

BRITTON, J.

JULY 8TH, 1911.

## McMILLAN v. ATTORNEY-GENERAL FOR ONTARIO.

*Limitation of Actions—Real Property Limitation Act—Title by Possession—Acts of Ownership—Burden of Proof—Evidence.*

Action for a declaration that the plaintiff was the owner of that part of the west half of lot 31 in the 3rd concession of the township of Roxborough, in the county of Stormont, which lies north of the highway—called “the forced road”—crossing the said lot, containing about 45 acres.

D. B. Maclellan, K.C., and C. H. Cline, for the plaintiff.

R. A. Pringle, K.C., for the defendant.

BRITTON, J.:—Donald McMillan, the grandfather of the plaintiff, was in his lifetime the owner, and died in possession of, all of the west half of the said lot, except about 27 acres of the southern part, owned by one Andrew Kinnear.

Donald by his will devised all that part of the west half which he owned, lying south of the highway mentioned, to his older son John, and all that part lying north of the highway, to his son Archibald. The family residence was on John's part, south of the road, and John and Archibald continued to reside there with their mother after Donald's death, which occurred in February or March, 1856. By Donald's will, his widow was given control of the real estate until John and Archibald became of age, and then she was to be maintained on the farm by these two sons. There was no evidence of the exact date of the birth of either John or Archibald, but the inference is warranted, and I find, that both were of age on the date in 1873 when Archibald left the farm. Archibald was in possession of his part from the time of his becoming of age until he left, and he was then obliged, with his brother John, to maintain his mother. The mother died in July, 1885. It appeared in evidence that 1885 was the first year that the whole farm was assessed to John, and the defendant's evidence established that then 38½ acres of the northern part were assessed as wood or bush land.

In 1885 the deceased George McMillan was living with John. He was a good worker, but John was master, and George simply resided with John and worked as one of the family. In 1895 John was apparently getting feeble, and on the 26th