

BOOTH v. SJOLIN—SUTHERLAND, J.—JULY 23.

Limitation of Actions—Dispute as to Boundary-line between two Halves of Lot—Possession and Fencing in Accordance with Agreement—Action to Recover Possession of small Strip of Land—Evidence.]—An action for a declaration of the true boundary-line between the north and south halves of lot 165 on a registered plan of a tract of land in the city of Ottawa, and for possession of the northerly three feet of the south half of the lot, according to a survey made for the plaintiffs. The action was tried without a jury at Ottawa. SUTHERLAND, J., in a written judgment, after setting out the facts, said that the defendant asserted that he had been in possession of the three feet in question, through his predecessor in title and himself, for such a length of time that any claim of the plaintiffs was barred by the Limitations Act, R.S.O. 1914 ch. 75. A surveyor was called as a witness by the plaintiffs, and another by the defendant. There might be some doubt from their conflicting testimony as to the true position of the dividing line between the north and south halves of the lot, on a proper and accurate survey. It was incumbent upon the plaintiffs to make out title to the three feet and a right to possession thereof; and the learned Judge was unable to find, upon the evidence, that they had done so. On the other hand, the defendant had proved an oral agreement made between the plaintiff Booth and the predecessor in title of the defendant (K.) to fix and establish the line between them, which was evidenced, to the extent of its length, by the fence built by K.; and that the possession of the defendant and K. of the three feet in question, lying to the north, had been consistent with the agreement, and had been open, continuous, and adverse, in so far as the plaintiff Booth was concerned, for a period of upwards of 20 years before the commencement of this action. The other plaintiff took from Booth with notice of some existing dispute between him and the defendant. Action dismissed with costs. G. F. Henderson, K.C., for the plaintiffs. George McLaurin, for the defendant.

RE McRAE—KELLY, J.—JULY 23.

Will—Validity—Evidence—Allegations of Testamentary Incapacity and Undue Influence—Failure to Prove—Agreement Made by Testator—Promise to Convey Land in Consideration of Maintenance for Life—Agreement and Will Upheld on Evidence—Costs of Issues.]—Issues directed to be tried for the purpose of determining certain questions relating to the will of Duncan L. McRae, who died on the 28th September, 1918; and also as to an agreement made