

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Quebec.]

RIOU v. RIOU.

[Dec. 9, 1897.

Deed—Construction of—Servitude—Roadway—User—Art. 549 C.C.

In 1831 the owners of several contiguous farms purchased a roadway over adjacent lands to reach their cultivated fields beyond a steep mountain, which crossed their properties, and by a clause inserted in the deed to which they all were parties they respectively agreed "to furnish roads upon their respective lands to go and come by the above purchased road for the cultivation of their lands, and they would maintain these roads and make all necessary fences and gates at the common expense of themselves, their heirs and assigns." Prior to this deed and for some time afterwards the use of a road from the river front to a public highway at some distance farther back, had been tolerated by the plaintiff and his auteurs, across a portion of his farm which did not lie between the road so purchased over the spur of the mountain and the nearest point on the boundary of the defendant's land, but the latter claimed the right to continue to use the way. In an action (*négatoire*) to prohibit further use of the way.

Held, that there was no title in writing sufficient to establish a servitude across the plaintiff's land over the roadway so permitted by mere tolerance; that the effect of the agreement between the purchasers was merely to establish servitudes across their respective lands so far as might be necessary to give access to each of the owners to the road so purchased from the nearest practicable point of their respective lands across intervening properties of the others for the purpose of the cultivation of their lands beyond the mountain. Appeal dismissed with costs.

Langelier, Q.C., and Choquette, for appellant. *Pelletier, Q.C., and Riou* for respondent.

Quebec.]

DELORME v. CUSSON.

[Dec. 9, 1897.

Appeal—Jurisdiction—Title to land—Petitory action—Encroachment—Constructions under mistake of title—Good faith—Common error—Demolition of works—Right of accession—Indemnity—Res judicata—Arts. 412, 413, 429 et seq., 1047, 1241 C.C.

An action to revendicate a strip of land upon which an encroachment was admitted to have taken place by the erection of a building extending beyond the boundary line, and for the demolition and removal of the walls and the eviction of the defendant, involves questions relating to a title to land, inde-