

the spring of 1894, nearly 2 years before the conveyance of any part of the property to Mrs. Clemmer, having secured permission so to do from the then owners of the property. The wire fence erected by the defendants was, it appears from the evidence, an irregular temporary structure. It did not follow right lines, and that portion of it apparently intended to mark the western boundary of the lot was several feet over the street line and enclosed a portion of the street. Some 3 or 4 years ago, the wire fence having fallen very much into disrepair, the defendants built a permanent board fence, intending, as I find, to enclose lots 14, 15, and 16 with their Lakeview avenue property, but in fact enclosing with these lots the strip of land in question. No survey of the land was made by the defendants before building either the first or second fence, and no survey was made before the purchase of lot 13 by the plaintiff. Shortly after the plaintiff's purchase, however, he caused a survey of the land to be made, when it appeared that the board fence of the defendants enclosed a strip of the plaintiff's property 4 feet 1 inch in width at the rear, and 4 feet 9 inches in width, at a distance of about 3 feet from Fairview avenue, the west side of the board fence being, as appears from the survey, about 2 or 3 feet inside one street line of the lot, so that, although the defendants by their pleading are claiming a strip of lot 13 from front to rear, it is now undisputed that since the board fence was built, at all events, they have not been in possession of about 3 feet in depth of the frontage of this strip on Fairview avenue.

On the discovery, after the survey in November, 1904, that the defendants' fence was upon the property the plaintiff had purchased, the plaintiff approached the defendants, and the defendant Abraham H. Clemmer then, and several times afterwards during the winter and spring, promised to remove the fence. Subsequently he reconsidered these promises, and set up title to the land in question under the Statute of Limitations, claiming to have been in possession for more than 10 years. Thereupon the plaintiff brought this action, and the issue now is as to whether or not the defendants have had such possession of the strip of land as to oust the plaintiff's title.

The point for consideration is one of some nicety, and is in some of its features, as far as I have been able to discover, a case of first instance. It appears from admissions which