

cutting the trees to the extent of \$50; subject to a reference if either party desires it. The defendant should pay the costs of the action and appeal and cross-appeal. If a reference is taken by either party, the Master will dispose of the costs before him.

In the periodical yearly intervals recurring between the summer pasture and the getting of firewood in winter (in the early spring and the late fall), when the pedal possession of the land would be vacant, the ownership and legal possession would revert to the true owner. This is putting it in the strongest way for the defendant, and treating the occupation of the land for wood and pasture purposes as adverse to the legal owner, or as interrupting his possession in point of law.

The special points of the possession of the land in this case are:—

(1) That the legal estate in the 5 acres has always been in the plaintiff and those under whom he claims, and the defendant and those under whom he seeks to claim the benefit of possession had no right nor colour of right to the parcel of 5 acres in question.

(2) That the old bush fence was put up, by the owners of it and the rest of the farm lot, for the purpose of their own convenience, and it does not in any sense mark a boundary as between lands of different ownership.

(3) That the acts of possession relied on by the defendant and the Campbells are of occasional and intermittent character—isolated acts inter se, though they may represent a series of trespasses, but not going to displace the legal title and ownership of the 5 acres, which always remained in the plaintiff.

(4) That these acts on the 5 acres, relied on by the defendants, were not exclusive of the plaintiff, who also used the place for purposes of timber and firewood—quite enough to negative any idea of abandonment or relinquishment of their rights.

The following cases are in point and shew the importance of these salient facts: *Sherren v. Pearson*, 14 S. C. R. 581 (1887); and two decisions of very high authority in 1904, *Reynolds v. Trivett*, 7 O. L. R. 623, 3 O. W. R. 463, and *Wood v. Leblanc*, 34 S. C. R. 627.

I would note that the same principle of decision which distinguishes Canadian authorities has been carried out in the Privy Council in an Indian appeal, *Radhamoni Debi v.*