ruling of the Supreme Court of Canada in Scown v. Herald Publishing Co. (1918), 56 Can. S.C.R. 305.

The appeal should be allowed and the action dismissed upon the defence of want of notice only.

Appeal allowed.

SECOND DIVISIONAL COURT.

MARCH 21st, 1919.

BAIKIE v. BRADLEY.

Title to Land—Survey—Boundaries—Non-compliance with sec. 14. of Surveys Act—Evidence—Onus.

Appeal by the plaintiff from the judgment of the County Court of the County of Wentworth dismissing an action for possession of a small piece of land and to compel the removal of a fence and house from the land.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, LATCHFORD, and MIDDLETON, JJ.

H. S. White, for the appellant.

C. W. Bell, for the defendant, respondent.

Main, a third party, was not represented.

LATCHFORD, J., read a judgment in which he said that, until a survey was made in 1914, the westerly line of Hughson street was assumed by both plaintiff and defendant to be identical with the line of the old fence, as indicated plainly, at the time they purchased from Main, by certain posts and by other remnants of the fence itself. Had the plaintiff thought otherwise, it was unlikely that he would have allowed the defendant to proceed with the erection of his house—still less probable that he would have united with his neighbours on the north and south in adopting for the fences which they built along the rear a line almost exactly 57 feet from the present line of Hughson street, and therefore, according to the evidence, 60 feet from the line of the old fence.

The plaintiff was entitled, as against the defendant, to a parcel of land 60 feet in depth from Hughson street, as shewn on Mc-Kenzie's map of the City of Hamilton in James Hughson's survey. The plaintiff had not proved that the westerly boundary of Hughson street, as established by the survey of 1914, was identical with the westerly boundary of that street as shewn on McKenzie's map in Hughson's survey. Had he established that identity, he