

LENNOX, J.

JULY 6TH, 1914.

SOPER v. CITY OF WINDSOR.

Limitation of Actions—Possession of Land—Evidence—Character of Possession—Claim under—Purchaser at Tax Sale—Title—Declaration of—Trespass—Injunction—Damages.

Action for a declaration of the plaintiffs' title to land in the city of Windsor and for an injunction and damages in respect of the defendants' entries and trespasses thereon, the defendants setting up title under a tax sale.

D. L. McCarthy, K.C., and A. H. Foster, for the plaintiffs.
J. H. Rodd, for the defendants.

LENNOX, J.:—The action was brought by Abram S. Soper. I added his wife as a party-plaintiff. I do not know that this was necessary, as, upon the terms upon which the plaintiffs were living, I think the possession might well be attributed to the husband.

The plaintiffs have established "open, obvious, exclusive, and continuous" possession of the land in question, of the character required to defeat the defendants' claim, under the Limitations Act, R.S.O. 1914 ch. 75, for a period of twenty-five years or more; and, subject to the trespasses of the defendants in this action complained of, this has been continued down to the time of the issue of the writ. It is true that like the rear part of the land which they acquired by deed, and as is true of the back portion of nearly every city lot, the plaintiffs were not able to make any actual use of the land in winter time, but it was fenced in and was resting, mellowing, and renewing its life for the plaintiffs from winter to winter; it was never abandoned by the plaintiffs; it was ploughed and cultivated and cropped or pastured from year to year; the fences were renewed, repaired, and kept up from time to time in the ordinary way of ownership; "everything was done upon the land that an owner not residing upon it would do in reaping the full benefit of it;" and but for the opinion expressed in *Coffin v. North American Land Co.* (1891), 21 O.R. 80, now overruled, I should not have thought that it was reasonably open to argument that a distinction could be drawn between the winter and the summer months. The point is set at rest at all events in favour of the plaintiffs