

FIRST DIVISIONAL COURT.

JUNE 25TH, 1920.

## \*DE VAULT v. ROBINSON.

*Limitation of Actions—Dispute as to Ownership of Strip of Land between Houses on Adjoining Lots—Paper-title—Exclusive Adverse Possession—Evidence—Fences—Roof of House Projecting over Strip—Easement.*

Appeal by the plaintiff from the judgment of the County Court of the County of Hastings dismissing an action for damages for trespass on lot 32 on the north side of Bridge street in the city of Belleville.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, J.J.A.

E. G. Porter, K.C., for the appellant.

Eric N. Armour, for the defendant, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that the trial Judge had found that, while the paper-title to the strip of land in dispute was in the plaintiff, the defendant had been in open, notorious, exclusive, and adverse possession of the strip for more than 10 years, and had thus acquired title by possession. The appellant contested this conclusion on two grounds: (1) that, while the strip in dispute was on the defendant's side of the fence, he did not acquire title by possession, because he had not maintained a gate at the street-end of the 4.5-foot alleyway between the houses of the plaintiff and defendant; (2) that the projection of the roof or eaves of the plaintiff's house over part of the land in dispute was sufficient to prevent the running of the statute in favour of the defendant.

The defendant bought his property and entered into possession thereof in the belief that he had acquired the paper-title up to the line of the plaintiff's house and the fence extending from the north-west corner of the house to the rear of the lots, and he used, occupied, and enjoyed all the lands in dispute as a part of his property, in the same manner, by the same acts, and to the same extent as he would have used, occupied, and enjoyed it, had he been, as he thought he was, the holder of the paper-title thereto.

The plaintiff did not acquire title to his lot and house until 1915, whereas the defendant purchased his property in May, 1905, having previously continuously occupied it as tenant from June, 1899.