

father Edward Murphy, as he says he did, then the question does not arise; but, if he received it to pasture for his father, any demand of possession was clearly within six years, and the time does not run until demand.

In my opinion, however, the judgment is properly entered in favour of defendant upon the facts disclosed in the evidence. . . .

Owen Murphy had married plaintiff's sister shortly before he received possession of the horses from his father, and was, with his wife, living in a house he had built upon a piece of plaintiff's land, with the promise of a deed of it. I think it is established that he remained in actual possession of both horses from that time forward; his possession of the one in question continued until he sold her to defendant in October, 1893. The other one he sold a year or two before that time. During that period his father (Edward) seems to have come down to Owen's place once to try and get the horses, but he failed to get them, and never seems to have troubled himself more about them. Then he made the bill of sale to plaintiff of both horses. The inadequacy of the consideration—\$50—is explained by his statement that plaintiff was to fight Owen Murphy if he wanted to get the horses. As a fact plaintiff only paid \$15 cash, and he has refused to pay the note of \$35 given for the balance because he never got the horses. Plaintiff, therefore, living close to Owen Murphy, and claiming ownership of the horses, allows him to keep them and to treat them and their colts as his own property, and finally to sell them both. He seems to have taken away one of the horses and to have returned it under the pressure of criminal proceedings.

In my opinion the facts I have stated strongly support the statement of Owen Murphy that his father gave him the horses for his work, and that plaintiff knew of his title, but supposed for some reason that it could not be sustained. Plaintiff's conduct in allowing Owen Murphy to retain the horses after he had, as he says, purchased them from Edward Murphy, is totally unlike that of a man who had really purchased property and believed it to be his own. . . . I do not think there is any evidence sufficient to outweigh the strong presumption of title in Owen Murphy arising from the undoubted and admitted facts.

I think, therefore, that the appeal should be dismissed with costs.

FALCONBRIDGE, C.J., gave reasons in writing for the same conclusion.

BRITTON, J., concurred.