

found that they are entitled to succeed, as the evidence shews that about 18 years prior to the commencement of this action the said defendant Angele Lord went into possession of the land in question and continued in quiet, peaceable, continuous and undisturbed possession thereof down to the issuance of the writ. Her position in the action was that she always believed until recently that the deed in question was a conveyance to herself in fee simple, and it was not until the fall of the year 1910 that she became aware of the fact that the names of other parties as grantees were included therein. SUTHERLAND, J., states the conclusion arrived at by him as follows: "Under the said deed the grantees therein take the land in question as tenants in common. The defendant Angele Lord went into sole possession thereof 18 years ago. The possession of one tenant in common is not to be considered as the possession of any other: Dart on Vendors & Purchasers, 7th ed., p. 451; Harris v. Mudie, 7 A.R. 414. The benefit of the Real Property Limitation Act, R.S.O. 1897 ch. 133, sec. 4, is not expressly pleaded by the defendants. But in the statement of defence, after setting out the possession of the defendant Angele Lord as above, a declaration is in the alternative asked "establishing a title by possession" in her. Counsel for said defendant Angele Lord asked at the trial for permission to amend if necessary and plead said statute. I think under the circumstances disclosed in the evidence such permission should be granted. The statement of defence may be amended accordingly. I think upon the evidence that the defendant Angele Lord is entitled to a declaration that she has been in such open, visible, continuous and exclusive possession of the land in question for more than the statutory period as to extinguish any title of the plaintiffs and the defendants other than herself therein under the said deed or otherwise, and I make such declaration accordingly. . . . Under all the circumstances I do not think this is a case for costs in favour of either party." M. J. Gorman, K.C., and A. E. Lussier, for the plaintiffs. J. U. Vincent, K.C., for the defendants.

NIXON v. WALSH—DIVISIONAL COURT—MAY 22.

Statute of Limitations—Possession of Land—Acts of Possession—Sufficiency of—Entry—Resumption of Possession.]—Appeal by the defendant from the judgment of the senior Judge of the County of Wentworth in favour of the plaintiff in an action