

FEBRUARY 12TH, 1909.

DIVISIONAL COURT.

GRAHAM v. RUDELL.

Trespass to Land—Division Fence—Dispute as to Boundaries—Finding of County Court Judge—Appeal—Consent of Parties to Court Disposing of Appeal as Arbitrators—Costs.

Appeal by defendant from judgment of Judge of County Court of Halton in favour of plaintiff in an action for trespass and a mandatory injunction to compel defendant to move a fence built by him as part of the line fence between the respective farms of plaintiff and defendant.

H. Guthrie, K.C., for defendant.

J. W. Elliott, K.C., for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., ANGLIN, J., CLUTE, J.), was delivered by

FALCONBRIDGE, C.J.:—The matter in dispute between the parties is of trifling value, and they have agreed that the question should be disposed of by the Court as arbitrators.

We direct and award that the survey line run northerly from the elm tree by J. Hutcheon, P.L.S., and being 50 feet south-easterly from the off-set line, as shewn on the plan (exhibit 1), shall be the true boundary line between the parties, and that the defendant shall proceed, at his own expense, with all convenient dispatch, to erect a fence upon said line, such fence to be built and erected to the satisfaction of the fence-viewers in case the parties differ about the same; that such fence shall be so erected within 6 months from this date, in which case this appeal is dismissed without costs. If the said fence is not so erected as aforesaid, this appeal is dismissed with costs.