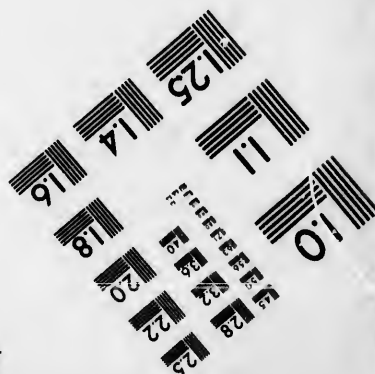


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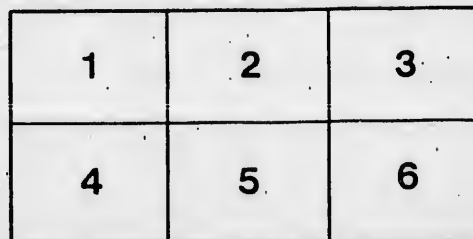
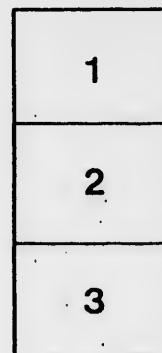
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TR J

Double Line: true Eastern Boundary Line of the  
Township and Town of Kingston.

CREECHM.

Side Line of Lot A<sup>o</sup> 24 in 1839.  
Erroneous Astronomical Boundary, or  
Eastern Side Line of Lot A<sup>o</sup> 24 in 1892.

H.J. Dotted

H.Q. — — —

280  
**MENTORIANA,**

OR

**A SERIES OF COMMUNICATIONS**

PUBLISHED IN THE

**KINGSTON HERALD**

**BETWEEN THE YEARS 1839 AND 1844,**

ON THE SUBJECT

OF THE

**STATUTE LAW OF THE PROVINCE,**

OR

**LAW OF THE LAND,**

ESTABLISHING THE

**TRUE BOUNDARIES AND LINES OF SURVEY**

**ON A PERMANENT BASIS, AND THEREBY**

SECURING THE

**RIGHTS OF LAND IN THE ORIGINAL PATENTS**

**To the Loyalists and their Heirs.**



**KINGSTON:**

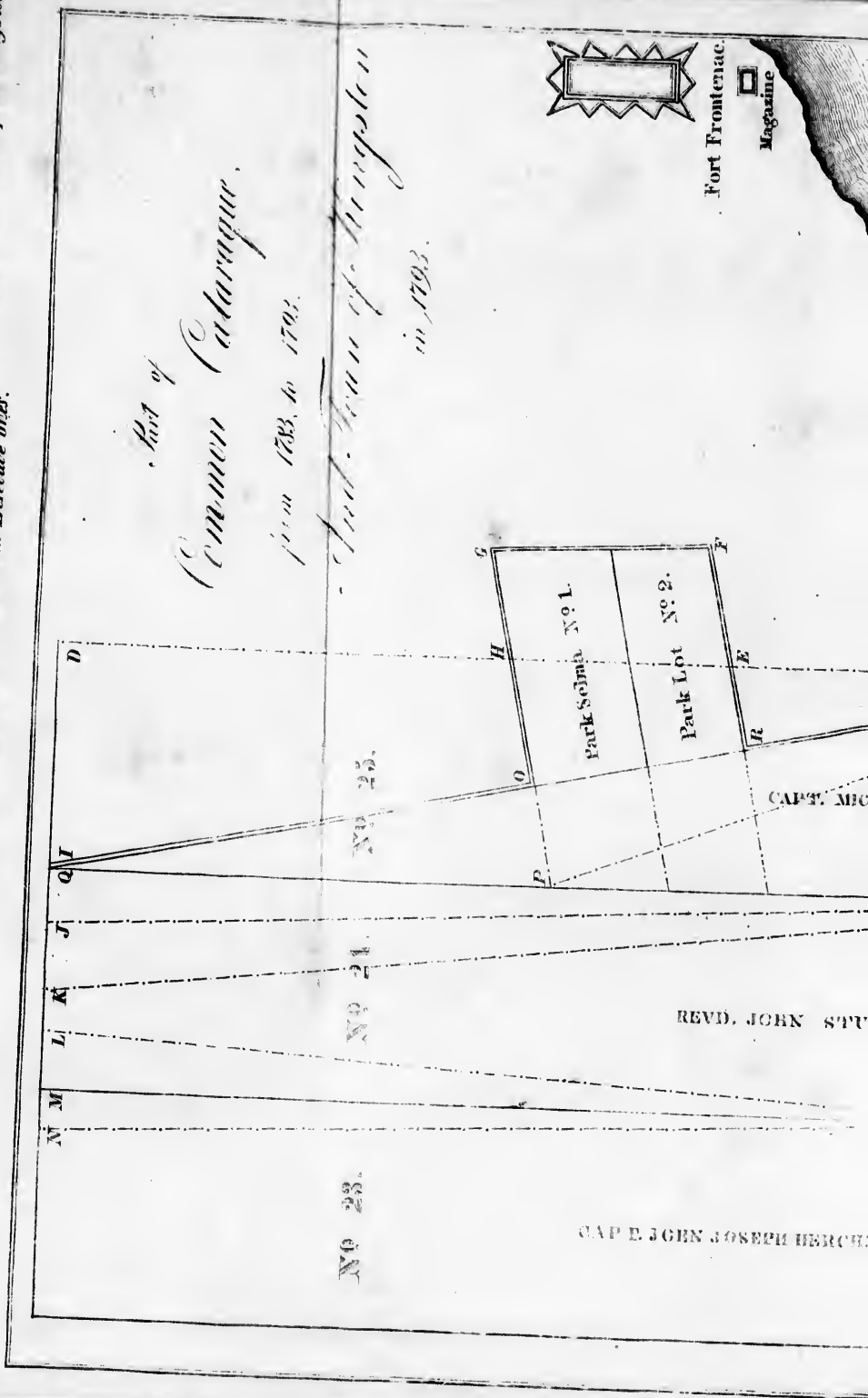
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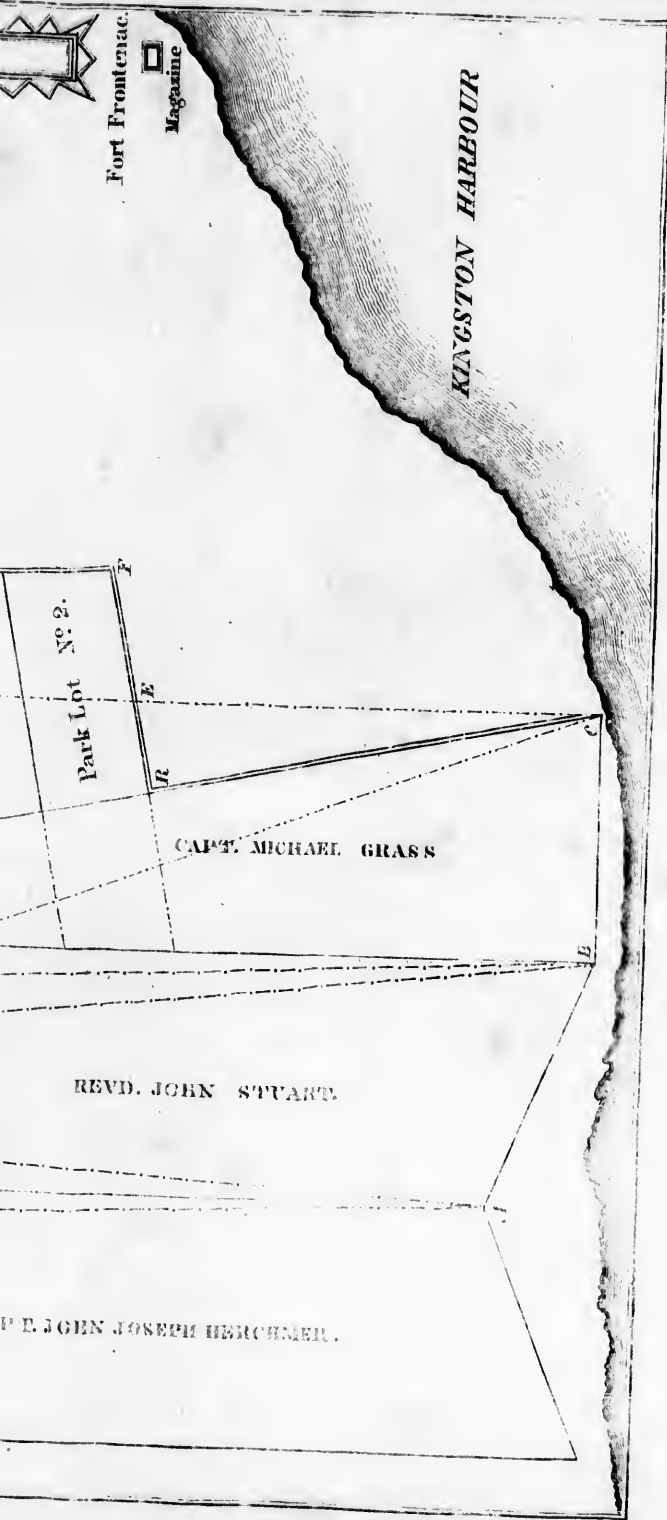
**1843.**



# A DIAGRAM.

Exhibiting the true Boundaries and Lines of Survey of Lots Nos 23, 24 and 25, in the 1<sup>st</sup> Concession of the Township of Kingston in Contradistinction to the Erroneous and Defective ones.





# REFERENCES.

C.D.	A dotted line boundary line of Eastern Limit of Seigneurie No. 1, or Township of Kingston in 1783.	S.K.	Dotted	Erroneous Magnetic Boundary or Eastern Side Line of Lot No. 24 in 1783.
C.A.	Black	A.L.	Dotted	Erroneous Astronomical Boundary or Western Side Line of Lot No. 24 in 1891.
C.P.	Dotted	A.M.	Black	Parallel and true Boundary Line or Western Side Line of Lot No. 24 in 1839. Permanently established by Boundary Line Commissioners in 1839.
B.Q.	Black	A.N.	Dotted	Erroneous Magnetic Western Side Line of Lot No. 24 in 1783.
B.J.	Dotted	C.R.E.E.C.H.O.T.		Double Line: true Eastern Boundary Line of the Township and Town of Kingston.



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## PREFACE.

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THE AUTHOR of the following Communications under the signature of "MENTOR," has endeavored, after much labour and research, to arrive at the adjustment and settlement of a disputed question, respecting Boundaries, Lines of Survey, and Patent Rights, founded on facts, in the early history of the country, and on the Statute Law of the Province, or Law of the Land. He has much satisfaction in stating his opinion in support of Patent Rights, to the rejection of the title of adverse possession, or illegal and usurped occupancy. This title, if admitted to be a right, would subvert true boundaries, and destroy Patent Rights, would invest spoliation and injustice with the character of legal right and just possession, and would violate the faith of Government in the patents granted to the Loyalists and their heirs.

This disputed question has, in the lapse of many years, from 1792 to 1843, the present period, given rise to a multitude of law-suits in the Courts of Justice and Law, and has been attended with continued contention and accumulated expense. The Courts of Justice and Law have, in many instances, decided cases involving the disputed question of patent rights and the title of adverse possession or illegal and usurped occupancy. The Board of Commissioners of Boundary Lines, established by law in the year 1837-1838, have also heard and determined all cases submitted to their cognizance and authority, unrestricted by the plea and title of adverse possession, or illegal and usurped occupancy, and in accordance with the Statute Law of the Province, or Law of the Land. This law, however, has been, through the omission and culpable inattention of the Legislature, allowed to expire.

The author, under the signature of "Mentor," is encouraged to offer to the public the series of Communications under the title of MENTORIANA, in the confident expectation and hope that from the information contained in the subsequent pages, the Juries, or men who shall be summoned to compose that body, will thereby be enabled to understand and appreciate the high importance and general interests of the disputed question. They will thereby become competent to co-operate with the Courts of Justice and Law, and professional men in hearing and determining all cases submitted to them, on the basis of Patent Rights and the Law of the Land, to the rejection of adverse possession or illegal and unjust occupancy.

THE AUTHOR.

## A SUMMARY

Of the Proceedings of the Board of Boundary Line Commissioners in the case of dispute between the Venerable George Okill Stuart, owner of Lot No. 24, in the 1st Concession of the Township of Kingston, and the Reverend William M. Herchmer, owner of Lot No. 23, in the aforesaid Concession, occupies the first place or part of the following pages, and in which is developed the power granted to them by the Legislature, in the provisions of the Statute Law 1st Victoria, 1837 and 1838, (see Appendix); and which power they exercised, unrestricted by the title or plea of adverse possession, or illegal and unjust occupancy. By their decision the Patentee, or Heir at Law of Lot No. 24—the Venerable George Okill Stuart—was restored to the possession of his just portion of land withheld from him by the Reverend William M. Herchmer, through illegal and unjust occupancy.

The second part embraces the Proceedings of the Boundary Line Commissioners in determining the Eastern Side Line of Lot No. 24, to the exclusion of occupants by usurped possession.

The third part embraces the series of Communications on the true Boundaries of the Township and Town of Kingston, published in the "*Kingston Herald*" between the years 1839 and 1843.

And the fourth and last part contains the insertion of a series of Communications on Patent Rights, and on the Statute Law of Upper Canada, or Law of the Land, published in the "*Kingston Herald*" between the years 1839 and 1844.

## THE FIRST PART.

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### EXTRACT FROM THE RECORD OF THE BOUNDARY LINE COMMISSIONERS OF THE MIDLAND DISTRICT.

Kingston, 11th April, 1839.

*Lots Nos. 23 and 24 first Concession of Kingston.*

The Board met.

**PRESENT**—Isaac Frazer, Orton Hancox, and Alexander Campbell, Esquires, April 11th, 1839, pursuant to adjournment.

The Reverend George Okill Stuart presented a Memorial claiming the said contested or disputed Line to be surveyed, agreeably to the Act 59 Geo. 3, chap. 14, parallel with Lot No. 1 in the said Concession, in opposition to which the Reverend Mr. Herchmer claimed that the Line now dividing the said Lot be established, as it had been once confirmed heretofore by a Judgment of the Court of King's Bench.

**The Memorial of the Reverend George Okill Stuart.**

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*To the Honourable Isaac Frazer, Orton Hancox, and Alexander Campbell, Esquires, Boundary Line Commissioners for the Midland District.*

The Memorial of the Reverend George Okill Stuart, of the Town of Kingston,

**RESPECTFULLY REPRESENTETH—**

That the late Reverend Doctor John Stuart, who removed with his family to this Province from Montreal, Lower Canada, in the year of our Lord 1785, and settled upon Farm Lot No.

24, in the first Concession of the Township of Kingston, in the year 1786; obtained a Grant or Deed of the same from the Government in the year 1796. This Farm or Lot of Land embraced Two Hundred Acres of Land, and was surveyed by Deputy Surveyor General Collins, from Quebec, in the year 1783, and posts and boundaries were planted and fixed in front on the first Concession, and from which the course of the Side Lines was intended to have been a due magnetic North course. The West Side Line of Lot No. 24 or East Side Line of Lot No. 23, was re-surveyed according to the compass between the years 1790 and 1795, by Captain John Joseph Herchmer and the Reverend Doctor John Stuart, the respective owners of Lots Nos. 23 and 24. By this survey it was ascertained that from the attraction or variation of the needle, and other causes, the Side Line between Nos. 23 and 24 could not be run so as to agree with the original survey by Deputy Surveyor General Collins, and to place the Line on a permanent and unalterable basis satisfactory to both parties. The variation in the surveys created no contention between the late Captain Herchmer and the Reverend Doctor John Stuart. And thus the Side Line between Nos. 23 and 24 rested on a varying and uncertain basis, and still continues in that state.

In the year 1817 the late Lawrence Herchmer, son of the late Captain Herchmer, employed a Deputy Surveyor by the name of Ryder to run the Side Line between Nos. 23 and 24, for his satisfaction, and in consequence of an encroachment having been made, as he supposed, on his land by the late Benjamin Whitney, Esquire. The Line of Survey was run by Mr. Ryder, but it was not adopted by the late Lawrence Herchmer, Esquire. After the death of Lawrence Herchmer, Esquire, in the year 1819, John Kirby, Esquire, Executor to the Estate of Lawrence Herchmer, Esquire, and Guardian to the heirs, then Minors, employed Captain McKenzie, of the steam boat Frontenac, to run the Side Line between Nos. 23 and 24 in the year 1820 or 1821. The mode of Survey in running the Side Line was that of ascertaining a

North course, not from the compass, but by observation of the stars, that is astronomically, and this Line granted by the Court of King's Bench, in place of the magnetic North, is the Line of Survey by which the Reverend William Herchmer holds possession of Twenty-one Acres of Land, more or less, belonging to Farm Lot No. 24, to the loss and detriment of the Reverend George Okill Stuart, the Heir at Law to Lot No. 24, by Patent from the Government.

From the uncertainty and impossibility of obtaining a correct Side Line that would be due North, as expressed in the Deeds or Patents from the Government, there arose contention and disputes between the owners of Land generally, in the Township of Kingston. In order to remedy these evils and to prevent litigation at Law and consequent expense, recourse was had to Legislative interference, and a Provincial Statute or Law was passed in the year 1798, "an Act to ascertain and establish on a permanent footing the Boundary Lines of the different Townships of this Province"; and also, a further Act was passed in the year 1818, extending the provisions of the preceding Act, and making provision for the Survey and settlement of Side Lines, and which in the words of the Statute is as follows: "Farther to regulate the manner in which Side Lines are hereafter to be Surveyed."

By reference to sections of the Statute of 1818, Nos. 2, 3, and 4, (see Appendix) the permanent basis or footing on which Side Lines are to be run, and the Survey to become legal, true and certain, and to settle all controversies and difficulties between owners of Land, and to make the Surveys permanent and unalterable, the legal and true mode is clearly and definitely expressed.

In virtue and by authority of these Statutes, William H. Kilborn, Deputy Surveyor under the provisions of the Provincial Laws of 1798 and 1818, and by the appointment of the Lieutenant Governor, was commissioned to retrace and run out the original Side Line of No. 1, being the Western Boundary Line of the

Township of Kingston. In the Spring of the year 1838, Mr. Kilborn was employed by your memorialist, and he undertook to run the West Side Line of Lot No. 24, conformably to the provisions of the Statute or Law of 1818, with a view to the settlement of all controversies and disputes now existing, respecting the Boundary Line between Lots Nos. 23 and 24.

In order to obtain the quantity of land included in the Patent from the Government to the late Reverend Doctor John Stuart, or to the Heir at Law, your memorialist, the Reverend George Okill Stuart, prays the interference of your Honorable Board, in order to obtain possession of a quantity of land occupied by the Reverend William M. Herchmer, by virtue of an erroneous Survey, neither acknowledged by the Statute of 1818, nor in agreement with the magnetic course prescribed in the patent, and which portion of land is not within the true and correct limits or Boundary Line of Lot No. 23.

Your memorialist, after the preceding detail of facts, submits his case to the favorable consideration and decision of your Honorable Board, and rests the settlement of the Boundary Side Line between Lots Nos. 23 and 24, as permanent and unalterable, on the authority of the Statute of 1818, and the legal and correct Survey of said Line by Deputy Surveyor William H. Kilborn, and appeals to your Honorable Board of Commissioners for the recovery and attainment of his just and legal rights, being a portion of land held by virtue of an erroneous Line of Survey by the Reverend William M. Herchmer, the owner solely of Lot No. 23 within its legal and true limits and boundaries.

All which is respectfully submitted by your Memorialist, who shall, as in duty bound, ever pray.

(Signed)

GEORGE OKILL STUART.

In support of the foregoing Memorial, the Testimony offered was as follows :—

WILLIAM H. KILBORN, Deputy Provincial Surveyor, Sworn, says that he is in no wise interested in the Lands at present in dispute; that he made the Survey between Lots Nos. 23 and 24 in the First Concession of the Township of Kingston, agreeably to the Act of 1818, by running said Line parallel to the boundary of said Concession, that is No. 1, which he is perfectly satisfied is correct. The late John S. McDonald and himself having examined the said Boundary at Lot No. 1, and ascertained the same to bear 4 deg. 3 min. 10 sec. West of North, and planted monuments thereon, under instructions from the Surveyor General, some time in the year 1826.

(Signed)

WILLIAM H. KILBORN,  
*Deputy Surveyor.*

JAMES NICKALLS, of Kingston, Esquire, being Sworn, deposeth and saith, that he the deponent was one of the persons appointed by the Court of Quarter Sessions to examine and report on the performance of the work by Messrs. Kilborn and McDonald, in running out of the Western Boundary Line of the Township of Kingston, under their contract. The work was minutely examined, and a Report made of its sufficiency, and upon which they got their pay. The course of the Boundary in the First Concession was 4 deg. 3 min. 10 sec. West of the true Meridian as determined by the work of Messrs. Kilborn and McDonald. The work was performed under instructions from the Surveyor General, but they have not as yet made an official report of the work so done.

(Signed)

JAMES NICKALLS.

No farther Testimony by either of the parties.

The Board having heard the Parties and the Evidences, and duly considered the matter in difference, Do Order and Direct, that the said Line between Lots Nos. Twenty-three and Twenty-four be Surveyed parallel with the course of the Western Boundary Line of Lot No. 1 in the First Concession of the said Township of Kingston, and that William H. Kilborn, Deputy Surveyor, be authorized to Survey the said Line, and plant sufficient



Stone Monuments at the governing points of the same, and make a correct plan thereof, making the courses thereof, both astronomically and magnetically, and that he shall Report to this Board on or before the first day of May next, what he shall have done in the premises.

The following Instructions were then issued to the Surveyor.

SIR,

You are hereby authorized to make a Survey of the said Line between Lots Nos. 23 and 24 in the First Concession of the Township of Kingston, parallel to the Western Boundary Line of the Township for said Concession, and plant Stone Monuments on the same, at the governing points, and return to the Commissioners a Plan of the Survey, with the Magnetical and Astronomical Courses laid down thereon, on or before the first day of May next.

(Signed)

ISAAC FRAZER,  
ORTON HANCOX,  
ALEX. CAMPBELL.

Kingston, 11th April, 1839.

MEM.—The return of the Survey herein directed is Postponed to the twentieth day of May next, by the consent of parties, or the application of the Surveyor, William H. Kilborn.

Kingston, May 20th, 1839.

PRESENT—I. FRAZER and O. HANCOX, Esquires.

On this day Mr. Kilborn should have made his Report of the Survey of the Side Line between Lots Nos. 23 and 24 in the First Concession of Kingston, which he was not prepared to do. The matter stands Postponed without a day..

(Signed)

ISAAC FRAZER,  
ORTON HANCOX.

Boundary Commission, Kingston, Oct. 28th, 1839.

PRESENT—I. FRAZER and O. HANCOX, Esquires.

To receive Mr. Kilborn's Report of his Survey of the Line between Lots Nos. 23 and 24 in the First Concession of Kingston—When it appeared that he was not prepared to return the Report. The Board direct a note to be written to Mr. Kilborn, calling his immediate attention thereto; as well as the necessity of making the Report of the Survey of the Western Boundary of Kingston, upon which the Side Line now to be run is based and governed by.

(Signed)

ISAAC FRAZER,  
ORTON HANCOX,

JUDGMENT IN THE MATTER OF BOUNDARY BETWEEN  
LOTS NOS. 23 AND 24, IN THE FIRST CONCESSION OF  
THE TOWNSHIP OF KINGSTON.

UPPER CANADA, } MIDLAND DISTRICT, } Boundary Commission, } To Wit: }	Between the Ven. GEORGE OKILL STUART, Claimant, and the Rev. W. M. HERCHMER, Respondent.
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To all to whom these Presents shall in any wise concern.

WE, ISAAC FRAZER and ORTON HANCOX, Commissioners of the Midland District, and ALEXANDER CAMPBELL, Commissioner of the Prince Edward District, Esquires,

SEND GREETING.

WHEREAS application hath been made to us, the said Boundary Commissioners, (JAMES NICKALLS, Esquire, the other Commissioner of the Midland District, being within the degree of affinity excluded by the Act,) by the Venerable GEORGE OKILL STUART, Claimant, and the Reverend WILLIAM M. HERCHMER, Respondent, requiring us to fix and determine the Boundary Line

between Lots Nos. 23 and 24, in the First Concession of the Township of Kingston, in the said District.

Now Know YE, that We, the said Commissioners, pursuant to an Act of the Legislature of the Province of Upper Canada, passed in the first year of Her Majesty's Reign, entitled "An Act to authorize the establishment of Boards of Boundary Line Commissioners within the several Districts of this Province;" and by the authority of the same having caused the said Respondent to be duly summoned to appear before us, pursuant to said Act, and having heard and duly considered the several allegations, as well as the evidence adduced by them respectively, touching the Line of said Lots—

We do therefore Adjudge, Order, and Decree as follows:— That the said Line between the Lots Nos. 23 and 24, in the First Concession of the Township of Kingston aforesaid, be Surveyed parallel with the Course of the Western Boundary Line of Lot No. 1 in the First Concession of the said Township of Kingston; and that the Surveyor do plant sufficient Stone Monuments at the Governing Points of the same, giving, in his diagram thereof, the Course of said Line, both astronomically and magnetically, and that the Venerable George Okill Stuart and the Reverend William M. Herchmer do pay equally the Costs incurred in the matter.

WITNESS, our Hands at Kingston, this Eleventh day of April, in the year of our Lord One Thousand Eight Hundred and Thirty-nine.

(Signed)

ISAAC FRAZER,  
ORTON HANCOX,  
ALEX. CAMPBELL.

This Judgment was published in the "Kingston Chronicle" for three successive weeks, and Stone Monuments were erected on the Line of Survey run by William H. Kilborn, Deputy Sur-

veyor. By this Judgment the West Side Line of Lot No. 24 was placed on a permanent and unalterable basis, in contradistinction to the erroneous, defective magnetic Line of Survey run between the years 1783 and 1795, and to the setting aside of the astronomical Line of Survey established in the year 1821, by the Court of King's Bench. Moreover, by this Judgment the true Boundaries and Lines of Survey of Lot No. 24 were established to the removal of Occupants, and to the setting aside of the plea or title of Adverse Possession, and to the securing to the Patentee of Government and the Heir at Law, the Venerable George Okill Stuart, his just quantity of Land, being Two Hundred Acres of Land within Lot No. 24, given in the year 1784 on the faith of Government, and granted in the Patent issued in the year 1796, and confirmed by the Statute Law of the Land 38th of George III. 1798, the 59th of George III. 1818, and the 1st of Victoria, 1837, 1838. (See Diagram in front of Title Page.)

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## PART SECOND.

The Venerable George Okill Stuart presented the following Memorial, and the same was received and heard by the Boundary Line Commissioners at their sitting on the 18th of March, 1840, and is as follows :

EXTRACT FROM THE RECORD OF THE BOUNDARY LINE COMMISSION OF THE MIDLAND DISTRICT, IN THE CASE OF THE EASTERN SIDE LINE OR BOUNDARY OF LOT NO. 24.

Boundary Meeting, March 18, 1840.

In the matter between the Venerable GEORGE OKILL STUART, owner of Lot No. 24, in the First Concession of the Township of Kingston, and the Respondents.

PRESENT—ISAAC FRAZER, Esq., ORTON HANCOX, Esq., and  
MR. JAMES NICKALLS.

George Okill Stuart, Claimant.

The Respondents were as follows :

David Alexander, part of Park Lot No. 1.

John R. Forsyth, part of Park Lot No. 1.

Thomas Minnis, Town Lot No. 363.

Mary Drury, Town Lots Nos. 364, 370, 371.

John Flanagan, No. 369.

Robert Tolbert, No. 377.

Thomas Kirkpatrick, No. 376.

John Watkins, No. 378.

#### STUARTVILLE.

— Willett, No. 182.

Elijah Beach, Nos. 3 and 4.

Thomas Brown, Nos. 5, 6, 7, 8, 9.

Mrs. Sansouci, No. 11.

— Smith, Nos. 12 and 13.

B. W. Smith, Nos. 14 and 19.

John Clewson, No. 15.

Mary Milor, Nos. 16 and 17.

Isaac Huff, No. 20.

John Quinlan, No. 21.

William McLean, No. 22.

Smith Bartlett, No. 11.

#### PICORDVILLE.

Augustus Thibodo, Nos. 10 and 25.

James Meagher, No. 9.

Elijah Conkline, Nos. 7 and 8.

William Forbes, Nos. 1, 2, 3, 4, 5, 6, 13, 14, 15, 16, 17, 18,  
19, 20.

STUARTVILLE.

Allan McLean, Farm Lot No. 1 West Side Grand Cataragui.

The subject before the Board was the application of the Venerable George Okill Stuart to have his Eastern Boundary and Side Line of Lot No. 24, in the 1st Concession of the Township of Kingston, made parallel with the Western Boundary of Lot No. 1, in said Concession,

The parties whose rights are compromised having been summoned and called, the Memorial of the Reverend George Okill Stuart to the Board, was read, as addressed, to the Commission, to wit :

The Memorial of the Reverend George Okill Stuart, Claimant,

RESPECTFULLY SHEWETH—

That your Claimant and Petitioner, from a due regard to his interests and a just sense of his rights, is desirous and anxious to obtain from your Honorable Board, the establishment of the East Side Line of Lot No. 24 in the First Concession of the Township of Kingston, on a permanent footing by a Survey in a line of direction parallel to the course of No. 1, the Boundary Line of the Township of Kingston.

Your Petitioner is Heir at Law to the late Reverend Doctor John Stuart, and Owner of Lot No. 24, whose Front Boundaries or Posts were planted in the first Survey in the year 1783 by Deputy Surveyor General Collins, under the authority of the Executive Government of the Province of Quebec.

In the year 1796 the Lieutenant Governor of Upper Canada, Colonel Simcoe, was pleased to confirm the possession of said Lot No. 24 to the late Reverend Doctor John Stuart, by Patent, and whose limits were governed by the Posts or Boundaries planted in Front in the First Concession of the Township of Kingston, by Deputy Surveyor General Collins, under the authority of the Executive Government of Quebec.

The Side Lines of Lot No. 24 were run out by compass between the years 1786 and 1796, by an authorized Surveyor. From this fallible and uncertain mode of Survey, arising from the variation or attraction of the magnetic needle, the Width of Lot No. 24 in the Rear on the Concession Line was contracted, and did not agree in extent with the distance between the Posts or Boundaries in front of Lot No. 24, and consequently the limits or Boundaries in Rear of said Lot on the Concession Line did not embrace the full portion or quantity of Land belonging to Lot No. 24, in accordance with the Front Posts or Boundaries planted in the first Survey in 1783, or with the limits and course described in the Patent.

In the year 1821 or 1822, your Petitioner, being dispossessed of the Magnetic North Line between Nos. 24 and 23, by a decision of the Court of King's Bench, in an Ejectment case, instituted an action against the late Henry Murney, Esquire, the owner of Lot No. 25, and succeeded in the attainment of a new Line. This Line was run by Deputy Surveyor Ryder, on a course supposed to be parallel to the Side Line between Lots Nos. 24 and 23, established by the Court.

Your Petitioner is now in possession of this Line supposed to govern the Eastern limit or Side Line of Lot No. 24; but it is obvious to your Honorable Board that it rests on a varying and uncertain basis, and left your Petitioner, the owner of Lot No. 24, in the tenure of no true or fixed Boundary.

By the equitable interference and just authority of the Provincial Legislature of Upper Canada, in enacting a Law, appointing Boundary Line Commissioners, and conferring on them judicial powers, and who are by law authorized and empowered, by correcting errors and defects in Surveys, to adjudge to every owner of a Lot of Land in the Township of Kingston its true Limits and Boundaries, by running a Line of Survey of the Side Lines parallel to the Lot No. 1 in the Township of Kingston, and in con-

formity to the Statutes of 1798 and 1818; relief can be obtained, and justice be done to your Claimant and Petitioner, by the recovery of a portion or quantity of Land belonging to Lot No. 24, within its true limits and boundaries, recognized in the first Survey in the year 1783, and also confirmed by Patent in the year 1796, and now to be established on a permanent footing by a parallel Survey under the direction and authority of your Honorable Board.

Your Claimant and Petitioner respectfully submits the statement of his case to the consideration and decision of your Honorable Board, and prays for relief from wrong and injustice by having an East Side Line or Boundary assigned by your Honorable Board to Lot No. 24, in a course parallel to No. 1, the Western Boundary of the Township of Kingston, and parallel to the West Side Line of Lot No. 24, lately placed on a permanent footing by the decision of your Honorable Board, and granted to the Prayer in the former Memorial of your Petitioner, who shall, as in duty bound, ever pray.

(Signed)

GEORGE OKILL STUART.

On the Record of the Commissioners after the above Memorial, follows the History of the different Surveys submitted by claimant.

A HISTORY of the First Survey of the Township of Kingston, and its Front, by Deputy Surveyor General Collins, under the authority of the Executive Government of the Province of Quebec, in the year 1783, and of its true Boundaries and Limits, recognized in the Statutes or Laws of 1798 and 1818 of the Province of Upper Canada.

In the year 1783, Deputy Surveyor General Collins, under the authority of the Executive Government of the Province of Quebec, and by instructions from General Haldimand, at that period



Governor of Quebec, Surveyed the Township of Kingston, to which he assigned Limits or Boundaries by planting Stone Monuments at the Four Corners thereof; and then proceeded to Survey the Lots in the Front Concession of the Township, for the establishment of the U. E. Loyalists, who settled on their Lots in the year 1784, according to fixed Boundaries or Posts planted at the Corners of the individual and respective Lots in the Survey of 1783.

In consequence of a contention or misunderstanding between Captain Grass, a Loyalist, the owner and possessor of Lot No. 25 in the First Concession of the Township of Kingston, and the Commanding Officer of Fort Frontenac, then Cataraqui, and now Kingston, respecting the Limits of said Lot, and its encroachment on the Common Cataraqui, now the Town of Kingston, an arrangement was made for the settlement of the dispute by the interference and recommendation of Deputy Surveyor General Collins, with the consent of Captain Grass, and a diagonal Line was run, thus constituting what is now called, and for many years known to be, the Limit between the Township and Town of Kingston.

This Survey was made by Mr. Tully in the year 1786, under the authority of the Executive Government of Quebec, and re-surveyed by Mr. Aitken in the year 1797, under the authority of the Executive Government of Upper Canada. This Line being run subsequently to the Survey in 1783, was confined to the Limits of Lot No. 25, as the Eastern Boundary thereof, and terminated at the Post or Boundary of Lot No. 24, in Rear of the First or Front Concession, on the South Side of the Concession Road. For the relinquishment and surrender of the East Half of Lot No. 25, Captain Grass received two or four hundred Acres of Land in the Township of Pittsburgh, as a reasonable compensation for the surrender. It is worthy of notice, that by reference to the Plan and Map of Survey of Deputy Surveyor General Collins, in 1783, and also to the Plan and Map of Deputy Surveyor

Aitken, in 1797, the Township of Kingston retains its original and entire Form as run in the first Survey in 1783, with the exception of the one half of Lot No. 25, whose Eastern Boundary constitutes the Limit between the Township and the Town of Kingston.

In the year 1791 the Province of Upper Canada was separated from the Province of Quebec, and in the year 1792 Colonel Simcoe assumed the Government of the Upper Province, distinct and apart from Lower Canada. In 1792 the Surveyor General's Office for Upper Canada was established at Newark, and soon after at York, (now Toronto,) the Seat of Government.

No Patents or Deeds were issued to Owners of Land in possession of Lots by fixed Boundaries in the first Survey between the year 1783 and 1792, by the Executive Government of Quebec; but after the year 1792 down to the present year, 1843, Deeds or Patents have been granted by the Government of Upper Canada, by which, in many cases, the disagreement of the description in the Deeds with the Boundaries in the Surveys has produced contention and law-suits among the settlers, arising from errors and defects in the Surveys.

In the year 1798, a Provincial Statute or Law was enacted by the Legislature of Upper Canada, declaratory of the Boundaries of the Township of Kingston, whose limits could only be known from the first and original Survey of Deputy Surveyor General Collins, under the authority of the Executive Government of Quebec.

In the year 1818, a Statute or Law of Upper Canada was enacted for the purpose of extending the former Law of 1798, and of establishing the Side Lines or Boundaries of the several Lots in the Concessions of the Township of Kingston upon a permanent footing, and recognizing all Boundaries and Posts planted in the first Survey by Deputy Surveyor General Collins, as unalterable, including the Corners or Boundaries of the Township of Kingston,

which by the said latter Statute were also placed upon a permanent footing.

In the years 1837, 1838, for the purpose of carrying into effect the legal and just provisions of the Laws or Statutes (Provincial) of 1798 and 1818, a Law was passed appointing Boundary Line Commissioners, and constituting a Board, who have judicial powers, and who are authorized and empowered, by correcting errors and defects in Surveys, to adjudge to every Patentee or owner of a Lot of Land in the Township of Kingston, its true Limits or Boundaries, and to establish the same on a permanent footing by a Survey of the individual Lots in a direction or course parallel with the course of Lot No. 1 in the said Township of Kingston, and in accordance with the Boundaries of the Township planted in the first and original Survey by Deputy Surveyor General Collins, under the authority of the Executive Government of Quebec.

From this History of the first Survey of the Township of Kingston, by Deputy Surveyor General Collins, under the authority of the Executive of the Province of Quebec, and from the preceding statement of its true Boundaries, recognized and established on a permanent footing by the Laws of 1798 and 1818, your Honorable Board have the power to make the parallel Survey, under the direction of an authorized Surveyor, of the several and respective Lots in the Township of Kingston, and to assign to each and to every Lot its full quantity and proper proportion of Land, by Side Lines established on a permanent footing, and thus fulfilling the high office and important trust of your Commission.

Your Claimant and Petitioner submits this document of Facts to your Honorable Board as a necessary accompaniment of his Memorial already read before you, and now leaves the Prayer of his Petition to the favorable decision of your Honorable Board. Your Claimant and Petitioner shall, as in duty bound, ever pray.

(Signed)

GEORGE OKILL STUART.

## THE TESTIMONY TAKEN WAS AS FOLLOWS :

WILLIAM H. KILBORN, Deputy Surveyor, being Sworn, Deposeth—That he commenced Surveying as a Deputy Surveyor in 1822 or 1823, in the neighborhood of Kingston; was employed to run the Line between Lots 17 and 18, First Concession of Kingston; ascertained the course of the West Boundary. Some of his party were persons who had been upon the original Surveys by Collins and Aitken. The Line he produced between Lots 17 and 18 came out at the Rear about Eight Chains East of Collins' Post, as between Lots Nos. 17 and 18 in the Second Concession. Was employed in 1823 to make a Survey of Park Lot No. 1, and was governed in said Survey by information given by the late John Ferguson and Captain Earl, and from that information he, Deponent, planted stone Posts at the North-westerly angle of the said Park Lot No. 1, then supposed to be the Eastern Boundary of Lot No. 25, 1st Concession. Deponent is satisfied that the Line recognized by Government is the Line of Wilmot, which Line cuts off a part of Park Lots Nos. 1 and 2. Deponent in laying out the Lots upon Lot No. 24, laid out and included the allowance for Street left by Wilmot, called West Street, along with the Lots upon No. 24. Deponent found upon examination that the Western Line of Lot No. 24 as decided by the Court, was not parallel with the Western Boundary of the Township of Kingston, and that when so drawn, it would be shifted Westerly, about half way from the first removal. Was employed in 1837 by Mr. Murney, to make a Survey of Lot No. 25. Deponent applied to Captain Grass, and from his information, planted a Stone on the present public Road, in front, between Lots Nos. 24, 25, as for the original corner of Lot No. 24, and in producing the Line on the Eastern side exactly straight throughout, it did not coincide with the Rear of the Park Lot No. 1, having reference to the Stone Post at the South-west corner as planted by him, from the testimony by Mr. Ferguson, and from which the Post as then planted, is about two feet too far Westerly. Deponent was frequently called upon by the Claimant to run the Eastern Line of Lot No. 24; but conceiving that he was restrained by the Act of 1818, he could not cross over any known or original Boundary. In measuring the width of the front of Lot No. 24 in 1838, Deponent found it 20 chains 58 links, and in the Rear line from the late determined Post—as between 23, 24, to a point in front of the known South-easterly Angle of Lot No. 24, 2d Concession, 9 chains 40 links, and to give to Lot No.

24, 1st Concession, its full breadth in Rear, a parallel Line will extend 11 chains 18 links Easterly, making a content of about 42½ Acres, and taking out what he had a right to, as lying between Collins and Tuffy's Lines, will leave about 39 Acres. In the Survey of 1823, made for the Claimant, West Street was included with the Lots in No. 24, with the intention of obtaining a right to it from the Court, in lieu of a like allowance, left for the use of the Public, more West. The Law authorizing the transfer or Sale of Government allowances being repealed in 1824, prevented its being done. Deponent considers that the commencement of Tuffy's Line, was the North-west corner of Park Lot No. 1, as at present known. Mr. Grass spoke to Deponent respecting the place of a particular Stone from which he could designate the Line run by Tuffy, and when Mr. Grass went with Deponent to the Ground, he recognized the Stone, and pointed out the Line where a fence has been placed, which agrees with the Rear as pointed out by Ferguson.

Sworn in Open Board, March 18th, 1840.

(Signed)

WILLIAM H. KILBORN.

PETER GRASS, of Kingston, Yeoman, being Sworn, Deposeth and Saith—That he was at the first Survey made by John Collins, Surveyor General, in 1783. The front of the 1st Concession was made before Deponent returned to Sorel. His father was allowed to take Lot No. 25, 1st Concession, and Mr. Stuart the Minister was allowed No. 24. The rest of the Township was drawn for. Deponent is now Seventy years of age. His father always supposed his Lot at first to be 200 acres, and got Kotte, a Deputy Surveyor to examine the course of the Eastern Boundary Line of No. 25, as then laid down by Collins, and found it to be 22 deg. West of North.

There was a difficulty about the course of the Line, and Tuffy, a Deputy Surveyor under Collins, was employed to run it out anew. He, Tuffy, commenced about the middle of the Concession, and the Line run by him was East of Collins's Line, which was the Eastern Boundary of the 200 acres, Lot No. 25. Collins' Line was run in 1783, and Tuffy's Line about 1785. Deponent went with Kilborn a short time since to examine the Ground, and found a large Stone which he recognized. The Line as now

known for the East Side Line of Lot No. 25, coincides with Collins' Line. His father supposed he had upwards of 100 acres after he had received a remuneration of Land in Pittsburgh for the deficiency of 100 acres. Deponent says that Mr. Collins stated that the persons who were deficient in their quantity, should receive an equivalent; that his father considered Collins' Line as the Line of his Land to where Tuffy commenced, and from thence Tuffy's Line was taken to be his Eastern Boundary. His father made his fences by Collins' Line.

BEING CROSS-QUESTIONED.

That he understood his father's Lot to go to the front of 2nd Concession; but what was the breadth there, Deponent cannot say. By Collins' Line, the Land did not reach the 2nd Concession. When he sold the Land to the late Henry Murney, his father supposed that he was selling at least 100 acres, and Deponent himself supposed so. Collins' Line was run out beyond the Rear of the 1st Concession, but Deponent does not know how far it was carried.

Sworn in Open Board, March 18th, 1840.

(Signed)

PETER GRASS.

21st April, 1840.

GILBERT ORSER, of the Township of Halloyell, formerly of Kingston, Yeoman, being Sworn, Saith—That he, Deponent, came to Kingston in September 1783, with John Collins, Esq., Deputy Surveyor General, and Captain Michael Grass from Sorel, attached to the Surveying Party. They proceeded to lay out the Township of Kingston, and commenced at the little Cataraqui, and run out West to Lot No. 1, and then Northerly to Collins' Bay, does not recollect crossing the Bay, but was told that the Surveying Party did go to the North six miles; Deponent says however that the Party, and he with them, returned from No. 1, and laid out the Lots, 200 acres each, to the Eastern side of Lot No. 25, where a Monument was placed; they then run out North, six miles; he was with the Party, and made a Line of blazed Trees throughout, but there were not at that time any of the Concessions run out, by which Survey it was intended to give Lot No.

25 200 acres; that the Eastern Line of Lot No. 25 was run out in the fall of 1783 when Captain Grass and his Son had returned to Sorel. Deponent says that the Township Lands were laid out before the Town, says that he has not attempted to find the Line so run out by Mr. Collins on the Ground; does not think that he could now find it, from the altered appearance of the place.

Sworn before the Board, April 21st, 1840.

(Signed)

GILBERT ORSER.

WILLIAM H. KILBORN, Deputy Surveyor, being Sworn, Deposeth and Saith—That in 1821 or 1822, he the Deponent was in the employ of Reuben Sherwood, when the Rear Angle of Farm Lot A was pointed out by the late John Ferguson, Esq., (whose Wife was the owner of Lot A,) where a Stone Monument was found at the North-west corner, and a Post at the South-west corner, there was a loose Stone Wall between Lot A and Lot No. 1. The Monuments could not readily be found in 1823, but Deponent after enquiring of Ferguson, and others, again found the place of the South-west corner, and ascertained the place of the other by the intersection of the Line drawn from the first Monument to a point sixty-six feet East from the Southerly Angle of Lot No. 24, 2nd Concession of Kingston, the places of which are now known, by Stones planted there, that he has traced the Line Northerly upon an old Line marked and blazed to the Rear of the Township.

Sworn before the Board, April 21st, 1840.

(Signed)

WILLIAM H. KILBORN.

SAMUEL S. WILMOT, of Clarke, Esq., being Sworn, Deposeth and Saith—That he was employed by the Surveyor General to make a Survey of the extension of the Town of Kingston in 1817 and 1818. In the prosecution of the work, he was guided by the Rear of the Blocks, Park Lots Nos. 1 and 2; in producing this Line, he Deponent found a Line of Stumps pointed out to him as the Line of Captain Grass's Land No. 25. He laid out

a Road of 40 feet between the Rear of Park Lots Nos. 1 and 2, and Farm Lot No. 25, thus making the Western limit of the Town on a Line from the water's edge to the intersection of the North Western Angle of the Glebe or Clergy Block C. He considered that the Town of Kingston was part of the Township of Kingston, and as within the limits of the Township. The line of Stumps spoken of, was considered as the Eastern Line of Captain Grass's Land, and he the Deponent was governed by it.

Sworn before the Board, August 20th, 1840.

(Signed)

SAMUEL S. WILMOT.

The Members of the Board went out and took a view of the whole Line in dispute along with Mr. Wilmot, but from the great alteration of the Ground since he made the Survey, he could not very clearly point out the course of the Line in some places as run by him in the Survey of the Town in 1818.

August 27th, 1840.

The Board having heard a variety of testimony relating to the subject, examined the several Surveys made, and Plans exhibited, and having viewed the Ground in question, and duly considered the premises, the undersigned do hereby make, publish and declare our decision in the matter, as follows: We do award, order and decree that the Eastern Side Line of the said Lot No. 24, 1st Concession of the Township of Kingston, shall be a Line drawn: commencing at a Stone Monument marked 24, 25, standing on or near the Bank of Lake Ontario, at the limit between the Venerable George Okill Stuart's Lot No. 24, and Lot No. 25, belonging to the estate of the late Henry Murney, Esq., in the 1st Concession of the Township of Kingston; and at a Point South 4 deg. 3 min. 16 sec. East, astronomically, of another stone Monument marked No. 24, 25, R, and 1st Concession, placed in



a hole drilled in the Rock on which it stands, filled up with lead, and the lead crossed, and also a cross on the top of the Monument, exactly at the place of the original Post at the front Angle between Lots 24 and 25,—then North 4 deg. 3 min. 10 sec. West astronomically parallel with the Boundary Line of No. 1 in said Concession, along the present Side Line between said Lots Nos. 24 and 25, to its intersection with the original Eastern Boundary Line of said 1st Concession, as run by the late John Collins, Esq. Deputy Surveyor General, in 1783, at which intersection there is a Stone Monument, marked Nos. 24, 25, placed with glass or earthen beneath it, and also marked with a cross on the top, exactly at said intersection, then along said original Eastern Boundary of said First Concession, North twenty-seven degrees six minutes West astronomically until the same shall intersect the North Easterly Limit of Store Street produced; then South-easterly along said Limit of Store Street to its intersection West of Wilmot's Western Limit of the Town of Kingston, run in 1818, and at his Western Limit of West Street; then North-westerly along said Western Limit of said Town, as run by Wilmot as aforesaid, to a Stone Monument to be planted at a point Forty Feet Westerly from the South-westerly angle of the Lot granted to the late Mrs. Magdalen Ferguson, and in a line with the Southerly Limit of the said Lot; and from thence Northerly in a direct line to a point where a Stone Monument is to be placed for the North-easterly angle of the said Lot No. 24, which point is forty feet Southerly of the Stone Monument planted by P. V. Elmore, Deputy Surveyor, in 1831, under and in accordance with the Statute of 1797, at the original South-easterly angle of Lot No. 24, in the 2d Concession of the Township of Kingston.

That durable Stone Monuments be placed at the points designated, where none are already done; that the expenses incurred in this matter shall be paid by the Claimant, when the amount thereof shall be ascertained.

IN WITNESS WHEREOF, we, the undersigned Boundary Line Commissioners, have hereunto set our hands this twenty-seventh day of August, 1840.

(Signed)

ISAAC FRAZER,  
ORTON HANCOX,  
JAMES NICKALLS.

From the foregoing Award, Judgment and Decree of the Boundary Commissioners, an Appeal was made by the Venerable George Okill Stuart, as not in accordance with the provisions of the Statute Law of the Land, to the Court of Law, of Toronto, who set aside the Award, Judgment, and Decree of the Boundary Commissioners, and established and confirmed the parallel Line of Survey as the Eastern Boundary and Side Line of Lot No. 24, in the 1st Concession of the Township of Kingston. (See Document A, in the Appendix, and Diagram in front of title page.)

## THE THIRD PART.

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### COMMUNICATIONS

On the true Lines of Survey and Boundaries of Seignory No. 1, and Common Cataraqui, afterwards, under different limits, the Township and Town of Kingston, in contradistinction to the defective Lines of Survey and erroneous Boundaries, published in the "**KINGSTON HERALD**" between the years 1839 and 1844.

MR. EDITOR,—

In your Paper of the 27th of April, 1841, two Questions are proposed to be solved for the information of the Public, and the gratification of "A Subscriber," expressed in these words:—"What is the cause of the difference between the Eastern Boundary Line of Seignory No. 1, and the Common Cataraqui, afterwards, under different limits, the Township and Town of Kingston, on the Government Map, and the same Boundary Line on the Map of Publius V. Elmore, printed and published at Hallowell, U. C. in 1836,—and which one of the two is the true Boundary?"

The writer signed "Mentor" undertakes to solve these Questions, in the decision of which the rights and interests of the inhabitants of the Township of Kingston are involved to a great extent and value; and for the settlement of the Boundaries agreeably to the original Lines of Survey, Commissioners have been appointed, to whom application must be made for the establishment of the Eastern Boundary Line of the Township and Town of Kingston, upon a true and permanent footing, and from whom an Appeal lies to the Court of Queen's Bench in Toronto.

In bringing these Questions before the Public, "Mentor" is encouraged to hope that if his statement should not prove satisfactory and conclusive, some aid may be expected and derived from Government Surveyors and first settlers in the Township, who are enabled, from knowledge in their profession, and from experience, to contribute to the removal of litigation and suppression of contention.

In the year 1783, Seignory No. 1, or the Township of Kingston, was laid out and Surveyed by Deputy Surveyor General Collins, under the authority of the Executive Government of the Province of Quebec, and it constituted a square, six miles in extent, having Monuments or Boundaries fixed and planted at its four corners. In the First Concession the respective Lots or Farms from No. 1 to No. 25, inclusive, had their limits assigned, and Monuments were planted. A Map of the Township, according to the Survey in 1783, was deposited in the Surveyor General's Office, in Quebec, accompanied by a specific Report from Deputy Surveyor General Collins, to Major Holland, the Surveyor General of the Province of Quebec.

In this Map are delineated the Boundaries of Lot No. 25, having its Eastern Side Line parallel with the Western Side of No. 1, the Western Boundary Line of Seignory No. 1, afterwards, under different limits, the Township of Kingston, and this Line constituted the Eastern Boundary Line of Seignory No. 1 and the Common Cataraqui from the year 1783 to 1785 or 1787, and afterwards, under different limits, the Township and Town of Kingston.

In the year 1785 or 1787, in consequence of a Contract between the Government and Captain Grass, a Loyalist, for the relinquishment of the Eastern half of Lot No. 25, a Line of Survey was run, with an intention to divide the Lot diagonally into two equal parts. This Line of Survey was run by Mr. Tuffy, a Deputy Surveyor under Deputy Surveyor General Collins, in

1785 or 1787, and is erroneous and defective, dividing the Lot into two unequal parts, and at variance with the Patent granted by the Government to Captain Grass in the year 1798. No Map of the Survey of Tuffly was deposited in the Surveyor General's Office, in Quebec, and consequently no scientific Report is to be found there.

In the period of time between the years 1794 and 1797, Deputy Surveyor Aitken, resident at Kingston, or Cataraqui, was authorized and commissioned by Governor Simcoe to re-survey the Township of Kingston, confining and regulating his Lines of Survey by the Monuments fixed and planted by Surveyor General Collins, in 1783, and making them the governing points of the re-survey. By reference to the Government Map, under the Executive Government of Upper Canada, the diagonal Line of Survey, dividing Lot No. 25 into two equal parts, and extending to the rear of the First Concession, constituting the Eastern Boundary of Lot No. 25, and also the Eastern Boundary of Seignory No. 1 and the Common Cataraqui, and afterwards under different limits, the Township and Town of Kingston, was run in accordance with the contract between the Government and Captain Grass, the possessor of entire Lot No. 25, in the Survey of 1783, and in agreement with the course and distance expressed in the Patent of 1798, granted to Captain Grass by the Government.

Having, in the foregoing statement of facts, given a history of the Lines of Survey, and the authority for the same, "Mentor" is enabled to solve the Questions which are the subject of enquiry : "What is the cause of the difference between the Eastern Boundary Line of Seignory No. 1 and Common Cataraqui, afterwards, under different limits, the Township and Town of Kingston on the Government Map, and the same Boundary Line on the Map of Publius V. Elmore printed and published at Hallowell, U. C. in 1836, and which one of the two is the true Boundary ?

The answer is obvious : The Line of Survey delineated on

the Map of Publius V. Elmore is erroneous and defective, because the Line was run by the Magnetic Needle, whose variation and attraction were not corrected by Mr. Tully, but following the aberration thereof, Lot No. 25 was divided into two unequal parts; and instead of extending the Line to the rear of the First Concession, it terminated about the middle of Lot No. 24 on Tully's course. In the re-survey of the Township by Deputy Surveyor Aitken, under the authority of the Executive of Upper Canada, the Line of Survey delineated on the Government Map was run correctly, dividing the Lot No. 25 into two equal parts, extending to the Rear of the First Concession, and in accordance with the contract between Captain Grass and the Government.

The answer to the Second Question, "Which one of the two is the true Boundary," is of easy solution. There is no authority to support Tully's Line of Survey, arising from the want of a Map of Survey and Report thereon, as they are not to be found in the Surveyor General's Office, in Quebec; and this is also confirmed by its incorrectness in not agreeing with the contract between the Government and Captain Grass.

There is an authority to support the Line of Survey on the Government Map, founded on the Report of Deputy Surveyor General Collins, in 1783, and on the re-survey by Deputy Surveyor Aitken, under the authority of the Executive Government of Upper Canada, between the years 1794 and 1797.

The Boundary Line of Seignory No. 1 and Common Cataraqui, afterwards, under different limits, the Township and Town of Kingston, on the Government Map, is the true Boundary.

MENTOR.

MR. EDITOR,

Having observed in your paper of the 27th ultimo, a Communication from "A Subscriber," containing two Questions relating to that part of the Eastern Boundary Line of Seignory No. 1 and Common Cataraqui, and which now, under different limits, forms the Western Boundary Line of the Town of Kingston, and believing that the instituting of Queries for public inspection and discussion, is always a legitimate, and not unfrequently an effectual mode of eliciting truth, and as your correspondent "Mentor" has favoured the public with an Answer to these Questions, I beg permission, through the medium of your columns, to ask him to indulge the public with a solution of the Questions which I herein take the liberty to propound for his consideration. And as he condemns Mr. Elmore's Map, published in 1836, because the Eastern Boundary of Lot No. 25 in the First Concession of Seignory No. 1, afterwards the Township of Kingston, does not correspond with the Government Map of the same Line, I beg, in the first place, to direct his attention to a few more discrepancies of the same character.

And First, if he will examine Mr. Elmore's Map, he will find that the Western Boundary Line of what was originally the Township of Kingston, from the front of the 1st to the rear of the Seventh Concession, is one continued straight Line; while on the Government Map by Mr. Aitken, dated March 5th, 1795, there is an offset in that Line at the Rear of the First Concession of about three hundred acres. What, I ask, causes this difference, and which of the Maps in question corresponds the nearest with the original Survey on the ground? Will "Mentor" answer this?

Secondly, if he will examine Mr. Elmore's Map, he will find that No. 19 in the Fourth, Fifth, and Sixth Concessions of the Township of Kingston, lies almost directly in Rear of Lot No. 17 in the Second and Third Concessions of the same Township,

while the Government Map bearing the date mentioned above, Lot No. 19 in the Fourth, Fifth, and Sixth Concessions lies directly in Rear of Lot No. 19 in the Second, and Third Concessions, and so on, through all the Concessions in the Township. What, may I ask, causes this difference, and which of the two Maps in question is the more correct according to the Survey? Will "Mentor" answer this also?

Thirdly, if he will examine Mr. Elmore's Map, he will find that Lot No. 12 in the Concession on the West side of the great River Cataraqui is delineated in the form of a triangle, while on the Government Map of the date referred to, he will find it represented as a Trapezoid fronting on the River. What, may I ask again causes this difference, and which of the two Maps is the more correct? Will "Mentor" answer this also?

Having, in the foregoing Queries, drawn the attention of your correspondent to some of the differences existing between an official copy of the late Alexander Aitken's map of the Township of Kingston and Mr. Elmore's published map of the same Township, I beg now to call his attention to the agreement, or rather disagreement, of the Government maps themselves.

And first, if he will examine a map obtained by the Venerable Archdeacon of this Town from the Surveyor General's Office, at Quebec, he will find that the Township of Kingston was originally intended to be six miles square; that the Lots in each Concession are represented to be about 64 chains long, and that there is an allowance for Road between every nine lots; while on the Government map obtained at Toronto, bearing nearly the same date, he will find that the Township, instead of being six miles square, is six miles by ten; that between the lots there is no allowance for Roads laid out, and that the lots by the latter map, instead of being only 64 chains long, are 105 chains, 27 links. Will "Mentor" account for this, and show us which is correct?

Lastly, if he will compare Mr. Collins' map of 1783 with Mr.



Aitken's map of 1795 or 1797, he will find on the former, that Lot No. 25 in the First Concession is only 19 chains wide, that there are no allowances for Roads, either between the Concessions or Lots, and that Lot No. 25 is a full lot; while on the latter Lot No. 25 is represented as being 28 chains wide, and allowance for Road between each of the Concessions, and Lot No. 25 a triangle, containing only 100 acres. Why this difference between the Government maps themselves, and why may not one be taken to be correct as well as another?

I am yours truly,

PHILO.

Kingston, May 22d, 1811.

MR. EDITOR,—

In perusing your paper of the 25th ultimo, "Mentor" had the satisfaction to notice a communication under the signature of "Philo," on the Eastern Boundary Line of Seignory No. 1, afterwards, under different limits, the Township of Kingston; but was much disappointed in discovering that it contained nothing in point of fact, date, and report of Survey in support of the opinion that the Boundary Line delineated on the map of Publius V. Elmore was the true limit or Eastern Boundary of Seignory No. 1 and Common Cataraqui, afterwards the Township and Town of Kingston, in contradistinction to the Line of Survey "Mentor" had stated to be the true one, and had established it by facts, dates, and likewise by documents from the Office of the Surveyor General of Quebec.

The principles and motives upon which "Philo" professes to act, in giving his communication to the public, were disregarded by him, and he did not elicit truth; because he did not inspect and discuss the two questions proposed by "A Subscriber" for the information of the public, and the gratification of the inquirer.

And it is not unfair, or unjust, on the part of "Mentor" to remark, that "Philo" has not proved to the public, and established the Line assumed on the map of Publius V. Elmore to be the true Eastern Boundary Line of Seignory No. 1 and Common Cataraqui, afterwards, under different limits, the Township and Town of Kingston; but, by his aberration from the subject under discussion, has indirectly and by implication conceded to "Mentor" that the Boundary Line on the Government map is the true one, and that the inferences from facts, dates, and documents, are satisfactory and conclusive to its establishment.

"Mentor" has much satisfaction in assuring the public, that the Boundary Line Commissioners have established the Western Boundary Line of Seignory No. 1, afterwards named the Township of Kingston, in the First Concession, on a permanent footing, and in accordance with the Line of Survey performed by Deputy Surveyor General Collins in the year 1783, under the authority of the Executive Government of Quebec. The public have reason, therefore, to infer, that the Eastern Line of Survey, being the Boundary between the Township and Town of Kingston, will also be established by the Commissioners on a true and permanent footing, and in accordance with the original Line of Survey, in 1783, by Deputy Surveyor General Collins. And thus the Eastern Boundary Line of the Township of Kingston on the Government map will be confirmed and permanently established, to the exclusion of the Line of Survey delineated on the map of Publius V. Elmore, which is erroneous and defective.

In bringing this communication to an end, "Mentor" is much gratified in the opportunity it presents of reminding the public of the debt of gratitude and acknowledgment due to the Legislators of the House of Assembly who originated, and succeeded in having the Provincial Statutes of 1798 and 1818 enacted. By the provisions of these laws the Boundary Line Commissioners are enabled and empowered to discharge the important Trust commit-

ted to them in correcting errors and defects in Surveys heretofore made in this Province, and in placing Boundary Lines upon a true and permanent footing, and by their decisions and judgments, in accordance with the Law of the Land, relieving the inhabitants of the Province from being involved in expensive litigation, and in endless uncertainty and contention. The Commissioners of the Midland District have, in a recent application before them, in the First Concession of the Township of Kingston, fulfilled their official duty ; and have decided a claim founded on the Rights in the Patent, and on Law and Equity, in a dispute between the Venerable George Okill Stuart, Claimant, and the Reverend William M. Herchmer, Respondent, Patentees, or Heirs of the Crown. In that Judgment the Commissioners have given an evidence of their integrity and impartiality ; and it is to be hoped that, in all future cases and applications for relief brought before them, they will continue to protect the rights of the Claimant against prepossession, injustice, and oppression ; and that Appeals from their decisions to the Court of Queen's Bench will be few, and confined only to special cases of difficulty and intricacy.

The Questions proposed by "Philo" in his communication on erroneous and defective Lines of Survey, to be solved by "Mentor," is a proper subject to be referred for solution to the officers of the Surveyor General's Department for Canada, formerly Upper Canada, and from whom the required information may be obtained ; as "Philo" represents them to be erroneous and defective, and not in accordance with the Government Map and original Survey in 1783, by application to the Boundary Line Commissioners, they will be corrected and placed on a true and permanent basis.

MENTOR.

MR. EDITOR,—

In your paper of April 27th, 1841, two Questions are proposed to be solved for the gratification of "A Subscriber," and for the information of the public. A third is now proposed in these words: "What is the true Line of Survey, or Boundary, of the Township of Kingston, limiting the Town of Kingston, and constituting the true, unalterable, and permanent Boundary thereof, established by Patents and the Statute Law of the Land?"

The writer under the signature of "Mentor," having, on a late occasion, and in a communication through the medium of your paper, and at the request of "A Subscriber," solved two Questions, now replies to a third, with a readiness and satisfaction equal to the importance of the inquiry, and the valuable interest it involves, and prosecutes the History of Surveying, by a statement of facts from the year 1783 to 1801, and from 1801 to 1804, and from 1804 to 1843, the present year, in order to arrive at the true Eastern Boundary Line of the Township of Kingston, limiting the Town of Kingston, and constituting the true, unalterable, and permanent Boundary thereof, established upon the permanent basis of Patents and the Statute Law of the Land.

From the year 1783 to 1785 or 1787, the Eastern Side Line of entire Lot No. 25 was the Eastern Boundary of Seignory No. 1 and Common Cataraqui, afterwards, under different limits, the Township and Town of Kingston. From the year 1787 to the year 1801 the diagonal line delineated on the Government Map, emanating from the Survey and Report of Deputy Surveyor General Collins, and the re-survey and Report of Deputy Surveyor Aitken, as being the Eastern Boundary Line of Lot No. 25, in the First Concession of Seignory No. 1, constituted also the Eastern Boundary of Seignory No. 1, afterwards, under different limits, known as the Township of Kingston, having the Common Cataraqui, or Reserve, lying between it and Fort Frontenac; and

which tract of land under different limits, and at a subsequent period or date, formed or constituted the Town of Kingston. This Boundary Line commenced at a Post or stone Monument placed at the South-east corner of Lot No. 25, in the First Concession, or front of Seignory No. 1, afterwards, under different limits, named the Township of Kingston, and it extended to the rear of the First Concession.

In the year 1801, a portion or tract of Land was taken from the Common, or Reserve Cataraqui, lying between the Eastern Boundary Line of Seignory No. 1, afterwards, under different limits, the Township of Kingston, and Fort Frontenac, and the said tract of Land was conveyed and granted in a Deed or Patent from Lieutenant Governor Hunter, issued to Sir John Johnson, and is known under the following description: "Being Park Lot No. 1, adjoining the Town of Kingston, in the Township of Kingston, containing Eighteen Acres of Land, and bounded in the Rear by the Eastern Boundary Line of Captain Michael Grass's Land, or Eastern limit and Boundary of Lot No. 25."

In the year 1804, a portion or tract of land was again taken from the Common, or Reserve Cataraqui, lying between the Eastern Boundary Line of Seignory No. 1, afterwards, under different limits, the Township of Kingston, and Fort Frontenac, and the said tract of land was conveyed and granted in a Deed or Patent from Lieutenant Governor Hunter, issued to Ann Earl, and is known under the following description: "Being Park Lot No. 2, in the Rear of the Town of Kingston, containing Ten Acres of Land, and situate in the Township of Kingston, and bounded in the rear by the Eastern Boundary Line of Captain Michael Grass's Land, or Lot No. 25."

The obvious conclusion which "Mentor" has it is his power to infer from the foregoing statement of facts, embraced in the History of Surveying, is, that the true and unalterable Boundary of Seignory No. 1, afterwards, under different limits, known as

the Township of Kingston, is that which is delineated on the Government Map, and is known by the Diagonal Line that limits the Eastern Boundary Line of Lot No. 25, in the First Concession of Seignory No. 1, afterwards, under different limits, the Township of Kingston, from the year 1785, or 1787, to the years 1801 and 1804.

And the next clear and plain, or obvious inference from the foregoing statement of facts is, that from and after the years 1801 and 1804, Seignory No. 1, embracing the additional tracts of land with their angular extension to the eastward, by Patents from Lieutenant Governor Hunter, constituted the Eastern limit or Boundary Line of the Township of Kingston, limiting the Town of Kingston from the period or years 1801 and 1804 to the year 1843, the present Time.

The commencement and termination of the Boundary Line or Eastern limit of the Township of Kingston, limiting the Town of Kingston, from the years 1801 and 1804 to the present year 1843, constituting the true, unalterable boundary thereof, founded on Patents and the Law of the Land, is known, and may be traced in the following course: Commencing at the stone Monument planted at the South-east limit, or corner of Lot No. 25, in the First Concession of Seignory No. 1, afterwards the Township of Kingston; thence running along said Boundary Line of Lot No. 25, and of Seignory No. 1, or Township of Kingston, to a point where it meets and intersects the Boundary Line of Park Lot No. 2; thence running along said Boundary to the Front of said Park Lot No. 2 in the Rear of the Town of Kingston, to a Post or Monument planted; thence running along the front of said Park Lot No. 2, to a Post or Monument dividing Park Lot No. 2 from Park Lot No. 1, or Park Selma, in the Rear of the Town of Kingston, to a Post or Monument planted; Thence running along the front of Park Lot No. 1, or Park Selma, in the Rear of the Town of Kingston, to a Post or Monument planted; thence running from said Post or Monument in a Line of direc-

tion bounding the said Park Lot No. 1, or Park Selma, till it reaches and strikes the Diagonal Boundary Line of Lot No. 25, or Boundary of Captain Michael Grass's Land, and of the Township of Kingston; thence running along said Boundary Line to the Rear of the First Concession.

The above and foregoing description gives the courses and distances of the true Line and Boundary of the Township of Kingston, and is an answer to the Question of "A Subscriber": "What is the true Line of Survey or Boundary of the Township of Kingston, limiting the Town of Kingston, and constituting the true, unalterable and permanent Boundary thereof, established by Patents and the Statute Law of the Land?"

In closing this Communication for the information and interest of the public, "Mentor" is not aware of any errors or mistakes committed by him; but should any be discovered through information from the first settlers in the Province and Town, or from authorized and licensed Surveyors, or from the Surveyor General's Office, the writer would be much gratified in having the same corrected, by being clearly stated and proved through the medium of your paper, to the satisfaction of the "Subscriber" and of the public.

MENTOR.

## THE FOURTH PART.

## COMMUNICATIONS

On Patent Rights and Statute Law of the Province of Upper Canada, or Law of the Land, published in the "KINGSTON HERALD," between the years 1839 and 1844.

MR. EDITOR,

"A Subscriber," in your paper of the 18th instant, has proposed three Questions for the information and satisfaction of the public, which, from their importance and the general interests they involve, are entitled to discussion. "Mentor," who, on a former occasion, replied to several Questions proposed by the same "Subscriber," on the true Boundary Lines of Seignory No. 1, and Common Cataraqui, afterwards, under different limits, the Township and Town of Kingston, now submits for insertion in your paper Answers to the three Questions proposed for solution.

QUESTION 1ST.—"What facts, in the early history of the Lines of Survey, and of the Province of Upper Canada, produced the erroneous and defective Boundary Lines, and consequent litigation?"

In answer to this first Question, reference must be made to the early history of the Lines of Survey in the Province, and the causes of erroneous and defective Boundary Lines, and of consequent litigation, must be developed and stated. In the year 1783, Deputy Surveyor General Collins, under the authority and by instructions from General Haldimand, Governor of the Province of Quebec at that period, surveyed Seignory No. 1, afterwards, un-



der different limits, the Township of Kingston, to which he assigned Limits and Boundary Lines by planting Monuments at the four corners of Seignory No. 1, and afterwards, under different limits, the Township of Kingston. Subsequently, in the year 1784, he placed or planted Posts at the front corners of each and every Lot, respectively, in the First Concession of Seignory No. 1, and afterwards, under different limits, the Township of Kingston, from No. 1 to No. 25, inclusive, whose extreme Eastern Boundary Line constituted the Eastern limit or Boundary of Seignory No. 1, afterwards, under different limits, the Township of Kingston. The side Lines of the respective Lots from the front Posts or monuments, in the First Concession, regulating the width and extent of each Lot in the rear of the First Concession, were not extended and run out in the year 1784; but between the years 1784 and 1792 they were run out by a Deputy Surveyor, under the authority of the Governor of Quebec, by the Magnetic Needle, or Compass. From attraction, and variation, and other causes, the Magnetic Needle or Compass produced erroneous and defective Boundary Lines. From this fallible guide, the width and extent of the respective Lots in the rear of the First Concession of Seignory No. 1, afterwards, under different limits, the Township of Kingston, did not agree with the width or extent existing between the Posts or Boundaries planted by Deputy Surveyor General Collins, in the front of the First Concession, in the year 1784. Hence originated the erroneous Lines of Survey, caused by the attraction and variation of the Magnetic Needle, or Compass; and hence arose disputes and litigation, which were strengthened and increased by the issuing of Patents that embraced as great an extent in rear as in front. The contention and controversy have continued to the present time.

In the year 1792, Governor Simcoe assumed the Government of the Province of Upper Canada, now Canada West, who granted and issued Patents to the holders of Lots of Land on the faith

of Government, embracing the Loyalists and their Heirs, conformably to the Map and Report of Deputy Surveyor General Collins. Patents were issued in accordance with the true Lines delineated on the Map, exhibiting the same width or extent given to the Lots in the rear of the First Concession, as agreed with the distance between the Posts or Boundaries planted in the front by Deputy Surveyor General Collins, in the year 1784. Hence arose the discrepancy and disagreement between the course and distance described in the Patent and the actual existing Lines of Survey on the ground. Hence arose a second cause and origin of contention, litigation, and Law Suits. The Courts of Justice could afford no relief to the litigants and disputants, without the aid, interference, and authority of the Legislature of the Country. To their power and authority application was made by both parties, for the enactment of a Law or Laws, whereby a remedy could be administered to the evil results and consequences, and whereby the Inhabitants could be relieved from incessant litigation and endless expense. Accordingly, in the years 1798 and 1818, Laws were enacted by the Legislature of the Country, (See Appendix,) recognizing and confirming the original Boundary Lines of Survey and limits of Seignory No. 1, afterwards, under different limits, the Township of Kingston, and in accordance with the Map, Survey and Reports of Deputy Surveyor General Collins, in the year 1783; confirming the courses and distances expressed in the Patents, and also recognizing and confirming the true Boundary Lines of the respective Lots in the First Concession of Seignory No. 1, afterwards the Township of Kingston, and through its extent by a parallel Line of Survey of each and every respective Lot, from No. 1, the Western unalterable Boundary and limit of Seignory No. 1, afterwards the Township of Kingston, to No. 25, constituting the Eastern Boundary and limit of Seignory No. 1, or Township of Kingston.

Thus, by the Law of the Land, or Statutes of the Province,

the disputed Boundaries or Lines of Survey, and consequent right of Possession, are settled on the basis of law and equity, and this legal and effectual remedy was adopted to correct erroneous and disputed Boundaries, and to secure and establish the rights of Property in the patentees and heirs of the Crown, on a permanent basis, and in accordance with their Patents.

**QUESTION 2ND.**—"What remedy was adopted to correct erroneous Boundary Lines of Survey, and to settle disputed Rights, by establishing them on a true and permanent basis; and in accordance with the Patents?"

In answer to the second Question, it is obvious from the facts above stated, in reply to the first Question, that there existed no relief, and none was to be obtained from the Courts of Justice. When Patents were granted and issued, the holder, by the erroneous Line of Survey, retained possession of some of the Land belonging to the patentee, through the uncertain Phraseology contained in the Deed, under these words, "more or less," affirming that the Claimant, by Patent, must relinquish his right, and be content with the less quantity of Land within the line of the Magnetic Survey, and be governed by the word "less," expressed in the Patent. On the other hand, the holder of the Patent contended, that the true Line expressed in the Patent embraced more Land than was contained within the erroneous and defective Line of Survey, and that the right to the Land was given to him by the word "more," expressed in the Patent, and confirming to him his just quantity, and no more. It is obvious, then, that the interference of the Legislature was necessary, and that no relief could be obtained from the Courts of Justice and Law, without a Law or Laws enacted for their government and guidance. In order, then, that the public may be satisfied that the Statutes of the Province, or Law of the Land, recognize the original Boundaries and true Lines of Survey, in contradistinction to the erroneous and defective ones, and that they confirm the patentee, or

heir of the Crown, in his right to the legal and true Lines of Survey expressed in his Patent, and to the possession of his quantity of Land withheld from him, a reference to the Statutes, or Law of the Land, will be conclusive.

QUESTION 3RD.—“Is the remedy of the Law of the Land or Statutes of the Province applicable to the circumstances of the Province, and the only basis on which erroneous Lines of Survey are corrected, and disputed rights settled in accordance with the Patents?”

In answer to this Question reference must be made to the Statutes of 1798 and 1818, the Law of the Land. The former is entitled “An Act to ascertain and establish on a permanent footing the Boundary Lines of the different Townships of this Province,” and the latter is entitled “An Act to ascertain and establish on a permanent footing the Boundary Lines of the different Townships in this Province, and further to regulate the manner in which Lands are hereafter to be Surveyed.” In the clauses 1, 2 and 3 of the former Statute or Law, (See Appendix,) and in the clauses 2, 3, and 4, of the latter Statute or Law, (See Appendix,) the mode and course to be pursued for the establishment of true Lines of Survey and Boundaries in contradistinction to erroneous and defective ones, is plainly declared. The Statutes or Law of the Land were enacted for the benefit and relief of the litigants, who could not obtain redress from the Courts of Justice and Law. The Law of the Land imparts to every man of the first settlers, the loyalists and their heirs, being patentees of the Crown, their quantity of Land expressed in the Patents, and no more. Thus injustice and oppression are removed. Shall justice be violated, and the Land be retained and withheld from its true owners, the patentees or heirs of the Crown, by usurped possession and illegal occupancy? Shall the monstrous opinion be maintained that from the lapse of a few years wrong shall become right, and right become wrong? That injustice shall become jus-

tice, and that there is no protection and remedy against spoliation? If Courts of Justice and Law do find precedents for such and similar decisions, it is matter of congratulation that the Legislature of the Country have exercised their power and authority in enacting the Laws that give protection and relief, and that restore to patentees and heirs of the Crown their rights and property. Herein I allude to the monstrous doctrine and legal opinion maintained by the advocates and supporters of Adverse Possession, which, being modified or qualified by circumstances, does apply to disputed cases of grantors and grantees; but is by no means applicable to this country, and to the cases of patentees and heirs of the Crown, in which the Statutes of the Province or Law of the Land, by establishing true Boundaries and Lines of Survey in contradistinction to erroneous and defective ones, and thereby securing possession, set aside this unjust principle and rule of decision, and restore to the patentees or heirs of the Crown their just quantity of Land, and no more, withheld by holders under the plea or claim of usurped occupancy.

Is the clause of limitation adduced in support of the title of adverse possession, or usurped occupancy, by its advocates and supporters, to the exclusion of the patentee or heir of the Crown, the owner of the Land by Patent and Law of the Land?

This plea or title cannot be admitted as a rule of decision, for in the Statutes or Law of the Land there is no limitation clause inserted or to be found in support of the plea, claim or title of adverse possession or usurped occupancy. By the Law of the Land, it is then obvious that patent rights are secured, justice administered, and property protected.

An appeal in all cases of illegal and unjust decision will be made from the Circuit Courts to the superior Court of Law in Toronto, and ultimately to her Majesty in Council; but it may confidently be presumed that public expectation will not be disappointed, when, after mature deliberation in cases of appeal, the

judgment of the superior Court of Law in Toronto will be pronounced upon principles not repugnant to patented rights, and not subversive of the Law of the Land.

MENTOR.

October 25th, 1842.

MR. EDITOR,

“A Subscriber” proposes the following Question to be solved by “Mentor” in your paper, as being connected with the preceding Questions that have occupied the attention of the public.

QUESTION.—“Have the Statutes of 1798 and 1818 or Law of the Land, been acted upon or carried into effect; the true Boundary Lines of Seignory No. 1, and Common Cataraqui, afterwards, under different limits, the Township and Town of Kingston, and the Lines of Survey of the respective Lots in the Township of Kingston, been recognized and established, on a permanent basis; thereby securing to the Patentees or Heirs of the Crown, the possession of their Land, and setting aside the title and claim of illegal and unjust occupancy.”

In answer to this Question, the facts and circumstances that affect and are connected with it, and were developed and stated between the years 1818 and 1844, must be enumerated for the information and satisfaction of the public, in order that “Mentor” may arrive at the conclusion, that the Legislature have enacted the Statutes of 1798, 1818, 1837 and 1838, for the purpose of securing to the Patentees, or Heirs of the Crown, the rightful owners of Land, their property, and also of enabling the Courts of Law in their decisions to set aside the title or claim of illegal and unjust occupancy.

In the year 1833, or about that period, on application by the Ma-

gistrates of the Midland District to the Lieutenant Governor of the Province, praying that he would direct the Monuments or Boundaries of the Township to be ascertained, established, and erected, agreeably to the original Survey by Deputy Surveyor General Collins, in the year 1783, the Western Boundary Line of Seignory No. 1, afterwards named the Township of Kingston, was ascertained and re-surveyed by W. H. Kilborn, Deputy Surveyor, and established on a permanent basis, conformably to the provisions of the Statute of 1798, the Law of the Land.

In the years 1837, 1838, Boundary Line Commissioners were appointed under a Statute of the Province or Law of the Land, enacted at that time, who were empowered to hear and determine all matters of dispute touching any Line or Lines, Boundary or Boundaries, of any Township, Concession, or Lot, or of any part or parts of any Lot or Lots, within their respective Districts, and to ascertain, fix, and determine, such Lines, Boundaries, or Divisions as shall appear just and reasonable, and to give and pronounce such judgment and decree therein. The Statute or Law provides farther that the said Boundary Line or Lines to be run by an authorized Surveyor, in accordance with the provisions of the Statute or Law of 1818, and that Monuments shall be planted on the said Boundary Line or Lines: and moreover that the award, judgment, or decree of said Commissioners shall be published three times in the Gazette of this Province, and in a newspaper of the District, wherein such a Line shall be. (See Appendix.)

In the year 1839, upon the application of claimants in the Midland District, the Board of Boundary Line Commissioners held their sittings in the Town of Kingston, and other places, and gave a hearing to the Memorials of the claimants. In nearly all the cases submitted to them, the true Boundaries and Lines of Survey of Lots were ascertained, Monuments were planted, and their award, judgment, or decree, was published three times in the Ga-

zotte of the District where such a Line lay, and in the Gazette of this Province. Thus was possession obtained by the Claimants of their just quantity of Land by the decision by award, judgment or decree of the Board of Boundary Line Commissioners, whose power and authority was derived from and under the Statute of 1837, 1838, or Law of the Land, enabling them to set aside erroneous and defective Boundary Lines, to establish the true ones on a permanent basis, and thereby to put the Claimants, being Patentees or Heirs of the Crown, into possession of their Land, withheld from them by illegal and unjust occupancy.

From the above statement of facts and of those in a former Communication, in the history of Surveying, in connexion with the Statutes of the Province, or Law of the Land of 1798, 1818, and 1837, 1838, provided and enacted for the purpose of establishing true Boundary Lines of Survey on a permanent basis, in contradistinction to erroneous and defective ones, and to confirm the Patentees or Heirs of the Crown in possession of their Land; "Mentor" has arrived at the legal and just conclusion—that the Law of the Land or Statutes of the Province, are solely applicable as a remedy, and the sole basis on which erroneous Lines of Survey are set aside, and disputed Rights are settled; and that in support and confirmation of this opinion, the Statutes of the Province, or Law of the Land, have been acted upon, or carried into effect; thereby securing to the true owners of Land their rights of property, and setting aside the plea, claim and title of usurped possession, or illegal and unjust occupancy.

November 1st, 1842.



MR. EDITOR,

Having perused the Communications of "Mentor," on the subject of Boundary Lines of Survey and Patented rights, wherein it was clearly stated, and satisfactorily proved for the information of the Public, that the Law of the Land is the Rule of Decision, setting aside the title or claim of illegal and unjust occupancy founded (as supposed by many,) on the application of the Statute and common Law of England to the circumstances of the country; "A Subscriber" renews a request, and proposes, for solution in your paper, the following Question, as reasonably and necessarily emanating from the 3d Question in the preceding Communications.

QUESTION.—"Is the Statute and common Law of England the Rule of decision for Boundaries, Lines of Survey, and Patent Rights, when the Laws of England, in cases of Patentees or Heirs of the Crown, are inapplicable to the circumstances of the country, and are at variance and repugnant to the Statutes of the Provincial Legislature enacted in the years 1798, 1818 and 1837, 1838, as the Law of the Land, and sole Rule of Decision in the cases of Patentees or Heirs of the Crown, against the claim of usurped possession or illegal occupancy."

In answer to this Question, the same course must be pursued as was adopted by "Mentor" in a statement of facts, in reference to the History of the Country, in its varying circumstances, from the year 1783 to the year 1844; thereby shewing that the Laws of England are inapplicable, as a Rule of Decision, for Boundaries, Lines of Survey, and Patented Rights, and if adopted would subvert and destroy those Rights, and, setting aside the Law of the Land, would countenance and embolden illegal occupancy, or usurped possession.

For the more clear and distinct understanding of the Question, it is necessary to divide the whole period of time from the year

1783 to 1844, into several separate portions ; assigning for one, the period from 1783 to 1792 ; to another from 1792 to 1818 ; and to a third from 1818 to 1837, 1838, or the present year, 1843 ; in order that each separate portion of the whole may receive its due consideration, and thus facilitate the settlement of Disputed Rights and conflicting interests, by furnishing a satisfactory answer to an inquiry of high importance and concern to the inhabitants of the Province.

In the period of time between the years 1783 and 1792, nothing was accomplished beyond the Survey of Seignory No. 1, afterwards, under different limits, the Township of Kingston, and the adjacent Seignories, or Townships, in the Bay of Quinte and on the River St. Lawrence, by Deputy Surveyor General Collins, who assigned to the first settlers, the Loyalists, their respective Lots of Land, by fixed Boundaries on the Ground, and Lines of Survey delineated on a Map and Maps ; of which a copy, or copies, accompanied by a Report, were recorded in the Surveyor General's Office in Quebec. During the period above stated, disputes commenced between the holders of Lots of Land respecting the correctness of the Lines of Survey performed by the Deputy Surveyors, but as the first settlers, or Loyalists, occupied their Farms, or Lots of Land, on the Faith of Government, and no Patents had yet been given, or could be issued to them until the Province of Upper Canada and its Government was established, as distinct and separate from the Province of Quebec, there was no Law, or Rule of Decision, to which an Appeal might be made by the parties at variance. The conclusion, then, is obvious : neither the Statute, or common Law of England, nor the Law of the Land, were applicable to the circumstances of the Country for giving relief to the litigants and disputants ; inasmuch as the former had not been introduced, and the latter had no existence ; and therefore the Question of Right and Possession continued unsettled for the period from 1783 to 1792.

In the period of time between 1792 and 1818, Patents were granted by Governor Simcoe and succeeding Governors, and issued to holders of Lots of Land, of the respective dates of 1796, 1798, 1801, 1804, and in subsequent years to the present time, 1843, conformably to the Survey, Map and Report of Deputy Surveyor General Collins, and in contradistinction to the erroneous and defective Lines of Survey run by the Deputy Surveyors. In consequence of the issuing of Patents, or Grants, of Lots of Land by the Government, the Patentees were secured and protected in their Rights by true Boundaries and Lines of Survey, as expressed in the Patents or Deeds, excluding the claim of supposed legal occupancy, founded upon the Statute Law of the Land 32d George 3d, 1792, set aside and virtually repealed by subsequent Statutes, or Law of the Land, enacted in 1798, 1818, and 1837, 1838, for the relief of Patentees and Heirs of the Crown.

The conclusion, or inference, is obvious: The short space of time that elapsed between the year 1792 and the years 1796, 1798, 1801 and 1804, was a bar and impediment to the claim and plea of Adverse Possession; it being a title which has its advocates and supporters in the Courts of Law and Justice; but is set aside by the Patents, and the interference of the Legislature who enacted the several Statutes or Law of the Land 38th George 3d, 1798, 59th George 3d, 1818, and 1st Victoria 1837, 1838, as a remedy providing against the claim and plea of illegal occupancy and usurped possession.

As contention and litigation continued to a period subsequent to the year 1792, and no relief to the litigants was obtained from the Courts of Law and Justice, aid was supplicated by the parties from the Legislature, who enacted the Statutes of 1798 and 1818, as the Rule of Decision, and which operated as a bar or impediment to the claim and plea of Adverse Possession, or illegal and usurped occupancy. By the enactment of these Statutes, 38th of

George 3d, and 59th of George 3d, (See Appendix,) a Rule of Decision was provided for the Courts of Law and Justice in the settlement and adjustment of disputed rights, by protecting the Patentee, or Heir of the Crown, against illegal occupancy and usurped possession, by an erroneous Line of Survey.

The conclusion, then, from the interference of the Legislature, who enacted the above Statutes, is obvious; for thereby the operation of the Statute of the 32d of George 3d, was confined to the cases of Grantors and Grantees, or their Heirs, and the Rights of Patentees, or Heirs of the Crown, were recognized and confirmed by the Law of the Land, or Statutes of the Province, excluding the claim and plea of Adverse Possession, a title adverse to Patented Rights, adverse to the Law of the Land, and adverse to Justice, but favourable to spoliation, injustice, and oppression.

In the period between 1819 and 1822, a Suit was sustained in the Court of Justice by *KIRBY versus STUART*, in an Action of Ejectment. In the issue of this case, the Patented Rights were secured by the decision of the Court in favour of the Astronomical Line of Survey, supposed to be designated in the Patent, and to the exclusion of the magnetic, erroneous and defective one. The Plaintiff was put into possession by the authority of the Court. Likewise, in the year 1822, a similar decision was obtained from the Court of Law and Justice in an Action of Ejectment, *STUART versus MURNEY*, and the Plaintiff obtained possession of his Land by the Astronomical Line of Survey, supposed to be expressed in the Patent as a due North course.

In the years 1837, 1838, a Statute was enacted by the Legislature of the Province, authorizing the establishment of Boards of Boundary Line Commissioners within the several Districts in the Province. They were commissioned and empowered to hear and determine all matters of dispute touching any Line or Lines, Boundary or Boundaries, of any Township, Concession, or Lot, or of any part or parts of any Lot, or Lots, within their respec-

tive Districts, and to ascertain, fix and determine such Lines, Boundaries or Divisions, as shall appear just and reasonable, and to give and pronounce such Judgment and Decree, (See Appendix.) The Statute, or Law of the Land, farther provides that the said Boundary Line Commissioners shall direct the Boundaries or Lines to be run by an authorized Surveyor, and that the Monuments shall be planted on the said Boundary Line or Lines. Moreover, that the Award, Judgment, or Decree, of said Commissioners, shall be published three times in the *Gazette* of this Province, and in a Newspaper of the District, wherein such a Line shall be, (See Appendix.)

In the year 1839, upon the application of Claimants in the Midland District, the Board of Commissioners for the District held their sittings in Kingston, and other places within the District, and gave a hearing to the Memorials of Claimants. In nearly all the cases submitted to them, the true Boundaries and Lines of Survey were ascertained, Monuments were planted, and their Award, Judgment, and Decree was published three times in the *Gazette* of the Province, and in a Newspaper of the District, wherein such a Line lay, (See Appendix.)

In the year 1839, a claim for a true Line of Survey in contradistinction to the erroneous and defective ones, (being the magnetic and astronomical ones,) and in accordance with the Patent and Law of the Land, was instituted and submitted, by Memorial to the Board of Commissioners, by STUART the Claimant, *versus* HERCHMER, the Respondent. The Decision of the Commissioners established the parallel Line of Survey laid down in the Map of Deputy Surveyor General Collins, and as expressed in the Patent, and recognized and confirmed by the Statute, or Law of the Land, 1st Victoria, 1837, 1838, to the exclusion of the Reverend William M. Herchmer, and to the setting aside of the erroneous Line of Survey. The Claimant, the Venerable George Okill Stuart, was put into possession of his just quantity of Land

and no more, by a true Line of Survey, or Boundary, established on a permanent basis, and in accordance with the Patent and Law of the Land. [See Memorial of the Ven. George Okill Stuart; Decision and Award of Boundary Line Commissioners in part 1st of the foregoing pages; Answer to three Questions in part 4th; as also the Statutes of the Province 38th George 3d, 59th George 3d, and 1st Victoria 1837, 1838, in the Appendix, and the Diagram, in front of Title Page.]

From the preceding statement of facts, and the development of the History of the Country, and its Surveys, in their varying circumstances from the year 1783 to the present year, 1843, "Mentor" is enabled to arrive at the legal and just conclusion, that the Statutes of the Province 38th of George 3d, 59th George 3d, and the 1st Victoria, or the Law of the Land, is the sole Rule of Decision in the cases of Patentees or Heirs of the Crown, to the exclusion of the plea, claim, or title of Adverse Possession, which is limited to the cases of Grantors and Grantees, who are not embraced within the provisions and protection of the aforesaid Statutes and Law of the Land.

In maintaining the opinion herein expressed, "Mentor" has much satisfaction in assuring the public, that his sentiments and opinion have been confirmed by the Decisions and Judgments of the Courts of Law and Justice in the foregoing cited cases, between the years 1819 and 1823, and also in the case decided by the Boundary Line Commissioners, who gave possession to the Claimant, the Venerable George Okill Stuart, in the year 1839, to the exclusion of the Respondent and Holder by usurped occupancy, the Reverend William M. Herchmer, in accordance with Patent Rights, and the Statutes of the Province, or Law of the Land.

Should, however, the opinion expressed to the public be at variance with the view of the subject entertained by the advocates and supporters of Adverse Possession, "Mentor" is aware that

the public would derive information from their Communications, and the "Subscriber" would be gratified in being favoured, through the public Press, with their sentiments and opinion on a question that has involved in its discussion the feelings and interests of the community.

MENTOR.

December 20th, 1842.

MR. EDITOR,

"A Subscriber" and the public having been favoured with satisfactory information, derived from the recent Communications of "Mentor," published in the "**KINGSTON HERALD**," proposes for solution the following Question, arising from the silence of the advocates and supporters of the title of Adverse Possession, to the setting aside of Patent Rights and the Law of the Land.

QUESTION.—"What Statute, or Law of the Land, is adduced in support and to maintain the title of Adverse Possession, to the setting aside of Patent Rights and Law of the Land?"

In answer to the Question, "Mentor" is aware that it is unnecessary to repeat what has been published for the purpose of shewing that the Statute and common Law of England is inapplicable to the circumstances of the Country, or Province, in the cases of Disputed Boundaries and Patent Rights of Possession between the Patentees or Heirs of the Crown, and the holders or occupants by usurped possession. By the authority and provisions of the Statutes or Law of the Land, 38th of George 3d, 1798, 59th of George 3d, 1818, the Rule of Decision is established for the government and guidance of the Courts of Law and Justice in the

cases of Disputed Boundaries and Lines of Survey between Patentees or Heirs of the Crown. And the Statute of the Province, or Law of the Land, 1st of Victoria 1837, 1838, by its authority and provisions, establishes the right of possession in the Patentees or Heirs of the Crown, and becomes the sole Rule of Decision in the Courts of Law & Justice, to the subversion of the plea, claim, and title of the holders or occupants by usurped possession, and for this evident reason, that no clause of limitation is inserted in the afore-named Statute in favour of the claim or title of the spoliators, and to the rejection of the Patentee or Heir of the Crown, the lawful owner of the Land.

“Mentor” undertakes to call the attention of the public, arising from the silence of the advocates and supporters of Adverse Possession.

The Law that is adduced by them, in support of their opinion, is known under the title of 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, and is better known under the name of the Limitation Act.”

It is necessary to recur to the Statute 4th of William 4th, 1834, which embraces and embodies the Statute and common Law of England, under certain modifications, and has become the Law of the Land; and further to ascertain the objects contemplated and embraced within its provisions. They are thus expressed—“To make certain alterations in the Law of Inheritance respecting the conveyance of Real Property by Devise and by Deed, and in regard to Dower, and the limitation of Actions, and Suits, and to simplify the remedies for trying the Rights thereto.”

It is obvious, then, and to be remarked, that the Statute, or Law 4th of William 4th, 1834, enacted for important objects and purposes, is operative in all cases that can from their character be embraced, and come, or be brought under its cognizance and authority, and that relief and justice will be obtained in all cases,



when application has been made to the Courts of Justice and Law within the period or lapse of twenty years.

It is also obvious and to be remarked that cases of Lines of Survey and Boundaries, and Patent Rights to Land, are not embraced within the provisions of the 4th of William 4th, 1834; nor can they, by any constructive interpretation of the Statute, be included within the cognizance, authority, and enactments of that Law, having a limitation clause.

And it is further obvious, that the Statutes 38th of George 3d, 1798, 59th of George 3d, 1818, and 1st of Victoria, 1837, 1838, were enacted between the years 1792 and 1843, the present year, for the specific and important object of embracing all cases of disputed Boundaries, Patent Rights, with possession of Land, within the true and legal Lines of Survey under the cognizance of the Law of the Land, to the rejection of Claimants by Adverse Possession, founded on the 32d of George 3d, 1792.

And it is of importance farther to remark, that in the provisions of the afore-named Statutes, or Law of the Land, there is no restriction, or limitation clause, whereby it is enjoined upon the Patentees, or Heirs of the Crown, to bring their Suits within the limited period of Twenty years, and in the event of their inability, or neglect to do so, the Holder by the plea, claim, or title of Adverse Possession, or usurped occupancy, is enabled to maintain a Right to the Land, and to exclude the Patentee, or Heir of the Crown, from Possession, investing spoliation and injustice with the character of legal Right and just Possession.

"Mentor," in reply to the foregoing Question, repeats the opinion, founded on Law and Justice, that the Statutes of the Province, or Law of the Land, 38th of George 3d, 59th of George 3d, and 1st of Victoria, 1837, 1838, is the Rule of Legal Decision and protects the Patentee, or Heir of the Crown, in the possession of his quantity of Land, by the true Lines of Survey, or Boundaries, expressed in the Patent, and recognized and confirmed by

the Law of the Land, to the exclusion of the Holder by illegal and usurped occupancy, founded on erroneous and defective Lines of Survey, but set aside by Law and Justice.

February 24th, 1843.

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In closing this publication, the Author (under the signature of "Mentor") of the foregoing Communications, with the accompanying Documents, is enabled to express and submit to the Reader and to the Public a legal opinion and consequent Decision of the Question, in maintenance of Patent Rights and Possession of Land to the exclusion of the Holders or Occupants by the title of Adverse Possession.

"Mentor" is aware, and fully sensible, that the Laws of England, as introduced into this Country, or Province, by the Statute or Law of the Land, the 32d of George 3d, 1792, Chapter 1st, Clause 3d, is the Rule of Decision for all cases of Disputed Boundaries, or Lines of Survey, and Rights to Property in Land between the Grantors and Grantees of Deeds; but with the exception of the Patentees, or Heirs of the Crown, their Heirs and Descendants, and for whose relief the Statutes 38th George 3d, 59th George 3d, 1st Victoria, 1837, 1838, were enacted and provided. In this first class of cases, the Patentees of the Crown, the Monuments or Boundaries of the several Lots were fixed and planted, and the Lines of Survey or Boundary Lines of the several Lots, or Tracts of Land, were run and established between the years 1783 and 1792, at a date prior to the introduction of the English Laws into the Province as a Rule of Decision. The Patents that followed, and were granted, and issued subsequently

to the year 1792, are in accordance with the Map of the Survey performed in 1783 under the Executive Government of Quebec, and in agreement with the Boundary Lines therein delineated. For the farther confirmation of Patent Rights, a Rule of Decision was established in the case of Boundaries and Lines of Survey for the Government, and direction of the Courts of Law and Justice, by the interference of the Legislature, who enacted the Laws of 1798 and 1818 for that purpose.

Moreover, with respect to the recovery of Possession of Land held by erroneous and defective Lines of Survey, under the plea, claim, and title of Adverse Possession of Twenty years, the Statute of the Province, or Law of the Land 1st Victoria, 1837, 1838, afforded relief to the Patentees, or Heirs of the Crown, and excluded the occupants by the provisions of the Statute, or Law of the Land, from holding under usurped and illegal occupancy. By this Statute, or Law, a Court of Commission was constituted under the title of Boundary Line Commissioners, who have with an integrity and impartiality creditable to them, in numerous cases, and in a few of special difficulty, in the Midland District, put into effect the provisions of the aforesaid Statute and Law, 1st Victoria 1837, 1838, by establishing true Lines of Survey, or Boundaries, in contradistinction to defective Lines of Survey and erroneous Boundaries, and by putting the Patentees, or Heirs of the Crown, into full Possession of their Patent Rights, and of their just quantity of Land, to the exclusion and expulsion of the Holders by illegal possession and usurped occupancy.

In the other and second class of numerous cases that do not come under, and are not included among Patentees, or Heirs of the Crown, the claims and rights of Grantors or Grantees being disputants, or litigants, are heard and decided in the Courts of Law and Justice. The Statute and common Law of England becomes the Rule of Decision in these cases. They are cases of dispute subsequent in date to the introduction of the English

Laws into the Province by the Statute 32d of George 3d, 1792; and are not embraced within, and cannot come under the provisions of the Statute or Law 1st Victoria 1837, 1838, 38th of George 3d, and 59th of George 3d, 1818. They are heard and adjudged in the Courts of Law and Justice according to the circumstances and nature of each case in the contract between the two parties, the Grantors and Grantees. Not so, however, in the case of dispute and litigation between the Patentees and Heirs of the Crown, whose rights are secured to them by the Patent and by the provisions of the Statute Law of the Land 38th of George 3d, 59th of George 3d, 1818, and 1st Victoria 1837, 1838, the two former establishing the true Boundaries, and the latter securing to them possession of the Land between the erroneous Lines of Survey and the true Boundaries which were enacted for the government, guidance and adoption of the Courts of Law and Justice.

In conclusion, the Author under the signature of "Mentor" appeals to the sense of right and wrong, of spoliation and protection, entertained by the Patentees, or Heirs of the Crown, the Loyalists, their Heirs and descendants, and suggests to them the duty incumbent on them to maintain their claims, as a pledge of gratitude from them to the Government, for the Land granted by the King as the reward of their fathers' loyalty, and as an acknowledgment from the Government of the privations and sufferings endured by them in support of their King and Sovereign, and his Authority, and in defence of the Country formerly subject to his paternal and mild Government. This Province was the Asylum provided by his Majesty George the Third, of revered memory, for faithful and attached subjects, who after their settlement in a wild and uncultivated wilderness, soon experienced the liberality of a generous and just Sovereign. His munificent Donations of Land, compensation for their losses in Property, and supplies for the three first years of the settlement amidst obstacles and difficulties nearly insuperable, are not equalled in the history of any people or nation under any other Government.

With a recollection of these rewards, and under a sense of their legal and just rights, the Author under the signature of "Mentor" is fully aware and sensible that the Loyalists, their heirs and descendants, do and will regard usurped occupancy, and illegal possession, and encroachment upon their Patented Rights and estates, with feelings of indignation and discontent towards the holders by injustice and spoliation ; but towards the Government, they will cherish the feelings of gratitude and loyalty, and moreover they will justly appreciate the legacy of Land left to them by their fathers, and to which they will adhere with associations of fond attachment.

The Loyalists, their Heirs and Descendants, will submit their claims to the Courts of Law and Justice, reposing full confidence in the integrity, impartiality and independence of men, who are commissioned to administer Justice, and who will be guided in their decision and judgment by a strict maintenance of the rights of the Patentees and Heirs of the Crown, and a conscientious adherence to the provisions of the Statutes of the Province or Law of the Land, establishing the Boundaries and Lines of Survey on a permanent basis, and thereby securing the rights of Land in the original Patents to the Loyalists, their Heirs, and Descendants.

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## APPENDIX.

**Act 59th of George 3d, 1818.**

AN ACT to ascertain and establish, on a permanent footing, the Boundary Lines of the different Townships in this Province, and further, to regulate the manner in which Lands are hereafter to be Surveyed.—[Chap. 14, 59th George 3d.

SECTION 2d.—And whereas it is necessary to extend the provisions of an Act, passed in the Thirty Eighth year of his Majesty's Reign, entitled "An Act to ascertain and establish, on a permanent footing, the Boundary Lines of the different Townships," Be it enacted, by the authority aforesaid, that all Boundary Lines of Townships, all Concession Lines, Governing Points, and all Boundaries, Posts or Monuments, which have been placed or planted at the front angles of any Lots, or Parcels of Land, in the first Survey, intended to determine the width of such Lots, or parcels of Land, provided such Survey has been performed under the authority of the Executive Government of the late Province of Quebec, or under the authority of the Executive Government of this Province, shall be, and the same are hereby declared to be the true and unalterable Boundaries of all and every of such Townships, Concessions, and Lots, respectively; and that every Lot or Parcel of Land, respectively, whether it shall, upon admeasurement, be found to contain the exact width or more or less than what may be expressed in any Letters Patent, Grant, or other instrument, in respect of such Boundaries or Lines mentioned and expressed, shall embrace the whole width contained between the front Posts, Monuments, or Boundaries, planted or placed at the front angles of any such Lot, or Parcel of Land, as aforesaid, in such original Survey, as aforesaid, and no more nor less, and every half or quarter of such Lot, or Parcel, its proportion, any thing in such Patent or Instrument to the contrary thereof in any wise notwithstanding.

SECTION 3d.—And be it further enacted by the authority aforesaid, That the Boundary Line of each and every Township, on

that side from which the Lots are numbered, shall be, and the same is hereby declared to be the course, or courses, of the respective Division, or Side Lines, throughout the several Townships and Concessions of this Province, respectively, and all Surveyors shall and are hereby required to run all Division or Side Lines, which they may be called upon by the owner, or owners of any Lands, to Survey, to correspond with, and be parallel to the respective Town Lines, from whence the Lots are numbered, as aforesaid.

**SECTION 4th.**—And be it further enacted by the authority aforesaid, That every licensed Surveyor, when, and as often as he is employed to run any Side Line or Limit between Lots or Lines, required to go the same course of the Side Lines or limits between Lots in the Concession in which the Land to be Surveyed lies, shall, if it has not been done before, or if it has been done, but the course cannot at such time be truly ascertained, determine, by a true meridian Line, or some other infallible method, the true course of a straight Line between the front and rear angles of such Concession, on that Boundary of the Township from which the Lots are numbered, and run such Line or Lines as aforesaid, truly parallel to such course, which is hereby declared, and shall at all times be deemed and taken to be the true course of such Lines in the several Townships of this Province.

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### **Act 38th of George 3d, 1798.**

**AN ACT** to ascertain and establish on a permanent footing the Boundary Lines of the different Townships of this Province.

Whereas it is expedient and necessary to ascertain and establish, upon some permanent principle, the Boundary Lines of the different Townships within this Province, and distinctly to preserve them when so ascertained and established: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled an "Act to repeal certain parts of an Act passed



in the fourteenth year of his Majesty's Reign, entitled an Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of said Province, and by authority of the same, that Stone Monuments, or Monuments of other durable materials, shall be placed at the several corners, governing points, or off-sets, of every Township that hath been surveyed, or may hereafter be surveyed; and also, at each end of the several Concession Lines of such Townships, and that Lines from the Monuments so erected, or to be erected, be taken and considered as the permanent Boundary Lines of such Townships and Concessions respectively.

2d. And be it further enacted by the authority aforesaid, that the Monuments above directed to be placed as afore-mentioned, shall be placed under the inspection and order of the Surveyor General of this Province.

3d. And be it further enacted by the authority aforesaid, that the courses and distances of the said Boundary Lines so ascertained and established, shall, on all occasions, be, and be taken to be, the true courses, and distances of the Boundary Lines of the said Townships and Concessions, whether the same do, or do not, on actual measurement, coincide with the courses and distances in any Letters Patent, or Grant, or other instrument, in respect of such Boundary Lines mentioned and expressed.

5th. And be it further enacted by the authority aforesaid, that it shall not be necessary for the Surveyor General to proceed to carry the provisions of this Act into execution, until an application for that purpose shall have been made to the Governor, Lieutenant Governor, or person administering the Government, by the Magistrates of any District or County, not being part of a District, in Quarter Sessions assembled, signifying that the erecting of such Monuments as aforesaid is necessary and expedient for some particular Township or Townships within such District or County.

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### **Act 1st Victoria, 1837, 1838.**

**AN ACT** to authorize the establishment of Boards of Boundary Line Commissioners within the several Districts of this Province.

#### **PREAMBLE.**

**CLAUSE 1st.**—Whereas the errors or defects in Surveys here-

tofore made within this Province, are found to occasion disputes and differences between individuals touching the Boundaries of Townships, Concessions and Lots, and to involve parties in expensive litigation; and whereas it is expedient to provide a remedy for these evils by the appointment of Commissioners in every District, with the powers and under the restrictions hereinafter expressed; be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and House of Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "an Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's Reign, entitled, 'an Act for making more effectual provision for the Government of the said Province,' " and by the authority of the same, that from and after the passing of this Act, it shall and may be lawful for the Lieutenant Governor of this Province, to nominate and appoint three fit and proper persons in each and every District of this Province, (one of whom shall be a Licensed Surveyor,) to form a Board to be known by the style and title of **THE BOUNDARY COMMISSIONERS** of the District for which they shall be so respectively appointed; and the said Commissioners for the time being, shall have power and authority, and are hereby authorized and required, to hear and determine all matters of dispute, touching any Line or Lines, Boundary or Boundaries, of any Township, Concession, or Lot, and to ascertain, fix, and determine such Lines, Boundaries, or Divisions as shall appear just and reasonable, and to give and pronounce such judgment and decree therein, and to award execution thereupon for such costs as shall, by the said Commissioners, be ascertained to have been reasonably incurred against the goods and chattles of all and every, the person and persons whom they shall decree to pay the same, as to them, or any two of them, shall seem just in Law or Equity; and that the acts, orders, judgments, and decrees of the said Commissioners, or any of them, shall be final and conclusive between the Parties, their Heirs and Assigns, except in cases of Appeal, to be brought within the time and in the manner hereafter mentioned; Provided always that the said Commissioners shall be appointed, and hold their office during the pleasure of the Lieutenant Governor, and no longer.

**CLAUSE 7th.**—And be it further enacted by the authority aforesaid, that previous to the hearing of any question under the provisions of this Act, the said Commissioners shall, if required by

any of the parties interested, proceed to and view the Boundary or Boundaries in dispute, in their own proper persons; and it shall be lawful for them, and they are hereby required, to employ a competent Surveyor to make a Map or Survey thereof, which Map shall be annexed to and filed with their judgment and decision as hereinafter provided.

**CLAUSE 17th.**—And be it further enacted by the authority aforesaid, that every Judgment and Decision of the said Commissioners, in case there be no Appeal against the same, shall be filed on the records of the said Court of Chancery, within one Calendar month from the expiration of the time of appealing against the same, together with the said plan of the Boundaries hereintoforesaid directed to be made; and the Judgment and Decree, and all orders of the said Courts of King's Bench and of Chancery, establishing any Line or Lines of Boundary upon such an Appeal, shall, together with said Plan be filed with the Register of the County where such Boundaries shall be situate, within six months after the determination and pronouncing of the same; and the said Register shall be entitled to a fee of one shilling and three pence, and no more, for entering the same of Record; and a copy of said Map duly authenticated, and of all Judgments, Decrees, and Orders affecting any Line or Lines of Boundary, shall in like manner, be filed in the Office of the Surveyor General of this Province, for public use and reference; and such final Order, Judgment, or Decree, shall in all cases, be published three times in the *GAZETTE* of this Province, and in a Newspaper of the District wherein such Line shall be, if a Newspaper shall be published therein, and if not, in the Newspaper of the adjoining District.

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### In the Queen's Bench.

GEORGE OKILL STUART, } JUDGMENT ON APPEAL FROM  
AND } BOUNDARY LINE COMMIS-  
ALEXANDER & OTHERS. } SIONERS.

UPON an Application of George Okill Stuart to have his Eastern Boundary of Lot Number Twenty-four in the 1st Concession Township of Kingston, produced to its full length, and made parallel with the Western Boundary of Lot Number One in the same Concession—

The Commissioners have made the following Decree—"That the Eastern Side Line of the said Lot No. 24 in the 1st Concession of Kingston, shall be a line drawn, commencing at a Stone Monument marked 24-25, standing on or near the bank of Lake Ontario, at the limit between the Venerable George Okill Stuart's Lot 24 and Lot 25, belonging to the estate of Henry Murney, in the 1st Concession of the Township of Kingston, and at a point South 4 deg. 3 min. 10 sec. East astronomically of another Stone Monument marked 24-25 R, 1st Con. (placed in a hole drilled in the rock on which it stands, filled up with lead, and lead crossed, and also a cross on the top of the monument,) exactly at the place of the original post at the front angle between said Lots 24 and 25—Then North 4 deg. 3 min. 10 sec. West astronomically parallel with the Boundary Line of No. 1 in said Concession, along the present Side Line between said Lots 24 and 25, to its intersection with the original Eastern Boundary Line of said 1st Concession as run by the late John Collins, Esq., Surveyor General in 1783, at which intersection there is a Stone Monument marked 24-25, placed with glass or earthenware beneath it, and also marked with a cross on the top exactly at said intersection—Then along said original Eastern Boundary Line of said 1st Concession North 27 deg. 6 min. West astronomically until the same shall intersect the North Easterly Limit of Store Street produced—Then South Easterly along said Limit of Store Street to its intersection West of S. Wilmot's Western Limit of the Town of Kingston run in 1818, and at his Western Limit of West Street—Then North Westerly along said Western Limit of said Town as run by Wilmot aforesaid, to a Stone Monument to be planted at a point 40 feet Westerly from the South Western angle of the Lot granted to the late Mrs. Magdalen Ferguson, and in line with the Southerly Limit of said Lot—and from thence Northerly in a direct line to a point where a Stone Monument is to be placed on the North Easterly angle of said Lot No. 24, which point is forty feet Southerly of the Stone Monument planted by P. V. Elmore, Deputy Provincial Surveyor, in 1831, under and in accordance with the Statute of 1797, at the original South Easterly angle of Lot No. 24, 2d Concession of Kingston, and in line with the Eastern Limit of the said Lot No. 24, 2d Concession of Kingston;—That durable Stone Monuments be placed at the points designated where not already done; that the expenses incurred in this matter shall be paid by the Claimant, when the amount thereof shall be ascertained."

**CHIEF JUSTICE ROBINSON.**—In this case, as in *Murney and Markland*, decided this term, upon Appeal from the same Boundary Line Commissioners, we do not find in the Award of the Commissioners any statement of the facts or principles on which they found their decision; we are left to gather it as we can from the return which they have made of the evidence. This case, though it brings under our review most of the same facts regarding the Survey of the Township of Kingston, which it was necessary to consider in the other Appeal already referred to, does not depend on the same considerations for its decision. In the one case, we were asked to determine the direction of a Side Line which, it is quite clear upon the testimony, was not intended, according to the Plan of Survey, to run parallel to the Township Boundary upon that side of the Township from whence the Lots are numbered. In this case, the original Plan of Survey, the Quebec Plan, Mr. Aitken's Plan, and the Patent itself, all show that the Division Line between Lots 24 and 25 is to be governed by the direction of that Township Boundary. The Patent issued 27th June, 1796, to the Rev. John Stuart, for this Lot 24, and describes it thus—“Beginning at the South East Angle of Lot 23 on Lake Ontario, then North to the Second Concession, 105 Chains, more or less, then East 19 Chains, then South to Lake Ontario, 105 Chains, more or less, thence West along the Bank of the Lake, 19 Chains, to the place of beginning, containing 200 acres.” The Western Boundary of the Township of Kingston being that from which the Lots in each Concession are numbered, runs North and South, according to the Plan and Report of Survey by Deputy Surveyor General Collins, and the Quebec Plan remaining of record in the Surveyor General's Office, and the Patent before us is founded upon that Plan of Survey, we see nothing which authorizes us to say that the Crown, when this Grant was made in 1796, had not full power to grant the tract of Land called Lot 24, bounded as the Patent describes, and being of this opinion, we cannot hold that any subsequent act of the Executive Government can, of itself, have had the effect of resuming the land so granted, or of vesting it in others. The Legislature undoubtedly could have made, and may make, a change in the Boundary, upon those considerations of public interest and convenience which sometimes lead to such enactments, and having (as no doubt they would have,) in view the necessity of having a just regard to the vested rights of individuals. There has been no such interposition in this case, however, and the bare question, what constitutes the Eastern Limit

of Lot 24 in the 1st Concession of Kingston, which is all that we are called upon to determine, depends upon the Original Plan of Survey, the Patent, and the general Law of the Land. As regards the last consideration, the Statute Law is express; the 59th Geo. 3d, ch. 14, sec. 5, enacts, "that the Boundary Line of each and every Township on that side from which the Lots are numbered, shall be, and the same is hereby declared to be, the course or courses of the respective Division or Side Lines throughout the several Townships and Concessions of this Province respectively, and all Surveyors shall, and are hereby required to run all Division or Side Lines, which they may be called upon, by the owner or owners of any lands, to survey, to correspond with and be parallel to the respective Town Lines from whence the Lots are numbered aforesaid." The succeeding clause points out how the Survey shall be made so as to ensure that all Side Lines in the Concession shall be run conformably to this standard.

We have had occasion to determine in other cases that this general provision can only be held to be applicable to those cases in which (as is usual) the Original Plan of Survey was intended to make the Side Lines range uniformly, not where the evident design was to make any particular part of the Township an exception to the general Rule of Survey. In this respect as regards Lot 24, we have seen nothing that would warrant us in saying that the Side Lines of this Lot 24 were not intended to be run parallel with the course of the other Side Lines in the same Concession, as the Patent assures the Grantee that they shall be. If it were supposed that the first Act for the appointment of Boundary Line Commissioners gave to them a discretion so wide as to sanction their departure from this rule, laid down as a fundamental principle by 59th Geo. 3d, ch. 14, the Legislature soon made such a supplementary enactment as must restrain them from so construing their authority. The 3d Vic. ch. 11, imposes upon the Commissioners the necessity of governing themselves by the general Statute Law in regard to the course of Division or Side Lines, and this Court has determined, in more than one case, that independently of this restriction, they were bound to observe the principle laid down in 59th Geo. 3d. Upon what authority the Commissioners may have thought they could establish a Side Line for Lot 24, departing from the Plan of Survey, the Patent, and the Statute, is not explained in their decree. They have made it pursue a devious course, in order to accommodate itself to streets, and to other tracts and blocks, which have been all defined and laid out

after the grantee of Lot 24 received his Patent. We think this was beyond their power, and therefore our judgment is given for annulling their decree. We can establish no other Boundary for the Eastern Side of Lot 24, than one which shall run parallel to the Township Boundary, at that end of the Concession from which the Lots are numbered. In reference to this decision, it must be understood that the effect of our Judgment can have no influence upon the questions that may be raised upon the rights which any parties may have acquired by length of possession, or, in fact, upon any ground apart from the mere fact of what are the Boundaries of the Lots which have been granted by the Crown as Lots 24 and 25. In this case, moreover, we could not pretend, by the exercise of any discretion, to lay down a New Line, which should vary from the course of the Township Line, for the Statutes are as binding upon us as upon the Commissioners.

The case may be one very proper for Legislative interference, in consequence of what has been done, whether regularly or irregularly, by the Executive Government, since the Original Survey, and there may be questions arising out of the acts and omissions of parties, which may call for the decisions of Courts and Juries acting upon other grounds and principles than those which come within the scope of the Boundary Line Commissioners.

We can only give a decision upon the question of Boundary, which may or may not be decisive of the rights of individuals within these Boundaries, according to circumstances, with which, on this occasion, we have nothing to do. The parties interested in these rights will know the means of supporting them.

We confine ourselves to determining that the Decree is not sustainable, because contrary to law, and we abstain from altering that Decree according to our opinion of what is the true Boundary, because it is quite obvious from the documents which have been placed before us, that the case is one that may call for Legislative interposition, and any unnecessary order of this Court in the mean time might throw difficulties in the way of an amicable arrangement. Besides if the parties are resolved to insist upon their legal rights, we look upon this as a case where the ends of justice would be better answered by a regular trial in a Court of Justice, than by a summary Decree from which there would be no appeal.—

**DECREE REVERSED.**

### Legal Opinion

Respecting Lot No. 21, founded on the Patent and Statute Law of the Province, or Law of the Land.

MENTOR is aware and fully sensible that the Imperial Statute 21st James 1st, or Law of England, as introduced into this Province by the Statute or Law of the Land the 32d of George 3d, 1792, chap. 1st, clause 3d, and the practice and decision of the Courts regulated by the provisions of the 4th of William 4th, a Statute or Law of the Land, are the Basis and Rule of Decision in the Courts of Justice and Law in all cases of disputed rights of property and possession of Land between the grantors and grantees of Deeds, but with the exception of the Patentees of the Crown, and HEIRS OF THE PATENTEEES; for the protection of whose Patents and true Lines of Survey in accordance with the Boundaries expressed in the Patents, the Legislature of the Province afforded relief in the enactment of the Statutes, or Laws of the Land, the 38th of George 3d, 1798, the 59th of George 3d, 1818, and the 1st of Victoria, 1837, 1838. These Statutes and Law of the Province are at the present time (with the exception of 1st of Victoria, 1837, 1838,) in full force and virtue, not having been repealed by any subsequent Statute or Statutes, and thereby have become the legal Rule of Decision in the Courts of Justice and Law in cases between the Patentees of the Crown and Heirs of the Patentees, and others.

Moreover with respect to the recovery of possession of Land held by persons through erroneous and defective Lines of Survey, under the plea and title of Adverse Possession, the Statute of the Province, or Law of the Land, the 1st of Victoria, 1837, 1838, afforded relief to the Patentees of the Crown and Heirs of the Patentees, and excluded the Occupants from possession by the provisions of the above Statute, or Law, from holding under usurped and illegal occupancy. By this Statute or Law a Court of Commission was constituted under the title of Boundary Line Commissioners, who have heard and decided cases of litigation and dispute with an integrity and impartiality creditable to them, and have put into effect the provisions of the aforesaid Statute and Law the 1st of Victoria, 1837, 1838, to the exclusion and expulsion of the holders of illegal possession and usurped occupancy.

In the numerous cases of litigation and dispute that are not included in the class of Patentees of the Crown and Heirs of the Patentees, being the claims and rights of grantors and grantees not



of the Crown, and disputants; their Suits are heard and decided in the Courts of Law and Justice on the Basis or Rule of Decision the 21st of James 1st, an Imperial Statute, and the 4th of William 4th, 1834; the Law applied to this distinctive class of Suitors, and governed by the circumstances of the case in the contract between the grantors and grantees being not of the Crown. Not so, however, in the cases of dispute and litigation between the Patentees of the Crown and Heirs of the Patentees, and the Occupants by usurped possession, whose rights are secured to the former by the Law of the Land the 38th of George 3d, 1798, the 59th of George 3d, 1818, and the 1st of Victoria, 1837, 1838.

And in further support of this legal opinion it is to be remarked, that in the provisions of the afore-cited Statute or Law, the 1st of Victoria, 1837, 1838, there is no restriction or limitation clause whereby it is enjoined upon the Patentees of the Crown or Heirs of the Patentees, to bring their Suits within the limited period of Twenty Years, and in the event of their inability or neglect to do so, the holder by the plea, claim, or title of Adverse Possession, or usurped occupancy, is enabled to maintain a right to the Land, and to exclude the Patentee of the Crown, or Heir of the Patentee, from possession.

And with reference to the Statute, or Law, the 4th of William 4th, it is to be remarked, that the limitation clause inserted in it respecting Suits or Actions at Law between litigants, giving a retrospective application and effect to the Law; the same does not apply to the cases of litigation between Patentees of the Crown or Heirs of the Patentees, nor are these cases embraced within the cognizance and authority of the aforesaid Statute or Law of the Land, the 4th of William 4th, 1834. The aforesaid Law or Statute under its title, and within its provisions, includes and embraces the numerous cases and distinct class of grantors and grantees, and its operation is confined to the above class of Suitors in the Courts of Justice and Law. The Patentees of the Crown and Heirs of the Patentees have their rights secured to them by their Patents, and by the Laws of the Province enacted for their protection, the 38th of George 3d, the 59th of George 3d, and the 1st of Victoria, 1837, 1838. These Statutes of the Province, or Law of the Land, are not repealed by any subsequent Statute or Statutes of the Province, and they continue in full force and virtue for the government of the Courts of Justice and Law.

MENTOR.

**Decision of the Court**

On Appeal of Stuart vs. Brown, in favor and support of Adverse Possession.

<p>DEODEM, STUART,</p> <p style="text-align: center;">vs.</p> <p>BROWN.</p>	}	<p>EJECTMENT FOR LOTS 5, 6, 7, 8, 9,</p> <p>IN PICARVILLE, IN THE MIDLAND</p> <p>DISTRICT, CLAIMED BY PLAINTIFF</p> <p>TO BE PART OF LOT 24 IN 1ST CON.</p> <p>OF THE TOWNSHIP OF KINGSTON.</p>
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PLAINTIFF produced Patent from the Crown to the Reverend John Stuart, 22d June, 1796, for Lot 24 1st Concession of Kingston, and it was admitted that Lessor of Plaintiff is Heir to the Reverend John Stuart.

It was proved that the premises in question do really form part of Lot 24, according to a Survey made agreeably to the Statute 59th George 3d.

On the other hand it was proved that neither the Lessor of the Plaintiff, nor his ancestor, nor any person claiming under either, has ever been in possession of any part of the premises claimed, but that from an early period they were supposed to form part of the adjoining Lot, owned by a Mrs. Magdalen Ferguson, and from 1816 to the present time, if not from an earlier period, they have been constantly in the possession of persons who have built upon them, and occupied them, not under any claim derived from the owner of Lot 24, nor upon any privity with the Lessor of the Plaintiff, or his ancestor, but under a title derived from or through Mrs. Magdalen Ferguson.

It was proved further that the Lessor of the Plaintiff first gave intimation of claiming this Land as part of 24 in the year 1823, and that so lately as April, 1841, the Lessor of the Plaintiff executed a Conveyance, as Executor of another person, in which the tract called Picarville is distinctly recognized as part of Magdalen Ferguson's Lot called Lot A.

The Jury, under the direction of the learned Judge, found a verdict for the Defendant. This verdict has been moved against on the ground that the Lessor of the Plaintiff is not bound by the length of possession set up as Adverse under the circumstances of this case. We should have disposed of the Rule earlier, but we have been requested, on the part of the Lessor of the Plaintiff, to postpone the Argument from time to time in order that he might procure and submit to us a Report of the decision of a case in a Court of very high authority in the State of New York, which involved the defence of possession under circumstances similar to the present. The case alluded to is that of *Adams vs. Rockwell*, reported in 16 Wendall's Reports, 285. It is one in which the

parties had respectively occupied for a long period, according to an erroneous Boundary Line, believing it to be correct; and whether such an occupation held, not in defiance of the other's right, but in consequence of a common error, could be considered to constitute an Adverse Possession, which, after twenty years, would ripen into a title under the Statute of Limitations, was the point discussed. This is in itself an interesting question—not new in this Province, where we have formerly had occasion to consider it in more than one case; and it is a question which must necessarily be much affected by the conduct of the parties, and by various circumstances which may properly enter into consideration. But our late Statute 4th William 4th, Chap. 1, has narrowed the field for discussion in a case like this before us. If we were now left to dispose of this case upon the old Statute of Limitations, 21st James 1st, then we should have to consider the doctrine of Adverse Possession upon which the elaborate American decision referred to would no doubt throw some additional light; but our late Statute, like the recent Statute in England, upon which it was framed, has put an end to these considerations, as we have stated in the case of *Deodem Marsh vs. Young*, lately determined in this Court, and though that Statute may, in some cases, operate hardly, yet in this case it will appear, I think, upon consideration, to operate justly and beneficially. It is sufficient, as the law now stands under this Statute, to state that the Defendant has been in actual, visible possession of these premises since 1816, not claiming under the Lessor of the Plaintiff, or his ancestor, but under a title distinct from his; that during that period he has paid no rent to the Lessor of the Plaintiff, nor acknowledged in writing that he held under him. And more than five years of this time has elapsed since the Statute referred to came into operation. If this action had been brought within those five years, then we must have considered this question without prejudice from the Statute 4th William 4th. The point, then, would have been, whether the possession of the Defendant ought, upon the evidence, to be regarded as an Adverse Possession upon which the Statute of Limitations would run or not. But the Plaintiff has allowed the five years reserved by the 27th Section of the Act to pass before he brought this Action, and we can now only say that as neither the Lessor of the Plaintiff, nor his ancestor, have been in possession for more than twenty years, nor been in the receipt of the rents and profits, there being at the same time possession in another, who has not acknowledged their title in writing, this Action must necessarily fail; the right to bring it being expressly taken away by our Statute 4th Wm. 4th Chap. 1, Sec. 16.—**POSTIA TO DEFT.**

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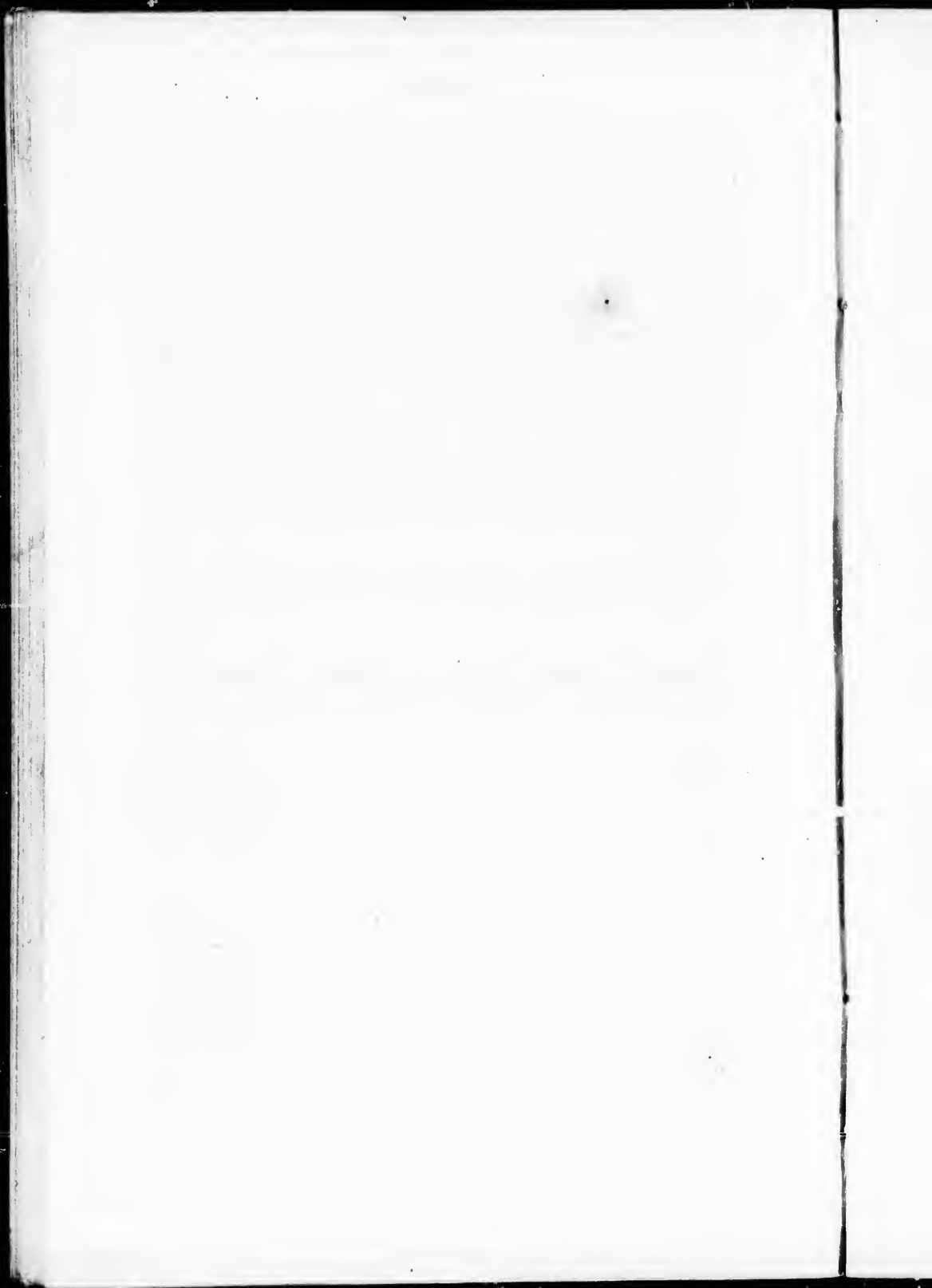
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COMMUNICATIONS,

PUBLISHED IN THE KINGSTON HERALD;

SUPPLEMENTARY TO MENTORIANA.

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## COMMUNICATIONS, &c.

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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

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 28 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.*

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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 know-  
“ ledge 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.*

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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's 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 1783 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.

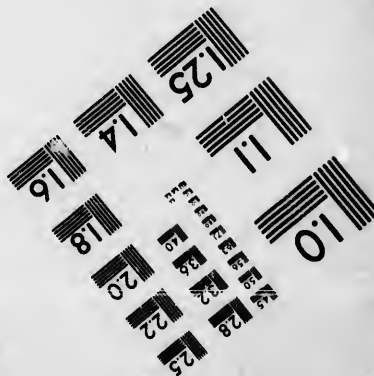
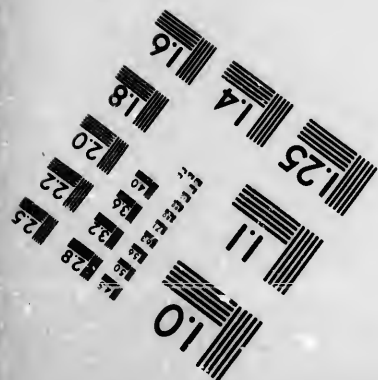
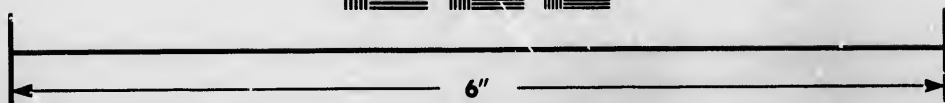
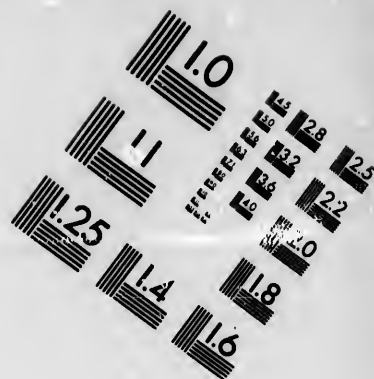
1778  
1818

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, <sup>1798</sup> 1818, and the 59th of Geo. Third, <sup>1818</sup> 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, <sup>1798</sup> 1818, and 59th of George Third, <sup>1818</sup> 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, <sup>1798</sup> 1818, and 59th of George Third, <sup>1818</sup> 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.







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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.

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 Boundaries 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~~ 1818, 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 1783 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, ~~5th~~ 50th 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, withheld 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, ~~5th~~ 50th 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 ~~5th~~ 50th 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.*

MR. EDITOR,

A Subscriber to your Paper derives much pleasure and satisfaction from having perused the Report and Decision of the Court of Law in the Case of *Murney v Markland* and others in Appeal. The Report and Decision sets aside the erroneous Eastern Boundary Line of the Township of Kingston, limiting the Town, adopted by the Boundary Line Commissioners on the authority of a Line of Survey, assumed and run by Deputy Surveyor Wilmot in the year 1818 or 1819, and also assumed and run by Deputy Surveyor Kilborn in the year 1823, and establishes the true Eastern Boundary Line of the Township of Kingston, limiting the Town, and run under authority of the Executive of the Province of Quebec between the years 1787 and 1794 by Deputy Surveyor General Collins or Deputy Surveyor Kotte, known as the Diagonal Eastern Boundary Line of the Township of Kingston, limiting the Town, re-traced by Deputy Surveyor Aiken in the year 1797, recognized by the Government Map of the Township of Kingston and confirmed and established by the Statute Law of the Land the 59th of George 3d, 1798.

The Report and Decision of the Court of Law in Appeal moreover establishes and confirms the true Boundary Line of Survey under the authority of the Executive of the Province of Quebec, to the rejection of the erroneous Boundary Line of Survey, assumed by Wilmot and Kilborn and adopted by the Boundary Line Commissioners, and as being in accordance with the Diagram exhibited in *Mentoriana*, and illustrated in the history of the facts connected with the first and original Line of Survey of the Township of Kingston, limiting the Town.

A Subscriber requests the publication of the legal Report and Decision, in order that it may be added to the Communications Supplementary to *Mentoriana*, and thereby may be submitted to the reading and consideration of the Public, who are interested in this legal Document and Decision of a question, whose merits have been investigated, discussed and ably vindicated by Mentor in the pages of *Mentoriana*, on the basis of Patent Rights and the Statute Law of the Province. The publication of the legal Report and Decision is more specially intended for the perusal and information of Juries, who thereby shall be enabled to decide all questions of Right and Property under litigation in the Courts of Justice, and in the words of Mentor in the Preface to *Mentoriana*, "will thereby become

competent to co-operate with the Courts of Justice and Law, and Professional Men in hearing and determining all cases submitted to them, on the basis of Patent Rights and the Law of the Land, to the rejection of adverse Possession or illegal and unjust occupancy."

A SUBSCRIBER.

*Kingston, Oct. 5th, 1844.*



## LAW REPORT AND DECISION.

**MURNEY *v* MARKLAND & OTHERS.**

ROBINSON, C. J.

The Plans which have been laid before us shew that the determination of the question may be attended with very important consequences to a number of individuals, and perhaps also to the public interests, for in the progress of time the land in the vicinity of this disputed boundary has become extremely valuable, and a great part of what was unquestionably intended at one time to form part of this Lot 25, has, under other designations, been granted by the Crown, and has been made the subject of many transfers among individuals who have expended large sums of money in buildings and improvements. It is to be regretted that a case of which the decision must affect so many interests has not come before us in a more precise and satisfactory shape. The Commissioners do not lay plainly and fully before us the grounds of their judgment. If they had stated what facts they looked upon as ascertained by their enquiries and upon what principles they had framed their conclusions, upon those facts we could more easily and perhaps more clearly have made up our opinions upon the correctness and reasonableness of their Judgment. Then again, the Appellant has omitted to do what on future occasions of this kind we must enforce, namely, to state in writing his reasons of appeal, in which we ought to find all the objections pointed out which have led him to question the propriety of the decision; and these reasons of appeal ought to be met in like manner by a written statement of the arguments in support of the decision. We should then see clearly to what points our attention was required to be given, and should feel more confident that we were not overlooking any consideration which the parties may regard as material. Taking up this question upon the materials which the parties have placed before us, we must enquire, 1st, What are the facts upon which the Commissioners gave their Judgment;—in other words, what has been done that can have a bearing upon the establishment of this particular boundary. The next consideration will be what is the legal consequence of all that

we find to have been done. The first, as regards the facts. It appears from a legal document laid before us, certified by the late Surveyor General of Lower Canada to be the copy of a map or plan remaining among the records of the former Province of Quebec, that in the year 1783, John Collins, Esq., then Surveyor General, laid out the Township of Kingston, under instructions from the Government, and returned a diagram and report of his survey, by which it appears that he ran out the township lines in such a manner that they comprised a rectangular tract six miles square, at each angle of which he placed a stone monument. According to this diagram the lot No. 25 in the first concession is the last lot in that range or concession. It is of the same figure and complement as the other lots in the township, and the Eastern boundary of the township forms the Eastern side-line or limit of that lot. It is not stated on the face of this plan what length and breadth had been given to each lot;—the number of ranges into which the whole depth was divided, and the number of lots in each range shew that they were designated to be 200 acre lots, as the descriptions afterwards issued have proved. It appears, however, that while Mr. Collins was making his survey it was apprehended that between the Eastern side-line of the township and the harbour too little space had been left for a town, or rather for the common, or open space intended to be attached to the fort then called Fort Frontenac, for it was rather in that light than as the site of a future town that the desired reservation seemed at that early day to be regarded. The Commanding Officer, Major Ross, it seems interposed, and induced the Deputy Surveyor General to alter his original plan. About the time of the survey, in 1783, Capt. Michael Grass, who accompanied the surveying party, was allowed to locate the lot 25 in question, which it is plain, according to the first intention, was to be a 200 acre lot, of the same area, and corresponding in courses and distances with the other lots in the township. But when the Government resolved to make the reservation for the town larger and to take a part of the intersected lot 25 for that purpose, they entered, through their officers, into an equitable arrangement with Capt. Grass, and assigned him lands in the adjoining township of Pittsburg, which he accepted as a sufficient equivalent for the part of his lot taken away. Another map or plan is laid before us, certified by the Surveyor General of this Province to be a copy of the Quebec plan of the township of Kingston, or rather of that part of it which embraces the land in the vicinity of this boundary, and in

a certificate upon the face of it copied from the original and subscribed by Samuel Rolland, Surveyor General, it is called the Quebec Plan of the township No. 1, now Kingston, surveyed by John Collins, D. S. General, in the year 1783. I take it to be generally understood among those conversant in the affairs of the Executive departments of this Province, that the Quebec plan of any township means that plan of the township which the Government of the Province of Quebec has acted upon and recognized as exhibiting the true plan of survey. It is deemed a public record of high authority. Upon this Quebec Plan the lot No. 25 in question appears to be bounded on the East by a line drawn diagonally from the South Eastern to the N. Western angle of the lot, thus dividing the lot as originally surveyed or intended to be run, into halves. The line of the township, however, on the East side, is marked out in this plan as in the diagram returned by the Surveyor General, Mr. Collins—that is, running nearly from the S. E. to the N. E. angle of the whole tract of six miles square, and thus leaving that portion of the lot 25 which lies on the Eastern side of the diagonal line still within the township as shown upon this Quebec Plan, although it seems to have been cut off from the lot for the purpose, as we find from other documents before us, of being added to the town plot or common. There is next submitted to us a Plan, certified by the Surveyor General of Upper Canada to be a copy of the plan of part of the township of Kingston, signed by Alex. Aitkin, Deputy Surveyor of the Midland District, and dated 25th March, 1797. Upon this plan also lot No. 25 in the first concession is described as a triangular tract, being originally the whole lot of 200 acres dissected by a line drawn across from the S. E. to the N. W. angle, and the residue of what constituted lot 25, as shewn on Mr. Collins' plan of survey, is exhibited as thrown in the town plot of Kingston. In this plan, however, the Eastern side-line of the lot 24 in the 2d and 3d concessions (North of the 1st) is made the Eastern limit of the township, and the lot 25 shewn as a triangular tract of 100 acres, stands as it were within the Eastern line of the township and the town plot. It appears further from a letter transcribed and certified from the Surveyor General's Office, of Quebec, that the Surveyor General Rolland, on the 7th May, 1786, wrote to the then Administrator of the Government (General Hope) that Mr. Kotti, a Surveyor, had reported to him that by the application of Capt. Grass and other settlers in Township No. 1, he had examined the East boundary line of said township, which he finds from 15 to 18 de-

gress west of the Magnetical North, at which course the line should run. By this Capt. Grass loses half his lot No. 25, and those in the other concessions behind him will be deprived of the whole lot No. 25; and Mr. Kotti, (he adds) "has applied to me for my instructions how to settle them. It seems these people will take their equivalent in other unlocated lands," &c. On the 27th August, 1788, it appears this same Surveyor, Mr. Kotti, received instructions to make such a Survey, under the direction of a Board of Gentlemen at Kingston, who are named, and of whom Capt. Grass was one, as would correct the inaccuracies in the boundary and division lines of the township. There is nothing before us purporting to shew what was done under these instructions. No plan or report of Mr. Kotti's is among the documents. It seems reasonable to assume that the plan of Mr. Aikin's under date of —1797, must have exhibited the lines of the corrected survey, but there is no evidence connecting them. Whatever was done appears to have been the result of an amicable arrangement with Capt. Michael Grass, the grantee of lot 25, for among the papers certified from the Surveyor General's office is one under date of the 17th Oct., 1787, in these words: "Arrangement between Mr. Collins, Deputy Surveyor General, and Capt. Grass, relative to lot No. 25 in the first concession of the township of Kingston. In order to settle and finally determine all difficulties and disputes respecting the deficiency of lot No. 25, first Township, belonging to Capt. Grass, on the difference of the line by which the said lot is run, I do hereby promise to give Capt. Grass the choice of any two lots joining each other in the new township lately laid out that are not already granted—the one as a recompence for the deficiency of Lot No. 25, and the other as a bounty from Lord Dorchester." This paper is subscribed by Mr. Collins, and at the foot, "accepted by me, Michael Grass." On the 1st May, 1798, Letters Patent issued to Michael Grass for the lot No. 25, in which the land is thus described—"Commencing at a post in front of the said Concession, marked No. 25, in the limit between the Town of Kingston and Lot 25, thus—North 10° West nearly along the said limit to the Eastern boundary of the Lot number 24 at the Eastern extremity of the said Concession line, nearly then South to the front where the harbour of Kingston opens into the Lake Ontario, then Easterly along the front to the place of beginning, containing one hundred acres more or less." These letters patent issued at an earlier date than any title from the Crown to other

lands which could clash with the boundary in question. In 1801, a Patent issued to Sir John Johnson, Bart., for Park Lot No. 1, adjoining to the Town of Kingston, and in 1804 a Patent to Mrs. Anne Earl for Park Lot No. 2, in rear of the Town of Kingston; and in 1801 a description issued to Mrs. Magdalene Fergusson, for a farm lot adjoining the Northernmost limit of the Town of Kingston. The two first of these Patents do not even in appearance interfere with the earlier Patent to Capt. Grass, because, taking as the points of departure certain designated in the respective patents, they proceed from thence in a course North  $50^{\circ} 20'$  West, 25 chains in the one case, and 18 chains in the other, to the distance more or less "to the *Easternmost boundary of Capt. Michael Grass's lands.*" the descriptions being limited of necessity by the grant which had already been made to Capt. Grass. It is remarkable that in one of these patents where the boundary is marked, the course along the boundary (towards the Lake) is called about South  $15^{\circ}$  East, and in the other patent the same course is called about South  $10^{\circ}$  East, from which it would seem that that boundary was not clearly defined. In the grant to Mrs. Fergusson the line running westward is thus given: "Then West 136 perches to the *public road* adjoining the Easternmost line of the Township of 'Kingston,'"—but that any such road was actually laid out before the issuing of the Patent to Capt. Grass, and if so, what was its precise direction, is not shewn to us. It appears further that on the 8th August, 1817, the Surveyor General of Upper Canada gave instructions to a Surveyor, Mr. Wilmot, to survey a part of the town plot of Kingston, and lay it out into lots—which instructions are so framed as to shew that the impression in the office then was that the Patents to Capt. Grass, Mrs. Earl, Sir John Johnson, and Mrs. Fergusson did not clash with each other, and that it was intended the proposed survey should not clash with any of them. It appears, indeed, that in January, 1817, Mr. Wilmot had been directed to survey and lay out the whole of the vacant lands in the town plot of Kingston; a copy of the instructions has not been furnished to us, but on the 6th January, 1818, Mr. Wilmot reported to the Government that he had completed the survey of all the vacant land in the Town of Kingston, and *had ascertained the limits between Capt. Grass's land and the Town*, and he returned a plan of his survey, a copy of which has been laid before us. On this plan he designates a road as bounding the township on what he calls the Southern boundary, by which he means what the Government in their de-

scriptions calls the Easternmost bounds, as the Western bounds of the town polt,—that is, he lays down a 40 foot road between the town and township, on that side. This road would strike the Eastern side of lot. No. 24 long before it reaches the second concession line, at a point which he designated on his plan as the “North angle of lot number 25 as recognized in the Surveyor General’s office;” and along the Western or Township side of this forty foot road, he makes an old fence said to be the South (yes West) boundary of Kingston, the direction of which line he makes as North 15° West in the field, and the length of the Eastern side of lot 25, as thus run, till it intersects lot 24, he makes as 66 chains 62 links. He represents further upon his plan that the course of N. 10° W. by the middle from the S. E. angle of lot 25 would intersect the Eastern limit of lot 24 at a point much nearer the front, making the area of lot 25 much less than when bounded by the 40 foot road. This road Mr. Wilmot has assumed to be the proper boundary of the Township on the East, but upon what authority is not clearly shewn to us, nor does it appear on what foundation the point of intersection of lot 24 is termed in this plan the *North angle of 25 as recognized in the Surveyor General’s office*. If these were shewn to a data well warranted by evidence, of course they would at once decide the point now in controversy. It is to be remarked that before any survey was made in 1783, the Surveyor General Rolland received instructions from Sir Frederick Haldimand, the Governor of the Province of Quebec, directing him first to lay out proper reservations for the town and fort, and then to proceed and lay out the township six miles square. If Mr. Collins’ plan of survey returned to him is to be taken as the true description of what he did then, the reservation for the town and fort was such as left for a range of 25 full lots of 200 acres each, though it seems clear that he was afterwards led to change this intention and withdraw a portion of 25 in the first concession from the township.

So far as we are informed the Commissioners found their Judgment upon this documentary evidence, together with the viva voce evidence which they have and which shews almost to a that the township was in point of fact run out before any survey of the town plots was made,—that the Eastern side of the township was actually so run in 1783 as to give to lot 25 in the first concession, 200 acres,—that before Mr. Collins completed his survey he was induced by the remonstrances of the Commanding Officer at Fort Frontenac, to make this lot a half lot only, by running



the line for its Eastern boundary diagonally from the South Eastern to its Western angle, giving thereby to lot 25 100 acres,—*that a line was then drawn* by Collins intended to give this lot 100 acres, the *true bearing of which line as drawn by Collins*, is North 27° 6' West, giving to lot 25 in fact, only 50 acres, 1 qr. and 34 rods, inclusive of the broken front, and the (40 foot) road. This statement is made by a Surveyor Kilborn, on the authority, as he swears, of information given to him by persons who had been with Collins in the original survey, whom he does not name. Another witness, Peter Grass, swears that his father, Michael Grass, took possession of his lot in 1784, and found, that his Eastern side line was inaccurately run, that he got Kotti, the Surveyor, to examine it, who found it to run North 22° West, that upon his representations to the Government, persons were sent up to correct the error, and after examination, one Tuffy was directed to re-survey the line, taking Collins's line part of the way across the Concession, and then diverging from that; that Collins's line struck 24 in the 2nd Concession, and that Tuffy's line gave more land to 25, that Collin's line consequently tended more to the Eastward; that after this line run by Tuffy, his father supposed his lot to contain about 160 acres, but that when he sold his lot to Murney, the father of the present applicant, (which was not till long after the Patent had issued,) it was supposed to contain 100 acres, which is what the Patent assumes, though not in absolute terms.

Another Witness, Gilbert Orser, swears, that he assisted in the Survey made by Collins in 1783, that all the lots to 25 inclusive, in the first concession, were actually laid out on the front or base line, that a monument was placed at the South-East angle of lot 25, from which monument a line was actually run Northerly the whole depth of the Township 6 miles, where another stone monument was placed, making a line of blazed trees throughout; that the Township was laid out before the town. Mr. Wilmot, who made the Survey spoken of in November, 1819, was also examined before the Commissioners, swore that he was guided in that Survey by the rear of Park lots No. 1 and 2, *as protracting that line*, he found a line of stumps pointed out to him as the line of Captain Grass's land, [not saying by whom] that he laid out a road 40 feet wide between the rear of the Park lots and lot 25, and that he took the line of stumps pointed out to him to be the limit of Captain Grass's land, and was governed by it. The

face of the ground is now so altered that Mr. Wilmot going to the place with the Commissioners was unable to point out the course of the line as run by him.

It will be seen by these explanations that the decision of the Commissioners establishes as the Eastern boundary of lot 25, that line which Mr. Kilborn assumes to have been the line run by Mr. Collins, and which he and they describe as running North  $27^{\circ} 6'$  West astronomically or true course, this line crosses the whole lot 25, and intersects the Eastern limit of 24 in the first concession at rather less than  $\frac{2}{3}$  of the distance from the front, and leaves for lot 25 only an area of 50 acres and a little more as already stated, and running a little to the Westward of Wilmot's line. I have noticed already the defects in the manner of bringing up this case for our decision. We do not see stated in writing as we ought to see, the principles and grounds upon which the Commissioners made their decisions, nor the objections which the applicant should have given in as his reasons of appeal, nor the arguments by which the other parties in this controversy may think they can sustain the decision. Another defect, and a very important one is, that the Commissioners have not returned with their decision any plan authenticated by their signatures, shewing the final situation of the boundary established by them. They speak in their Report of a Monument marked 24-25, and there is a map among the papers laid before us signed by Mr. Kilborn, a Surveyor, but this plan is not shown to have been executed under the authority of the Commissioners, nor to have been adopted and recognized by them. With respect to the decision which has been given by the Commissioners, it may be just and reasonable upon grounds and circumstances not disclosed to us, but I do not see how we can pronounce it to be so upon the evidence laid before us. The case seems to stand thus :

The Township of Kingston was first Surveyed in 1783, under the instructions of the Government, and by the Deputy Surveyor General, Mr. Collins. He returned a plan of his survey, exhibiting 25 full lots of 200 acres each, in the first concession, and making this lot 25 a parallelogram of the same size and figure as the others. But it seems that at the very time he was engaged in the survey, and before he had completed it he determined to throw the Eastern boundary of lot 25 further back in order to have more space for the Town plot, and he seems to have taken this resolution after Captain Grass had become the locater of that lot. It seems also



that the alteration which he intended to make was the precise and simple one of cutting the lot in halves by a line drawn diagonally from the South-East to the North-West angle, which would give to the lot an area of 100 acres instead of 200. Still he returned his plan of survey according to the original design without making this change. Why he did so is not explained. Whether he has transmitted to the office any other plan exhibiting the alteration is not shewn, nor is it certified as it ought to be that the documents before us contain all the evidence which the Surveyor General's office can furnish of the acts and declarations of Mr. Collins in respect to this boundary. I mean not merely the Surveyor General's office in Upper Canada, but that in the Lower Province where the correspondence, plans, filed notes, &c. of that time may be expected to be preserved. It seems to be assumed by the decisions that Mr. Collins did himself run a line intended to be the new boundary, but I see no proof of this, except what is drawn from this very important fact that there is in the Surveyor General's office what is called the Quebec plan of the Township in which the concessions and lots are laid down as "surveyed by Mr. Collins in the year 1783," according to which plan this lot 25 is a triangular tract of 100 acres, bounded to the Eastward by a line drawn diagonally from the S.-E. to the N.-W. angle. I do not see how we can avoid inferring from this that Mr. Collins must, after framing the first plan of survey, have reported officially this change made in respect to lot 25, if he made it in the map only without having run a corresponding line on the ground, or if such a line was run by any one else under his direction the effect would be the same. Or if Mr. Collins or any one acting under him, or for the Government, intending to run such a line in a different direction either from inattention or want of skill, or the difficulty of being accurate from any cause, so that instead of the line running up to the N.-W. angle of 25, and touching the 2d concession line, it ran too much to the Westward, and intersected the Western side line of the lot long before it reached the second concession; an error of this kind, if such an error was committed, would be immaterial so long as it is clear what was meant to be the boundary. There is not, and has not been, any law of this Province which would establish an erroneous line run for such a purpose, in preference to the line as described in the Patent, and as intended to be run, because this is neither a township line nor a concession line, but a side line to a lot forming an exception to the general plan of a Survey, and not governed or intended to be

governed by the direction of any other line. The Government shews by their Quebec plan which is understood to be the recognized plan of the township, that they had adopted and confirmed a reported survey which exhibited lot 25 in the form I have described. It appears further from what I have stated as having taken place in 1786 and 1788, that Michael Grass to whom lot 25 had been located had very early discovered that a line had been run [not shewn how or by whom] which would deprive him of a good part of his expected two hundred acres, that the Government averred that it was determined by them not to make his lot a full lot, and thus made an equitable arrangement with him, and gave him an equivalent for what they meant to take away, which he accepted, and that Mr. Kotti, a Surveyor, was publicly instructed to run a correct line for the boundary. Mr. Kotti received these instructions in August, 1788, which shews that up to that time the boundary was unsettled in the opinion of the Government, and that if a line had been run on the ground before that time either by Mr. Collins or any one else, it was not such a line as was acknowledged either by the Government or the proprietor of the lot to be the true boundary, consequently all that had been done to that time was immaterial; now the first defect in the chain of evidence is that it is not shown what was done by Mr. Kotti under the instructions which he received in 1788. If any plan, report, or correspondence of his exists in the Surveyor General's office in either Province it should be shewn, if nothing of the kind is to be found, that fact should be certified, and we should *know* whether any trace exists on the ground, or whether satisfactory evidence can from any quarter be adduced of what was done by Mr. Kotti towards establishing the boundary. Some trace too might probably be found of the instructions which were given to Mr. Kotti either by the Surveyor General or the Board of Gentlemen who were authorized to employ him, which might shew the description of the line which he was requested to run. In the absence of all other evidence on these points it is material that it should be known whether the Quebec plan spoken of was compiled in the office after August, 1788, because if it was, the natural presumption would be that it adopted the line which Mr. Kotti was reported to have run. If it was compiled and in existence before August, 1788, then the inference is material that Mr. Kotti must have been desired to run his line so that it would accurately mark out on the ground what is delineated in the map. All that we can learn from the docu-

ments before us is this very material fact, that in a plan in the office which is certified to us as one of their public records, Mr. Aitkin, the Surveyor General for the Midland District, describes this lot 25 [on the 25th March, 1797,] exactly as it stands on the Quebec plan, that is as being half of the original 200 acre lot, and bounded by a line drawn from the S.-E. to the N.-W. angle. All this tends strongly to shew that if any line had been actually marked out on the ground before March, 1797, bounding the lot 25 by a line drawn in another manner, and intersecting the Western limit long before it reached the second concession, such line could not have been run under instructions from the Government or with their knowledge at the time, nor is it shown by any evidence to have been recognized or even known at the office, up to the 24th March, 1797. Then in May, 1798, the Patent issued, describing the lot, when, for all that appears, matters stood precisely as they did when Mr. Aitkin's plan was stated. Now, at the time of issuing this Patent, the Government yet owned all the adjoining land, they could therefore grant the lot to Captain Grass, bounding it as they chose, that is, they could either make it to correspond with the Quebec plan, and Mr. Aitkin's plan, or they could describe and confine the land within such other limits as was thought fit. No Statute that ever passed restrained them, nor any principle of the common law, nor any prior grant made by the Crown, for all the land to the Eastward was still ungranted. If it could be shewn clearly that before this Patent had been made out a line had been run by direction of the Government, such as the Commissioners have decided upon establishing, that such line had been made known to the Government and officially confirmed, then it would be right to presume that the Government intended to make the Patent conform to the boundary which their Surveyor had laid down and reported, and then also it would be just so to construe the description given in the Patent by every intendment that could possibly be made, as to make it cover that land and no more, which we must then suppose the Government designed to grant. But nothing is shewn us which can be supposed to have formed the foundation of a Patent intended to convey a tract so bounded as the Commissioners had bounded lot 25 in their decree. We see nothing that authorizes us to say that the Government, when they were about preparing a Patent for this land, must be supposed to have intended that it should convey to Michael Grass about 50 acres only, and that the Eastern limit of the tract should fall more than

30 chains short of the second concession. Thus, when we look at the Patent we find that it assumes the quantity of land to be about 100 acres, and that the Eastern boundary is carried to "*the Eastern extremity of the second concession line nearly.*" The description is not precise. One can easily understand why the course should be described as North 10 ° West *nearly*, instead of giving the exact course, because the description being drawn, as we may suppose, with the map in view, the length of the lots being known, and the course of the side lines of the whole lot being North, it was probably seen that in order to divide the lot diagonally into equal parts, the line must be drawn about 10 ° to the West, and that is expressed as being the course nearly. But when the description speaks of the point to be arrived at, I do not see why it should not in that part have been expressed more precisely. If it had been said thus—to the North-West angle of lot 25, or to the Western limit of lot 25, when it the second concession line, there could have been no room for doubt, and the course expressed would have become immaterial; as it stands, it seems to give some confirmation to the evidence of Peter Grass, that the line run by Tuffy by way of arresting the boundary, gave more land to 25 than Mr. Collins, and as he understood, left their father about 160 acres, which it could only have done by striking the second concession line to the Eastward of the limit of lot 24. As the description now stands, I can only understand it to mean that the boundary is to be carried to the second concession line, and nearly to the Eastern extremity. What they considered as the Eastern extremity it is not easy to say. According to Mr. Collins's first plan of survey, it would have been 20 chains from the Western limit of lot 24. If it was meant that the alteration should have the effect of carrying the concession no further to the Eastward than lot 24, then the description ought to have said simply—to the extremity of the 2nd concession line. Taking the whole as it stands, that the Town lines are assumed in the Diagram to be North and South, that North 10 ° West must be taken with reference to that fact; in other words, that this boundary is meant to diverge only 10 ° degrees from the course of the other side lines,—that the Quebec plan exhibits lot 25 and half of the original parallelogram, and reaching on the West to the 2nd concession, that the description in the Patent assumes the area to be 100 acres or about that, and carries the limit to the second concession line near the Eastern extremity, I think we cannot see that in assuming to lot 24 a

limit which would vary 23 ° from the course of the other side-lines instead of 10 ° more than 30 chains short of the 2nd concession, and give to the grantee only 50 acres instead of 100, the Commissioners have varied altogether from what the Patent seems designed to convey. Certainly the line which is appealed against cannot be said to be a line taken from the Patent, nor is it taken from any record or plan sanctioned by the Government upon which we can suppose the description to have been framed, no such record or plan at least has been shewn to us. Upon what ground then is it supported. If at any time before the Patent issued, such a line had been run out by authority upon the ground, it must either have been a line rightly laid out in accordance with public instructions, or a line inaccurately run deviating from the instructions. If the former, we must have some proof of the authority and instructions, or some proof of a subsequent adoption of the line. The plans that have been shown us show no such adoption. If the latter, that is, if such a line was run, but run by error, of which error the Government are not shown to have been conscious; or have they issued their Patent and do not therefore notice it or conform to the erroneous line,—that there is no principle in which we can say that the erroneous line must prevail against the Patent. If such an erroneous line were shown to have been run in the original survey, which is not shown—this, as I have before stated, is not a case in which such inaccurate line could be preferred to the course given by the Patent. It need hardly be said that what was done by Government after their Patent was issued, cannot affect the question, because the Crown cannot grant and afterwards at its pleasure take away the land granted, or any part of it. The grants made of Park Lots 1 and 2, and of the other tracts mentioned, cannot affect the decision because they were made afterwards, and could not cover land which had been granted before. Mr. Wilmot's survey, therefore, cannot be material, because he began by assuming that the Western limit of those other tracts being produced, must form the limit of the lot 25, and he was directed to make his survey on that principle; but the first question is not what Park lots No. 1 and 2 covered as described but what lot 25 covered, because that first took up the ground so far as its limits extended. It may be just, and even necessary, on public considerations, that lot 25 should not now be allowed to have that extent which was given it by the Quebec Plan and the Patent, but such considerations as I allude to would properly form the basis of a legislative measure, in which the rights of parties must be made to bend in order to suit the general welfare,

upon some equitable arrangement which we must suppose would be made. It may also be not only just but legal to hold that the proprietors of lot 25 are now precluded from claiming what the Patent seems to give, either in consequence of their long acquiescence in the adverse possession held by others, or by some act which may have been done compromising or limiting their rights—but nothing is or properly can be shewn to us as the grounds of the decision of the simple question of Boundary. Such facts are for the consideration of Courts and Juries whenever the right to the possession may come in question, and they will and must have their legal effect however the line of boundary may be fixed.

Upon the case as it is before us, I think that we shall be compelled to say that the decision of the Commissioners must be reversed, since we see no authority for saying that Mr. Collins ever laid out a line as they assume, running North  $27^{\circ} 6''$  West, true course,—or, if he did, that the Government ever confirmed that as the boundary.

It would be material to shew, if it can be shewn—

- 1st,—Whether Mr. Collins' Field Notes, or Correspondence, or Plans, shew that he did actually lay out an Eastern boundary for Lot 25, assigning to the lot less than 200 acres, and how he described it.
- 2nd,—When the Town Plot was Surveyed, and how its Western boundary is described.
- 3rd,—Whether the Government is in possession of any document shewing that Kotti or any other person did, by authority, run out a line intended to be the Eastern boundary of Lot 25, after the original survey by Collins.
- 4th,—Whether such line was ever confirmed by the Government.
- 5th,—When the Quebec Plan of the Township of Kingston was framed, and upon what Survey it was grounded as respects this line.
- 6th,—Upon what Map the description in the Patent was framed.
- 7th,—How the Surveyor General can explain the using the term "*at the Eastern extremity of the Second Concession line nearly.*"
- 8th,—Why the Lot was assumed by the description to comprise about 100 acres.
- 9th,—Whether there is, in the Surveyor General's Office, any evidence of a Survey corresponding with the line laid down by the Commissioners, or nearly so.
- 10th,—Upon what authority it is noted on Mr. Wilmot's Plan, that the point marked thereon is recognized in the Surveyor General's office as the North Western angle of Lot 25, and when it was first recognized as such, and on what grounds.



## CONCLUSION.

The Author of "Mentoriana" has much pleasure and satisfaction in closing the Communications supplementary to its publication, and avails himself of the opportunity of stating for the information of the Public, the decision of two important and distinct cases heard and adjudged in the Courts of Justice and Law in this Province.

The case of Ejectment in the suit of George Okill Stuart, Plaintiff, vs. Thomas Brown, was heard and adjudged in the Sitting of the Assizes under Justice Hagerman, in the year 1843. The case involved two points, the Question of the Parallel Eastern limit and Boundary line of Lot No. 24, and the operation of the Law of Adverse Possession in the case.

The learned Judge in his charge to the Jury admitted the parallel Eastern limit and Boundary line of Lot No. 24, run by Deputy Surveyor Kilborn in 1841, and confirmed in the Queen's Bench by judgment on Appeal from Boundary line Commissioners, but decided the case in suit in favour of the Defendant, Thomas Brown, on the Title of adverse possession for twenty years.

The Plaintiff in this Case referred the decision or verdict of the Court of Justice and Jury against him by an Appeal to the Court of Law at Toronto. The Chief Justice Robinson decided the Case in favour and support of Adverse Possession, founded on the 4th of William the IVth, a Provincial Statute of the Country.

The Case admits of an Appeal against its validity and legality to Her Majesty in Council, on the grounds that the Patentees of the Crown are excepted from the operation of the Provincial Statute of the 4th of William the IVth, and that their Patent rights are secure and inviolate on the faith and act of His Majesty George the 3d.

The second and latter Case of Ejectment was heard and adjudged in the Sitting of the Court of Assizes in June, 1844, between the Venerable George Okill Stuart, Plaintiff, and John R. Forsyth, Esquire, Defendant, under Chief Justice Robinson.

The learned Chief Justice in his Charge to the Jury did not admit the parallel Eastern limit and Boundary line of Lot No. 24, although confirmed by the Court of Law at Toronto in appeal, but allowed the erroneous Boundary line of the Commissioners to be substituted in its place, at variance with the Case of Stuart vs. Brown under Justice Hagerman. This Case as the former one, involved two

points, the Question of the Eastern Boundary line of Lot No. 24, and the operation of the Title of Adverse possession in the case.

The learned Chief Justice in his Charge to the Jury in this case decided the point of Adverse possession as not operating against the right of the Plaintiff, but his Lordship charged the Jury with an injunction to bring in and give their verdict in favor and support of the claim and right of the Defendant, founded on the erroneous Boundary line of the Commissioners, and the rejection of the parallel Eastern limit and true Boundary line of Lot No. 24.

This second and latter Case admits of an Appeal to His Excellency the Governor General in Council, constituting the Court of Appeal in the Province, on the grounds of Patent right and Statute Law of the Province, the 59th of George 3d, and of the Report and decision of the Court of Law in the Queen's Bench in Judgment on Appeal from Boundary line Commissioners, George Okill Stuart and Alexander and others.

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