While it is plain that at the trial the real defence was based upon the statute . . . it was earnestly and ably contended that the plaintiff had not made out the true line. . . . The defendant does not suggest any other line, but he relies, as he may, upon an alleged failure of the plaintiff to make out his case. . . .

[Reference to the original survey of the township in 1797; a survey made by R. Hamilton in 1880; R. S. O. 1897 ch. 181, secs. 14, 15, 17, 23, 24, 36; and a survey recently made for the plaintiff by one Wilkie.]

The plaintiff is . . satisfied with Wilkie's line, and certainly the defendant cannot complain.

The defendant raised before us the same objections he raised before the trial Judge. A Court is not concerned with the question whether the surveyor took the prescribed means for determining his data; he should, of course, follow the directions of the statute; but the Court is concerned with the facts, and not with the manner of determining the facts. There can be no doubt that the monuments planted by Hamilton were found by Wilkie; and it is a matter of indifference what method he adopted to satisfy himself that they were real monuments, or whether he took any, or was himself satisfied. In reality we do not take his conclusions as to the points these monuments mark, and we do not trouble to inquire if he came to the conclusion he did on proper evidence.

As to the post at the north-east corner of lot 34, the evidence of the defendant himself is quite enough.

Much complaint is made that Wilkie did not take astronomical observations, as it is argued he should have done under sec. 36. It would be a sufficient answer to say . . . that the Court is concerned with the true line, and not with the surveyor's method of finding it or laying it down. But there is no necessity for finding the true astronomical bearing of the governing line, so long as the line to be run is on the same astronomical course, that is, has the same astronomical bearing. . . .

The remaining argument for the defendant is, that the plaintiff had not such possession as enabled him to sue in trespass. Street v. Crooks, 6 C. P. 124, is relied upon. But, bearing in mind that no other person was in actual possession of the land in question, the case does not support the proposition. As is pointed out (p. 127), "the title draws the possession to it if there be no other party in possession;" and the plaintiff failed there because there was some one else in actual possession. There can be no doubt that where one has the paper title to a piece of land, and