The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, and HODGINS, JJ.A.

I. F. Hellmuth, K.C., for the appellants.

E. D. Armour, K.C., for the defendant, respondent.

MEREDITH, C.J.O., delivering the judgment of the Court, said that the respondent had the paper title to the land in question, which formed part of lot 2, but the appellants claimed title by length of possession to the east 6 or 8 feet of the lot.

Up to the time lot 1 was purchased by the mother of the appellants from Mrs. Armstrong there had been no possession of the land in question by the owner of lot 1. That was clear from the evidence of Mrs. Armstrong, who lived on lot 1 from the time she purchased it in April, 1877, until she sold it to Mrs. McFarland in 1886. When Mrs. McFarland purchased, lot 2 belonged to a Dr. King, and was unoccupied. It was rented by Mrs. McFarland or her husband from King, and the tenancy continued at all events down to the time when McCoppen purchased lot 2 from Dr. King, and, according to McCoppen's testimony, for 4 months afterwards, and during this time a rental of $1 a month was paid for the use of the lot. McCoppen bought in May, 1897. It was clear that during the period of this occupation the statute did not run against the owner of lot 2; and, therefore, in order to establish their case, the appellants must have shewn such a possession of the land in question since the termination of the tenancy as would have operated to extinguish the title of the owner of it; and this had not been shewn.

Shortly after purchasing, McCoppen moved the hedge which, it was contended, marked the boundary between his land and that of the appellants, and that without any objection or protest by them. The evidence as to the acts of ownership since that time was very conflicting; and, in view of the conflict of testimony, it was impossible to hold that there had been, since the McFarlands' tenancy of lot 2 came to an end, a possession by them of the land in question sufficient to extinguish the title of the owner of it.

That the title of the owner of lot 2 to that part of the lot occupied by the areas at the cellar windows and by the bay window had been extinguished, was undoubted, and the judgment of the County Court so determined. That the appellants had acquired the right to maintain the eaves of their house where they overhang lot 2, was also undoubted, and by the judgment this was intended to be declared; but, by an over-