

DECEMBER 31st, 1908.

DIVISIONAL COURT.

UTTERSON LUMBER CO. v. H. W. PETRIE LIMITED.

Sale of Goods — Conditional Sale—Default in Payment of Price—Repossession by Vendor—Contract of Sale—Construction—Judgment Recovered against Vendee—Merger—Election to Treat Contract as Absolute Sale—Laches—Conditional Sales Act—Conversion.

Appeal by plaintiffs from judgment of Judge of District Court of Muskoka dismissing an action for conversion of a shingle machine.

W. E. Raney, K.C., for plaintiffs.

H. E. Rose, K.C., for defendants.

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by

MULOCK, C.J.:—One H. W. Petrie (whose rights are now vested in the defendant company) supplied to one Bird certain mill machinery, on the terms contained in a written order given by Bird to Petrie, bearing date 16th September, 1905, the material provisions of which are in the following words:—

“Toronto, September 16th, 1905.

“H. W. Petrie, Toronto.

“Please ship to my address . . . one Drake shingle mill, terms \$200, \$20 cash, \$30 in 30 days, balance 3, 6, and 9 months, with 6 per cent. interest, and I hereby agree that if the above machinery . . . shall not be settled for by cash and notes according to said terms within 20 days after date of shipment, or, if default shall be made in any cash payment or note, then the whole amount shall become due, and I, for value received, promise to pay the same on demand.

“And I further agree not to countermand this order, and until payment in full of the purchase money the said machinery and goods shall be at my own risk, and I will insure in your favour for amount sufficient at all times to