FERGUSON, J.A., in a written judgment, said that the question for the Court was: "Had the defendant possession of the disputed lands at the time the plaintiffs entered and set their traps?"

Reference to Lord Advocate v. Lord Lovat (1880), 5 App. Cas. 288; Davis v. Henderson (1869), 29 U.C.R. 344, 353, 354, 355; Jackson v. Cumming (1917), 12 O.W.N. 278; M. J. O'Brien Limited v. LaRose Mines Limited (1920), 18 O.W.N. 337; McCannel v. Hill (1920), 18 O.W.N. 343.

Applying the law laid down in these cases, the answer to the question must be given by determining whether there was evidence to support the findings of fact of the trial Judge. After a careful consideration of each of the findings, with the evidence, the learned Justice of Appeal was of opinion that all were justified and in accordance with the evidence.

The argument of the appellants' counsel was not directed so much to an attack upon the findings as to the question whether they were sufficient to support the conclusion that the defendant was in possession. The contention was that the finding as to the fence dividing the east half from the disputed land did not establish an enclosure of the disputed land, and was insufficient to support a finding of possession. According to the authorities, enclosure is not necessary to establish possession. The fence was sufficient to enclose that part of the land which was dry and fit for pasture, and it was some evidence of an intention to possess and of possession of the part not enclosed thereby, and that piece of evidence must be considered in the light of the other evidence. Taking all the acts of the defendant together, they seemed to afford ample evidence to establish that the defendant, being in actual occupation of part of the lot, used the part not actually enclosed in the same manner as it would have been used and enjoyed had he been, as he thought he was, the actual owner; that these acts of user were done in the assertion of a right of ownership and possession, in the bona fide belief that he had acquired title to the lands, and were not mere acts of trespass.

The appeal should be dismissed with costs.

MEREDITH, C.J.O., and HODGINS, J.A., agreed with FERGUSON, J.A.

MAGEE, J.A., read a dissenting judgment. He was of opinion that the acts of the defendant did not amount to adverse possession of the land in question so as to give him title as against the true owner.

*Appeal dismissed* (MAGEE, J.A., *dissenting*).