

Funeral expenses are not maintenance—these must be paid for out of her own estate, not out of the estate of her deceased husband.

It appears that there is no such society as “the Woman’s Home Missionary Society of the King Street Church, Ingersoll,” but there is a Women’s Missionary Society of the Methodist Church, and this Society has an “Auxiliary” in the King Street Methodist Church, Ingersoll. This “Auxiliary” is the Society meant—and the executor has both the right and the duty of assisting the Auxiliary to divide the bequest.

Order accordingly. Costs out of the estate.

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DIVISIONAL COURT.

JANUARY 30TH, 1912.

YACKMAN v. JOHNSTON.

*Limitation of Actions—Adverse Possession of Strip of Land—Ejectment—Evidence—Position of Fence—Motion for New Trial—Surprise—Discovery of Fresh Evidence—Insufficient Affidavits—Absence of Diligence.*

An appeal by the defendant from the judgment of the District Court of the District of Nipissing in favour of the plaintiff in an action to recover possession of a strip of land. The defendant also asked for a new trial on the grounds of surprise and the discovery of new evidence.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

F. Arnoldi, K.C., for the defendant.

G. H. Kilmer, K.C., for the plaintiff.

RIDDELL, J.:—The plaintiff is the owner of lot 31 on the north side of Second avenue in North Bay—the defendant, of lot 30, adjoining to the west. A wire fence runs apparently dividing the properties, but the plaintiff alleges that it is at the street line four feet in on his lot, and this is one of the disputes in the action—and the only dispute on the pleadings. But at the trial the Statute of Limitations was appealed to by the defendant, although no amendment of the pleadings was made or asked. The learned trial Judge, Judge Leask, found, and rightly found, that the plaintiff had the paper title, and, hold-