

I would not have been sorry had I been able to apply the principle laid down in *Sanders v. Sanders*, 19 Ch. D. 373.

I have considered whether in this case the admission made in this deed might not raise the presumption that, notwithstanding the outward visible possession, it was a possession not intended to be, and which was not in fact, to the exclusion of the true owner, but I am afraid I cannot so apply it. The difficulty arises as to the two distinct undivided halves of this lot.

As a matter of law they must be dealt with as if defendant had never acquired the undivided half from his father, Levi; as if that still remained with Levi, or some other grantee of Levi, clearly Levi's right would be barred.

If on the 24th December, 1887, the plaintiff and his wife had executed the deed with the recital that Levi was the owner of one half, and that the defendant was the owner of the other, could Levi have claimed? If the defendant, after the expiry of the time required by the Statute of Limitations, and before the death of plaintiff's wife, had attempted to re-enter into possession of his undivided half, he could not have done so, he would have been barred. As to the other undivided half, the wife simply claimed under the will of her husband an estate for life. The defendant could not be barred as to that, unless possession long enough after death of wife.

While not free from doubt, I think the plaintiff entitled to succeed as to the undivided half, and that there must be the division as asked, and judgment for partition, with the usual reference.

The plaintiff must get costs of this trial, to be paid by defendants.

Costs of partition proceedings to be determined and apportioned in the usual way.

BRITTON, J.

JULY 22ND, 1903.

TRIAL.

EVANS v. JAFFRAY.

*Partnership—Agreement—Termination—Breach of Contract—Malicious Procuring—Conspiracy—Formation of Company—Purchase of Businesses.*

Plaintiff claimed an account of the partnership dealings between him and defendant Jaffray and damages for alleged breach of contract, and damages against the other defendants for the malicious procuring of the breach of contract by defendant Jaffray and for conspiracy. Plaintiff also sought