

SECOND DIVISIONAL COURT.

NOVEMBER 23RD, 1917.

MATHIEU v. LALONDE.

Limitation of Actions—Possession of Land—Tenancy—Payment of Rent by Payment of Taxes and Work Done upon Land—Length of Possession—Compensation for Improvements Made under Mistake of Title.

Appeal by the plaintiff from the judgment of SUTHERLAND, J., 12 O.W.N. 373.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

J. A. Macintosh, for the appellant.

M. J. Gorman, K.C., for the defendant, respondent.

The judgment of the Court was read by MEREDITH, C.J.C.P., who said that the evidence did not, in his judgment, warrant the conclusion of the trial Judge that the defendant had acquired title to the land in question under the Statute of Limitations.

The proper conclusion to be drawn from the whole evidence seemed to be, that, until the time of the correspondence between the parties, the defendant was in possession as tenant of the owner of the land, paying rent by way of payment of taxes and of work done upon the land; and, since that time, there had not been, up to the time of the beginning of this action, sufficient length of possession to give title under the statute; so that the plaintiff was now entitled to the land.

But the case was one for compensation in respect of improvements, increasing its value, made upon the land by the defendant since the time when he was advised that he had good title to it.

The appeal should be allowed; and there should be a reference to the proper officer to ascertain and state the amount of such compensation, reserving further directions and all questions of costs, except the costs of this appeal, which the defendant must pay to the plaintiff on the final disposition of the case. The plaintiff to have possession of the land when the compensation is paid.