in which Messrs. O. R. G., and J. B., and R. F. S., professed to settle, or between what parties, or whether the parties appeared or made default. It is quite too absurd to suppose the legislature ever intended that such a document as produced should be final and conclusive, and bind the rights of parties to whom it affords no information whatever. We cannot hold this to be a judgment or decree within the meaning of the act.

There was evidence offered at the trial, independent of what was considered to be the decision of the Commissioners which might have been sufficient *primâ facie* for the purpose of calling upon the defendant to prove why and wherefore he interfered with a road which had been a travelled road for a number of years, and upon which statute labour had been done. When the defendant offered to prove the line to be as he contended for, his evidence was rejected. The case has not been heard upon the merits, and possibly it may be that the defendant, by his conduct or acquiescence, has dedicated the piece of land in question for the road. The matter has been assumed against the defendant upon the idea that a judgment of the boundary commissioners bound his rights, or prevented him from asserting what he now contends for. Without meaning to say the opinion which the commissioners endeavoured to perfect into a judgment may not be quite correct, and that perhaps the defendant may be liable to be indicted for obstructing a road which his own acts and acquiescence may have dedicated to the public, it is sufficient to say that, as he was prevented from going into evidence on the ground that he was bound by a decision which, in our opinion, was not such a judgment as the statute contemplates, we cannot support the conviction.

The same course should be taken as was done in Regina *v.* Spence, (11 U. C. R. 31) viz., the judgment must be arrested, so that a fresh indictment may be preferred if the parties be so advised.

Judgment arrested.

Ferrier v. Moodie.

Boundary—Right by possession according to division line agreed on—Extent of such right.

If two parties owning respective halves of a lot agree to a division line which is not the true boundary, and one party clears a portion of land according to such line, and obtains a right by possession to such portion, this will not give him any right by constructive possession to the whole as if this line were carried out.

The jury having found a general verdict for the plaintiff, though the defendant was in fact entitled to the part he had cleared:—

Held, that this was not ground for a new trial, but for an application to restrain the plaintiff from taking possession of such part.

[12 B. R., 379.]

Ejectment for the west half of lot No. seven in the tenth concession of the township of North Burgess.

The defendant did not limit his defence, but defended generally for the whole of the half lot.

The plaintiff gave notice that he claimed damages as mesne profits, &c.

At the trial, before *Richards, J.*, at the last spring assizes, held at Perth, it appeared that the plaintiff was, by patent dated 10th April, 1824, the owner of the west half of the lot in question, and the defendant claimed the north-east half of the lot by deed from the grantee of the Crown for that portion, which was granted to one Alexander McMillan on the first of March, 1824. The dispute between the parties was as to the boundary between the respective portions of the lot. The plaintiff gave a good deal of evidence to establish the bearing of the side lines of the lot as they should be run according to the course of the town line of the township. The weight of evidence appeared to establish this course, as also the front angle of the lot in question upon the tenth concession, to the satisfaction of the jury. The defendant gave no evidence to controvert or to cast any doubt upon this part of the plaintiff's case, and no question was made on the argument of this rule upon the correctness of the view the learned judge took of that in submitting the case to the jury. The plaintiff proved by a surveyor that he ran the division line between the plaintiff's and defendant's land according to the data so established, and found that the defendant had in possession within his fences five and a half acres belonging to the plaintiff. The land through which the division line ran was not cleared from the front to the rear of the lot, and the five and a half acres was the quantity cleared which the defendant had included within his fences. The remainder of the land was still in a state of nature, not fenced in by either party. A portion of the land included within the defendant's fences was cleared and fenced by him more than twenty years before the commencement of the action, and a portion of it had been cleared and fenced within that time.

The defendant relied upon establishing that in the year 1825 the plaintiff and he had agreed that a surveyor should run a division line, and that such a line was run between their possessions accordingly from front to rear of the lot, and marked by trees being blazed, and that the land cleared and fenced in by the defendant was according to that line, both as respects what was cleared more than twenty years ago and what had been cleared within that period.

The plaintiff gave evidence to show that he had assented (by a verbal arrangement, as must be supposed, for nothing in writing was produced or alluded to in any way) to a line being run between the respective halves of the lot, but that the surveyor employed used only a compass for the purpose—each party was to pay half of the expense: that after the surveyor had run half through the concession something went wrong with his compass, and the line was never completed; and because it was not completed the plaintiff would not pay any part of the expenses, but said he would do so if the survey should be completed, but which in fact he contended had never been done. The defendant in 1849 assented to a line being run, because he said that if he lost land on the plaintiff's side of his lot he should gain upon the other side; but subsequently he receded from this, and stated he could rely upon his length of possession.

The learned judge left it to the jury to say what portion of the west half of the lot had been in possession of the defendant for twenty years before the commencement of this action; and as to such portion he told them the defendant was entitled to succeed. Then they were directed to ascertain what portion of the west half of the lot the defendant had included within his fences, and of which he had not had the actual possession for twenty years; and as to such portion the plaintiff was entitled to recover, and the jury should assess such damages per acre for six years past as they thought reasonable for the profits. The learned judge expressed to the jury his opinion that the plaintiff was not to be deprived of such portions of the west half of the lot as might be upon the defendant's side of the conventional line spoken of, by any constructive possession which might be supposed to arise from a protraction of that line from the land of which the defendant was in the actual possession, to the front and rear of the lot.

The jury gave a general verdict for the plaintiff, and assessed damages for two and a half acres of the land in possession of the defendant at £7 10s.

Philpotts obtained a rule to show cause why the verdict should not be set aside and a new trial granted, on the ground that the verdict was contrary to law and evidence, and for misdirection. He cited Doe dem. Hill *v.* Gander, 1 U.C.R. 7; Doe dem. Cuthbertson *v* McGillis, 2 C.P. 124.

Richards shewed cause, and cited Doe dem. Taylor *v.* Proudfoot, 9 U.C.R. 503.

Burns, *J.*, delivered the judgment of the court.