

DAME EVA MARANDA (*Defendant*) . . . APPELLANT;

1963
*May 29
Oct. 1

AND

MAURICE CORBEIL AND OTHERS }
(*Plaintiffs*) } RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

*Real property—Possessory action—Encroachment—Extension to building
—Necessary possession established—Findings of fact—Civil Code,
art. 2193—Code of Civil Procedure, art. 1064.*

The parties owned adjoining properties in the city of Outremont, P.Q. The defendant acquired her property in April 1950, and commenced in June the construction of an extension to the building already erected thereon. Alleging encroachment upon their land, the plaintiffs instituted a possessory action. The action was maintained in the Superior Court and in the Court of Queen's Bench. The defendant appealed to this Court.

Held: The appeal should be dismissed.

There was ample evidence to support the findings of fact made by the two lower Courts that the plaintiffs had enjoyed the possession required by art. 2193 of the *Civil Code* and that they had been disturbed in their possession by the construction in question.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, affirming a judgment of Jean J. Appeal dismissed.

J. G. Ahern, Q.C., for the defendant, appellant.

G. Laurendeau, Q.C., for the plaintiffs, respondents.

The judgment of the Court was delivered by

ABBOTT J.:—The parties own adjoining emplacements lying between Côte Ste-Catherine Road and Maplewood Avenue in the city of Outremont. Respondents had acquired their property in 1945. Appellant acquired her property in April 1950 and in June of that year commenced the construction of an extension to the building already erected thereon and which the respondents claimed encroaches upon their land.

In October 1950 the respondents instituted the present possessory action alleging the encroachment and asking

*PRESENT: Taschereau C.J. and Cartwright, Abbott, Martland and Hall JJ.

¹[1961] Que. Q.B. 533.

1963
MARANDA
v.
CORBEIL
et al.
Abbott J.

(1) for a declaration that they had been illegally disturbed in the possession of their property and (2) for an order requiring the appellant to demolish the said extension.

In taking this action the respondents assumed the burden of proving (a) that for a period of a year and a day their possession of the property had been continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor, art. 2193 of the *Civil Code*, and (b) that by the construction of the said extension they had been disturbed in such possession, art. 1064 of the *Code of Civil Procedure*.

The learned trial judge found that the respondents had enjoyed the possession of the property required by law, on their side of a straight line between two brick pillars, one on Côte Ste-Catherine Road and the other on Maplewood Avenue and that the extension to appellant's building encroached upon the land thus possessed by them. Those findings of fact were unanimously confirmed by the Court of Queen's Bench and there is ample evidence to support them.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Attorneys for the defendant, appellant: Hyde & Ahern, Montreal.

Attorneys for the plaintiffs, respondents: Laurendeau & Laurendeau, Montreal.