

the deposit of plan and book of reference as a condition precedent to the beginning of construction: that this being done, there is no permission required for the occupation of the public streets. It may be that the municipality will waive the deposit of plans, on the undertaking of the company to have the method of construction approved of by the Railway Board; and in that case the deposit may be made *nunc pro tunc* and the prosecution of the work not unduly delayed. For this reason, also, I have perhaps expedited overmuch the giving of judgment, but it is best for both parties to know where they are as soon as possible.

Success being divided, I would give no costs to either side.

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BRITTON, J.

OCTOBER 2ND, 1911.

BURROWS v. BURROWS.

*Husband and Wife—Land Acquired in Name of Wife—Contract—Evidence—Statute of Frauds—Resulting Trust—Work and Labour—Counterclaim—Injunction.*

This action was brought for the recovery of an undivided half of two certain parcels of land, parts of lot 5 in the 3rd concession of the township of Kitley, or, in the alternative, to recover a certain sum of money for work and labour and money expended in divers way in the occupancy and working of this land for many years. Counterclaim for an injunction to restrain the plaintiff from interfering with the defendant's working of the land.

G. F. Henderson, K.C., and W. McCue, for the plaintiff.

H. A. Lavell, for the defendant.

BRITTON, J.:—The facts of the case are as follows. The plaintiff and defendant are husband and wife, he 59 years of age—she about 61. They were married in 1871.

It must be assumed for the purpose of this action that the defendant's mother became and was the owner of a portion of this lot, out of which she conveyed to the defendant a part, particularly described, containing 5 acres and 12 poles.

The defendant's father and mother had unhappy differences between them, and separated. After the separation, the mother and the plaintiff entered into an agreement by which the mother