

FIRST DIVISIONAL COURT.

APRIL 19th, 1916.

*McLEAN v. WILSON.

Title to Land—Strip between Road Allowance and Lake—Evidence—Survey—Plan—Surveyor's Report—Field-notes—Possession—Trespasser—Limitations Act—Part of Lot Covered by Building—Easement—Way to Building—Prescriptive Right—Description of Land Held by Possession—Amendment of Judgment.

Appeal by the defendant from the judgment of the Senior Judge of the County Court of the County of Lambton, in favour of the plaintiff, in an action brought in that Court to recover possession of land.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

D. L. McCarthy, K.C., for the appellant.

W. N. Tilley, K.C., for the plaintiff, respondent.

The judgment of the Court was read by MEREDITH, C.J.O., who said that the small piece of land, bordering on Lake Huron, which the plaintiff sought to recover, was alleged by him to form part of lot 43 in the 9th concession of the township of Sarnia, of which lot he was admittedly the owner. If this piece of land proved part of lot 43, the plaintiff's title was made out.

The defendant contended that the instructions for the original survey of the township, made in 1829, the report of the surveyor, the plan which he returned to the Surveyor-General, and the field-notes of the survey, shewed that the strip of land between the road allowance and the lake was not included in the 9th concession; but that was not the proper conclusion; it was plain that the instructions indicated that the lots in the 9th concession were to extend to the lake. They were to be "lots bordering on the lake-shore," and they were so called in the report of the surveyor; the plan shewed the lots as bounded by the lake; if the defendant's argument were to prevail, the strip of land between the road allowance and the water's edge would not have formed any part of the township, but would have been unsurveyed land. It was manifest also that the Surveyor-General read the report and the plan as the Chief Justice reads them.

The plaintiff had made out his paper title to the locus.

The defendant had failed to shew a possession of any part of the land of which possession was claimed, except that part of