

DIVISIONAL COURT.

OCTOBER 10TH, 1910.

\*CHARBONNEAU v. McCUSKER.

*Trespass—Dispute as to Boundary between Farms—Agreement—Evidence—Statute of Limitations — Proof of True Line—Survey—R. S. O. 1897 ch. 181, secs. 14, 15, 17, 23, 24, 36—Method Adopted—Astronomical Observations — Possession—Sufficiency of, to Maintain Trespass—Ownership Subject to Mortgage—Judicature Act, sec. 58 (4)—Costs.*

Appeal by the defendant from the judgment of the County Court of Prescott and Russell in favour of the plaintiff in an action for trespass to land.

The appeal was heard by FALCONBRIDGE, C.J.K.B., MACLAREN, J.A., and RIDDELL, J.

J. A. MacInnes, for the defendant.

C. G. O'Brian, for the plaintiff.

The judgment of the Court was delivered by RIDDELL, J.:—

The township of Alfred, in the county of Prescott, lies with its north end upon the Ottawa river; the governing line is the western boundary, which runs approximately north and south and between the townships of Alfred on the east and North Plantaganet and South Plantaganet on the west: the concession lines are at right angles to the governing line and  $1\frac{1}{4}$  miles apart: the lots are  $\frac{1}{4}$  of a mile wide, and contain 200 acres each—they number from east to west.

The plaintiff owns, subject to a mortgage, lot 33 of the 3rd concession, and the defendant, lot 34, immediately to the west thereof. Most of the line between these lots has been fixed for years, and the action concerns only about 6 rods at the south. The action is in trespass to determine the boundary at that place.

One defence set up is an alleged agreement between the adjoining owners, but I agree with the learned trial Judge that this is not established.

The main defence at the trial was the Statute of Limitations, but it is quite clear that this defence also fails.

[Reference to Rogers v. Nixon, an unreported decision of a Divisional Court (Armour, C.J., and Street, J.), 21st December, 1889.]

\* This case will be reported in the Ontario Law Reports.