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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JUNE 23RD, 1919.

MOND NICKEL CO. v. DEMOREST.

Boundaries—Evidence—Position of Post—Finding of Fact of Trial Judge—Appeal—Ascertainment of Division-line between Lots—Lost Divisional Post—Locality of, not Ascertainable—Surveys Act, secs. 39, 40—Costs.

An appeal by the plaintiffs from the judgment of MIDDLETON, J., 13 O.W.N. 410.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

J. M. Clark, K.C., and R. U. McPherson, for the appellants.

W. N. Tilley, K.C., for the defendants Demorest and Black, respondents.

R. S. Robertson, for the defendant Jefferson, respondent.

MAGEE, J.A., read the judgment of the Court. He said that the plaintiffs claimed lot 6 in the 2nd concession of the township of Lanark; and the defendants claimed lot 5 in the same concession; lot 5 adjoined the east side of lot 6. After stating the facts and reviewing the evidence, the learned Judge said that it should be declared that the divisional post originally planted between lots 5 and 6 could not be found, nor the exact locality thereof established, and that the division-line should be ascertained in the manner directed by secs. 39 and 40 and other apposite sections of the Surveys Act, R.S.O. 1914 ch. 166, that is, by dividing the width between the two established posts, those at the south-east angle of lot 5 and south-west angle of lot 6 in proportion to the intended width of those lots—that is, equally—and the side-lines between the lots should run, in accordance with the Act, from that point, and that the plaintiffs were entitled to possession of the land up