

for the remainder of it; the right of the true owner would attach upon each occasion when the possession became thus vacant, and the operation of the Statute of Limitations would cease until actual possession was taken again in the spring by the plaintiff.

J. W. McCullough for the plaintiff.

Foy, Q.C., MacGregor and F. E. Hodgins,
for the several defendants.

Div'l Court.]

[March 6.

MCKAY v. BRUCE.

Easement—Grant of lands with right to use of springs on adjoining lands—Access to springs—Right to lay pipes to springs—Prescriptive rights—Enjoyment for twenty years—Interruption after twenty years—R.S.O., c. III, ss. 35, 37—Unoccupied lands—Owners absent—License—Revocation of—Possession—Extinguishing easement—Registry laws—Notice—Mortgagor and mortgagee.

The plaintiff claimed title to two springs, C. and E., under conveyances in 1841 and 1843 of lands north of the springs. One conveyance granted the sole and perpetual right to spring C. together with the right to use the road from the southern boundary of the land granted to the springs; the other granted the sole and perpetual use of and right to the water of spring E., without indicating the manner in which the water was to be approached or its enjoyment had. The defendant was the owner of the land to the south upon which the springs were situated. The water had been carried from the springs by means of pipes through the defendant's land to the plaintiff's land from 1861 till 1882 or 1883, when the defendant tore up the pipes, insisting that the then owner of the plaintiff's land had no right to maintain them, and thereupon an arrangement was made under which the pipes were again put down with the addition of certain troughs for the convenience of the defendant's cattle.

Held, that under the conveyances the plaintiff had a right of access to spring C. by the road mentioned, and to spring E. by a convenient road to be laid out, but had no right to the easement of conveying the water by pipes through the defendant's land.

The result of the interruption in 1882 or 1883 and the arrangement then made was that since that time the plaintiff must be taken to have

maintained the pipes, not as a matter of right, but by the license of the defendant; under ss. 35 and 37 of R.S.O., c. III, the fact that twenty years had expired before the interruption was immaterial; and therefore the plaintiff had not acquired a prescriptive right to the easement.

The fact that for nearly the first half of the period from 1861 to 1881 or 1883 the land over which the easement was claimed was unoccupied and its owners out of the country constituted another objection to the acquisition of a prescriptive right under s. 135.

The license of the defendant under which the pipes were maintained since 1882 or 1883, being by parol, was determinable at any time by the defendant; and the defendant in subsequently taking up the pipes, which led to the bringing of this action, was acting within his strict legal right of revoking the license; and the plaintiff was not entitled to damages for their removal or for disturbing the ground in which they lay, whereby the water was rendered impure.

The possession by the defendant of the land through which access to the springs was to be had, for upwards of ten years, did not extinguish the plaintiff's right of access.

Mykel v. Doyle, 45 U.C.R. 65, followed.

Before the conveyances of 1841 and 1843, G., the then owner of all the lands now in question, conveyed them to M. by a deed absolute in form, but really intended as a mortgage, and in 1857 in a redemption suit brought by persons who had acquired the equity of redemption from G. after the registration of the conveyances of 1841 and 1843, it was declared that this conveyance was a mortgage only, and in 1858 a conveyance was made by the representatives of G. pursuant to the decree reciting the payment of the mortgage moneys and conveying the lands to the plaintiffs in the redemption suit. The defendant claimed the land upon which the springs were situated under the grantees in the conveyance of 1858,

Held, that the defendant was affected under the Registry Acts, with notice that M. was a mortgagee only, and that those who redeemed him did so as owners of the equity; and the defendant could not set up the estate of the mortgagee, which, upon payment of the mortgage, was a bare legal estate, carrying with it no rights as against the beneficial owners of the land.

Aylesworth, Q.C., for the plaintiff.

C. J. Holman for the defendant.