

be assumed that defendants will appeal from the judgment rendered upon the special case; and, if that were assumed, whatever might be the case as to other portions of that judgment, any contemplated appeal in regard to matters which affect the issues in the present cases, cannot serve any other purpose than delay. To continue the existing stay of proceedings because of such a prospective appeal would be tantamount to encouraging proceedings projected (if they be so) in the furtherance of a policy of temporization. An appeal from other parts of the judgment upon the special case would not affect these actions. Without saying that the order of the Master was erroneous under the circumstances existing when it was made, the stay of proceedings which it imposes should be removed.

Appeal allowed. Costs here and below to be in the cause.

NOVEMBER 14TH, 1904.

DIVISIONAL COURT.

MITCHELL v. WEESE.

*Sale of Goods—Title—Trover—Bills of Sale Act—Estoppel—Ownership—Evidence.*

Appeal by plaintiff from judgment of County Court of Victoria dismissing action in trover for the value of a black mare alleged to be the property of plaintiff.

The appeal was heard by FALCONBRIDGE, C.J., STREET, J., BRITTON, J.

C. A. Moss, for plaintiff.

H. O'Leary, K.C., for defendant.

STREET, J.—Edward Murphy owned the mare in question down to January, 1897, at least: that is the common case of both parties. Owen Murphy swears that in that month his father (Edward) gave him the mare and a horse, in consideration of some work, and that he received possession of both, and had both in his possession until he sold the horse to defendant some two or three years before the trial; and that he had the mare in his possession thereafter until he sold her also to defendant in October, 1903.

Plaintiff claims title from Edward Murphy under a purchase from the latter on 29th April, 1899, of the mare in question and also of the horse above mentioned.