

**CASE NO.**

**VOLUME**

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**Cite as: Brennan v. Hendricks, 1998 NSCA 123**

THOMAS BRENNAN

GEOFFREY HENDRICKS

- and -

(Appellant)

(Respondent)

C.A. No. 144122

Halifax, N.S.

CROMWELL, J.A.

**APPEAL HEARD:**

May 15, 1998

**JUDGMENT DELIVERED:**

June 9, 1998

**SUBJECT:**

**Real Property - Title - Boundaries; Appeal - Powers of Court of Appeal - Appellate Review of Findings of Fact at Trial**

**SUMMARY:**

The plaintiff (respondent on the appeal) sued the defendant (appellant) in trespass. The essence of the dispute was the location of the rear boundary of the plaintiff's property. After trial in the Supreme Court, the trial judge found for the plaintiff and made a declaration as to the rear boundary of his property, issued a permanent injunction prohibiting the defendant from entering the disputed lands and awarded damages. The defendant appealed, arguing that the judge had made various errors in his appreciation of the evidence and had misapplied the burden of proof. In the alternative, the defendant argued that the trial judge erred in awarding punitive damages.

**ISSUE:**

Did the trial judge err with respect to the burden of proof or in his assessment of the evidence or, in the alternative, in awarding punitive damages?

**RESULT:**

The appeal is dismissed with costs. The trial judge did not misstate or misapply the burden of proof and there was no basis for appellate review of his findings of fact. His decision to award punitive damages was based on correct principles of law, did not give rise to an injustice and the award of punitive damages in this case served a rational purpose having regard to the modest award of compensatory damages.

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