

"je conclus contre mon voisin, à ce qu'il soit ordonné qu'il sera planté par des experts des bornes et limites entre nos héritages contigus." It is not the revendication by one of the parties of a certain and definite piece of land from the other, but is an action which seeks to render certain that which is uncertain, to fix by a definite division line limits then uncertain. In the action in revendication one of the parties is plaintiff and the other defendant, while in the action of boundary, each of the parties is at the same time in effect plaintiff and defendant; in the latter action, each seeks to be maintained in the possession of what he claims as his own. This is clearly put by Aubry & Rau, Vol. 2, Section 199:—"Bien que l'action en bornage, formée par un voisin qui se plaint d'anticipations commises à son préjudice, tende à obtenir des restitutions de terrain, elle ne perd pas pour cela son caractère propre, et ne dégénère pas en action en revendication. Elle n'en constitue pas moins, malgré cette circonstance, un *judicium duplex*, c'est-à-dire une de ces actions dans lesquelles chacune des parties est à la fois demanderesse et défenderesse, et doit par conséquent faire preuve de son droit."

The owner who revendicates his land can only claim the fruits and issues of the past from the possessor in bad faith. Article 411 of the Civil Code lays down this rule: "A mere possessor only acquires the fruits in the case of his possession being in good faith: otherwise he is obliged to give the produce as well as the thing itself to the proprietor who claims it." And Pothier, *Propriété*, No. 335, says: "Le possesseur de mauvaise foi est tenu de faire raison de tous les fruits de la chose revendiquée qu'il a perçus.... depuis son indue possession."

Now, in an action of boundary, where the object is to determine limits which are uncertain, where each of the parties claims and has to prove what is his, how can either party be accused of having encroached in bad faith until after the uncertain has been made certain by a definite settlement of the limits, and the existence of an encroachment has been thereby established? I conclude, therefore, that a demand for fruits and issues of the past cannot be joined to an action of

boundary, which ceases to be pending when its object has been accomplished, that is when the boundaries have been definitely settled. I am with the defendant on this point; and I maintain the second ground of his demurrer, and order the demand for damages or compensation to be struck from the declaration. **

I now pass on to the answer in law.

Who has the right to bring an action of boundary? Only an owner, who is in possession of his property. 5 *Pandectes Françaises*, page 381, No. 46: "La demande à fin de bornage peut être formée par quiconque est en possession légitime." 3 *Dénisart, verbo Bornage*, page 655: "L'action de bornage peut être instituée par toute personne qui possède paisiblement." 8 *Poullain Duparc*, page 12: "L'action de bornage est une action réelle, qui compète au possesseur d'un héritage contre le possesseur du terrain contigu, pour qu'il soit mis des signes propres à constater à perpétuité la distinction des deux terrains." Where another person is in possession of a property ostensibly as owner, the real owner cannot, therefore, bring an action of boundary; before he can do so, he must first oust the intruder and recover the possession of the body of his property by means of a petitory action, and then only can he call upon the neighbours to verify and settle the limits and place bounds. The defendant's plea that the plaintiff is not in possession of the hereditament of which he asks for a boundary is therefore good in law, and that part of the answer in law objecting to it must be dismissed.

By Article 1038 of the Code of Civil Procedure, any interested party had the right to ask by suit for the annulling of letters patent granting lands, in accordance with chapter 22 of the C. S. L. C.; but the article above mentioned was abrogated and this right was withdrawn by the statute of Quebec, 32 Vict., chapter 11; and now all demands for annulling such letters patent can only be made by the Crown, represented by one of its law officers or by some other officer duly authorized for that purpose, as provided by Article 1035 of the Code of Civil Procedure and section 30 of the statute of Quebec above mentioned. The defendant has no right,