

MEREDITH, J.A.:—The question must be answered in the affirmative, because there was the testimony of the defendant—whatever may have been its weight—that there was no such authority.

Whether the accused ought to have been found guilty, upon the whole evidence, is not a question over which this Court has jurisdiction, being, in this case, altogether a question of fact; but the whole facts may be presented to the Crown upon an application for clemency. Nothing can be done for the accused here, upon the ground that, upon the whole evidence, he ought not to have been convicted.

MAGEE, J.A., gave reasons in writing for the same conclusion.

MOSS, C.J.O., GARROW and MACLAREN, J.J.A., concurred.

JUNE 15TH, 1910.

*IHDE v. STARR.

*Easement — Conveyance of Lots according to Registered Plan—
Park Reserve and Entrance Marked on Plan—Obstruction by
Purchaser of Lots—Right of Purchaser of other Lots to Re-
moval—Statute of Limitations — Equitable Title — Registry
Laws.*

Appeal by the defendant from an order of a Divisional Court, 19 O. L. R. 471, reversing the judgment at the trial of MULOCK, C.J.Ex.D., who dismissed the action.

The action was brought by the plaintiff, suing on behalf of herself and all others the property holders at Crescent Beach, in the township of Bertie, in the county of Welland, to restrain the defendant from obstructing an alleged right of way and for damages.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

W. M. Douglas, K.C., for the defendant.

E. D. Armour, K.C., and G. H. Pettit, for the plaintiff.

GARROW, J.A.:—It is clear, I think, as was practically held in the Courts below, that the case must turn on the question whether the defendant has acquired a title under the Statute of Limitations. Mulock, C.J., held that the defence was made out, while Meredith,

* This case will be reported in the Ontario Law Reports.