

should have for so doing a right of way with them over the road. B. denied that an agreement was concluded, or that the matter ever proceeded beyond negotiation, and his evidence was corroborated by H., a former owner of the lots, and by drafts of an agreement containing alterations indicating that the parties were merely in treaty and providing for the maintenance of the road by K. in common with the owners of the lots, an obligation disclaimed by plaintiff, and for a conveyance by K. of the part of his land to be used for widening the entrance. This conveyance was never made, and the land was included in the conveyance from K. to the plaintiff. The road had been used from the time of the alleged agreement by K. and plaintiff in connection with the farm house until it is torn down, situate about two hundred feet from the public highway, and the plaintiff had used, but not without interruption, the road for about 15 years for a considerable part of its length shortly after the date of the alleged agreement, fences with gates, crossing the road at separate points were erected by H. without objection by K.

Held, that plaintiff's bill for an injunction to restrain defendant from obstructing plaintiff in the use of the road should be dismissed.

C. J. Coster, for plaintiff. *A. H. Hannington*, K.C., and *M. G. Teed*, K.C., for defendant Robertson. *A. O. Earle*, K.C., for defendant Lloyd.

Province of Nova Scotia.

SUPREME COURT.

Full Court].

BROWN v. DOOLEY.

[April 7.

Partition—Defence of Statute of limitations—Not available to persons acting in fiduciary capacity.

An action for partition of land was resisted by the heirs, etc., of D. on the ground that she had acquired title by exclusive possession against the other tenants in common. The trial judge found and the evidence supported such finding that D. acted throughout in a fiduciary capacity as administratrix for the benefit of her father's estate and those interested in it.

Held, 1. It was not open to a person in the position of D. to avail herself of the Statute of limitations.

2. As plaintiffs believed D. was acting within her rights as administratrix there was nothing in their conduct that would operate as a bar to the relief sought on the ground of acquiescence.