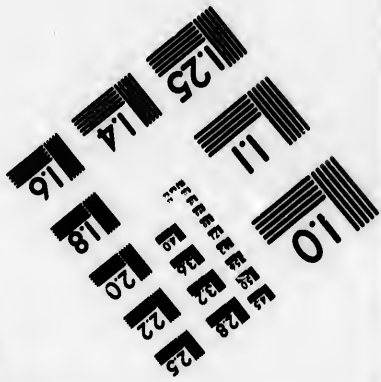
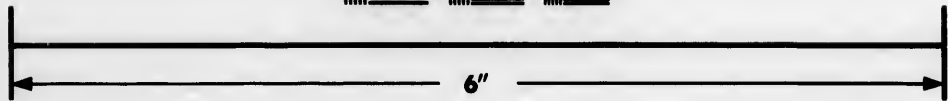
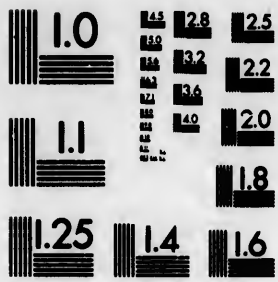


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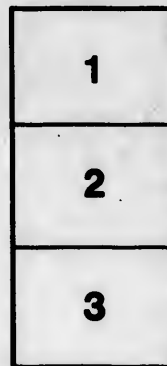
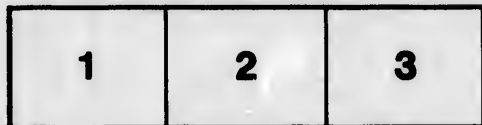
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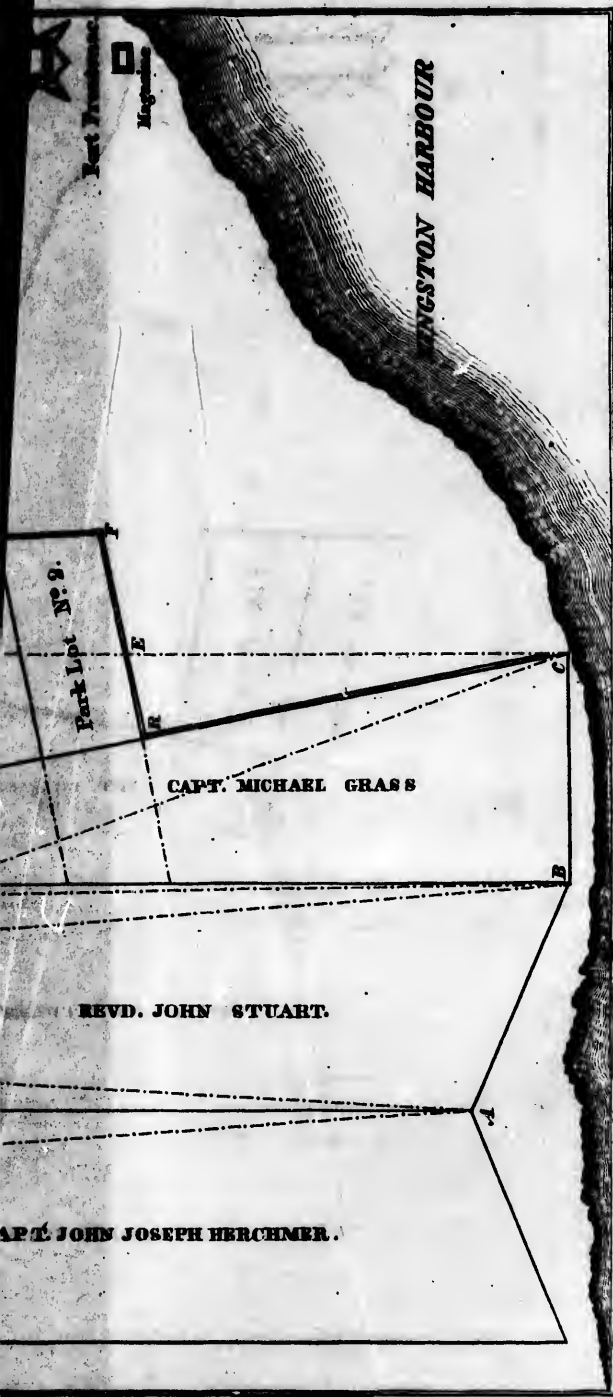
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REFERENCES.

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|---|---------------|---|
| C.D. — Dotted Line.—Boundary Line & Eastern Limit of Signory N ^o 1, or Township of Kingston in 1782. | B.I. — Dotted | Erroneous Magnetic Boundary, or Eastern Side Line of Lot N ^o 24, in 1823. |
| C.I. — Black | A.L. — Dotted | Erroneous Astronomical Boundary, or Western Side Line of Lot N ^o 24, in 1824. |
| C.P. — Dotted | A.M. — Black | Parallel and true Boundary Line, or Eastern Side Line of Lot N ^o 24, in 1839. Permanently established by Boundary Line Commission in 1839. |
| B.Q. — Black | A.N. — Dotted | Erroneous Magnetic Western Side Line of Lot N ^o 24, in 1782. |
| R.J. — Dotted | CRITCHFIELD. | Double Line: true Eastern Boundary Line of the Township and Town of Kingston. |

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DIAGRAM

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C.P. Deed

B.C. Deed

R.J. Deed

2-1/2 Township of England to 1785 or 1786;
and also of Lot N^o 24 in the First Concession
Previous Boundary Line & Return Line
of Signory P^o 1 or Township of England
run by Tally in 1788 or 1787.
Parallel & true Boundary Line or Return
Side Line of Lot N^o 24 to 1829.
Previous Astronomical Boundary, or
Return Side Line of Lot N^o 24 to 1822.

A.H. Deed

A.J. Deed

C.R.F.C.E.O.I.

Side Line of Lot N^o 24 to 1822.
Parallel and true Boundary Line or Return
Side Line of Lot N^o 24 to 1829. Boundaries
Established by Boundary Line Commissioners
in 1829.
Previous Agents Return Side Line of Lot
N^o 24 to 1782.
Return Side Line; true Return Boundary Line of the
Township and Return of England.

W. 24th St. from Eastern Boundary Line of the South Lot; from Eastern Boundary Line of the Township and Thru of Kings.

C. 24th St.

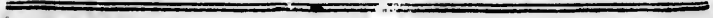
North of 24th St. from Boundary Line of Lot 100. Sub Line of Lot 100. 24th St. from Eastern Boundary of Eastern Sub Line of Lot 100. 24th St. 100.



COMMUNICATIONS,

PUBLISHED IN THE KINGSTON HERALD;

SUPPLEMENTARY TO MENTORIANA.



COMMUNICATIONS, &c.

Mr. Editor :

A Subscriber was much gratified in perusing a summary of a Law Case, Murney *versus* Miller, communicated through the medium of your paper of the 3rd of October, 1843, embracing a discussion of the Eastern Boundary and Line of Survey of the Township of Kingston, limiting the Town of Kingston, and constituting also the Eastern Boundary and Side Line of Survey of half of entire Lot No. 25, in the first Concession of the said Township, and containing one hundred acres of land.

In the case alluded to, it is worthy of remark, for the information of the public, and to be ascertained by this communication, that the original Boundary and Line of Survey of the Township of Kingston, and of entire lot No. 25, embracing two hundred acres of land, was run by Deputy Surveyor General Collins, in the year 1783, was recognized and known to be of that character from the year 1783 to 1794 or 1797.

The boundary and diagonal line of Survey run by Deputy Surveyor Tuffy, in 1785 or 1787, arising from and founded on the contract of Captain Grass with the Government, and his relinquishment of the original Boundary and Eastern Side Line of entire Lot No. 25, is erroneous and defective, dividing the same into two unequal parts.

The Bondary, and diagonal line of Survey, dividing entire Lot 25 into two equal parts, and embracing one hundred acres of land, and recognized upon the Government map, and run out by Deputy Surveyor Aitken, between the years 1794 and 1797, is the true Eastern Boundary and Side Line of half Lot

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No. 25, in the first Concession of Kingston. It became also the Eastern unalterable Boundary Line of the Township of Kingston, limiting the Town, and is confirmed by the Statute of the Province, or Law of the Land, the 38th of George Third, 1798.

The reason of the change, founded on the facts in the History of Surveying, published in Mentoriana between pages 29 and 31, and between pages 31 and 40, in the third part of said publication, is obvious, and the reasoning conclusive.

The Diagonal Line of Survey, from the change and setting aside of the Boundary Side Line of entire Lot No. 25, and of the original Boundary Line and Eastern limit of the Township of Kingston, run by Deputy Surveyor General Collins, in the year 1783, assumed a double character. The Diagonal Line of Survey became the Eastern Side Line and limit of half Lot No. 25, in the first Concession of the Township of Kingston; constituting also the Eastern Boundary Line of the Township of Kingston, limiting the Town; and to the exclusion of Deputy Surveyor General Collins' original Eastern Boundary Line of the Township of Kingston; and also to the setting aside of Tuffy's erroneous and defective line of Survey, supposed by many and taken to be the Boundary Eastern Side Line of the Township, limiting the Town, and of half Lot No. 25, in the first Concession of said Township.

In a few words, the Boundary Line run out by Deputy Surveyor General Collins, in the year 1783, was the true limit and Eastern Boundary Side Line of entire Lot No. 25; and it also constituted the true Eastern Boundary Line of Seignory, No. 1, afterwards the Township of Kingston, limiting the Common Cataraqui afterwards the Town of Kingston, from the year 1783 to 1794, or 1797.

The Boundary Line of Survey of half Lot No. 25, run by Tuffy, Deputy Surveyor, in 1785 or 1787, is the erroneous and defective Eastern Side Line of said half Lot, in the first Concession of Seignory No. 1, or Township of Kingston; and it also became the erroneous and defective Eastern Boundary Line of the said Seignory No. 1, or Township of Kingston, limiting the Town of Kingston. Conclusively, therefore, from the foregoing premises, the Diagonal Line of Survey run out by Deputy Surveyor Aitken, between the year 1794 and 1797, is the true Boundary Line, or Eastern Side Line and limit of half Lot No. 25, containing one hundred acres of land, expressed in the Government Patent, and confirmed by the Statute 59th of George Third, 1818; and also the inference or conclusion is just that the said Diagonal Boundary Line is likewise (embracing the angular extension) the true unalterable Eastern Boundary Line of the Township of Kingston, limiting the Town, and confirmed by the Statute 38th of George Third, 1798; and there is none other.

The foregoing statement of facts, embraced in the History of Surveying from the year 1783, and which also have been published, supported by documents and authorities in Mentoriana, it is expected will enable and induce the owner of half Lot No. 25 to establish the true Boundaries of the said Lot; and by perseverance in prosecuting his rights, ultimately to obtain his vested rights and just quantity of Land, secured to him by his Patent, and confirmed by the Statute Law of the land.

A SUBSCRIBER.

Kingston, Oct. 10th, 1843.

MR. EDITOR :

Having perused the communications of Mentor, on the subject of Boundary Lines, which, by virtue of the Statute, or Law of the Land, 1st Victoria, 1837, 1838, and under the authority and decision of the late Commissioners, secured to the Patentees of the Crown, and their heirs, the possession of their just quantity of land, to the rejection of the plea, claim, or title of occupants, founded on adverse possession, or more truly and properly, usurped occupancy : I have much pleasure in submitting to the consideration, and for the information of the public, some remarks in elucidation and application of the Statute Law of the Land, 4th of William Fourth, 1834 ; being that which is assumed by its advocates and supporters as the Law of decision in support of the plea, claim, or title of adverse possession, to the subversion and rejection of Patented rights, and in repugnance and violation of the Statutes of the Province or Law of the Land, 38th of George Third, 1798 ; 59th of George Third, 1818, and 1st of Victoria, 1837, 1838.

In accordance with, and in support of the legal opinion of Mentor, the Statute, or Law of the Land, 4th of William Fourth, 1834, is submitted to the public, accompanied by suitable remarks, illustrating its true character, and confining the application of its provisions to the cases of litigation that come within its cognizance and bearing ; but with the exception of the Patentees of the Crown, and their heirs, whose rights are secured to them by 1st of Victoria, 1837 and 1838, the Law of the Land.

The *title* of the Law is thus expressed, " An Act to amend the Law respecting Real Property, and to render the proceedings for recovering possession thereof, in *certain cases*, less difficult and expensive." This title is clearly explained and defined in the *Preamble*, expressing or naming the certain

cases which come under its cognizance, and within its bearing; but at the same time not embracing—but excepting and rejecting—the cases of the Patentees of the Crown, or their heirs.

PREAMBLE:

“WHEREAS it is expedient to amend the Law relating to Real Estate, by making certain alterations in the Law of *Inheritance*, and respecting the conveyance of Real Property by *Devize*, and by Deed, and in regard to Dower, and the limitation of *Actions* and Suits relating to Real Property, and for simplifying the remedies for trying the rights thereto.”

The twelve first clauses succeeding to the Preamble, have relation to the rights of Devizees by Will and by Deed under Purchase, and do not comprehend or embrace the cases of Patentees of the Crown, and their heirs, whose rights are secured to them by the decision and judgment of the Boundary Line Commissioners, and possession obtained of these rights by virtue and under the provisions of the 1st of Victoria, 1837, 1838, the Law of the Land, in which there is no limitation clause in support of the claim or title of adverse possession.

The next and following four clauses of the 4th of William Fourth, 1834, embrace the provisions relative to the right of Dower, and have no connexion with, or bearing on the rights of the Patentees of the Crown, and their heirs, in the question of right against usurped occupancy or adverse possession.

Then follows the seventeenth clause of the aforesaid Statute of the 4th of William Fourth, 1834, enabling the occupants of Land, in certain cases, in possession for twenty years and upwards, by Deed on purchase, to hold and enjoy under the title of adverse possession, or more truly and properly, usurped occupancy. And the limitation is in full force and virtue in certain

cases, namely, Devizees by Will, and by Deed founded on purchase, but with the exception of the Patentees of the Crown and their heirs, to whom no knowledge did or could have accrued of the occupants being in possession of Land adverse to the Patentees of the Crown, or their heirs, until after the enactment and operation of the Law of the Land, 1st of Victoria, 1837, 1838, at and from which period the title of adverse possession did and should be deemed to have accrued or commenced, and only in the certain cases which the limitation clause of prescription embraced.

The remaining clauses of the 4th of William Fourth, 1834, in number forty-three, afford remedies in the various and numerous cases affecting the rights of Devizees, and Purchasers by Deed, and have no relation to or bearing upon cases of the Patentees of the Crown, or their heirs, whose rights are secured to them by the Law of the Land, 38th of George Third; 59th of George Third, and the 1st Victoria, 1837, 1838; recognizing and confirming the rights expressed in the Patents from the Crown.

From the foregoing remarks on the title, preamble, and subsequent provisions of the Statute 4th of William Fourth, 1834, it is obvious that the question of the rights of the Patentees of the Crown, or their heirs, against occupants by adverse possession, or more truly, usurped occupancy, is to be decided upon the basis of the Laws that have been enacted, 38th of George Third, 1798; 59th of George Third, and 1st Victoria, 1837, 1838. And it is further obvious, that while the clause of the limitation of actions and suits, to twenty years, and upwards, in favour and support of the title of adverse possession, or usurped occupancy, operates against, and to the exclusion of, the rights of Devizees by Will, and Deed on purchase, the Patentees of the Crown, and their heirs, are not included with

them by a constructive interpretation of the seventeenth clause of the 4th of William Fourth, 1834; on the contrary, there is a proviso in said clause which has a reference to the case of Patentees and their heirs, who are not included or embraced within the operation of the limitation clause of the 4th of William Fourth, 1834, but are excepted from coming under its cognizance and bearing.

The exclusion and exception of the Patentees of the Crown and their heirs, are expressed in the following terms or words of the aforesaid Statute :

“ Provided always, that until the person deriving title to land in this Province as the Grantee of the Crown, or his heirs or assigns, or some or one of them, by themselves, their servants or agents, shall have taken actual possession of the land granted, by residing thereupon, or by cultivating some portion thereof, the lapse of twenty years shall not bar the right of such Grantee, or any person claiming by, under or through him, to bring an action for the recovery of such land, unless it can be shown that such Grantee, or person claiming by, under or through him, while entitled to the land, had knowledge of the same being in the actual possession of some other person, not claiming to hold by, from or under, the Grantee of the Crown, (such possession having been taken while the said lot was in a state of nature,) in which case the right to bring such action shall be deemed to have accrued from the time that such knowledge was obtained.”

The inferences from the above and foregoing explanation of the limitation clause of the 4th of William Fourth, 1834, in certain cases, with the exception of the Patentees of the Crown, and their heirs, are obvious, and accord with the following legal opinion :—“ That with reference to the Statute or Law, 4th of William Fourth, 1834, it is to be remarked, that

“ the limitation clause, in the said Statute or Law, respecting
“ actions and suits at Law between litigants, having a retrospec-
“ tive application before the existence 4th of William Fourth,
“ 1834, does not apply to the cases of litigation between the
“ Patentees of the Crown and their heirs, and the holders of the
“ land by and under the title of adverse possession, or more
“ truly and properly, usurped occupancy. Nor are these cases
“ embraced within the cognizance or bearing of the Statute
“ Law, 4th of William Fourth, 1834. The said Statute or
“ Law, under its title and preamble, and within its provisions,
“ embraces the numerous cases known by the name of Devi-
“ zees by Will and by Deed on purchase, and its operation is
“ confined to the above class of suitors in the Courts of Justice
“ and Law. The Patentees of the Crown and their heirs have
“ their rights secured to them by their Patents and the Laws
“ of the Province, enacted for their protection, 38th of George
“ Third, 1798 ; 59th of George Third, 1818, and 1st of Victoria,
“ 1837, 1838, which having no limitation clause in their provi-
“ sions, became the rule and decision in the Courts of Law and
“ Justice.”

The attention of the public is requested to the foregoing communication, which will be succeeded by a legal opinion on the explanation and application of the Statutes, or Law of the Land, 38th of George Third ; 59th of George Third, 1818, and 1st of Victoria, 1837, 1838, which establish the Boundary Lines on a true and permanent basis, and secure and confirm the rights of land to the Loyalists, the Patentees of the Crown and their heirs.

A SUBSCRIBER.

Kingston, December 26th, 1843.

MR. EDITOR:

Having in a preceding communication submitted a legal opinion to the public, to the effect that the Statute of the Province, or Law of the Land, the 4th of William Fourth, 1834, from its title, and in its preamble and provisions, is not the rule and law for decision and judgment in the Courts of Justice and Law, in the cases of Patentees of the Crown and their heirs, and within whose cognizance and authority they are not included and embraced, but that the aforesaid Statute is limited to certain cases as expressed therein; the Devizees by Will and by Deed on purchase, and Grantees not of the Crown, and has no bearing on the cases of the Patentees of the Crown and their heirs, by a constructive interpretation of its clauses, contrary to the letter and intention of the title and preamble.

A Subscriber, in the following communication, has much pleasure in calling and inviting the attention of the public to a consideration and knowledge of the bearing and effect of the Statutes of the Province, or Law of the Land, 38th of George Third, 1798; 59th of George Third, 1818, and the 1st of Victoria, 1837, 1838; which declare and establish the true Boundaries or monuments, and lines of Survey running from them, in contra-distinction to the erroneous and defective ones, on a permanent basis, and in accordance with the courses and distances expressed in the Patents; thereby securing the rights of land in its full and just quantity to the Loyalists and their heirs, the Patentees of the Crown, against the holders by erroneous and defective lines of survey under the plea, claim or title, of adverse possession, and more truly and properly, usurped occupancy.

By a reference to a communication in "Mentoriana," between pages 50 and 56, in the fourth part of that publication, the public are favoured with a legal opinion at large on this question; and it is also stated in a more abridged and concise

form in the tenth and eleventh pages of the Appendix to that publication. For the purpose, and with the object in view of satisfying public inquiry, and of determining and settling a question interesting to individuals and to the country, which even in the Courts of Justice and *Law* has not been duly appreciated, correctly understood, nor finally settled, the following communication is submitted.

It is a fact, and matter of historical notoriety, that the first and original Settlers of this Province held and occupied their lands and estates from the year 1763 to 1792, and for several succeeding years, on the faith of Government. Boundaries or monuments were established, and lines of Survey were run from them preparatory to the issuing of Patents by the Government, and accompanied by an assurance and promise at the time, that within the boundaries or monuments fixed, and by a true and correct line of Survey from them, each and every Patent when granted would embrace within its extent and true limits two hundred acres of land.

In the interim between the years 1792 and 1818, Patents were granted by the Government, in accordance with the intention, assurance, and promise of Government, but at variance with the lines of Survey, which from the attraction and variation of the magnetic needle did not agree with the courses and distances expressed in the Patents. Hence commenced disputes and contention, arising from erroneous and defective lines of Survey, in contra-distinction to the true boundary lines expressed in the Patents. Hence was the origin of the disputes and contention between the holders of the lots of land by an erroneous line of Survey, and the claimants, Patentees or heirs of the Crown, by a true boundary line expressed in their Patents.

For the protection and relief of the litigants, who could derive and receive no adjustment of their disputes from the Courts of Law and Justice, application was made by both parties at variance, the litigants, to the Provincial Parliament for Legislative interference, and the settlement of their disputed rights. By the authority of the Provincial Parliament, the Statutes 38th of George Third, 1798; the 59th of Geo. Third, 1818, and the 1st of Victoria, 1837, 1838, were enacted; and by the provisions of these Statutes the original Boundaries or monuments, in the first Survey of the several Townships, were recognized and established as immovable; and likewise the true Boundary Side Lines of each and every Lot and Lots of Land in the several Townships of the Province were declared, adjudged, and in cases of dispute, to be run by a parallel line of Survey, conformably to the legal provisions of 38th of George Third, 1798, and 59th of George Third, 1818, and in agreement or accordance with the courses and distances expressed in the Patents.

In addition to the aforesaid Statutes, or Law of the Land, 38th of George Third, 1798, and 59th of George Third, 1818, the Legislature of the Province enacted the Statute or Law of the Land, the 1st of Victoria, 1837, 1838, authorising and empowering the Commissioners of Boundary Lines to set aside the erroneous and defective lines of Survey, and to run and establish a true parallel line of Survey, to the rejection and removal of the occupants holding under the plea, claim and title, of adverse possession, or more truly and properly, usurped occupancy. The Statute of the Province, or Law of the Land, the 1st of Victoria, 1837, 1838, contains and embraces within its provisions no clause recognizing occupancy for twenty years, by and under an erroneous Boundary Line of Survey, as a title or legal right; subversive of Patent-rights, and in repugnance to, and in violation of, the Law of the Land.

The disinterested, and even the advocates and supporters of adverse possession, free from the bias of pre-possession, prejudice and interest, must be aware that the basis on which the title of adverse possession rests, the Imperial Statute and Common Law of England, is inapplicable to the circumstances of the Country; at variance with, and repugnant to, the Statutes or Law of the Land, 38th of George Third, 1798; 59th of Geo. Third, 1818, and the 1st of Victoria, 1837, 1838; and moreover, that the title derives no countenance and support from the Statute, the 4th of William Fourth, 1834, erroneously advanced by its advocates and supporters as the Law and basis of decision. If the foregoing plea should be maintained in the Courts of Justice and Law, spoliation would be invested with the character of right; wrong and right would be confounded together; and oppression would become triumphant over right and justice.

Should however the legal opinion of the advocates and supporters of adverse possession, on the authority of the 4th of Wm. Fourth, 1834, be entertained in the Courts of Justice and Law, to the violation and surrender of the rights of the Patentees, and heirs, of the Crown, a reference of their cases must be made to the Superior Court of Appellate Jurisdiction, and if imperatively expedient, ultimately ~~to the Legislature of the Country.~~ *to the Queen in Council*

In confirmation of the legal opinion expressed in the foregoing communication, the Court of Boundary Line Commissioners, in the year 1839, heard and adjudged a case of disputed Bondaries between the Venerable George Okill Stuart, Claimant, and the Reverend William M. Herchmer, Respondent.—The parallel Line of Survey was run by Deputy Surveyor William H. Kilborne, conformably to the provisions of the Statute of the Province, or Law of the Land, the 59th of Geo.

Third, 1796, and was placed on a permanent and unalterable basis, in contra-distinction to the erroneous and defective magnetic line of Survey, run between the years 1763 and 1795, by Deputy Surveyor Kotte; and also to the setting aside of the astronomical line of Survey erroneously run by Deputy Surveyor Rydar, in violation of the Statute of the Province, or Law of the Land, 59th of George Third, 1818, established in the year 1821 by the Court of King's Bench.

Moreover, in virtue of and conformably to the provisions of the Statute of the Province, the 1st of Victoria, 1837, 1838, possession was obtained from the Courts of Boundary Line Commissioners to the removal of occupants, and to the setting aside of the plea or title of adverse possession. Thus the Venerable George Okill Stuart, the Patentee of the Crown, and heir at Law, was protected and secured in the right and possession of his just quantity of Land, with-held from him by the Reverend William M. Herchmer, being two hundred acres of Land within Lot No. 24, in the first Concession of the Township of Kingston, given in the year 1784 on the faith of Government, granted in the Patent issued in the year 1796, and confirmed by the Statute Law of the Land, 59th of George Third, 1818, and the 1st of Victoria, 1837, 1838. In the year 1840 a case of disputed line of Boundaries was heard and adjudged by the Board of Boundary Line Commissioners between Geo. Strachan, Claimant, *versus* George Baxter, and others, in the Township of Pittsburg. The Boundaries were adjudged by a parallel line of Survey, run by Deputy Surveyor Kilborne, conformably to the provisions of the 59th of George Third, 1818, and possession was obtained of his rights by the Claimant, from the Court of Commissioners, under the provisions of the 1st of Victoria, 1837, 1838, to the rejection and removal of the occupants holding under an erroneous and defective

line of Survey; and to the setting aside the plea, claim or title, of adverse possession.

To these cases, a large number in this District might be added, but it is unnecessary to add more to this communication; not omitting however to include in it, for the information of the public, a legal decision or judgment of the Court of King's Bench, in confirmation of the foregoing legal opinion, extracted from a Digest of Cases determined in the Court Queen's Bench, by John Hillyard Cameron, in the year 1840, and to be found in page 17; and it is thus expressed:—

“BOUNDARY.”—“Twenty years possession according to a certain Boundary Line will bar an ejectment brought to disturb such Boundary, unless a new Survey can be made strictly in accordance with the provisions of 59th of George Third, 1818, Chap. 14th—*Doe Morgan, vs. Simpson*. Trinity, 1st & 2d Victoria.”

A SUBSCRIBER.

Kingston, January 2nd 1844.

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