

The plaintiff relied principally on an alleged understanding or agreement between him and his step-son, Sylvester Houle, since deceased, to the effect that the latter was to be entitled to the lands for his life; and the plaintiff said that he permitted Houle's family to remain on the land after his death.

The action was commenced on the 11th January, 1916, against Richard Le Duc, who in his appearance asserted that he was in possession as tenant of Josephine Laplume, the widow of Houle, remarried. She appeared under Rule 53, and was the substantial defendant.

On the 3rd September, 1897, the plaintiff obtained a certificate of ownership under the Land Titles Act of lots 30 in the 3rd and 4th concessions of Baxter, having been located for these lots under the Free Grant and Homesteads Act.

Sylvester Houle was married to the defendant in 1882, and died on the 22nd October, 1895, leaving his widow and four children. From the time of the marriage until Houle's death, except for about fifteen months, seven or eight years after the marriage, their place of residence was on the land in dispute; and, after Houle's death, the defendant, until recently, continued to reside there without interruption except for short intervals.

The action was tried without a jury at Barrie.

J. G. Guise-Bagley, for the plaintiff.

W. A. J. Bell, K.C., for the defendant Laplume.

KELLY, J., in a written judgment, after setting out the facts, said that there was much conflict in the evidence; but it was common ground that some agreement or document relating to this land was given by the plaintiff to Sylvester Houle about the time of his marriage. This writing was not produced, but it was shewn that it was in existence for many years. The evidence of its contents was unsatisfactory. If the fact was, as the plaintiff contends, that what he gave Houle was only a life interest, then, from Houle's death, the defendant's possession of the part of the land to which possession extended was adverse to the plaintiff's title.

The learned Judge was unable to make any finding upon which to base a declaration of the meaning and effect of the lost document.

The defendant relied upon the Limitations Act. There was now enclosed by fences about 15 acres, nearly all within the east half of lot 30 in the 3rd concession. A dwelling-house and out-buildings were erected thereon during Houle's lifetime, and some