

REVIEW OF CURRENT ENGLISH CASES.

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TRESPASS BY TIPPING EARTH AGAINST WALL—OWNERS OF ADJOINING LAND—BOUNDARY—ERECTION OF WALL WITHIN A BOUNDARY LINE—ABANDONMENT OF POSSESSION—DISCONTINUANCE OF POSSESSION—STATUTE OF LIMITATIONS—REAL PROPERTY LIMITATIONS ACTS, 1833 AND 1874 (3 & 4 Wm. IV. c. 27, ss. 2, 3; 37 & 38 VICT. c. 57, s. 1)—(10 EDW. VII. c. 34, ss. 5, 6, ONT.).

Kynoch v. Rowlands (1912) 1 Ch. 527 is a case which has some resemblance to a recent case in the Ontario High Court of *Rooney v. Petru*, 22 O.L.R. 101, although the result of the case was quite different. The plaintiffs and defendant were owners of adjoining lands physically divided by a dry ditch or channel of an ancient watercourse. In 1894 the plaintiffs built on their own side of the ditch an enclosing wall. In an action between the parties in that year it was judicially determined that the true boundary between the lands of the plaintiffs and defendant was the middle line of the ditch. The erection of the wall left unenclosed a narrow strip of land between the wall and the middle line of the ditch belonging to the plaintiffs, the real boundary though known to the parties remaining unmarked. In 1910 this action was brought to restrain the defendant from trespassing on the narrow strip and from tipping earth against the plaintiffs' wall; the defendant contended that by the erection of the wall the plaintiffs had abandoned the strip, and that the defendant had acquired a title thereto by possession under the Statute of Limitations. The only evidence of such possession offered by the defendant was that cattle belonging to his tenants had been allowed to graze such herbage as grew in the ditch and on the strip between it and the wall. Joyce, J., held that there had been no abandonment or discontinuance of possession of the strip in question by the plaintiffs and that they were entitled to judgment, and his decision was affirmed by the Court of Appeal (Cozens-Hardy, M.R., and Moulton, and Farwell, L.JJ.). In view of this decision, it seems open to question whether *Rooney v. Petru* was rightly decided.

ADMINISTRATION—RIGHT TO FOLLOW ASSETS—SECURED CREDITOR—EQUITABLE RIGHT—DELAY NOT AMOUNTING TO LACHES.

In re Eustace, Lee v. McMillan (1912) 1 Ch. 501. This was an administration action brought in the following circumstances.