

to recover possession of land and allowing the defendant's counterclaim for rectification of the conveyance of land made by the defendant to the plaintiff.

The appeal to the Supreme Court of Ontario (Second Appellate Division), was heard by HON. SIR JOHN BOYD, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE MIDDLETON, and HON. MR. JUSTICE LEITCH.

A. E. H. Creswicke, K.C., for appellant.

M. B. Tudhope, for respondent.

HON. MR. JUSTICE MIDDLETON:—One Marion H. Dallas, now deceased, the plaintiff's predecessor in title, owned lots nine and ten on the north side of Brant Street, in the town of Orillia. According to the plan, these lots had a depth of 210 feet. The southerly 150 feet of lot number 9 had been sold to one Scott, while the south 150 feet of lot ten had been conveyed to the plaintiff, Charlotte B. Smith. This left, according to the paper title, the rear sixty feet still vested in the heirs of the late Marion H. Dallas. This sixty feet would have a frontage upon Matchedash street. The fence between the lots in question and the lots immediately to the north had not been erected upon the true boundary line, and a possessory title had probably been acquired to some four feet six inches immediately to the north.

Scott had been accustomed to obtain access to the rear of his lot by crossing over the land immediately to the north of the portion conveyed to Mrs. Smith, to Matchedash street, through a gate in the fence there.

Mr. Evans, a practising solicitor in Orillia, had charge of the affairs of the estate. Mrs. Smith, as already mentioned, resided in Orillia. Her brothers and co-plaintiffs resided in Victoria, B.C., and Lamont, Alberta, respectively. Mr. Evans had placed a "for sale" sign upon the rear land; and the defendant, seeing this, called at his office with a view to negotiate for its purchase. After having inspected the property and after having ascertained that the frontage between fences on Matchedash street was between 65 to 70 feet, the defendant signed an agreement to purchase the northerly sixty feet of the two lots in question. There is a good deal of difference in the accounts given as to what took place. The agreement was mislaid, and only found shortly before the trial; but the recollection of the defendant was that there