

upon the ground, and agreeing further to abide by his decision and accept the line which he might establish as correct. On the conclusion of the referee's operations one of the parties refused to accept or act upon his decision, and action was brought by the other party to have the line so established declared to be the true boundary and to revendicate the strip of land lying upon his side of it.

*Held*, reversing the judgment of the Court of Queen's Bench, that the agreement thus entered into was a contract binding upon the parties to be executed between them according to the terms therein expressed, and was not subject to the formalities prescribed by the Code of Civil Procedure relating to *bornage* or arbitration.

Appeal allowed with costs.

*Foran, Q. C.*, for the appellant.

*Geoffrion, Q. C.*, (*Champagne* with him) for the respondent.

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7 June, 1897.

TURCOTTE v. DANSEREAU.

Quebec.]

*Action—Service of—Judgment by default—Opposition to judgment—Reasons of—“Rescisoire” joined with “Rescindant”—Arts. 16, 89, et seq. 483, 489, C.C.P.—False return of service.*

No entry of default for non-appearance can be made, nor *ex parte* judgment rendered, against a defendant who has not been duly served with the writ of summons, although the papers in the action may have actually reached him through a person with whom they were left by the bailiff.

The provisions of articles 483 and following of the Code of Civil Procedure of Lower Canada relate only to cases where a defendant is legally in default to appear or to plead, and have no application to an *ex parte* judgment rendered, for default of appearance, in an action which has not been duly served upon the defendant, and the defendant may at any time seek relief against any such judgment and have it set aside notwithstanding that more than a year and a day may have elapsed from the rendering of the same, and without alleging or establishing that he has a good defence to the action on the merits,