
 CONWAY v. BROOKMAN.

Title to land—Trespass—Right of action—Fences—Enclosure—Possession.

1903

*Dec. 3.

APPEAL from the judgment of the Supreme Court of Nova Scotia, *in banco* (1), affirming the judgment of Mr. Justice Meagher at the trial by which the plaintiff's action was maintained with costs.

The action was for trespass but the question in dispute was, in reality, the title to the lands. The judgment appealed from decided that the mere enclosure of the land of another, by the proprietor of the adjoining land, by putting up a fence for the purpose of protecting the lands of both parties against incursions of cattle, such fencing being made by mutual consent and arrangement to that end, could not have the effect of dispossessing the actual owner of the land enclosed, nor prevent him from maintaining an action for trespass against an intruder thereon or to prevent any one using his land for purposes other than those for which it had been enclosed.

After hearing counsel for the parties the Supreme Court of Canada dismissed the appeal with costs.

Appeal dismissed with costs.

Russell K.C. for the appellant.

W. B. A. Ritchie K.C. for the respondent.

* PRESENT :—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Nesbitt and Killam JJ.

(1) 35 N. S. Rep. 462.