

FIRST DIVISIONAL COURT.

APRIL 3RD, 1917.

WESTON v. BLACKMAN.

Title to Land—Dispute as to Ownership of Small Strip—Ascertainment of Boundary-line between Town Lots—Survey—Evidence—Fences—Original Monuments—Inference—Possession of Strip—Limitations Act—Estoppel.

An appeal by the defendants from the judgment of the Judge of the County Court of the County of Perth in favour of the plaintiff in an action in that Court, brought to determine the ownership of a strip of land, and tried without a jury.

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

R. G. Fisher, for the appellants.

J. W. Graham, for the plaintiff, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said that the controversy was as to the ownership of a small strip of land, of trifling value, forming part of a lot in the town of St. Mary's. The County Court Judge found that a triangular piece of land, having a width in front of 3 feet 8 $\frac{3}{4}$ inches, and extending from the street-line to a point in the rear of lot 27 (the respondent's lot), formed part of that lot.

The case was to be dealt with as if the respondent had claimed the land not only by having the paper title to it, but also because if the paper title to it was in the appellants, their title was extinguished by the operation of the Statute of Limitations.

The learned Judge determined that question in favour of the respondent, holding that the deceased Hugh Smyth, of whose estate the respondent was administratrix, and his predecessors in title, had had possession of a somewhat large piece of land from a time prior to 1897 until the appellants, in 1913, erected a fence, taking it or part of it into their lot, and that as far back as 1907 or 1908 the title of the owner of it, if it formed part of lot 26, became extinguished by the operation of the Limitations Act; and it was adjudged that the respondent was the owner and entitled to the possession of this parcel.

The evidence of Mr. Farncombe, an Ontario Land Surveyor, who made a survey at the instance of Smyth, was in itself insufficient to establish the true boundary-line between the two lots. Mr. Farncombe found no original stakes or monuments