

1913

HIRTLE v. BOEHNER.

*Mar. 13, 14. ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*May 6.

Trespass — Crown grant — Conflicting claims — Priority of title — Evidence.

APPEAL from a decision of the Supreme Court of Nova Scotia(1), reversing the judgment at the trial by which the action was dismissed and ordering a judgment to be entered for the plaintiff (respondent).

The plaintiff, Bohner, brought action for trespass on his wilderness land by cutting wood thereon. The defendant claimed that the wood was cut on his own land. Each party claimed title through allotment on the foundation of the township and by subsequent Crown grants.

The trial judge held that the plaintiff's case depended on the properties overlapping and he could only succeed by establishing priority of title. He held as to this that the original party from whom the defendant claimed had an allotment possession before plaintiff's title originated and the allotment was confirmed by a township grant in 1784 and by a Crown grant in 1800, the latter reciting his possession for more than twenty years previous. The Supreme Court *en banc* reversed the judgment at the trial, holding that on the evidence plaintiff's title was prior and defendant's grant in 1800 derogated from it.

The Supreme Court of Canada after hearing counsel for each party and reserving judgment allowed the appeal and restored the judgment of the trial judge dismissing the action.

Appeal allowed with costs.

Mellish K.C. and *Matheson K.C.* for the appellant.

Paton K.C. for the respondent.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.