

R. C. Clute, K.C., for plaintiff.

M. Houston, Chatham, for defendant.

Judgment of the Court was delivered by

MEREDITH, C.J.—The first occasion was not privileged, and therefore proof of malice was not necessary. The existence of a social or moral duty upon which the privilege rests is one for the Judge and not the jury: *Stuart v. Bell*, [1891] 2 Q. B. 341. There was no such duty in the present case, and the objection to the charge fails. There is no ground for the interference, and the damages are not excessive. Motion dismissed with costs.

Scane, Houston, Stone, & Scane, Chatham, solicitors for plaintiff.

W. F. Smith, Chatham, solicitor for defendant.

MEREDITH, C.J.

JANUARY 9TH, 1902.

TRIAL.

McGOWAN v. ARMSTRONG.

Limitation of Actions—Title by Possession of his Father's Land by a Son who does not Pay Rent nor Acknowledge Title for 11 Years—Assessment of Son as Tenant and both afterwards as Owners—Tenancy at Will—Settlement in Ignorance of Rights not Binding—Doe d. Bennett v. Turner, 7 M. & W. 226, distinguished—Fane v. Fane, L. R. 20 Eq. 698, followed.

Action tried at Toronto brought to recover payment of the first instalment, \$333.33, of a charge payable in twelve annual payments, upon certain land in the township of Chinguacousy, created by the will of Edward Armstrong, deceased, who died in 1900, having devised the land, subject to the charge, to his son, the defendant. The plaintiffs are the executors and other beneficiaries under the will.

E. D. Armour, K.C., and W. B. Milliken, for plaintiffs.

E. F. B. Johnston, K.C., and J. D. Montgomery, for defendant.

MEREDITH, C.J.—The defendant was put by his father in possession of the land in 1879, has continued in possession ever since, occupying it for his own benefit, though expecting some burden with respect to it to be imposed by his father: having the profits, paying no rent, and giving no acknowledgment of his father's title, and having made valuable improvements; and therefore upon such state of facts the father's title has become extinguished: *R. S. O. ch. 133*. The defendant was a tenant at will, the tenancy was never determined, and the defendant acquired title after eleven years: *sec. 5, sub-sec. 7*. There is no evidence that he was care-