

vey made in accordance with the agreement would give him, the joint survey for which it provides was essential.

The evidence also leads to the conclusion that the plaintiffs, or some of them, were all the time protesting against the encroachment the defendants were making on their land, and that when the wall was built the defendants knew that that was the attitude of the plaintiffs, and deliberately decided to take the risk of erecting the wall where it was built.

I do not wish to be understood as meaning that in every case and in all circumstances a person making improvements on the land of another must be held not to have done so under the belief that the land was his own, merely because some one else has claimed the land as his; but the knowledge of the defendants that the plaintiffs disputed their right to the land on which the wall was built, in the circumstances of this case, is in itself sufficient to present the application of the statute in the defendants' favour.

I would dismiss the appeal with costs.

TEETZEL and CLUTE, JJ., concurred; CLUTE, J., stating reasons in writing.

DIVISIONAL COURT.

NOVEMBER 9TH, 1910.

DOMINION CARRIAGE CO. v. WILSON & HUMPHRIES.

*Sale of Goods—Conditional Sale—Title Remaining in Vendors—Vendors' Name Affixed to Goods—Resale by Purchaser—Price not Paid to Vendors—R. S. O. 1897 ch. 150—Agency of Purchaser—Evidence—Onus—Estoppel—Ratification of Resale—Assignment of Promissory Note—Laches—Demand—Conversion—Damages.*

Appeal by the plaintiffs from the judgment of the County Court of Simcoe dismissing an action for the return of two buggies and damages for wrongful detention or for the value of the buggies.

The appeal was heard by FALCONBRIDGE, C.J., RIDDELL and SUTHERLAND, JJ.

A. J. Anderson, for the plaintiffs.

W. A. Boys, for the defendants.