8th, that they were charged to inquire; 9th, the verdict, or finding; and lastly, the attestation.[e]

(TO BE CONTINUED.)

U. C. REPORTS.

GENERAL LAW.

REGINA v. ROSE.

Boundary line commissioners—1 Vic., ch. 19; 3 Vic., ch. 11—Form of judgment—Omission to file.

Held, That the minute of the boundary line commissioners, produced in this case, could not be considered a judgment within the meaning of the 3 Vic., ch. 11, and that the defendant should therefore have been permitted to give evidence contradicting such minute.

That second section of this act, which provides that every such judgment shall be filed, is directory only, and the omission to file will not affect the validity of the judgment.

[12 U. R. 559.]

NUISANCE.—The indictment charged that the defendant Silas Rose, on the 1st of May, 1854, in the Township of Oxford, in the county of Grenville, obstructed a certain road, called the side-line road, between lots 20 and 21 in the first concession of the said township, the road being a common highway, and by obstructions placed across the road prevented the same from being used.

The case was tried at the last assizes held at Brockville, before *McLean, J.*, and the evidence to sustain the charge was as follows:—In 1842 one Jehiel Hurd complained to the Board of boundary commissioners for the District of Johnstown, and requested that they should hear and determine all matters in dispute between himself and certain persons, of whom the defendant was not one named by him, touching the line between lots No. 20 and 21, in the first concession of Oxford, and also the line in the centre of lot No. 20. A parcel of papers were produced, shewing that the commissioners had a meeting upon the notice and requisition, and had taken evidence upon the subject of the line between the lots 20 and 21; and a memorandum of minutes of what the commissioners called a judgment was made on the 22nd of July, 1842. These papers were not produced from the registry office of the county of Grenville, but were said to have been left at the registry office for the county of Leeds, though not filed or entered of record in the latter office.

The minutes of the commissioners was in the words and figures following:—

"*Minutes of the Judgment.*

"Find post between 20 and 21, marked 20 on west side, an original post; find the line running thence to rear of concession, parallel with boundary line of township, to be the boundary between lot 20 and allowance for road on east thereof; stone monuments to be placed at front and rear of said line, also at centre of lot 20, and at the rear of said centre; following costs reasonably incurred and awarded as within.

"*Kemptville, 22d July*, 1842.

O. R. G.
J. B.
R. F. S."

Mr. *Steel*, the commissioner who was examined, stated that the parties were heard and the commissioners came to a conclusion, and signed a paper, of which the foregoing is a copy, with their initial letters, intending afterwards to draw up a formal and extended judgment. Evidence was adduced to show that stone monuments had been placed under the directions of the commissioners, and that the road between lots 20 and 21 had been laid out on the east side of the line so said to be established by the commissioners. Statute labour had been done for some six or seven years, and the road had been used by the public for some twelve years, until the month of May last, when the defendant obstructed it by fencing it up.

The objections raised by the defendant at the trial were as follows: First, that there was no evidence to shew that the boundary commissioners were required to ascertain the lines in question by any one who owned the land, and who had authority by law to ask their interference in establishing a line. Secondly, that the instrument produced is not a decree or judgment of the commissioners. Thirdly, that there is no decision where the western limit of 21 is. These objections were overruled by the learned judge, and then the defendant tendered evidence to show that the allowance for road was on the west side of the line ascertained by the commissioners as the east line of lot No. 20, which the learned judge rejected, considering that the commissioners had determined the matter, and that such determination was binding, unless appealed against; and he therefore directed a verdict of guilty to be entered; and reserved the considerations of the case upon the objections made for the judgment of this court, and also further, whether the evidence tendered should have been received.

The case was argued by *Freeland* for the crown and *Richards* for defendant.

BURNS, J., delivered the judgment of the court.

The statute 1 Vic., ch. 19, as amended by 3 Vic., ch. 11, is the statute which governs this case, so far as the same is to be governed by the decision of the boundary commissioners. The second section of the latter act enacts that the judgment and final decision of the commissioners shall be filed with the registrar of the county where such boundary commissioners shall be situate. We do not not consider it necessary to the validity of the judgment that it should be filed with the registrar of the county. We cannot but see the legislature intended it should operate as a notice in some way, for some purpose, and in that way the provision with respect to filing it in the registry office has importance. The first section of the first mentioned act enacts that the acts, orders, judgments and decrees of the commissioners shall be final and conclusive between the parties, their heirs and assigns, except in case of appeal to be be brought within the time limited. By the 17th section an appeal lies to the Court of Chancery, or the Court of Queen's Bench. All these provisions shew that it is necessary that the judgment or final decision of the commissioners should shew upon the face of it who were parties litigating the dispute, that it may be seen who are to be bound, also whether the parties who are to be bound appeared, or were summoned and made default. The judgment to be filed with the registrar should be so drawn up in form as that either the parties named in it, or some person whose rights would be affected by it, could bring the matter befote the courts named, to be heard upon appeal. Now when we look at the memorandum herein set out, not one of the requisites which would be expected to be found in a final judgment or decree of a court, or board of commissioners acting as a court, is to be found. In order to understand the meaning of it, even as regards the signatures, or to know who the commissioners are, parol evidence must be resorted to. The township is not stated or mentioned in which the line is determined, and resort must be had to other documents and parol evidence to connect those documents with what is said to be a judgment. The legislature never surely meant, if a person desired to appeal from a judgment or final decision of the commissioners, that he should be obliged to furnish the court with evidence as to the meaning of the initials, such as O. R. G., and J. B., and R. F. S., and also how to apply the different figures and contradictions in the minute set forth. Suppose such instrument as furnished in the present case to be properly filed, it may well be asked what information would be derived from it, as to what township the line was

(e) 2 Hale, P. C. 174.