

Plaintiffs' lands are situate on the south side of Bread-albane street, in the city of Toronto, and run southerly to the lands of the defendant which front on the north side of Grosvenor street. The southerly boundary of plaintiffs' lands as described in the writ of summons, runs (from the easterly boundary of the property as therein described) "westerly seventy feet and one inch along the line on which a stable formerly stood to the corner of an old fence and along such old fence, etc." The stable referred to was on defendant's lands, and "the line on which the stable formerly stood" was the northerly line of the north wall of the stable; the eave of the stable projected about three inches north of that line. Plaintiffs allege that the defendant in preparation for the erection of an apartment house on his lands encroaches to a small extent on their property, and that if defendant's proposed building be erected as intended it will so encroach.

Defendant claims that the northerly limit of his lands, as shewn by the conveyance to him, falls to the north of the line of the north wall of the old stable and old fence above referred to. As against this, plaintiffs set up that even if defendant's paper title be as he claims it is, they have by length of possession acquired title to the lands as far south as the line of the north wall of the old stable and old fence; and they also object to the defendant removing the old fence.

The amount of land in dispute is so small, and the value, having regard to its location at the rear of the two properties, must be so insignificant, that one cannot but express surprise that an amicable arrangement has not been arrived at. It will not be of service to either party to continue the injunction as already granted, namely, restraining the defendant, etc., from entering on plaintiffs' lands, etc., as the matter in dispute is what land at the place in question belongs to the plaintiffs.

To finally dispose of this dispute involves the settlement of the ownership of the disputed land and the fixing of the true boundary between what is owned by plaintiffs and defendant respectively. This cannot be done on the present application. I, therefore, dismiss the application to continue the injunction, leaving the parties to whatever rights they may be able to establish at the trial.

The costs of the application are reserved to be disposed of by the trial Judge.