Keefer v. Arillotta

(1977) 13 O.R. (2d) 680

ONTARIO COURT OF APPEAL

BROOKE, MACKINNON and WILSON,JJ.A.

20TH JULY 1976

MACKINNON, J.A. (dissenting):— The plaintiffs asked for a declaration that they are the owners of an eight-foot strip of land lying between their residence, known municipally as 57 Chapel St. S. in the Town of Thorold, and the lands of the defendants immediately to the north, known municipally as 53 Chapel St. S. The defendants counterclaimed for a declaration that they are entitled to absolute possession and ownership of the strip of land, and for an injunction restraining the plaintiffs from using the said strip except as a right of way.

The plaintiffs were granted the requested declaration based on a title acquired by prescription and the counterclaim was dismissed. The defendants now appeal.

The issue as to whether a prescriptive right has been acquired is a question of fact and an appellate tribunal must be careful not to re-try such an issue on appeal: Johnston et al. v. O'Neill et al., [1911] A.C. 552; Godson Contracting Co. v. Grand Trunk R.W. Co. (1917), 13 O.W.N. 241. In the instant case the learned trial Judge heard some 11 witnesses, seven of whom gave evidence on behalf of the plaintiffs. After thoroughly canvassing the evidence, and accepting the evidence given on behalf of the plaintiffs, he made his finding of fact. There is no suggestion that he misunderstood the evidence and unless it is clear that he misunderstood or misapplied the relevant law, this Court should not interfere with his finding.

A survey of the strip of land whose ownership was in issue was filed as an exhibit. It shows its physical relationship to the properties of the plaintiffs and defendants and is reproduced here.

The two properties were at one time in the common ownership of one Martin Cloy who, in 1918, conveyed the lands known municipally as 57 Chapel St. to the father of the plaintiff, Mrs. Keefer. The north property line of those lands is shown on the survey. That conveyance also granted a right of way over a strip of land (the strip in issue), eight feet in width immediately to the north of the Keefer property. It is described as follows:

> TOGETHER with a free and uninterrupted RIGHT OF WAY, ingress and egress, to the said Grantee, his heirs, executors, administrators and assigns, and all persons authorized by him or them, at all times and for all purposes connected with the use and occupation of the lands hereby conveyed, in over and along EIGHT FEET of the lands immediately

> adjoining to the North of the lands hereby conveyed, and extending at the said width of EIGHT FEET from the Easterly limit of said Lot 9, to the full depth of 105 feet, as is mentioned in the lands hereby conveyed.

The chain of title is not important. Suffice it to say that the property devolved on Mrs. Keefer and in 1957 Mrs. Keefer, as the executor of her mother's estate, conveyed the lands and right of way to her husband and herself as joint tenants.

Number 53 Chapel St. remained in the Cloy family until 1972, passing from Martin Cloy to his wife and finally, in 1952, from Mrs. Cloy to her son, Douglas Cloy. In 1972 Douglas Cloy conveyed his lands to a Mr. and Mrs. Watson who, in 1973, conveyed the property to the defendants. These two conveyances, to which, of course, the plaintiffs were not parties, showed the lands conveyed were subject to a right of way in favour of the owners of the lands immediately to the south.

The learned trial Judge reviewed the facts fully and it is not necessary to repeat them all here. The plaintiffs' house had always been used as a dwelling-house, Mrs. Keefer having lived in it since 1918, Mr. Keefer moving in in 1941 when he married Mrs. Keefer. The defendants' premises had been used since the time of Martin Cloy as a grocery store supplying the boats plying the Welland Canal during the open season. Above the store was an apartment which had been rented to various tenants over the years.

As can be seen from the survey, the stone or gravelled driveway extends westerly some 41 ft. from the street line. West of the gravelled driveway is a grassy area running to the front of the frame garage at the rear of the property. The evidence established that around 1956 Douglas Cloy installed the precast concrete landing and steps on the south of his building shown on the survey, which was used by his tenants to reach the apartment. These steps encroached on the right of way and made it very difficult, if not impossible, for a modern car to go through to the back of the property, and at that time the plaintiffs gave up using the right of way as a driveway to the rear or west of the steps.

In the 1920s and early 1930s, there had been an ice-house and lean-to stable owned by the Cloys at the rear of the properties and there was regular traffic back and forth over the right of way. That traffic was considerably reduced when the ice-house and lean-to stable were torn down in the mid-30s. However, it is clear that from 1918, the year of the grant, until the 1930s, the Cloys had used this strip of land on a regular basis to take ice in and out of the ice-house, first by horse and wagon and later by truck. It cannot be said, therefore, that they did not desire to use the right of way as a right of way either at the time of the grant or for a number of years thereafter. In 1952 the plaintiffs moved the garage from its original location at the rear of their property onto the right of way as shown on the survey. This was known to Douglas Cloy

but he raised no objection. Since 1956 the original garage has been used continuously as a storage shed, and not as a garage. Since 1956, if not before, the plaintiffs have seeded and carefully tended the portion of the right of way to the west of the concrete landing leading to the garage, looking after and using it in various ways described in the evidence, to the exclusion of all others, including Mr. Cloy: see *Clarke et al. v. Babbitt*, [1927] S.C.R. 148, [1927] 2 D.L.R. 7.

In 1949 Douglas Cloy erected an addition on the rear of the store. It is west of the concrete landing. There is a south door on this addition and, as can be seen from the survey, if Cloy wished to reach the rear of his property from this building, he could exit from this door and walk westerly on his own property without walking on the right of way.

Immediately north of the right of way and running from the street line to the concrete landing is an, approximately, two-foot wide concrete walk. This walk serviced the tenants who might well, on occasion, have walked on the nearest portion of the driveway in view of the narrowness of the walk, in order to reach the landing. In addition, the evidence disclosed that, on occasion, during the months when the store was in operation (it was closed when the canal was closed) men delivering soft drinks to the store would proceed down the north side of the right of way, carrying the soft drinks in a handcart, around the concrete landing and into the door of the 1949 addition. The learned trial Judge, in declaring that the plaintiffs had acquired a prescriptive right to the right of way, made such right subject to an easement around the concrete landing to allow for any deliveries of soft drinks.

Mr. Keefer, who took up residence at 57 Chapel St. in 1941, was clear in his evidence that from that time on, if not before, the Keefer family had parked their cars in the driveway as did visiting friends and relatives. Since 1956 cars were always parked on the driveway to the east of the concrete landing. One disabled car was parked there for four years. Although Douglas Cloy had paved the apron in front of his store and trucks and cars were parked there from time to time as he required, he had paved no portion of the right of way and since 1952 at least, any gravel placed on the driveway was placed and paid for by the plaintiffs.

The fact that the Cloys were away some winters from the end of January to March does not lessen the effect of the use by the plaintiffs as owners of the right of way by their building a skating-rink on it. Quite apart from the fact that the rink, in all likelihood, would be in use prior to the end of January, when the Cloys left for the south, the user was open and unequivocal and could have been known to the Cloys: see *Rains v. Buxton* (1880), 14 Ch. D. 537.

The user of the right of way changed, at the latest, in 1956, and it has not been used as a right of way since that time. The plaintiffs' use, as owners of the entire right of way, from the garage through the lawn portion and the gravelled driveway, to the street line, has been exclusive,

continuous, open and visible and without objection from the registered owner since, as stated, at least, 1956.

Mr. Cloy, on a few occasions, had wished to park his car, or his relations' or customers' cars on the right of way, but this was denied him, without objection from him. Nor did Mr. Cloy object to the plaintiffs' use of the right of way, a use which was totally inconsistent with the original grant and the original use by both parties. The evidence in this connection is extensive and clear and recited in part by the trial Judge. To reverse the situation now, after some 20 years, would mean, as the defendants argue, that the plaintiffs now could no longer use the driveway as a parking area. Moreover, the lawn, in place for 20 years, would have to be taken up and it would have to be determined whether it was possible to squeeze by the 1956 concrete landing erected by Mr. Cloy in order to use the right of way as a right of way. Whatever the life of the law has been, such a result does not accord with either logic or experience.

The plaintiffs have shown the necessary animus possidendi to support their claim, having the clear intention from the evidence of excluding the owner as well as all others. In the course of his reasons for judgment the learned trial Judge stated that the plaintiffs, with regard to the right of way, "treated it and used it as their own, notwithstanding the grant of right of way in their favour". Clear findings of fact as found by the learned trial Judge with evidence to support them, ought not to be disturbed or varied by this Court on appeal except for the most cogent of reasons. Accordingly, upon a finding of possession and the requisite animus, in order to stop the time from running there has to be some act by the holder of the paper title made *animo possidendi*. The intermittent and desultory acts of the owner, through having soft drinks delivered by hand carrier from time to time, without more, were not such, under the circumstances found by the trial Judge, as to stop the time from running.

An analogous situation is found in the landlord and tenant cases where the tenant first enters upon the land as a tenant, but the character of his use and occupation changes subsequent to the entry, continuing his possession after the tenancy is at an end. The running of the statute in such cases is not interrupted by a mere entry. A new tenancy has to be created or an action to eject the erstwhile tenant has to be commenced before the time has run: *Day v. Day et al.* (1871), L.R. 3 P.C. 751; *McCowan et al. v. Armstrong* (1902), 3 O.L.R. 100; *Noble v. Noble* (1912), 27 O.L.R. 342, 9 D.L.R. 735.

The case of *Great Western R. Co. v. Lutz* (1881), 32 U.C.C.P. 166, was very different from the present one. There the railway company had purchased land under their statutory powers and had obtained a conveyance of the land from the true owners. They entered upon the land in 1854 and the defendant alleged that he had gone into possession in 1865. In 1873 the railway, without the consent of the defendant, entered upon the land, knocking down the fence and constructing a double line of track. At the same time they removed such portions of the soil as

they required. After completion of their work they replaced the fence where they saw fit and the defendant argued that this amounted to a renunciation of the land outside the fence. As the Court pointed out, if the defendant had entered upon the land and replaced the fence he would have been a trespasser. It was in the context of these facts that Galt, J., said that it appeared to him:

> ... when the true owner in the exercise of his rights enters upon any portion of his own land which is not in actual possession of another person, he must necessarily be considered as being in possession of the whole.

In the instant appeal, the land to the east of the garage to the street line is as much in the possession of the plaintiffs as the land upon which the garage sits. If the language of Galt, J., is accepted literally, without regard to the surrounding facts, such acceptance would be in conflict with the reasoning in *Rooney v. Petry* (1910), 22 O.L.R. 101, a judgment of Riddell, J., relied on by the trial Judge, and approved by this Court in *De Vault v. Robinson* (1920), 48 O.L.R. 34 at pp. 40-1, 54 D.L.R. 591 at p. 596.

In my view, the learned trial Judge was correct in holding that the title of the servient owners had been extinguished and that the plaintiffs have gained title by the fact of uninterrupted possession. There is none now who has the right to eject them. The possession here clearly was not equivocal or for a temporary purpose. By 1956 the plaintiffs had abandoned the use of the lands in issue as a right of way and the owner was under an obligation to assert his title to the land to prevent the time running against him, or to ask for a declaration that, because of the abandonment of the use as a right of way, the land had now reverted to him as owner free from any such use. The use made by the plaintiff was no longer referable to a lawful title but rather was totally inconsistent with it: *Thomas v. Thomas* (1855), 2 K. & J. 79, 69 E.R. 701.

It is to be noted that the use of the right of way as a parking lot does not give the plaintiff an easement for that purpose. Such user, while capable of supporting a claim to possession and ownership, is too extensive to support a claim to an easement: *Copeland v. Greenhalf*, [1952] Ch. 488. Accordingly, if the plaintiffs' claim by prescription to the parking area is dismissed, the situation will be that the plaintiffs will no longer be permitted to park motor vehicles on the driveway but will be limited to using it solely as a means of access to the rear of their premises, something that has not been done for over some 20 years. Neither will the defendants be permitted to park their automobiles there, in view of their position as owners of the servient tenement to a right of way. Taking the matter one step further, it may result, as was suggested in evidence at trial, that a car will not be able to be driven past the 1956 concrete landing, in which case the defendants may have, in effect, extinguished the plaintiffs' right of way altogether although asserting no such claim.

Counsel for the plaintiffs agreed it would make more sense to extend due east to the street line the line running from the north wall of the frame garage to the south face of the precast concrete landing and steps. Such a line would be the north boundary of the land acquired by prescription.

Subject to this variation, I would dismiss the appeal with costs.

WILSON, J.A.:-- This is an appeal from an order of His Honour Judge Nicholls holding that the respondents had acquired a possessory title to a portion of the appellants' land subject to an easement remaining in the appellants.

The facts are more fully set out in the reasons for judgment of the learned trial Judge but the more significant ones for purposes of this appeal may be summarized under the following headings:

1. The nature and location of the land in issue;
2. The chain of title;
3. The conduct of the owners.

The nature and location of the land in issue

It is unnecessary to describe the land by its metes and bounds description Suffice it to say that it is a narrow strip of land 8 ft. wide by 105 ft. deep running between the residential property of the respondents to the south and the business premises of the appellants to the north. The most easterly 41 ft. of the strip running back from the street line is a stone driveway. Extending westward from the driveway is a grassy area running up to a frame garage owned by the respondents and located at the rear of the strip. A concrete walk-way adjacent to the appellants' store runs up the side of the store alongside the stone driveway to a set of steps which lead up to a concrete landing giving access to an apartment located over the store. To the west of the steps and concrete landing is an entrance door to an addition which was built on to the rear of the store in 1949 by the appellants' predecessors in title.

The chain of title

The appellants' and the respondents' properties were initially owned by one Martin Cloy. In 1918 Mr. Cloy conveyed the property now owned by the respondents to one Elzear Lynch together with a right of way of ingress and egress over a portion of his own property, the strip of land in issue on this appeal. In each subsequent conveyance of that property, including the conveyance made in July of 1957 to the respondents, the right of way over the appellants' land was granted.

When Mr. Cloy died in July of 1921, the land he had retained, now owned by the appellants, passed to his widow Maude Cloy who was also his executrix. As executrix she conveyed it to herself as devisee under the will but inadvertently included in the conveyance the lands already conveyed by her husband to Mr. Lynch. To rectify this error Mrs. Cloy made a new deed to Mrs. Lynch, who had acquired the land on her husband's death, and this deed made in April of 1926, included the grant of right of way over the strip of Mrs. Cloy's land. In November of 1952, Mrs. Cloy transferred her land to her son Douglas Cloy and again through inadvertence omitted to make that conveyance subject to the right of way in favour of Mrs. Lynch. Douglas Cloy remedied this in March of 1958 by a quitclaim deed in favour of the respondents who by that time had become the owners of the adjoining land. In August of 1972, when Douglas Cloy sold his property to the appellants' predecessors in title, he made the grant subject to the respondents' right of way and, when they in turn sold it to the appellants in February, 1973, they likewise made their grant subject to the respondents' right of way.

It is accordingly clear, so far as the chain of title to the respective properties is concerned, that the respondents took their property in 1973 subject to the right of way of the appellants over the strip of land in issue on this appeal and the appellants obtained their right of way down through the chain of title to their own property but also by express grant in Douglas Cloy's quitclaim deed made in March of 1958.

The conduct of the owners

The learned trial Judge made a number of important findings with respect to the use of the strip of land made over the years by the owners of the two adjoining properties.

(a) The respondents and their predecessors in title. Since the respondents' property has always been used as a dwelling-house, the main use of the strip made by the owners of that property has been as a driveway. Up until about 1956, the respondents' car was kept in the garage but since that time the garage has been used as a storage shed and the car has been left on the driveway at night. Although the respondent Mr. Keefer uses the car to go back and forth to work, it is also sometimes parked in the driveway during the day and so occasionally are the cars belonging to the respondents' friends when they come to visit. The trial Judge found that in the 1960s a disabled car was left at the rear of the driveway for some four years.

The trial Judge found also that the Keefers on several occasions had put gravel on the driveway at their own expense. They also kept it free of snow in the winter-time. This may not be significant since they have a right of way over it and the Cloys closed down the store every winter and went to Florida.

As far as the grassy area to the west of the stone driveway is concerned, the evidence disclosed that the grass had for many years been tended by the owners of the respondents' property,

including the respondents themselves, and that the respondents occasionally held barbecues and picnics on it with no objection from the Cloys. The evidence that the Keefers made a skating-rink of part of the grassy area on three winters does not appear to be significant since it was when the Cloys were wintering in Florida. The evidence, however, that no objection was made by Mr. Cloy when in 1952 Mr. Keefer moved the garage located at the rear of his property over onto the rear of the strip in order to line it up with the driveway is clearly significant.

(b) The appellants and their predecessors in title. The appellants' premises have always been used for business purposes, first in Martin Cloy's time as a grocery store and later by Douglas Cloy as a marine supply store for vessels plying up and down the Welland Canal. Since 1972, when Douglas Cloy sold the property to the respondents' predecessors in title, it has been used as a general variety store. Douglas Cloy was assisting his father in the business prior to the conveyance to Elzear Lynch and gave evidence on behalf of the appellants as to the use made by his parents and himself of the property from 1918 to 1972. The Cloys never lived on this property.

The strip of land was used by the Cloys in the early days to give access to an ice-house at the rear of the store. The ice-house was filled in the winter with blocks of ice cut from the Welland Canal. Deliveries were made from it originally by means of a horse and wagon and later by truck. In 1949 the ice-house was removed and a one-storey addition was built on to the rear of the store. The addition was used partly as an office and partly for the storage of soft drinks. Access to the addition was through a door to the west of the stone steps and landing which provided access to the apartment over the store. Soft drinks were delivered by truck to the storeroom. If there was a car parked in the driveway, the soft drinks would be taken by a small hand-cart; if the driveway was clear, the truck would drive up to the entrance door to make its deliveries.

Mr. Cloy testified that he never parked his car in the driveway but that trucks parked there occasionally when unloading supplies if the driveway was clear. Mr. Cloy's customers also sometimes parked in the driveway for short periods of time when making purchases.

The tenants of the apartment above the store entered from the street by the concrete walk-way running alongside the driveway, but the one tenant who owned a car did not leave his car in the driveway. Moving trucks used the driveway and, when tenants were moving in or out, the Keefers always moved their car if it happened to be in the driveway at the time. The owners used the walk-way to visit the apartment. They also used a portion of the grassy area to get to and from the side entrance to the storage and office premises built on to the rear of the store in 1949.

Mr. Cloy testified that both he and his father had put gravel on the driveway over the years, but he acknowledged that the last time he had put gravel on was probably in 1956. Because of the store's being closed in the winters from December to March every year when he and his family went to Florida, no trucks or customers' cars would be parked in the driveway during the winter months. His evidence was that they had been wintering in Florida for the past 18 years.

The issue

His Honour Judge Nicholls, after reviewing the evidence of user by both owners over the years, stated:

> the possession [of the plaintiffs and their predecessors in title] was not consistent with the rights accruing from the specific grant of right of way but far exceeded them. Counsel for the plaintiff expressed the opinion that the grant of right of way matured into a possessory title.

He also stated:

> The possession of the plaintiffs and their predecessors in title was open, visible and continuous for far more than the requisite number of years, but the question arises as to whether there was exclusive possession.

With all due respect to the learned trial Judge, I believe that the crucial question in this case is whether the respondents' possession challenged in any way the right of the legal owner to make the use of the property he wished to make of it. This is not a case where the Keefers could be viewed as trespassers on their neighbours' property so that any act of theirs on the property was a challenge to the constructive possession of the owners. Possession is not adverse to the extent it is referable to a lawful title: *Thomas v. Thomas* (1855), 2 K. & J. 79 at p. 83, 69 E.R. 701, per Sir William Page Wood, V.-C. The Keefers were on their neighbours' property pursuant to their grant of right of way and, even if they exceeded the rights they had by virtue of the right of way, this would not necessarily mean that their right of way matured into a possessory title.

The use an owner wants to make of his property may be a limited use and an intermittent or sporadic use. A possessory title cannot, however, be acquired against him by depriving him of uses of his property that he never intended or desired to make of it. The *animus possidendi* which a person claiming a possessory title must have is an intention to exclude the owner from such uses as the owner wants to make of his property.

Viewed in this light the evidence that the Cloys never parked their car or truck on the strip of land, far from being helpful to the respondents' case, is harmful to it. It shows that the Cloys

never intended or wanted to use the strip for parking. Indeed, this is clear from the fact that they gave the owner of the adjoining property a right of ingress and egress over it. Similarly, the fact that the respondents created a skating-rink on the grassy area in the wintertime when the appellants were in Florida has in my view no real significance in terms of the ouster of the true owner. The true owner was probably quite content to give the Keefers full rein on the property while the store was not in operation. The trial Judge was obviously correct in his finding that, even when the appellants were operating the store, the respondents were using the strip for more than just a means of ingress and egress to their property. I do not believe, however, that this is the test for the acquisition of a possessory title. The test is not whether the respondents exceeded their rights under the right of way but whether they precluded the owner from making the use of the property that he wanted to make of it: *Re St. Clair Beach Estates Ltd. v. MacDonald et al.* (1974), 5 O.R. (2d) 482, 50 D.L.R. (3d) 650. Acts relied on as dispossessing the true owner must be inconsistent with the form of enjoyment of the property intended by the true owner. This has been held to be the test for adverse possession since the leading case of *Leigh v. Jack* (1879), 5 Ex. D. 264.

The onus of establishing title by possession is on the claimant and it is harder for a claimant to discharge this onus when he is on the property pursuant to a grant from the owner. It was held in *Littledale v. Liverpool College*, [1900] 1 Ch. 19, that acts done on another's land may be attributed to the exercise of an easement, even an excessive exercise of an easement, rather than to adverse possession of the fee.

In *Pflug and Pflug v. Collins*, [1952] O.R. 519 at p. 527, [1952] 3 D.L.R. 681 at p. 689 [affirmed [1953] O.W.N. 140, [1953] 1 D.L.R. 841], Mr. Justice Wells (as he then was) made it clear that a person claiming a possessory title must establish (1) actual possession for the statutory period by themselves and those through whom they claim; (2) that such possession was with the intention of excluding from possession the owner or persons entitled to possession; and (3) discontinuance of possession for the statutory period by the owner and all others, if any, entitled to possession. If he fails in any one of these respects, his claim fails.

In my view the respondents fail in both (2) and (3) above. I do not believe that while the Cloys owned the strip of property in issue the Keefers ever intended to oust them from the limited use they wanted to make of it. The evidence discloses that the relationship between the Cloys and the Keefers was excellent and that there never was any trouble with the respondents when delivery trucks occasionally used the driveway for unloading supplies, when customers parked for short periods on the driveway when making purchases at the store, when tenants were moved in and out of the upstairs apartment and when they came and went to the apartment. Nor did Douglas Cloy take any exception to the Keefers parking their car in the driveway. Why would he, even if it were an excessive use of the right of way, if it did not impede him in the use

he wanted to make of the property? His whole posture appears to have been that of an accommodating neighbour anxious to avoid any trouble. This is clear from the one contentious incident disclosed by the evidence, i.e., the incident when one of Mr. Cloy's tenants in the upstairs apartment left his car in the driveway and had a "run-in" with Mr. Keefer. When his tenant reported this to him, Mr. Cloy told him to park somewhere else because "I do not want to fight with my neighbours."

The evidence of Mr. Keefer was "I never had any problems with Doug (Mr. Cloy) as far as the drive-way was concerned." He testified that on one occasion Mr. Cloy left his car in the driveway overnight so that he was unable to get his car out in the morning. He therefore pushed Mr. Cloy's car out onto the road and Mr. Cloy apparently made no objection to his having done that. I cannot attach great significance to this as evidencing an assertion of possessory title by the Keefers since the Cloys, having given the Keefers a right of ingress and egress, had no right to block Mr. Keefer's egress. Mr. Keefer was perfectly entitled to do what he did. I cannot find on the evidence that the Keefers' possession was with the intention of excluding the Cloys from the limited use they wanted to make of the property. I think that the issue of a possessory title is something that has arisen since the Cloy's property changed hands and the hitherto amicable relations between the adjoining owners disintegrated.

As far as proof of the discontinuance of possession by the owner is concerned, I do not believe that the Cloys did discontinue their possession of any part of the strip of land other than the portion at the rear occupied by the respondents' garage. I think that with respect to that portion the constructive possession of the owners was displaced by the actual possession of the Keefers for more than the statutory period. However, as far as the balance of the strip is concerned, I think the owners made such use of it as they wanted. It was used as an access to the apartment above the store and to the entrance to the addition at the rear of the store. It is true that the Cloys may not have used the full width of the strip for this purpose, but the authorities make it clear that the constructive possession which a legal owner has of the whole of his property is not ousted simply because he is not in actual possession of the whole. Possession of part is possession of the whole if the possessor is the legal owner: *Great Western R. Co. v. Lutz* (1881), 32 U.C.C.P. 166. I find, therefore, that the respondents have not discharged the onus of proving discontinuance of possession of the strip (other than the portion occupied by their garage) by the owners for the statutory period.

I would allow the appeal and hold the respondents entitled to a declaration that the appellants' title has been extinguished only with respect to that part of the land occupied by the respondents' garage.

The appellants should have their costs of the appeal. Appeal allowed.