

Before proceeding to discuss the legal aspect of the case we will briefly state the facts.

The plaintiff and defendants were brothers and sisters, and originally owned as tenants in common a parcel of land on which was erected a building. The plaintiff sold his share to the defendants; but after the sale he was allowed to continue in possession of an upper room in the building erected on the land; this room he used as a workshop, for which he at first paid rent, but since 1890 had ceased to do so. The room was reached by a stairway from the street which the defendant was accustomed to lock at nights, and he also kept the door of the upper room locked when not using it. The defendants were in possession of the rest of the building including the part immediately beneath the room occupied by the plaintiff, and they in the exercise of their rights as owners were about to tear down the building, which would have had the effect of demolishing the room occupied by the plaintiff; and the action was therefore commenced to restrain them from so doing, and the case has been well litigated. It was tried before Mabee, J. The plaintiff, besides an injunction, claimed a declaration that he was entitled as owner in fee to the workshop. Mabee, J., granted the injunction, but refused to make any declaration of title. This judgment was reversed by the unanimous judgment of the Court of Appeal (Moss, C.J.O., Osler, Garrow and Maclaren, JJ.A.), whose judgment has now been reversed by a majority of the judges of the Supreme Court (Fitzpatrick, C.J., and Davies and Duff, JJ.) (Maclaren and Idington, JJ., dissenting). Three judges have therefore overruled the decision of six other judges.

The conclusion of the Supreme Court of Canada was, in short, that under the Statute of Limitations by ten years' possession a title may be acquired to a room in a house and also to easements of support and access, notwithstanding that the owner has been all the time in actual occupation of the rest of the building. In other words, if a man takes another into his house and assigns him a bedroom, if he occupies it for ten years without paying rent or giving any written acknowledge-