

families. Whether the two sons expected to succeed to the business does not appear.

I think the evidence fully justifies the conclusion of the trial Judge, and that defendant was given, first, the rent of the house and afterwards the use and occupation of it as part compensation for his services in his father's business, and under these circumstances I also agree with the trial Judge that the Statute of Limitations would not begin to run in favour of defendant so long as the employment continued, the enjoyment of the premises being a part return for his services. . . . Under such circumstances, title cannot be acquired by length of possession during such employment. See *Berti v. Beaumont*, 16 East 33; *The King v. Chestnut*, 1 B. & C. 473; *The King v. Snape*, 6 A. & E. 278; *Moore v. Dougherty*, 5 Ir. L. R. 449 (1843.).

The occupation of the premises by defendant was ancillary or incident to his employment by the testator. In other words, I think the service and the occupancy were incidents of one arrangement or agreement between father and son, and that no other tenancy relationship ever existed between the parties.

Appeal dismissed with costs.

JULY 11TH, 1904.

DIVISIONAL COURT.

# BRADLEY CO. v. WILSON LUMBER CO.

*Appeal—Division Court Appeal—Jurisdiction to Hear—Condition Precedent—Notice of Setting down.*

Motion by plaintiffs to quash appeal by defendants from order made in 10th Division Court in county of York dismissing defendants' application for a new trial of the action after a judgment in favour of plaintiffs.

The grounds of the motion were, (1) that the certified copy of the proceedings in the Division Court, which was filed in due time, did not contain the notes of the evidence taken at the trial, and (2) that, although the appeal was set down in due time, the defendants did not, as required by sec. 158 of the Division Courts Act, give notice of the setting down and of the appeal and of the grounds thereof to plaintiffs at least 7 days before the commencement of the first sittings of a Divisional Court which commenced after the expiration of one month from the decision complained of.

H. W. Mickle, for plaintiffs.

W. H. Blake, K.C., for defendants.