

April of that year he made a conveyance to George of all of the west half owned by Donald—and not even excepting that part of it which had been taken by a railway company and was used as part of the line. This conveyance was subject to and the land was charged with the maintenance of John during his life and his burial after death. John afterwards made a will in which he assumes to charge the land already conveyed to George with the maintenance of Lydia McMillan or to give to Lydia a room in the house upon that property. Nothing turns upon this. The will is dated 1890—that is manifestly a mistake in omitting properly to fill in the year.

John died in April, 1905.

George seems faithfully to have maintained his uncle John—and he, George, died in June, 1910.

Archibald never returned to the property, but on the 22nd January, 1908, he made a conveyance of the land in question to his son Donald McMillan, the plaintiff in this action.

Archibald McMillan died on the 25th February, 1908.

The conveyance from Archibald to the plaintiff was not seriously contested. I find that the plaintiff has a good paper title.

As to possession. This is not a case where either the deceased John or George entered upon the land under any colour or pretence of right. It was not, I think, ever the intention of John to claim, as against his brother Archibald, title by possession. The only doubt cast upon that is the conveyance by John to George of what they both knew to be Archibald's by paper title. That may be explained by its being the mistake of the conveyancer. John could not read or write. The conveyance included the part taken by the railway company for their right of way; and yet John never set up any claim to that. It may be—and I think that is what happened—that John intended to convey what was unquestionably his. It would have been satisfactory to have had, if it were possible, some evidence of how the conveyance was obtained and from whom, if one was ever obtained, to a railway company of what is now used as part of the line of the Canadian Pacific Railway. It is admitted that the railway company own the part they use. It was accepted at the trial that the railway company took possession of what they required of this land in 1885. Archibald was then the registered owner. I will assume that the railway company obtained title from Archibald—and that John raised no question about Archibald's right to sell. There is no evidence of anything being said or done by John that he desired to terminate or that he would ter-