

Taking the view I do as to what passed by the patent, I do not think that the plaintiffs have any paper title to the lands in question. Nor has the defendant any title.

Mr. Armour argues that, this being the case, the plaintiffs must succeed, because they took possession of the land and were ousted.

No doubt, possession implies ownership and casts upon one who seeks to disturb possession the onus of shewing title in himself. The kind of possession interfered with is a matter of importance. Here it was the mere placing of a tent on this sandy point. The defendant has shewn a better title; he has shewn the same kind or a better kind of possession, extending over many years, and that the persons through whom the plaintiffs purport to claim title have acknowledged his claim. All this would be of little value if the plaintiffs had a conveyance and were entitled to the protection of the Registry Act; but it seems to me of the greatest value when the contest is treated as one between two parties, neither of whom has the paper title.

If I am right in assuming that the title is still in the Crown, no doubt, on the facts being placed before the Minister, he will direct a patent to issue to the defendant. There can be no doubt, upon the evidence as placed before me, that the defendant's claim has been recognised for many years, and the plaintiffs are seeking to avail themselves of a dishonest advantage in the way the deed from Eades to them is drawn. Eades, as I have said, did not intend to sell this parcel, and would not have done anything to interfere with Fitzgerald's position. I do not think the form of the description was, at the time, intended to be tricky, but the plaintiffs now seek to avail themselves of the situation created, and to acquire this point without paying for it. This land is said to be worth \$1,000 as a site for a summer residence.

Action dismissed with costs.

MIDDLETON, J.

JANUARY 3RD, 1912.

CROWTHER v. TOWN OF COBOURG.

*Water and Watercourses—Polluting Stream with Sewage—
Drainage of Part of Town—Property Right in Stream—
Riparian Owners—Nuisance—Liability of Municipal Cor-
poration—Injunction—Damages.*