought was a binding obligation on him to sell to the plaintiff.

The action will be dismissed, but without costs. The claim of the defendant Whalen against the third party will be dismissed without costs. There will be no costs payable by the plaintiff to the Burrill Construction Company, but that company should be paid their costs, which I fix at \$20, out of the money in Court—\$10 out of the money belonging to the third party, Niemi, and \$10 out of the money belonging to the defendant Whalen. There will be no costs paid to or by the third party by reason of the application for the third party order or of the order or of the trial.

As the action is framed, I cannot deal with any claim by the plaintiff against Niemi, but the judgment will be without prejudice to any action or proceeding by the plaintiff against the third party, in reference to the piling, or any of it, mentioned in the alleged contract.

As to the \$819, money in Court, \$453 belonged to Niemi and the balance to the defendant Whalen. Assuming that to be so. \$10, part of the Burrill Construction Company's costs, should be deducted from each and \$443 paid out to Niemi, and \$356 paid out to the defendant Whalen. If there is any dispute as to amount belonging to Niemi, the matter can be spoken to and determined on settling the minutes.