

MAGEE, J.A., also concurred, though with considerable hesitation.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT.

MARCH 21ST, 1916.

*TAYLOR v. VANDERBURGH.

Evidence—Title to Land—Possession—Presumption of Ownership—Rebuttal—Acts and Conduct of Predecessor in Title—Admissibility.

Appeal by the defendant from the judgment of the Senior Judge of the County Court of the County of Lambton, in favour of the plaintiff, after trial, without a jury, of an action, brought in that Court, to recover possession of a strip of land 142 feet wide, forming part of a 50-acre lot, the south half of the south half of lot 6 in the 1st concession of Moore township. The plaintiff alleged that he was the owner of the strip, and that the defendant took possession of it in May, 1911, and had ever since wrongfully held possession of it.

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

A. Weir, for the appellant.

W. N. Tilley, K.C., for the respondents.

MEREDITH, C.J.O., read a judgment in which he said that the defence based upon the Statute of Limitations entirely failed, and was not seriously pressed upon the argument of the appeal; but it was contended for the appellant that his possession was prima facie evidence of ownership, and that the presumption of ownership was not rebutted, because—as the appellant now contended—the plaintiff had failed to prove title to the land; also that, if the plaintiff was entitled to recover, the appellant was entitled to damages from the respondent Sheppard, upon whom a third party notice claiming damages for deceit was served.

The appellant's possession of the land in question afforded evidence of his ownership entitling him to succeed unless the presumption of ownership arising from his possession was rebutted. It was shewn conclusively that, although the third party, the appellant's grantor, at first thought that the land conveyed to him extended to the west fence referred to in the