

when he went away, discontinued possession, and left the property in the sole occupation and possession of the Rahelly family.

Gerald Rahelly continued to occupy and use the premises for himself, his wife and three daughters, constantly, openly, visibly, and notoriously as any owner absolutely seised in fee would do. The exclusion of Thomas and the possession of his share must be attributed to Gerald, and to him alone, until he died in 1907.

The right of Thomas to re-enter first accrued immediately after he went out. Time began to run against him and in favour of Gerald in August, 1904; and the undivided one-half share or interest of Thomas became extinguished in August, 1904, by force of the Limitations Act.

Gerald was the sole owner in fee when he died in 1907. As Gerald died intestate, Thomas immediately became entitled to a one-fifth share. (There was another son, Thomas's brother Daniel.) Immediately upon Gerald's death, the defendants and their mother assumed and took possession, to the exclusion of Thomas, and occupied, used, and treated the property as their own. During the 5 years after this before the death of Thomas he did nothing. Time was running against him in his lifetime, and ran on, whether his children were of age or not after he died. The Rahelly plaintiffs' claim to one-fifth as accruing through their grandfather, Gerald, therefore failed.

The mother of the defendants, who died in December, 1915, acquired no interest in the land in her husband's lifetime. She survived her husband less than 8 years, and acquired nothing. She had a dower-right, but dower was never assigned. She was in possession, so far as she could be said to be, as dowress or as a trespasser, and had acquired no statutory right up to the time of her death. The claim of the Rahelly plaintiffs based on some right accruing through their grandmother therefore failed.

There should be judgment for the plaintiffs the trusts corporation, in terms of the consent minutes, upon the first branch of the case, with costs. In all other respects the action should be dismissed without costs. There should be no deduction from the costs of the successful plaintiffs by reason of their having joined the unsuccessful plaintiffs.

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NORTHERN GROCERY CO. v. PARADE—MASTEN, J.—MARCH 24.

*Contract—Agreement to Refrain from Bringing Action—Conditions—Onus of Proof—Findings of Master—Appeal.*—An appeal by the defendant from the report of an Official Referee and a motion by the plaintiffs for judgment on the report. The appeal