

MIDDLETON, J.

OCTOBER 17TH, 1914.

## HARRISON v. SCHULTZ.

*Limitation of Actions—Possessory Title to Land—Evidence—Building — Encroachment—Retention of Land Encroached upon—Improvements under Mistake of Title—Conveyancing and Law of Property Act, R.S.O. 1914, ch. 109, sec. 37—Compensation—Damages for Trespass—Costs.*

Action to restrain the defendant from proceeding with the erection of a building alleged to encroach upon the plaintiff's land, for removal of the building, and for damages.

The action was tried without a jury at Sandwich.

F. D. Davis, for the plaintiff.

F. C. Kerby, for the defendant.

MIDDLETON, J.:—The plaintiff complains of the encroachment of a building erected by the defendant upon lands to which the plaintiff claims to have established a possessory title. It is admitted that the paper title of lot 2 is in the plaintiff and the paper title of lot 1, to the immediate south thereof, is in the defendant. It is also admitted that the defendant's building is south of the true boundary-line between lots 1 and 2.

The plaintiff's case is, that the fence to the south of her property had for a long period enclosed a narrow strip of lot number 1, and she had thereby acquired possessory title.

The whole issue is one of fact, and I think the plaintiff has succeeded in establishing the possession that she alleges, and that the building which has now been erected on the westerly end of the defendant's lot encroaches upon the land of which the plaintiff has acquired possessory title, substantially to the extent alleged, that is to say, to the extent of 5 inches at the west and 8 inches at the east. The whole controversy has been with reference to this tapering strip, some 30 feet long.

I think this is a case in which the provision of the Conveyancing and Law of Property Act as to improvements under mistake of title, now found in R.S.O. 1914 ch. 109, sec. 37, may well be applied; for I find that the defendant made the lasting improvements embodied in the building in question under the belief that the land was his own, and that I ought to require him to retain the land, making compensation therefor. This compen-