

D. B. Maclellan, K.C., and F. G. Maclellan, Cornwall, for plaintiff.

James Leitch, K.C., for defendant Rupert.

G. I. Gogo, Cornwall, for defendant Newman.

BRITTON, J.:—The plaintiff claims to be the owner of an undivided half of the north half of the south-west quarter of lot 31 in the 9th concession of Cornwall, and with a view to partition brings this action to establish his title, acquired, as he says, by possession. He admits that the other undivided half is owned by the defendant Beaque Rupert, of which other undivided half the defendant Newman is mortgagee. One Lachlan McDonald owned the whole west half of this lot, and on the 7th March, 1871, conveyed it to Levi Rupert and John L. Rupert as tenants in common.

Levi Rupert was the father of John L. Rupert, and on the 23rd October, 1871, Levi conveyed his interest in this south-west quarter to another son, Adam. The two brothers, John L. Rupert and Adam Rupert, thus became and were the owners of the south-west quarter of lot 31.

Adam, being the owner of an undivided half of the south-west quarter, and in possession of all the south-west quarter, made his will on the 26th March, 1872, giving all his real estate to his wife Caroline for life. He made no disposition of the estate in remainder. On the 30th March, 1872, he died, leaving no issue. His father Levi survived, and so became entitled to Adam's share, subject to the life estate in Adam's widow.

On the 4th March, 1873, Adam's widow, being in possession, married the plaintiff, and he came upon the property and resided upon it, with his wife, from that time until her death, which occurred on 3rd March, 1903. Levi, the father of Adam, died in December, 1885, having first made his will devising his interest in this property to his son, the defendant Beaque Rupert. Upon the death of the wife of the plaintiff (Adam's widow) the defendant Beaque Rupert became entitled to this undivided half, and as to this there is no dispute.

As stated above, the other undivided half was in 1871 owned by John L. Rupert, and on the 1st March, 1872, John L. Rupert conveyed all his interest in the west half to defendant Beaque Rupert.

Plaintiff and wife were in possession of all of the south-west quarter until the 24th December, 1887. Up to that time the defendant Beaque Rupert did not in any way assert his right or title to an undivided half, but apparently acted as if he had supposed his sister-in-law, the widow of Adam,