That the arbitrators should have adjudicated, upon the merits of the appeal against the several assessments on the lots and roads assessed, as their award was, by secs. 400 and 403 of 46 Vict. cap. 18, made final, subject to appeal only to the High Court of Judicature, and it was not a matter for the Court of Revision to deal with at all, as held by one of the arbitrators. That the award should have been set aside because it did, in point of fact, as it stood, profess to be a final adjudication against the township of Dover upon all the grounds of appeal stated in the notice of appeal, and did, in point of fact, charge every one of the lots and roads so assessed with the precise amount assessed upon them respectively, although, by a minute of the proceedings of the arbitrators who signed the award, it appeared that they refused to render any award upon such point, and expressed their intention to be to submit that to the Court of Revision.

That the arbitrators should have allowed the appeal to them against the surveyor's assessment, and that their award should have been set aside on the merits, because the evidence not only failed to show any benefit which the lots or roads in Dover which were assessed would receive from the proposed work, but the evidence of the surveyor himself showed that he did not assess them for any benefit the work would confer upon them but for reasons of his own which were not sufficient under the statute, and did not warrant their being assessed.

Appeal dismissed with costs.

Pegler, for the appellants.

C. Robinson, Q.C., and *Wilson* for the respondents.

JOHNSON v. CROSSON.

Trespass to land—Conflicting titles—Description of locus in quo—Boundaries.

A suit was brought in the Chancery Division of the High Court of Justice for Ontario to restrain the defendant from trespassing on the lands claimed by the plaintiff, and for damages for trespass already committed. The lands in question were described in the statement of claim as being in concession "C" in the township of Etobicoke, and the defendant, in his statement of defence, denied the plaintiff's right to the possession of said lands, and claimed himself to be the owner in fee of the same; he also claimed that the lands in question were not in concession "C," but were part of certain lots in concession "B" in said township. On the hearing each party gave evidence of title in himself, the principal contention being as to the location of the land, and judgment was given for the plaintiff.

Held, reversing the judgment of the Court below, that the title was in the defendant, under the evidence produced at the hearing, and that he was therefore entitled to have judgment entered for him with costs of defence.

Held, also, that the said lands were in concession "B," and not in concession "C," as claimed by the plaintiff.

Appeal allowed with costs.

C. Robinson, Q.C., and *Reeve*, for appellant.

Osler, Q.C., for respondent.

KEARNEY (Plaintiff), Appellant and CREELMAN AND REID (Defendants), Respondents.

Will—Devise under—Mortgage by testator—Foreclosure of—Suit to sell real estate for payment of debts—Decree under—Conveyance by purchaser at sale under decree—Assignment of mortgage—Statute confirming title.

Appeal from the Supreme Court of Nova Scotia.

A. M. died in 1838, and by his will left certain real estate to his wife, M. M., for her life, and after her death to their children. At the time of his death there were two small mortgages on the said real estate which were subsequently foreclosed, but no sale was made under the decree in such suit.

In 1841 the mortgages and the interest of the mortgagee in the foreclosure suit were assigned to one J. B. U., who, in 1849, assigned and released the same to M. M.

In 1841 M. M., the administrator with the will annexed of the said A. M., filed a bill in Chancery for the purpose of having this real estate sold to pay the debts of the estate, she having previously applied to the Governor-in-Council, under a statute of the Province, for