

## WELLINGTON COLLIERY COMPANY v. PACIFIC COAST COAL MINES.

1920

\*Feb. 5.

\*Mar. 8.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

*Evidence—Trespass—Verbal consent by one now deceased.*

APPEAL from the judgment of the Court of Appeal for British Columbia (1), reversing the judgment of the trial judge, Murphy J. and dismissing the appellant's, (plaintiff's), action.

The action is to recover damages for certain coal which, it was alleged, the respondent had fraudulently, secretly and wilfully taken from the appellant's mine. The respondent urges that it was justified doing so under a verbal agreement made with one Coulson, then manager of the appellant.

The agreement was sworn to by two witnesses and could not be contradicted on account of the death of Coulson before the trial.

The trial judge, in rejecting the testimony of these witnesses, stated that in justice to them and in order "that the hands of any appellate tribunal may be perfectly free," his conclusions "were not based on their demeanour in the witness box nor on the manner in which their evidence were given, but because he felt their evidence could not be accepted in view of all the facts." But this judgment was reversed by the Court of Appeal.

On appeal to the Supreme Court of Canada, the judgment of the Court of Appeal was affirmed, Brodeur and Mignault JJ. dissenting.

*Appeal dismissed with costs.*

*H. B. Robertson* for the appellant.

*Geoffrion K.C.* and *Brethour* for the respondent.

\*PRESENT:—Sir Louis Davies C.J. and Idington, Anglin, Brodeur and Mignault JJ.

(1) [1919] 3 W.W.R. 463.