

TAYLOR, C.J.]

[Jan. 9.

POCKETT v. POOL.

*Boundary lines—Survey—Re-survey—Dominion Lands Act, s. 129—52 Vict., c. 27, s. 7 (D.)—Ratification—Road allowance—Dominion lands.*

This was an action to recover possession of a piece of land containing about 13½ acres which the plaintiff alleged to be part of the south-west quarter of sec. 2, township 16, range 16 west, in Manitoba, of which he was the grantee of the Crown. The defendant claimed that the land in question was part of the south-east quarter of sec. 3, immediately adjoining the plaintiff's land on the west, and he had a good title thereto, and was in possession thereof. The plaintiff's claim to the land in question was based upon a re-survey of a portion of said township 16 made in February, 1895, under instructions from the Minister of the Interior, followed by an order-in-council ratifying the action thus taken. This re-survey was assumed to have been made under s. 129 of the Dominion Lands Act as amended by the Act 52 Vict., c. 27, s. 7. By the new survey thus made the defendant's part of sec. 3 was encroached upon, but he objected to its validity and refused to give up possession of the land.

*Held*, that the proceedings for making the new survey were wholly irregular, as an order-in-council providing for it should first have been procured, and there was no power given by the Act to ratify by order-in-council a new survey previously made without such authority.

*Held* also, that the new survey was invalid, because no new survey could be made under the Act so as to affect any lands which have ceased to be Dominion Lands, and a number of the parcels affected were no longer such.

The road allowance between the two sections had become the property of the Province of Manitoba, by virtue of the Act 58 & 59 Vict., c. 30, s. 1, and for that reason alone it would be improper to change the boundaries by a new survey not authorized by Provincial legislation.

Non-suit entered with costs.

Caldwell, Q.C., for plaintiff.

C. H. Campbell, Q.C., for defendant.

[NOTE.—In *Reg. v. Douglas*, ante p. 89, for "conviction quashed" read "conviction affirmed."]

## Province of British Columbia.

### SUPREME COURT.

DRAKE, J.]

[Dec. 20, 1896.

STUSSI v. BROWN ET AL.

*Mineral claim—Partnership—Record—Notice.*

In July, 1894, the plaintiff and the defendant, Joseph Brown, entered into a partnership for the purpose of holding, acquiring, developing and disposing of mineral claims in Trail Creek Mining Division. Plaintiff advanced Brown