

*Held*, (RITCHIE, J. dissenting) that the appeal should be allowed, and judgment entered for plaintiffs for the amount of their claim, with costs of action and of the appeal.

*H. McInnes*, K.C., for appeal. *Wall*, and *Rowlings*, contra.

Full Court.]

BROOKMAN v. CONWAY.

[Jan. 19.

*Trespass to land—Right to maintain actions for—Erection of fence to protect land—Effect of, as to possession.*

The mere enclosure of the land of another by the adjoining proprietor by a fence put up with the consent of and by arrangement with the owner for the purpose of protecting the lands of both against cattle does not dispossess the owner nor prevent him from maintaining trespass against any one intruding therein or using his land for purposes other than that for which it was enclosed.

*Rowlings*, in support of appeal. *Harrington*, K.C., and *Fullerton*, contra.

Full Court.]

ARMSTRONG v. BERTRAM.

[Jan. 19.

*Bill of sale—Banking Act—Right of bank under, to hold securities as against creditors—Compromise of action—Effect of possession taken under.*

B., being indebted to the Commercial Bank of Windsor, gave to the bank a document purporting to be a warehouse receipt, and also a general transfer or bill of sale. The bank took possession of a portion of the goods covered by the documents and removed them and was proceeding with the removal of others of the goods when they were forbidden to do so by one of B.'s clerks. Two actions of replevin brought by the bank to recover possession of the balance of the goods were compromised by B. who agreed that the bank should take the goods and sell them and credit him with the amount received.

*Held*, that notwithstanding any irregularities under the Banking Act the title of the bank was complete under the compromise made between the bank and B., and that plaintiff who purchased a portion of the goods from the bank was entitled to recover against the defendant sheriff who levied on the goods under an execution against B.

*Held*, also, assuming it to be correct that the security on the goods held by the bank was void under the provisions of the Act not being for a present advance but for a past due debt, and that the bank was not entitled to hold such security against the creditors of B., that the bank was not obliged to rest its title on the document, and that its defects, if any, would not affect the subsequent transaction by which the bank became the actual purchaser of the goods and dealt with them as its property.

*Fullerton*, for appellant. *McInnes*, K.C., contra.