

Action for an injunction restraining defendant from trespassing on plaintiff's lands and counterclaim for damages suffered by reason of an interim injunction order herein.

A. McLean Macdonell, K.C., and O. H. King, for the plaintiffs.

Shirley Denison, K.C., and Standish, for the defendants.

HON. MR. JUSTICE BRITTON:—On the 10th June, 1912, the plaintiff, Douglass, was the owner, and Woods was the tenant, of parts of building lots 171, 172 and 173, on the east side of Surrey place in Toronto, forming part of the Elmsley Villa estate, according to a plan or survey of part of park lot 10, made by J. O. Browne, D.P.S.

The plaintiff Douglass purchased in 1886 and the conveyance to him describes the land by metes and bounds. Since his purchase the plaintiff, Douglass, has been in undisputed possession. In the early part of 1912 the defendant purchased the property lying to the south of plaintiff's for the express and avowed purpose of erecting thereon a large and expensive apartment house. The plaintiffs were quite opposed to such a building close to their southern boundary, and they were on the alert to prevent the defendant trespassing to the slightest extent in prosecuting his building operations.

The plaintiffs allege that immediately before the commencement of this action, viz., on the 10th June, 1912, a surveyor of the defendant entered upon plaintiff's land and planted a post which the surveyor alleged marked the north-east boundary of defendant's land. The plaintiffs allege that the said surveyor assumed to determine for defendant, the southern boundary line of the plaintiff's property, that being the northern boundary line of defendant's property. The plaintiffs allege that this post was at least three inches upon the land of the plaintiffs, and that the so-called boundary line encroached upon plaintiffs' land distances varying from one and three-quarter inches to nine and a half inches. Because of this action of the surveyor the plaintiffs, on the 10th June, applied for and obtained an interim injunction order. The usual undertaking as to damages was given, and the plaintiffs were allowed to file and use further material on motion to continue the injunction. The motion to continue was argued on the 16th July, 1912, and continuance was refused. By that order the costs of and incidental to both