

comes upon it and occupies in fact part thereof, he is considered in law in possession of the whole, unless another is in actual physical occupation of some part to the exclusion of the true owner. . . . [Re Bain and Leslie, 25 O. R. 136, 141, and Heyland v. Scott, 19 U. C. R. 165, 172, referred to.] But, if he has no title, he is in possession in law only of that part of which he is in possession in fact: Lake v. Briley, 5 U. C. R. 136, and many other cases.

The possession was certainly as much here as in Conway v. Brookman, 35 S. C. R. 185. Assuming the rule as to trespass to be as stated in Street v. Crooks—and Baker v. Mills, 11 O. R. 253, may be looked at upon that point—and assuming further that the form of action is now of any importance, there was sufficient possession in the plaintiff to satisfy the rule. The fact that he is a mere mortgagor is rendered immaterial by the Ontario Judicature Act, sec. 58 (4): McMullen v. Free, Ch. D., unreported.

The defendant complains that he has been saddled with costs, although he paid money into Court, and no further or greater amount of damages has been assessed against him. But he did not admit the plaintiff's title, which was the main matter in dispute, and it was necessary for the plaintiff to proceed to trial to obtain his desired relief.

I cannot find anything in the conduct of the plaintiff which should deprive him of costs; he seems throughout to have acted most reasonably and as one who did not desire unduly to press his own rights or at all to encroach upon those of others.

I do not think there is any error in the conclusions of the Court below, and I entirely concur in the able written judgment of the County Court Judge.

The appeal should be dismissed with costs.

CLUTE, J.

OCTOBER 11TH, 1910.

*DAWSON v. NIAGARA AND ST. CATHARINES R. W. CO.

Damages—Workmen's Compensation for Injuries Act—Death of Workman—Action by Widow—Assessment of Damages by Jury—Deduction of Insurance Moneys Received—Right to Correct Verdict.

Action by the widow and administratrix of the estate of George William Dawson, who was killed while in the employment of the

* This case will be reported in the Ontario Law Reports.