

Upon the whole case I must decide in favour of defendants Bedford and Sale as to assertion of lien. Action as to them dismissed but without costs.

Judgment for plaintiffs against defendant Laird for amount of claim.

JULY 11TH, 1904.

DIVISIONAL COURT.

COULTER v. COULTER.

Limitation of Actions — Real Property Limitation Act — Character of Possession — Occupation of House as Part Compensation for Services.

Appeal by defendant from judgment of BRITTON, J., at the trial, in favour of plaintiffs, trustees under the will of James Coulter, father of defendant, in an action to recover possession of a house and about 3-5 of an acre of land in the village of Weston.

The defence was that defendant had acquired title by virtue of the Real Property Limitation Act.

G. H. Watson, K.C., for defendant.

A. F. Lobb, for plaintiffs.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) was delivered by

TEETZEL, J.—Defendant has been in continuous occupation of the house since February, 1884, and has during these years cultivated the adjoining land, in varying quantities, for garden purposes. . . .

The trial Judge held that defendant had entered into possession of the house not as tenant, but as servant, of his father, and that his possession in that way continued until the employment of defendant in his father's foundry business ended in 1899, and therefore that the Statute of Limitations never began to run till that time. . . .

I think the effect of all the evidence upon the relationship between the father and the two sons is that he allowed each of them the use of a house and garden, and each to draw from the business what was necessary for his living expenses beyond the use of his house and garden, and that, while the business was advertised as James Coulter & Sons, the capital was all furnished by the father, and there is no evidence of any right in the sons to draw from the resources of the business beyond what was necessary to maintain their respective