

forfeit the \$48.75. They had not done so; and the defendant could not, by a breach of his contract, force the plaintiffs to elect which remedy they would first pursue.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

JUNE 25TH, 1920.

McCANNEL v. HILL.

Limitation of Actions—Possession of Land—Dispute as to Ownership of Narrow Strip Extending from Swamp on Boundary between two Lots to Rear of Lots—Fences—Swamp Regarded as Boundary—Encroachment—Establishment of Title by Possession—Necessity for Defining Original Line between Lots.

Appeal by the defendant from the judgment of the County Court of the County of Grey in favour of the plaintiff for the recovery of \$150 damages and costs of the action, which was for trespass and cutting timber upon the plaintiff's land.

The appeal was heard by MACLAREN and MAGEE, JJ.A., MASTEN, J., and FERGUSON, J.A.

W. H. Wright, for the appellant.

W. S. Middlebro, K.C., for the plaintiff, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that the plaintiff's lot was 23 in the 19th concession of Egremont, and the defendant was the owner of the adjoining lot, 22. It was admitted that each party had the paper-title to his lot. The district was a long-settled one. On each of the lots substantial dwellings and outbuildings had been erected, and both farms had long been cultivated. The plaintiff's father settled on lot 23 about the year 1854, and the plaintiff and his father had since occupied the land. The defendant purchased lot 22 about 5 years ago.

On the boundary between the two lots, and about midway between the front and rear boundaries, there was a swamp covered with dense underbrush. For more than 30 years, a fence running from the front of the lot to the swamp had been maintained. On the other side of the swamp, running from it to the rear end of the lots, the plaintiff had erected and maintained for more than 18 years a substantial rail and post fence. If it be taken that the fence from the front to the swamp starts from the place where the