

*Per MEREDITH, J.:* This is not the case of a purchase by an agent in his own name for an undisclosed principal. The purchase was made by the defendant Polson in reality for himself and his co-defendants. They received and used the goods for their own benefit. And even if it cannot be said that the defendant Polson lawfully might and did buy the goods for the defendants, it is clear that they cannot repudiate his unauthorized act and yet retain the benefit of it. They would be bound to reject or return the goods if they wished to escape payment for them. There is no pretence that they bought them from the company. And though the plaintiff sued the company and proved his claim against them in the winding-up proceedings, he did so without knowledge of the facts, and in the reasonable belief that the company was really purchasers in the ordinary way of business; and it would be a good replication to a plea of judgment recovered that the judgment in question had been reversed or set aside.

*Moss, Q.C., for the defendants.*

*Walter Read for the plaintiff.*

Div'l Court.]

COOK *v.* TATE.

[March 2.

*Line fences—Proper mode of construction—Trespass—Fence-viewers—R.S.O., c. 219, s. 3.*

Action for trespass.

The Line Fences Act, R.S.O., c. 219, s. 3, provides that "owners of occupied adjoining land shall make, keep up, and repair a just proportion of the fence which marks the boundary between them."

*Held, per FERGUSON, J.,* affirming the decision of ARMOUR, C.J., the trial judge, that such fence should be so placed that, when completed, the vertical centre of the boards should coincide with the line or limit between the lands of the parties, the board wall being the fence which really separates the land of one party from the land of the other; and in the absence of any agreement, or of any statute or by-law governing the case, each owner is bound to build the board wall and maintain it, as best he may or can, by appliances placed in or upon his own land, if appliances are necessary, and he is not at liberty to place his posts or other appliances on the land of the adjoining owner without leave or license so to do.

*Held, per BOYD, C., contra,* that the fence may be placed partly on the land of each owner, and it should be, consistent with local usage and custom and fitness of situation, placed as far as possible equally on the lands of each; and if the line making the boundary line be between the posts on one side of the fence, and the scantling and boards on the other, so that there is practical equality in the amount of space, on the one hand, occupied by the posts, and, on the other, by the continuous boards, and if that method is sanctioned by local usage, neither owner has legal ground for complaint.

*Semle, per BOYD, C. (FERGUSON, J., dissentiente),* that such a controversy as this, involving merely "a matter of proportion," is, under the above statute, for the fence-viewers to determine.

*Denton for the plaintiff.*

*Davis for the defendant.*