

original post is planted, and a line is run from that point to the rear of the lot, according to the directions of the Surveys Act, the fence running from the swamp to the north or rear boundary of the lot encroaches on the defendant's property, and the dispute is as to the ownership of a narrow strip of land extending from the swamp to the blind line or rear of the lots.

At the trial, much evidence was given for the purpose of establishing the true line; also for the purpose of shewing that, even if the fence from the swamp to the blind line was over on the defendant, the plaintiff had acquired title by possession.

The trial Judge found both issues in favour of the plaintiff; and also found "that the fence" (from the swamp to the rear of the lot), "was erected and maintained continuously in its present position for upwards of 18 years; . . . that neither party has been troubled with cattle trespassing; . . . that the fence from the blind line to the swamp was substantially built, of a permanent character, and not merely a makeshift put up until the dividing line between the two properties could be determined."

It was contended for the defendant that, because there was no fence through the swamp, the plaintiff did not acquire title to the small strip in dispute, on which the defendant recently entered and cut 5 maple trees.

A swamp may form a boundary up to which a party will be deemed to have possession sufficient to give him a title: *Jackson v. Cumming* (1917), 12 O.W.N. 279; and in this case the fences and swamp formed the visible boundary of the lands visibly occupied by the plaintiff.

This was not a case of a known and intentional trespass, followed by other acts from which the Court might infer continuous use and occupation: *McLeod v. McRae* (1918), 43 O.L.R. 34; but an entry made as of right and an open and visible exclusion of the defendant and his predecessors in title from the land on the plaintiff's side of the fence, and of continuous occupation of the farm enclosed by the fence, and the natural barrier created by the swamp, as a whole, and of the use and occupation of the little strip now in question as part of the whole, in the same manner as it would have been used and occupied had the plaintiff been, as he thought he was, the actual owner thereof: *Davis v. Henderson* (1869), 29 U.C.R. 344; *Piper v. Stevenson* (1913), 28 O.L.R. 379.

The trial Judge was right in holding that the plaintiff had established a title by possession to the strip in question, and that it was, in the circumstances, unnecessary to define the original line between lots 22 and 23.

*Appeal dismissed with costs.*