

## SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

OCTOBER 27TH, 1913.

## KOVINSKI v. CHERRY.

5 O. W. N. 167.

*Prescription—Possession of Lands—Boundaries—Buildings—Surveys—Encroachment—33 Vict. c. 66—Statute Legalizing Survey—Tax Sale—Irregularity—Taxes not in Arrear.*

SUP. CT. ONT. (2nd App. Div.) dismissed an appeal and cross-appeal from the judgment of the County Court of the County of Kent declaring plaintiff entitled to possession of certain lands and that a tax title he possessed thereto was invalid.

Appeal by the defendant, and cross-appeal by the plaintiff from a judgment of HIS HONOUR JUDGE BELL, Judge of the County Court of the county of Kent, sitting without a jury, dated the 19th May, 1913, in an action to recover possession of land and for other relief.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

M. Hous'on, for defendant, appellant.

O. L. Lewis, K.C., and S. B. Arnold, for plaintiff, respondent.

HON. MR. JUSTICE LEITCH: — The plaintiff appeals against the second and third clauses of the judgment, which are as follows:—

“2. This Court doth further order and adjudge that the plaintiff, as the owner of an undivided eight-ninths of lot number 6, plan 9, Beatty's survey, on the east side of William street in the city of Chatham, in the county of Kent, recover possession of the said land to the line between lots 6 and 7 in the said survey, as shewn on the plans of W. G. McGeorge, Esq., P.L.S., filed at the trial as exhibits 29 and 30, except that portion thereof upon which now stands the old brick-veneered portion of the present building claimed to be owned by the defendant.