

pendently of the controversy as to bare ownership, and is appealable to the Supreme Court of Canada under the provisions of the Supreme and Exchequer Courts Act.

Where, as the result of a mutual error respecting the division line, a proprietor has in good faith and with the knowledge and consent of the owner of the adjoining lots erected valuable buildings upon his own property, and it afterwards appears that his walls encroached slightly upon his neighbor's land he cannot be compelled to demolish the walls which extend beyond the true boundary or be evicted from the strip of land they occupy, but should be allowed to retain it upon payment of reasonable indemnity.

In such a case the judgment in an action en bornage previously rendered between the same parties, cannot be set up as *res judicata* against the defendant's claim to be allowed to retain the ground encroached upon by paying reasonable indemnity, as the objects and causes of the two actions were different.

An owner of land need not have the division lines between his property and contiguous lots of land established by regular bornage before commencing to build thereon when there is an existing line of separation which has been recognized as the boundary. Appeal allowed with costs. Judgment of Court of Queen's Bench (Q.R. 6 Q.B. 202) reversed, and judgment of Superior Court (Q.R. 10 S.C. 329) restored.

Geoffrion, Q.C., for appellant. *Fortin*, for respondent.

Quebec.]

POWELL v. WATTERS.

[Dec. 9, 1897.

Title to lands—Deed, form of—Signature by a cross—19 Vict. c. 15, s. 4 (Can.)
Registry laws—Arts. 2134, 2137 C.C.—Litigious rights—Acquiescence by first purchaser in subsequent deed by his vendor—Evidence—Commencement of proof in writing—Finding of facts—Warrantor impeaching title—Arts. 1025, 1027, 1472, 1480, 1487, 1582, 1583 C.C.

Where the registered owner of lands was present, but took no part in a deed subsequently executed by the representative of his vendor granting the same lands to a third person, the mere fact of his having been present raises no presumption of acquiescence or ratification thereof. The conveyance by an heir-at-law of real estate which had been already granted by his father during his lifetime is an absolute nullity, and cannot avail for any purposes whatever against the father's grantee who is in possession of the lands, and whose title is registered. Writings under private seal which have been signed by the parties, but are ineffective on account of defects in form, may nevertheless avail as a commencement of proof in writing to be supplemented by secondary evidence. The grantees of the warrantors of a title cannot be permitted to plead technical objections thereto in a suit with the person to whom the warranty was given. Where there is no litigation pending or dispute of title to lands raised except by a defendant who has usurped possession, and holds by force, he cannot when sued set up against the plaintiff a defence based upon a purchase of litigious rights. Appeal dismissed with costs. Judgment of Court of Review (Q.R. 12 S.C. 350) affirmed.

Geoffrion, Q.C., for appellant. *Lafleur and Aylen* for respondent.