

MARCH 25TH, 1915.

MURRAY v. MUIR.

Trespass—Cattle—Using Dog to Drive out—Necessity for—Injury to Animal—Cause of—New Trial.

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Oxford, in favour of the plaintiff, in an action for damages for injury to the plaintiff's cow, caused by the defendant setting a dog upon her when she was trespassing.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

C. A. Moss, for the appellant.

Peter McDonald, for the plaintiff, respondent.

The judgment of the Court was delivered by RIDDELL, J.:—The defendant, in driving out trespassing cows of the plaintiff, set a dog on the animals; they ran quickly, and one of them broke her leg.

There is no doubt as to the law—counsel for both parties cited the same authorities. But the learned Judge does not seem to have directed his mind to the real questions, namely: Was what was done by the defendant in setting the dog on the cows reasonably necessary in the circumstances of the case? And was this the cause of the injury.

It may be a cruel kindness; but, as the defendant is entitled to a new trial, we should grant that relief if he desire it.

Costs of the last trial and of this appeal to be costs in the cause unless otherwise ordered by the trial Judge.

MARCH 26TH, 1915.

DAVIDOVICH v. SWARTZ.

Appeal—Evidence—Findings of Fact of Trial Judge—Motion to Reopen Hearing of Appeal.

This was an action for specific performance of an alleged agreement for the exchange of houses.

The action was tried by SUTHERLAND, J., who dismissed it with costs; and the plaintiffs appealed.

The appeal came on for hearing before FALCONBRIDGE, C.J. K.B., RIDDELL, LATCHFORD, and KELLY, JJ., on the 10th March, 1915.