

HON. MR. JUSTICE SUTHERLAND. DECEMBER 14TH, 1912.

RE BUTLER AND HENDERSON.

4 O. W. N. 498.

*Vendor and Purchaser — Encroachments — Title by Possession — Acceptance of.*

SUTHERLAND, J., *held*, that where the property of a vendor has encroached upon his neighbour's lands, the purchaser is bound to accept satisfactory evidence of possession for the statutory period.

A. Cochrane, for the vendor.

T. H. Barton, for the purchaser.

HON. MR. JUSTICE SUTHERLAND:—By written contract dated            of October, 1912, William Butler, the owner thereof, agreed to sell to George Henderson "the premises on the west side of Hamilton street in the city of Toronto, known as No. 108." The vendor's paper title appears to comprise the northerly 20 feet 4 inches of lot 28 on the west side of Hamilton street, plan 188. No. 108 is the house number. It appears that the house itself encroaches slightly on the land to the south and the sheds and fences on the land to the north of the above described lands. The extent of these encroachments is shewn on a sketch filed on this motion and admitted to be accurate. The vendor submitted proofs to the vendee by declarations that the lands included in the encroachments have been held in quiet, peaceable and undisturbed possession by him and his predecessors in title for such a period as to establish his title thereto. The vendor tendered, before the motion, a deed of the land hereinbefore described, but not including the land covered by the encroachments. Since the motion a new deed was prepared covering the encroachments also.

I am of opinion that a satisfactory title by possession has been shewn by the declarations furnished by the vendor and that the vendee must now accept the title.

There will be no costs of the motion.