

The right of Alexander is admittedly barred by the Statute of Limitations unless the fact that the mother of Alexander and of the parties to the reference lived upon the land with the parties to the reference down to a period within ten years before the partition proceedings which resulted in the reference being made, were begun, operated to extinguish in her favour the title of Alexander and the other heirs of William Mullin, deceased, in which case the persons entitled would be her heirs at law, of whom Alexander is one.

It is clear, I think, that the possession of the lands from the death of William Mullin was not that of the widow, but of such of the heirs at law as lived upon the lands with her; *Fraser v. Fraser*, 14 C. P. 70; *Wall v. Stanwick*, 34 Ch. D. 763; and *Kent v. Kent*, 20 O. R. 445, affirmed 19 A. R. 352.

Mr. Clute relied upon *McArthur v. McArthur*, 14 U. C. R. 544, but that case is clearly distinguishable. The persons who claimed had no title, not being the heirs at law of the owner of land, which had passed to the eldest son as heir at law; and what was decided was that the widow, who had been in possession as head of the family, and not they, though they resided with her, had acquired title by the operation of the statute—as the result of that possession.

If I am right in this view, it would serve no good purpose to remit the matters referred to the arbitrators, and the order will therefore be that the time for making the award be enlarged until the 1st day of January next, and that the motion be dismissed and under all the circumstances the dismissal will be without costs.

BRITTON, J.

OCTOBER 19TH, 1903.

WEEKLY COURT.

CENTRAL TRUST CO. OF NEW YORK v. ALGOMA STEEL CO.

*District Courts—Jurisdiction—Recovery of Land—Ejectment by Mortgagees — Injunction — Mortgagees Proceeding in District Court—High Court Action also Pending.*

Motion by defendants to continue injunction restraining plaintiffs from proceeding with an action in the District Court of Algoma for the recovery of the land covered by certain mortgages in respect of which this action (in the High Court) was brought.

G. F. Shepley, K.C., and W. E. Middleton, for defendants.

C. H. Ritchie, K.C., and J. Bicknell, K.C., for plaintiffs.