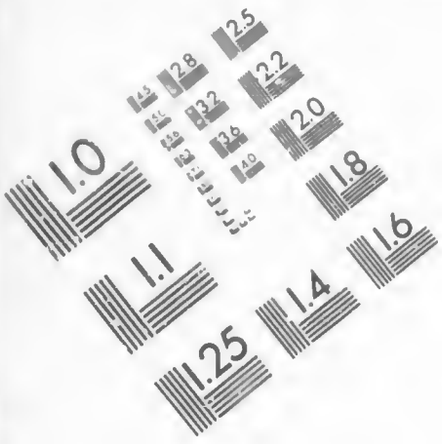

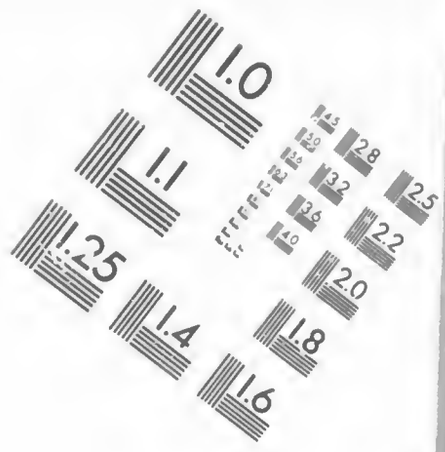

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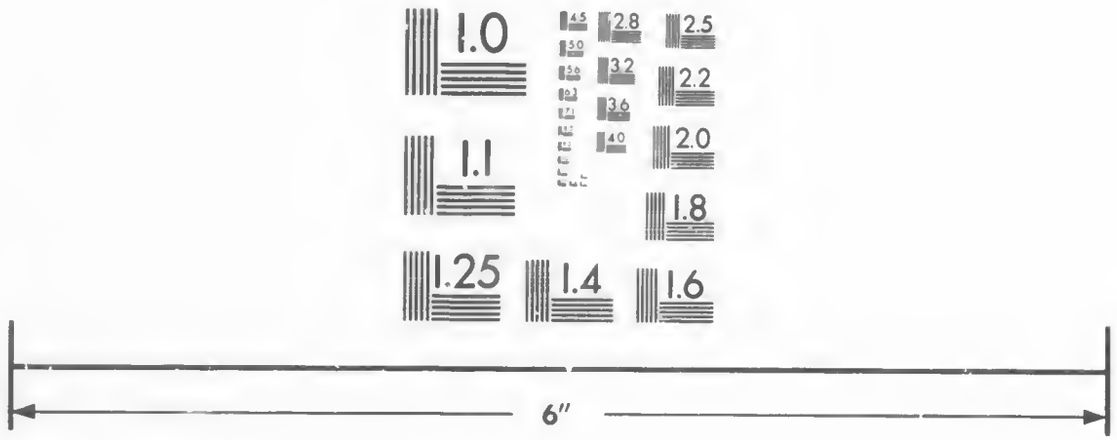

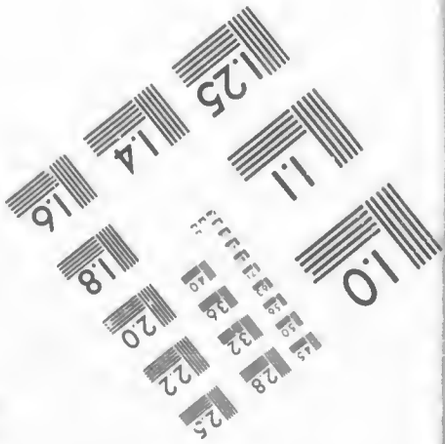

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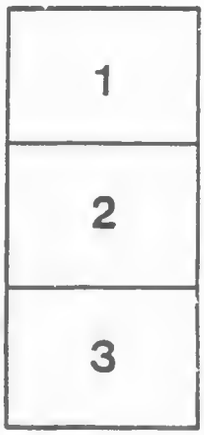

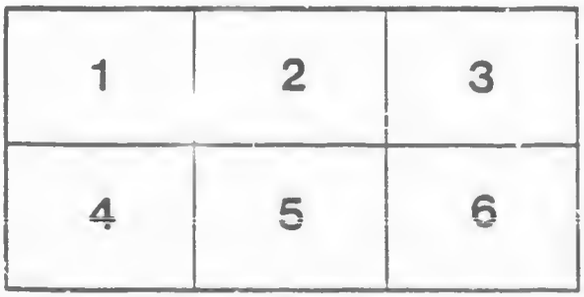

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HEAD NOTES OF REPORTED LAND CASES

By H. L. ESTEN, O.L.S.
TORONTO

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CONTENTS.

HEAD NOTES OF REPORTED LAND CASES.

H. L. ESTEN, O.L.S.,
Toronto.

SURVEY AFTER PATENT—PATENT GOVERNS.—TOWNSHIP OF HARWICH.

McGregor *vs.* McMichael *et al.*

The plaintiff claimed a piece of land as part of lot ten in the first concession west of the Communication road in the township of Harwich; the defendants claimed it as part of lot nine, and the plaintiff was entitled to recover if the line between the lots was to be run as in the case of a double not a single-fronted concession. It appeared that lots nine and ten were described for patent by metes and bounds in 1793, and letters patent were soon after issued in accordance with this description. The original survey of that part of the township was not completed on the ground, but the surveyor laid out the Communication road as directed and returned a plan shewing it, and, as the learned Judge who tried the case without a jury found, he gave the information upon which the description for these lots and for others about the same time were prepared. The principle of survey with double-fronts was not in use before 1820. In 1821 another surveyor was instructed by the Government to complete the survey of this township with double-fronted concessions, and to explore and survey the road, but not to interfere with the lands ceded intersecting it. No posts on the ground were found along the Communication road, and he laid out the lots along it as double-fronted.

Held, that the latter survey, made after the patents for these lots, could not affect them: that the principle of survey with double-fronts could not be applied to the grant made long before it was adopted; and that the plaintiff therefore could not succeed. McGregor *v.* McMichael *et al.*, 41 Q.B., 128.

SINGLE FRONT CONCESSION—NOT ALTERED BY SUBSEQUENT SURVEY.

Murphy *vs.* Healey.

The first five concessions of a township were surveyed in 1797, the lots being 29 chains 87 links in width. About 1813, an original post was found by a surveyor in front

of the fifth concession by which he determined the limits of the lots, and they had been settled on accordingly. In 1821 the remaining concessions were surveyed, under instructions from the Surveyor-General, which directed the several concession lines to be produced beginning with that between the fifth and sixth concessions, and from the centre of each line at the distance of 50 links each way, right and left, at right angles thereto, the several lots of the width of 29 chains 37 links were to be posted. The surveyor, under these instructions, double posted the line between the fifth and sixth concessions, making the lots 29 chains 37 links wide and patents were afterwards granted for half lots in the concession. It was contended that this made the fifth concession double-fronted, having the lots 29 chains 87 links wide in the front, and 29 chains 37 links in rear. One of these patents however made the rear half 29 chains 87 links wide, and the Government plans shewed no jog in the side lines of the fifth concession.

Held, that the concession was not double-fronted, for the evidence shewed that the whole of it had been surveyed as a single fronted one in 1797, and the surveyor in 1821 had no authority to change it, if he so intended. Murphy *v.* Healey 30 Q.B., 192.

SINGLE OR DOUBLE FRONT CONCESSION — HOW TO RUN SIDE LINE. TOWNSHIP OF CUMBERLAND.

Holmes vs. McKechin.

The township of Cumberland is bounded to the north by the Ottawa, and has a range of lots on the river, with their rear boundaries irregular, corresponding to the course of the stream in front, the remainder of it being laid out into concessions running north and south, numbering from the east, and into lots running east and west numbering from the north.

The instructions for the original survey were to leave one chain as an allowance for road between each concession, to be double posted at the distance of 50 links right and left from the centre of the road The surveyor however planted only a single row of posts in rear (*i.e.*, at the west side) of each concession, and he stated in his evidence that the west halves of lots in the concession were to be measured from these posts, and the east halves of lots in the next concession westward by beginning at the distance of one chain from each post westerly, parallel to the side line of the township. No line therefore was run or posted at the front of the eighth concession.

The plaintiff sued for trespass on the west half of lot B, in the eight concession, and the question was how the course and starting point of his side line were to be de-

termined? His surveyor took the line dividing Cumberland from Russell, the adjoining township to the south, as governing the course of the side line, because, though the lots numbered from the north, there was no continuous straight line at that end of the concession. He found an original monument on the rear line of the 7th concession, intended to mark the limit between lots A. and B. there, and ran the side line from a point one chain west of that monument to the rear of the 8th concession, which if correct, shewed that the plaintiff should recover; while if the township was to be treated as double-fronted, the line should have been run from the post at the west side of the concession, and in that case the defendant should succeed.

It appeared that whole lots had been granted in several of the concessions, and the north halves of two lots and the south half of one, all before 1854, but that many more grants had been made from 1821 to 1858 for the east and west halves of lots separately described.

Held, 1. That the course of the side line was under the facts proved correctly ascertained, the case being within the proviso to sec 71, Consol Stats. U.C., ch 77, and the principle of McDonald *v.* McDonald, 11 C.P. 374.

2. That sec. 85 could not apply, for no line in front of the 8th concession had ever been run or posted. As to the starting point for the side line, the precise case of this survey is unprovided for by the Act: the concessions were not single-fronted for the lines had been run and posted in rear not in front, and very few whole lots had been granted; and they were not within the definition of double-fronted concessions, or within sec 28, for only a single row of posts had been planted, and the grants had not all been by half lots; but *Held*, looking at the instructions, the evidence of the surveyor and the grants made, that the weight of evidence was much in favour of treating the township as one with double rather than single-fronted concessions, in which case the plaintiff's side line had not been correctly determined.

Held, also, that if a single-fronted concession as the posts in rear of the seventh were intended to govern the front angle of lots in the eighth concession, the plaintiff's line might properly being as it did by his survey. Holmes *v.* McKechin, 23 Q.B., 52.

TOWNSHIP OF CUMBERLAND, SURVEY OF—SINGLE OR DOUBLE-FRONTED CONCESSIONS—EVIDENCE—SECOND NEW TRIAL GRANTED—12 VIC., CH. 35, SEC. 37.

See this case reported on a previous motion for a new trial.

The jury having again found for the plaintiff, the court granted a second new trial, holding that upon the facts proved the township should clearly be treated as one with double-fronted concessions.

Held, also, that as all the grants before the passing of the Surveyors' Act, 12 Vic., ch 35, sec. 37, had described the land in half lots, that feature of a double-fronted concession was established by the retrospective words of the Act, and subsequent grants, therefore, could not affect the question.

There are several townships with double-fronted concessions in which the posts have not been planted on both sides of the allowances for roads between the concessions, though the statute makes that a part of the definition of such townships. Holmes *v.* McKechin, 23 Q B., 321.

DOUBLE FRONT CONCESSION—ADJALA ROAD, TOWNSHIP OF ALBION.

McLachlen *vs.* Dixon.

In the township of Albion, the lots in the different concessions were originally surveyed and laid out with double fronts; but the Adjala road, which forms the northern boundary of the township of Albion, cuts lots numbers 30 and 31 in the 7th concession diagonally, leaving the eastern halves of these lots broken, and not corresponding with the front or west halves, and no posts or monuments were placed to mark the angles of the east halves.

Held, in appeal, that the side or division road between lots numbers 30 and 31 should not run direct from one front to the Adjala road in a direct line, but that the side road should be run from each front to the centre of the lots.

Macaulay, C. J., C. P., V. C. Esten, V. C. Spragge, and Richards, J., dissentiente. McLachlen *v.* Dixon, 4 C. P 307.

DOUBLE FRONT.—PATENTED IN HALF LOTS.

Marrs *vs.* Davidson.

The 12 Vic., ch. 35, sec. 37, Consol. Stat. U. C., ch. 93, sec 28, which prescribes the rule for drawing the side lines in double-fronted concessions, applies to townships theretofore surveyed.

Held, following Warnock *v.* Cowan, 13 U. C. R. 257, and Holmes *v.* McKechin, 23 U. C. R., 52, 321,—that the lands having been described in half lots is made by that section part of the definition of a township with double front concessions.

Held, also, that the rule prescribed applies to all lands in such concessions, not to the grants of half lots only, and that it is brought into application by the granting of any half lots.

Semble, however, that the section is on both points open to doubts, which it is desirable to remove by legislation. Where land was described as commencing at a post planted four chains and fifty links from the north-east angle of a lot; *Held*, that the post (the existence and position of which were satisfactorily established) was the point of commencement, though its distance from the true north-east angle was inaccurately given.

The declaration charged the trespasses breaking down fences, etc., as committed on divers days and times. Defendant pleaded leave and license, which the plaintiff traversed. It appeared that part of the fence was removed under a license, and the remainder after it had been revoked, the interval from the first to the last removal being two or three years.

Held, that the plaintiff was entitled to succeed, though it would have been otherwise if the declaration had only charged the trespasses as committed on the same day, for the defendant could then have applied the license to the only trespass charged. Marrs *v.* Davidson, 22 Q. B, 641.

DOUBLE FRONT CONCESSION LINE BETWEEN LOTS, TOWNSHIP OF OPS.

In *trespass quære clausum fregit*, to try the boundary line between lots 28 and 29 in the 5th concession of Ops, the plaintiff described in his declaration by metes and bounds the piece of land trespassed upon, alleging it to be part of 28, to which lot his title was not disputed: *Held*, that "not guilty" was the only plea required and that the other pleas pleaded and set out below were unnecessary and inappropriate. Dark *vs.* Hepburn *et al.*

The land in question was situated at the rear of the concession (the concessions running north and south and numbering from the west), and plaintiff claiming that it was a double front concession, had the division line run from a point on the concession line in the rear, or, what he claimed to be the east front, of the concession; but there was no proper evidence of the concession having, in the original survey, been laid out as a double front concession, and of posts being planted in the rear, while the lots were granted by the letters patent as whole, and not as half lots.

Held, the fact of 28 and 29 having been granted as whole lots, was *prima facie* evidence of the concessions being single-fronted, and that the grant of half lots in the adjoining concession could not affect it.

Held, also, that the fact of defendants attempting to prove a post in rear, from which they contended the line should be run, did not estop them from asserting that the concession was single-fronted.

The jury were asked to find:—1. Is the point contended for by the defendants the place where the original post stood? 2. Did the plaintiff, when he moved his fence, do so on the understanding with the defendants that they acknowledged his right; or, Was his possession to be subject to the correct adjustment of the line? They found, that the post had not been proved, and that the plaintiff was given possession by the defendants: *Held*, that on the first answer the verdict should have been for defendants, for the fact that defendants had not proved the post did not relieve plaintiff from proving the true line; and that the second question was not presented by the case. Dark *v.* Hepburn *et al* 27 C. P., 357.

SPECIAL CASE—DOUBLE FRONT CONCESSIONS—POSTS NOT ALL PLANTED. TOWNSHIP OF EMILY.

Dyell *vs.* Millage.

By 36 Vic., ch. 60, sec. 1, O.,—after reciting that great inconvenience had resulted from the concessions in the township of Emily, having been intended to be made double-fronted, but posts not having been in many cases planted at the front and rear angles of the lots—it is enacted that notwithstanding anything in secs. 28-31, inclusive, of C. S. U. C., ch. 93:—1. Where posts were in the original survey planted at the front, but not at the rear angles of any lot, the side lines should be run from the posts at the front angles to the rear of the concession, parallel with the governing line. 2 Where posts were in the original survey planted at the rear angles of any lot, the side lines should be run from the front angles of such lot parallel with the governing line to the centre of the concession, and thence direct to the post at the rear angle. 3. In all other cases, the side lines should be run from the front angles of the lots to the rear of the concession, parallel to the governing line. In trespass, to try the boundary between lots 15 and 16 in the 14th concession, it was admitted that the original survey of the township was intended to be in double-fronted concessions, and that there was satisfactory evidence of the original posts at the north or rear end of the concession, between lots 14 and 15 and lots 17 and 18, but not of the intermediate posts. It was admitted, also, that a post had been planted in the rear, in the original survey between the two lots in question; and the post in front was agreed upon.

Held, that the case came within the third sub-section, and that the line must therefore be drawn from the front to the rear of the concession parallel with the governing line. Dyell *v.* Millage, 27 C.P., 347.

BOUNDARY LINES AND SIDE LINES.

The Eastern side line of lot 24, in the front or first concession of the township of Kingston, cannot be run as it is described in the grant from the crown, or parallel to the Western limit of the township, according to 59 Geo. III., c. 14, because that would carry the concession beyond the line which was originally run out as its eastern boundary. *Doe dem.* Stuart *v.* Forsyth, 1 Q.B., 324. Stewart *vs.* Forsyth.

SIDE LINES OF LOTS, HOW ASCERTAINED—SURVEY—12 VIC. CH. 35, CASE WITHIN THE 36TH SECTION OF—CONSTRUCTION OF 32ND SECTION.

In the original survey of the township of K. which was made by alternate concessions, the lines in front of the first and rear of the second concessions, were run, and a single row of posts planted along the latter to divide the space into two hundred acre lots. The line between the first and second concessions was afterwards surveyed under instructions from Government, and divided off into lots of the same size. McDonell *vs.* McDonell.

Held, A case within the 36th section of 12 Vic., ch. 35: and therefore that the side lines of lots in the second concession should be ascertained by the posts of the original survey on the line in rear of that concession, and not by those of the subsequent survey on the division line between the first and second concessions. McDonell *v.* McDonell. 10 Q.B., 530.

BOUNDARY LINE—MODE OF ASCERTAINING WHEN IMPERFECTLY SURVEYED.

On the original survey of a township a base line had been run, but the concession lines had not been run through from one side of the township to the other, and the surveyor had also run the side lines, planting a post at the measured depth of each concession, to mark the line of the concession; but it appeared impossible the concession lines so marked could be straight, and one of the angles of a lot could not be discovered by any stake or monument. Davis *vs.* Waddell.

Held, that the statutes 12 Vic., ch. 35, and 18 Vic., ch. 83, do not provide a rule for determining the front of any lot in a township so surveyed, and that the proper method of ascertaining the place of a lost post was by dividing the

distance between the nearest known posts on the side line, as it was originally run past the lots, and not by running a straight line between the nearest posts on the concession line and dividing the distances by the number of lots; also, that the side lines originally surveyed were to be considered true and unalterable boundaries. Davis *v.* Waddell, 6 C.P., 442.

BOUNDARY LINES AND SIDE LINES—BOUNDARY WHERE POST MARKING SIDE LINE OF LOT HAD BEEN LOST.

Culp *vs.* Culp.

A concession or base line had been run and posts planted on it upon a survey made on a similar principle to that referred to in Davis *v.* Waddell, but the question was how the side line of a lot was to be ascertained.

Held, that the distance between the two nearest ascertained monuments on the base line should be measured and divided proportionately between the lots, making the due allowance for roads, and that the side line required should be run from the angle of the lot so ascertained. Mary Culp *v.* John Culp, 6 C.P., 466.

SIDE LINE—TOWNSHIP OF YORK—12 VIC., CH. 35, SEC. 35.

Bell *vs.* White.

Where the lots in a concession ranging from east to west were not numbered all the way from the boundary line of the concession on the east, but two blocks of five lots each had been laid out in the original survey fronting on and towards that line, and the remainder of the concession in blocks of five lots each, fronting as usual on the concession line, and numbering westward, beginning at No. 10.

Held, that the 35th section of 12 Vic., ch. 35, would nevertheless apply, and that the side line of the lot in question (32) must be determined by the course of the eastern boundary line of the concession.

Held, also, that the last proviso in that section would not apply, so as to make the boundary line of the block in which lot 32 was the governing line, because the township was surveyed before the 27th of March, 1829. Bell *v.* White, 15 Q.B., 171.

SURVEY—BOUNDARY LINE—NUMBERING OF LOTS—APPLICATION OF STATUTE.

Macdonald *vs.* McDonald.

Two surveyors being employed to divide the gore of land marked in the plan in the statement of case ran lines as are therein dotted and named McLaurin's and McLeod's lines. The parties apparently acquiesced in the McLeod's line for a time, but subsequently disagreed, and this action was brought to contest the division.

Held that the rule in the statute, that the course of the boundary line in each concession, on that side from which the lots are numbered shall be the course of the division or side line, not being applicable to the case as these lots purport to number from the east, while the gore at the east of the concession is not numbered, the defendant is entitled to recover. Macdonald *v.* McDonald, 11 C.P., 374.

TRESPASS ON HIGHWAY.

Mountjoy *vs.* Regina.

On the 8th of January, 1836, a surveyor, in compliance with instructions from the government agent, laid out a road or street on the northern limit of the town of London, two chains wide, a portion of which was then, and had for some time been, in the actual possession of the Episcopal church, to which body a patent subsequently, and on the 18th of January, 1836, was issued, granting to them all that parcel or tract of land, "on which the Episcopal church now stands, and containing four acres and two-tenths of an acre or thereabouts." Upon an indictment for a nuisance in stopping up the highway:—

Held, that this survey, although made after the grantees had gone into possession, must prevail against such possession. Hagarty, J., diss. Mountjoy *v.* Regina, I. E. & A., 429. See Regina *v.* Bishop of Huron, 8 C.P., 253, from which this case was in effect an appeal.

WHEN NUMBERING OF LOTS ON PLAN IS ALTERED BY GOVERNMENT, ORIGINAL PATENT HOLDS AGAINST NEW NUMBERING.

Talbot *vs.* Paterson.

In regard to a survey made before the 50 Geo. III, ch. 14, the provisions of that act will not have the effect of necessarily confining the grantee to the land designated by the posts planted in the original survey, if the plan of survey had been altered by the government before the issuing of the patent, and before the passing of that statute; therefore, when the government had added to the ends of the several concessions a strip of land which the surveyor had left unsurveyed between his concessions and the adjoining townships, and in consequence of such addition had changed the numbering of the lots throughout the concession.

Held, that the patents issued in accordance with such reformed survey would cover the land which the government intended to be included within the boundaries expressed in the patent, though the number of lots would not correspond with the posts set by the surveyor. *Doe d.*, Talbot *v.* Paterson, 3 Q.B., 431.

WORK ON GROUND—LICENSES TO CUT TIMBER—INCONSISTENT SURVEYS—"GENERAL COURSE" OF A RIVER.

White *et al.* *vs.* Dunlop.

The plaintiffs held a license dated September, 1860, to cut timber within certain limits, commencing "at the south branch of the Indian River, at the extremity of a limit licensed to A. & Co., ten miles above the forks." In 1842 a survey had been made by the Deputy Inspector of woods and forests, to determine A. & Co's limits, when the upper end, where the plaint began, was marked by blazed trees; and in 1844 the ey was completed by one R, under instructions from the Department, and the line previously marked was then adopted, and recognized until March, 1867. In that month a sur.eyor was instructed by the department to determine the defendant's limits, which were the same as those of A. & Co. and he made the upper boundary not so far from the forks as the previous surveys. His plan was returned to the Department, but no action taken on it. The plaintiffs then sued the defendant for cutting timber on the strip between the two surveys, trespasses complained of having been committed apparently before the last survey was made.

Held, that they could not recover, for R.'s survey having been adopted and acted on by the Government, the boundary marked on the ground in accordance with it must govern until changed by competent authority.

Quære, how a boundary line following "the general course of the river" for a given distance is to be ascertained, and whether it is properly done by drawing a straight line from the starting point to a point on the river at that distance.

Quære, whether, as was assumed in this case, the holder of a license which has expired may sue for trees cut during its currency. White *et al. v.* Dunlop, 27 Q.B., 237.

CHANGE OF PLAN—INCONSISTENT DESCRIPTIONS—ADMISSIBILITY OF DESCRIPTIONS TO EXPLAIN PATENTS.

Hagarty *vs.* Britton.

One R. in 1829 first surveyed part of the township of Plympton fronting on Lake Huron, and his plan returned shewed the lots fronting on the lake with an oblique line in rear, following the general course of the lake but no allowance for road. Afterwards a plan of the whole township was compiled in the Crown Land office, from surveys of three separate portions of it made by different surveyors. The descriptions of the lots were made from this plan, all the lots having been granted after it had been completed, and the distances in the descriptions contained in the

deeds were according to the scale on which the plan was compiled. This plan shewed a road in rear of the front lots, and made their depth greater than in R.'s plan. There was no proof of any work on the ground shewing that R. had ever run out or posted the rear lines as it appeared on his plan.

Held, that it was competent for the Government to make such allowance for road, not being inconsistent with any work on the ground.

Held, also, that in order to give effect to the change made by such allowance—to avoid an irregular rear boundary for such front lots—and to reconcile the plans, and the grants for one of the front lots and two gore lots in rear of it, which could not all three be carried out owing to a deficiency in the land—a proportionate reduction should be made in each of such lots.

The description of a lot by metes and bounds, from the Crown Land Department, is admissible in evidence to explain the patent for the lot in which it is described only by the number and concession. Hagarty *v.* Britton, 30 Q.B., 321.

See also, Keeley *v.* Harrigan, *et al* 3 C.P., 173.

TITLE BY POSSESSION.

TOWNSHIP OF HAMILTON—SURVEY UNDER 29 VIC., CH. 72, EFFECT OF.

Taylor *vs.* Croft.

The plaintiff owned lot 28 and the defendant lot 27 in third concession of Hamilton, between which there was no road allowance, and the plaintiff, previous to the survey of that concession made under 29 Vic., ch. 72, had occupied the land in question for more than twenty years. By this survey it belonged to lot 27.

Held, Morrison, J., dissenting, that the effect of such survey was to fix conclusively the division line between the lots, but

Held, also, that the plaintiff's title by possession was not taken away by it.

The above survey was made by Surveyor E. C. Caddy. It was admitted that Caddy made a survey of concessions A and B, and of the first and third concessions of the said township, in accordance with the said Act, and did all in accordance with the act he was required to do; that in making his survey of the third concession, he found two original monuments, one on the east and the other on the west side of lot 27, and from the monument on the west side of the lot he ran a line as a division line between lots 27 and 28. There is no road allowance between the two lots.

The questions for the Court were, whether the survey of Caddy, under the facts stated, made by virtue of the Act, fixed conclusively the division line between lots 27 and 28. If conclusive, then the further question was, is the plaintiff entitled to recover by right of possession, notwithstanding the provisions of section 3, and the other provisions of said Act. Taylor *v.* Croft, 30 Q.B., 573.

TOWNSHIP OF SCARBOROUGH—24 VIC., CH. 64, 25 VIC., CH. 38,—EFFECT OF SURVEY UNDER—PROOF OF ORIGINAL MONUMENTS—STATUTE OF LIMITATIONS.

Palmer *vs.* Thornbeck.

In ejectment to try a question of boundary, the plaintiff claimed the north half of lot 31. Defendants limited their defence to a piece described by metes and bounds, giving notice that they claimed it as part of lot 32.

Held, that the plaintiff was not entitled to succeed on proving his title to lot 31; but that it was for him, seeking to change the possession, to shew that the piece in dispute was part of that lot.

In this case it appeared that over twenty years ago a fence was mutually erected by plaintiff and defendant's father, who then occupied lot 32, as a line fence along the course of an old blazed line; though for what purpose such line had been run did not appear. The fence continued to be used as a line fence until 1862-3, when, in consequence of the survey made under the 24 Vic., ch. 64, and 25 Vic., ch. 38, the plaintiff claimed that the line was incorrect, and he procured the Surveyor, who had made the survey to run the line. The Surveyor divided equally the space in the block containing these two lots between the road monuments planted several years previously by himself at the front angles of the side road allowances; but there was no evidence to shew how he ascertained the position of such side roads in making that survey, or of any search for the original monument. In 1865-6, after this new line had been run, the plaintiff pulled down a piece of the old fence and removed it to the new line, where it remained for two or three days until put back by the defendants to the original line, where it has so remained ever since.

Held, that these statutes did not interfere with any original posts, if existing; that the evidence was insufficient to shew plaintiff's right to claim according to the statutable survey, and a new trial was granted.

Per Gwynne, J.: That the onus was on the plaintiff of proving the original monument marking the front angle of the lot, or its loss, and that there was no satisfactory evidence

of its position, before the mode adopted of dividing the space between the road monuments could be adopted.

Per Hagarty, C. J.: That on proof, which was wanting here, of the statutable directions having been obeyed in laying out such side lines and planting the monuments, then that plaintiff would be entitled to the statutory division, and the onus of proving an original monument, marking the front angle of the lot, was on the defendants.

Per Galt, J.: That under those statutes, the onus of proving the existence of original monuments was cast upon the person asserting it

Semble, that the plaintiff's entry in 1865-6 was sufficient to stop the running of the Statute of Limitations. Palmer *v.* Thornbeck, 27 C.P., 291.

TOWNSHIP OF SCARBOROUGH—SURVEY UNDER 24 VIC., 64, AND 25 VIC , CH. 38—ONUS PROBANDI—STATUTE OF LIMITATIONS—EVIDENCE.

Palmer *vs.* Thornbeck.

On the second trial of this case, under the judgment granting a new trial herein, reported in 27 C.P., 291, it appeared that the line between lots 31 and 32 was not run upon the original survey, and that when the line was run in 1865, no trace could be found of an original post, if any had been planted, designating the boundary line between the lots on the front of the concession. It also appeared that the position of the original monuments at the front angle of the side road allowances was ascertained by the surveyor, and that the monuments planted by him were on such site.

Held, that on this evidence the plaintiff was entitled to claim according to the statutable survey.

Held, also, that the 6th Sec. of 25 Vic., ch. 38, had not the effect of divesting any title acquired by the Statute of Limitations.

Held, also, per Gwynne, J., adhering to his former judgment, that the onus probandi, that the piece of land in question was part of lot 31, either independently or by force of the statutes 24 Vic., ch. 64, and 25 Vic., ch. 38, rested on the plaintiff. Palmer *v.* Thornbeck, 28 C.P., 117.

MUNICIPAL SURVEYS.

C. S. U. C., CH. 93, SECS. 6, 7, SURVEY UNDER—MOTION TO QUASH BY-LAW—ACQUIESCENCE OF APPLICANT.

Fairbairn *vs.* Sandwich E.

Sec. 6 of C. S. U. C., ch. 93, authorizing the County Council to apply to the Governor to cause a concession line to be surveyed, applies only where such line was not run in the original survey or has been obliterated. Where,

therefore, it appears that there were in fact two lines clearly traceable, the question being which was the original line, and the surveyor decided this upon conflicting evidence.

Held, that such survey was not binding or conclusive, and that a by-law of the township adopting it must be quashed.

Held, also, that the acquiescence by the applicant in the line thus adopted (which was a highway) could not be urged against the application, other interests than his, both public and private, being affected.

Sec. 7 directs that the surveyor shall so draw the line as to leave each of the adjacent concessions of a depth proportionate to that intended in the original survey. The depth of the concession on the north side of the line in question lay from north to south, and the concessions on the south extended in depth from east to west, so that the depth of that to the north only would be affected by the position of the line.

Semble, that this would not prevent the application of the statute. In *re* Fairbairn and the Corporation of the Township of Sandwich East, 32 Q.B., 573.

MUNICIPAL SURVEYS.

Boley *vs.* McLean.

A surveyor employed by the Government, under Consol. Stat. U.C., ch. 63, secs 6-8, to survey a concession line alleged not to have been run in the original survey, or to have been obliterated, instead of attempting to make a survey in accordance with those sections, satisfied himself that the original line could be found and endeavored to retrace it.

Held, following Tanner *vs.* Bissell, 21 U.C.R., 553, that such survey was not binding under the statute; and the Court, on the evidence given at the trial, affirmed the finding of the learned judge, who tried the case without a jury, that the line so run was not in fact the same as the original line.

Semble, that in order to prove a survey which will be conclusive under the statute, the application by the county council to the Government for such survey must be shewn. Boley *vs.* McLean, 41 Q.B., 260.

ERROR IN MARKING POSTS OF ORIGINAL SURVEY.

Jarvis *vs.* Morton.

A mistake of a surveyor in marking the number of concessions wrong on some of the posts of an original survey, will not make it proper to describe the lots so marked as being in the concession numbered on the posts. Jarvis *vs.* Morton, 11 Q.B., 431.

CONCESSIONS—SURVEYS—STATUTES.

There is no rule of law nor any statute which makes it necessary that each concession should be of the same width throughout a township, nor is there any principle by which an error in the survey of one concession entirely unconnected with the actual work and survey on the ground in another, is to affect and either contract or expand such other concession. Johnson *vs.* Honsberger *et al*, 6 C.P., 201. Also Marrs *vs.* Davidson, 26 Q.B., 641; Dark *vs.* Hepburn. Johnson *vs.* Honsberger *et al.*

DISCREPANCY BETWEEN WORK ON GROUND AND PLAN—HIGHWAY—FIELD NOTES—COSTS.

The question in an action of trespass being whether there was a highway between lots 20 and 21 in a township, which the plaintiff denied, it appeared that the practice of surveyors in laying out a road allowance was to plant a post on each side of it, marked on the side nearest the road with the letter R., and on the opposite side with the number of the lot, and to plant a third post in the centre of the road marked R on two or on all four sides. Stakes thus marked were found between 19 and 20, but none between 20 and 21, and it was sworn that an original post had been seen there 24 years ago, and until within three or four years, marked 20 and 21, thus far shewing that there was no road allowance between those lots. Carrick *vs.* Johnston.

On the other hand, the registered map of the township, the map in the Crown Lands Department, and the field notes of the surveyor who made the original survey, shewed such allowance. The plaintiff and defendant both claimed under grants from the Crown of separate parts of lot 21, described as commencing on the northern limit of such allowance, and without it the defendant would have no access to his lands.

The jury were told that the work on the ground must govern, but that under C.S.U.C., ch 54, sec. 313, the fact of the Government surveyor having laid out this road in his plan of the original survey, would make it a highway, unless there was evidence of his work on the ground clearly inconsistent with such plan. The jury having found for defendant.

Held, that the direction was right, but that the verdict was contrary to evidence, and a new trial was granted on payment of costs.

The Queen *vs.* Great Western R. W. Co., 21 U.C.R., 555, remarked upon.

A certified copy of part of the field notes of the original survey is admissable in evidence.

The defendant's counsel told the jury that a verdict in favour of the plaintiff for any sum would carry costs. Quære, as to the right to make such statement; but semble, that the objections to a verdict for the plaintiff founded upon it, would apply equally to a verdict for defendant. Carrick *vs.* Johnston, 26 Q.B., 69.

SURVEY—BOUNDARY LINE COMMISSIONERS—VALIDITY OF WORK DONE BY SUBORDINATE.

Ovens *vs.* Davidson.

Held, that a line run by a subordinate and adopted by the principal (surveyor) is the work of the latter, and must be treated as such.

That it is by the work as executed on the ground, and not as projected before execution, or represented on a plan afterwards, that the boundaries are to be determined. Ovens *vs.* Davidson, 10 C.P., 302.

SURVEY OF TOWNS AND VILLAGES—WORK ON THE GROUND —PLAN—C.S.U.C., CH. 93, SEC. 35.

McGregor *vs.* Calcutt.

Under the latter part of sec. 35, of ch. 93, C.S.U.C., the work upon the ground in the original survey of towns and villages, to designate or define any lot, shews its true and unalterable boundaries, and will over-ride any plan of such lot. McGregor *v.* Calcutt, C.P. 39.

BOUNDARIES—ORIGINAL MONUMENTS—SURVEYS.

Artley *vs.* Curry.

In questions relating to boundaries and descriptions of lands, the well-established rule is that the work on the ground governs; and it is only where the site of a monument on the ground is incapable of ascertainment that a surveyor is authorized to apportion the quantities lying between two defined or known boundaries. Therefore, where an original monument or post was planted as indicating that the north-west angle of a lot was situated at a distance of half a chain south therefrom, and another surveyor had actually planted a post at the spot so indicated, and subsequently two surveyors, in total disregard of the two posts so planted, both of which were easy of ascertainment, made a survey of the locality and placed the post at a different spot, the court (Spragge, C.) disregarded the survey, and declared the north-west angle of the lot to be as indicated by the first mentioned monument. Artley *v.* Curry, 29 Chy., 243.

EVIDENCE.

A piece of land marked out in the original plan of a township, as an allowance for road, does not lose that character, because it has never been used as a road for a period of forty years, and a copy of the original plan of the township is admissible in evidence to prove such allowance, although it does not appear by whom, nor from what materials the plan was compiled. Badgely *v.* Bender, 3 O.S., 221. Badgely *vs.* Bender.

When a witness, a surveyor, founded his evidence upon the assumption of a certain monument as the correct point to start from in running a line, and the jury gave their verdict accordingly, and such witness afterwards discovered he was in error as to the correctness of that boundary, and made affidavit of his mistake, the court granted a new trial. *Doe d.* Case *v.* Magill, 5 O.S., 56. Case *vs.* Magill.

A surveyor cannot act independently of the provisions of the statute, 5 Geo. III., ch 13, and arbitrarily lay on one side the evidence which neighbours are ready to give, from their own knowledge of the situation of original posts. Sherwood *vs* Moore, 3 Q.B. 468. Sherwood *vs.* Moore.

THE DESCRIPTION AND CERTAINTY OF EVIDENCE REQUIRED BY PLAINTIFFS IN EJECTMENT BROUGHT ON ACCOUNT OF DISPUTED BOUNDARIES—FIELD NOTES.

In all ejectments brought on account of disputed boundaries, the plaintiff has to shew, beyond any reasonable doubt, that he is entitled to some land at least of which the defendant is in possession ; where the point is a doubtful one, the plaintiff must be prepared to shew that he has had a survey carefully made, and that the proper steps have been taken which the law requires for ascertaining the exact position of any posts along the line which can still be discovered by inspection or can be established by evidence, in order that the court and jury may see whether the two lots in question are, by the proof which the plaintiff is seeking to establish, made to occupy their proper position on the concession line Strong *vs.* Jones.

Semble, that an admitted copy of the field notes from the Crown Lands Office may be received in evidence. *Doe d.* Strong *v.* Jones, 7 Q.B., 385.

EVIDENCE.

A person not being a licensed surveyor is a competent witness on a question of boundary. Potter v. Campbell, *et al.* 16 Q.B., 109. Potter *vs.* Campbell.

BOUNDARY LINE—EVIDENCE.

Richmond *vs.* Ferris.

In ejectment for part of a gore of land, lying between lots Nos. 12 and 13, the plaintiff rested his case on proving by the recollection of witnesses. the original movement between lots Nos. 10 and 11 and between lots 14 and 15, and claimed to have the space between these two boundaries proportionally divided according to the width of lots Nos. 11, 12 and 13; and of this gore, as designated in the field notes. The defendant gave evidence of an original monument between the gore and lot No. 12; and if this were proved defendant was entitled to a verdict; but it did not appear from the field notes that any post had been planted in the original survey between the gore and lot No. 12.

Upon verdict for defendant, the court set aside such verdict, and granted a new trial, without cost—Hagarty, J., dissentiente. Richmond *v.* Ferris, 6 C.P., 163.

See also Ovens *v.* Davidson, 10 C.P., 307; McGregor *v.* Calcutt, 18 C.P., 39.

CROWN SURVEY—ALLOWANCE FOR ROADS—PROFESSIONAL EVIDENCE.

Stock *vs.* Ward *et al.*

An original Government survey of part of a township, made no mention of roads, and it was apparently the surveyor's intention the roads should be taken out of them (wild land) adjacent. The surveyor who afterwards surveyed the adjoining lands, treated the road allowance as included within the lines of the original survey, whereby the plaintiff's lot would be diminished one chain in breadth The jury having found for the defendants. the court ordered a new trial, considering such verdict against the weight of evidence.

The weight attached by the court to the evidence given by professional witnesses is diminished by efforts to sustain the views of the party who may call them—it should be given free from bias. Stock *v.* Ward, *et al.*, 7 C.P., 127.

EVIDENCE—AFFIDAVITS TAKEN BY SURVEYOR—TRESPASS TO LAND—PLEADING—AFFIDAVITS TAKEN BY SURVEYOR—HOW FAR EVIDENCE—C.S.U.C., CH. 93, SECS. 50, 51—CONSTRUCTION OF.

Manary *vs.* Dash.

To an action of trespass on lot 11, in the 5th concession of Saltfleet, defendant pleaded, among other pleas, that the alleged trespass was committed on lot 12, and on defendant's land. *Semble*, that the allegation of title to lot 12 was superfluous, unless equivalent to

liberum tenementum; that the averment that the trespass was committed there was in effect not guilty; and that if the fact that the trespass took place on lot 11, and on the plaintiff's property, was intended to be put in issue, it should have been done in another form The question in dispute at the trial being the boundary line between 11 and 12, affidavits were offered in evidence as to the line between lots 4 and 5, and 14 and 15, in the same concession, taken by the surveyor employed by defendants to run this line in 1860, and filed with the registrar under C.S.U.C. ch. 93, sec. 51. Held that such affidavits were properly rejected.

Quære, as to the effect of the words in that section, "subject to be produced thereafter in evidence in any court of law or equity within Upper Canada."

One of these affidavits went to show that none of the side lines in this concession had been run in the original survey, owing to a large swamp.

Held, not an affidavit within the statute, for evidence "concerning any boundary" does not mean evidence that no such boundary ever existed; and on this ground, also, such affidavit was rightly rejected. Manary *v.* Dash, 23 Q.B., 580.

ALIQUOT PARTS OF LOTS—EJECTMENT—SURVEY—ALIQUOT PART OF A LOT—C S.C, CH. 77, SEC. 68.

Babaun vs. Lanson.

In ejectment by the patentee of the south east quarter of a lot, to try a disputed boundary, defendant owning the north-east quarter, the plaintiff's surveyor stated that he ran the east side-line of the lot, divided it into equal halves, and drew a line across the lot on a bearing corresponding to the concession line in the rear, and that of the quarter so ascertained defendant was in possession of eleven acres. He said, however, that he did not know the quantity in the whole lot, which fronted on a river, and there was a jog in the concession line in rear, for which he made no allowance.

By the Survey Act, C.S C., ch. 77, sec 68, every grant of an aliquot part of a lot shall be construed as a grant of such aliquot part of the whole, whether more or less than expressed in the grant.

Held, that the plaintiff had not clearly shown his right to the land claimed and was therefore not entitled to succeed; but a new trial was granted instead of a non-suit. Babaun *v.* Lanson, 27 Q.B., 399.

BOUNDARY LINES—EVIDENCE.

Smith vs. Clunas.

Held, that the entries in the diary of the surveyor, together with a small piece of map, also produced, supposed

to be his (which was all that remained in the Crown Lands office shewing the lines in question run), and the trace of a blaze for a great part of the way, were evidence of the fact of the lines having been run by him in the manner in which he was directed to run them by his instructions (which were produced), although there was no further evidence upon the ground that the original lines had been run. Smith *v.* Clunas, *et al.* 20 C.P., 213; Dark *v.* Hepburn, *et al.*, 27 C.P., 357.

SPECIFIC PERFORMANCE—STATUTE OF FRAUDS.

Stretton *vs.* Stretton.

An agreement for sale of lands referred to them as certain lots in "Stretton's Survey." No survey had in fact been then made, but a rough sketch of the proposed survey was in existence.

Held, that such sketch could not be considered as the survey referred to in the agreement; and as parol evidence was necessary to shew the particulars as to size and position, without which such sketch was unintelligible, the Court refused to enforce the agreement, but offered to make a decree for performance of the agreement admitted by the answer without costs; or dismiss the bill without costs—the defendant having improperly denied the agreement alleged by the plaintiff, which was clearly established by the evidence, though incapable of being enforced owing to the defence of the Statute of Frauds. Stretton *v.* Stretton, 24 Chy., 20.

SURVEY UNDER ORIGINAL PLAN, ETC., AND PRIVATE AGREEMENT.

McEachern *vs.* White *et al.*

It appeared that no survey had been made on the ground of the 10th or 11th concessions of the township of Eldon, north of the Portage road, but the patents had been granted according to a plan returned by the surveyor instructed to make the original survey; and by taking this plan, with the original instructions and field notes, the lots could be found upon the ground. One D., a P.L.S., made a survey in accordance with this plan, by which the plaintiff's lot, 32, 10th concession, contained 50 acres, and defendant W.'s lot 32, 11th concession, 30 acres. While a dispute as to this line was pending the defendant W. induced the plaintiff to sign a document under seal, agreeing that the portion of the line between the 10th and 11th concessions opposite lots 32 be surveyed upon the same bearings as that portion of said line lying south of the Portage road. Defendant W., who was a sharp, intelligent man, knew that the effect of this would be to deprive the plaintiff's lot of 50 acres and add it to his own, while

the plaintiff, who was illiterate and dull, was quite ignorant of this; and defendant W. assured him that if the effect of the agreement should be to reduce his, defendant W.'s, lot to 10 acres he would be satisfied. The agreement was prepared at W.'s instance, and the plaintiff signed it without taking any advice.

Held, that the plan and survey must govern, and that there was nothing in the agreement, if binding upon the plaintiff, to prevent him from asserting his title in accordance with them, or to divest him of any portion of his land.

Semble, however, that under the circumstances plaintiff would not be bound by the agreement.

The plaintiff claimed under a patent for the east half of lot 32, in the 10th concession, as expressed in the patent, "according to the original survey of said township of Eldon," containing 100 acres more or less, issued on 1st of May, 1868, to the plaintiff. The patent for the west half of the same lot as expressed by the patent, "according to the original survey thereof," containing by admeasurement 100 acres more or less, was issued on the 3rd of February, 1873, to one James Sweeny. The defendant claimed under a patent to one Joseph Fee, dated 17th of October, 1853, of lot 32, in the 11th concession of Eldon, containing by admeasurement 30 acres more or less. McEachern *v.* Somerville, *et al.*; McEachern v. White *et al*, 37 Q.B., 609.

AS TO THE TOWNSHIP OF KINGSTON—BOUNDARY LINE.

Murney *vs.* Markland.

Appeal from the decision of the Boundary Line Commissioners of the Midland District upon an application of Edmund Murney, Esquire, to have the eastern boundary line of lot 25 in the first concession of the township of Kingston determined.

Semble, that the eastern boundary line of lot 25, in the first concession of the township of Kingston, is a line drawn from the north-west to the south-east angle of the said lot. (See Stewart *vs.* Forsyth.)

Award set aside, no further information having been given during term. Murney *v.* Markland *et al*, 6 O.S. 220.

RE-SURVEY OF TOWNSHIPS—CONSOL. STAT. U. C., CH. 93—RIGHT OF ACTION BY THE COUNTY.

Peterboro' Co. *vs.* Smith Tp.

Declaration that the plaintiffs, pursuant to the statute, applied to the Governor to have the concession lines in the defendants' township re-surveyed, which was ordered accordingly and the expense paid by the plaintiffs; that the plaintiffs thereupon directed the defendants to levy and

collect the moneys so paid; but, although they did levy part, they refused to pay the same to the plaintiffs.

Plea, that the only direction was by the plaintiffs' by-law, which before suit was quashed.

Held, on demurrer, that the declaration was bad for not showing a by-law, as the plaintiffs could proceed only in that way; and that the plea was good.

Quære, whether the money can be levied before the survey has been actually made. The Corporation of the County of Peterborough *v.* the Corporation of the Township of Smith, 26 Q. B. 40.

TRIVIAL CASE—AS TO THE TOWNSHIP OF VAUGHAN. BOUNDARY BY AGREEMENT—DIVISION FENCES—STATUTE OF LIMITATIONS—SMALLNESS OF INTEREST.

Bernard *vs.* Gibson.

The plaintiff and defendant were owners of adjoining lots in the township of Vaughan. An Act of the Legislature of Canada (23 Victoria, chapter 102) had been passed, providing for a new survey of the township; and, according to a survey made under the provisions of that Act, a strip of land containing about two acres and three-tenths, occupied by the defendant, it was alleged belonged to the plaintiff. On that strip there had recently been standing nine pine trees, seven of which the defendant had cut down. It appeared that some years before 1851, a fence from the front or easterly side of these lots, for a distance of about 60 or 70 rods, had been put up and was then standing on the supposed division line between the two lots: and also another fence running from the rear or westerly side of the lots to a distance of about 25 or 30 rods, leaving a space of about 600 yards in the centre unenclosed; but the parties respectively in occupation of the lots had always used the land on either side of the supposed line as belonging to them, up till about the year 1858, when the father of the plaintiff and the then owner of the defendant's lot procured a survey to be made and a fence to be erected on the division line then laid out, which was paid for jointly by them, and which corresponded with a line which had been run and blazed by the same surveyor in 1851. The plaintiff, in 1873, filed a bill seeking to restrain the further cutting of timber, and for a declaration that the strip in question was his property.

Held per Curiam, that there had been a sufficient occupation of the lands on either side of the line for such a length of time as bound the parties under the Statute of Limitations, even if the survey made and fence erected in 1858 were not sufficient acts to compel the parties to abide by that line as the true boundary; Blake, V. C., being of

opinion that they were. Spragge, C., dubitante as to the parties being bound under the Statute of Limitations; but, being clear that the matter in dispute was too insignificant to call for the interference of this Court by injunction, he concurred in dismissing the bill, with costs.

Held, also, that the Statute of 1860, directing a survey of the township to be made, had not the effect of creating any new right or title as between parties who had been in undisturbed possession for the statutable period of twenty years before action or suit brought. Bernard *v.* Gibson, 21 Chy. 195.

TOWNSHIP OF SMITH—LOTS FRONTING ON A RIVER—C. S U. C., CH. 93, SEC. 27.

Johnson *vs.* Hunter.

The three easterly lots only of one concession in a township (Smith, in the county of Peterborough) were bounded in front by a river, and the line had been run in the original survey in front of such concession, up to though not past these lots, but the township itself fronted upon another township.

Held, clearly not a township bounded in front by a river, within the C.S.U.C , ch 93, sec. 27, so that resort might be had to the posts in the concession in rear to determine the side lines of these three lots.

Quære, whether such a case is provided for by the Statute. Johnson *v.* Hunter, 25 Q.B. 348.

TRESPASS—BOUNDARY LINE.

McNaught *vs.* Turnbull.

Trespass to try the boundary line between plaintiff and defendant. The former claimed title to part of N.W. part of lot No. 20 in the sixth concession of South Dumfries, by metes and bounds; the defendant claimed the east half. The descriptions in the deeds did not conflict; a line was originally run by a Mr. Ball for the prior holders of the property, one of them at the time claiming title through the original patentee, under an agreement for purchase, but was not acquiesced in by the plaintiff. In 1849 one M., a Provincial Land Surveyor, at plaintiff's request, ran a line supposed to be acquiesced in by the defendant; but upon the erection of a fence thereon by the plaintiff the defendant objected, and it was removed. In 1863 a Mr. Peters ran a line, claimed by the plaintiff as a true line, and which caused this dispute

Messrs. P. and J , being present at the time on defend ant's behalf, concur in opinion that this line is correct.

The jury having found for the plaintiff with leave reserved to the defendant to move against it, upon motion—

Held, that the line originally run, and now contended for by the defendant, was not binding upon the parties, and that the evidence showed the line run by Peters, and acquiesced in by the defendant, to be the correct one; therefore the verdict for the plaintiff was correct. McNaught *v.* Turnbull, 13 Q.B. 426.

BOUNDARY—ESTOPPEL—AGREEMENT TO ABIDE BY SURVEY.

Crosswaite *vs.* Gage.

In action of trespass. *q.c.f.*, it appeared that defendant conveyed to the plaintiff 19 acres of lot 2 in the fifth concession of Barton, described by metes and bounds, commencing at the N.E. angle of the lot. This starting-point upon the ground was undisputed, and it was admitted that the description given enclosed the land claimed by the plaintiff.

Held, that defendant was estopped by his deed, and could not set up any question as to the boundary between lots 1 and 2.

It appeared also that about twelve years since, one W., defendant's tenant, having moved the fence between plaintiff and defendant, an agreement in writing was entered into between W. and the plaintiff that they would employ B., a surveyor, to establish the original line between lots 1 and 2, and would be bound by it; and defendant, by a memorandum signed by him at the foot of this agreement, agreed to abide by it. The land in dispute was then in W.'s possession, and it was alleged that B. had not completed his survey.

Held, no evidence to support defendant's plea of leave and license.

Held, also, that upon the evidence, set out below, B. the surveyor, had proceeded properly to establish the line. Crosswaite *v.* Gage, 32 Q.B. 196.

Also Holmes *v.* McKechin *et al*, 23 Q.B. 52.

LOTS FRONTING ON RIVER—POINT OF LAND IN FRONT SEPARATED BY WATER.

Thomson *vs.* Sherwood.

In an action of trespass, defendant claimed as part of lot 16 in the broken front of Escott that part of Cary's point in the river St. Lawrence which would be included within the side lines of the lot, if projected from the main shore across a small bay, to and across the point to the river in front of it. In the original plan of the township the line across the point from west to east, showing an intention to include it in the broken front was continued only as far east as lot 14, though the point extended far enough to cover the fronts of lots 15 and 16. In scaling

the front on the river posts appeared to have been put down on the main land, but none could be traced on the point. The jury found that these posts were intended to mark the width of lots, not the front angles of lots in the broken front, and that the front of lot 16 was upon the main shore, and not on the river in front of the point.

Held, that upon the evidence the verdict was right as no part of the point appeared to be included in the lot. Thomson *v.* Sherwood *et al.* 21 Q.B , 174

ALTERNATE CONCESSIONS, RUNNING OF—DISPUTED BOUNDARIES—ORIGINAL SURVEYS.

In the first government survey of a township (Loughborough), the lines between alternate concessions only, as the 2nd and 3rd, 4th and 5th, 6th and 7th, had been run and staked out, numbering from south to north. These lines were not straight but curved or bended southward in the centre of the township. It appeared (though not very satisfactorily) that several persons had, under government, settled according to these lines. Subsequently, a surveyor was employed by Government to run the concessions omitted on the first survey, viz., 1st and 2nd, 3rd and 4th, 5th and 6th concessions. He did so; but instead of running them parallel to, or diverged, as the lines formerly surveyed, he ran them in straight lines, thus cutting off part of the rear of the northerly concessions and adding them to the front of the southerly concessions. *Held*, that such last mentioned survey could not be adopted as the governing one. Martin Keeley *v.* Cornelius Harrigan, Cornelius Burk and James Ryan. 3 C P., 173. Keeley *vs.* Harrigan *et al.*

BOUNDARY LINE COMMISSIONERS—SURVEY CONFIRMED BY STATUTE, 12 VIC., CH. 35.

The judgment of the boundary line commissioners under 1 Vic., ch. 19, when not appealed against. *Held*, binding wher. not appealed against within six months as required by the statute. And the decision of this court in Keeley *v.* Harrigan, 3 U. C. C. P., 173, confirmed. Raile *v.* Cronson, 9 C. P., 9. Raile *vs.* Cronson.

SURVEYS UNDER SPECIAL ACTS.

TOWNSHIP OF BINBROOK—ERRONEOUS SURVEY—ACTS 1, WM. IV., CH. 8, 7 WM. IV. CH. 59, REMEDYING SAME—MARRIED WOMAN OWNING LAND IN BINBROOK

Under the statutes 1 Wm. IV., ch. 8, and 7 Wm. IV., ch. 59, passed for the purpose of remedying an erroneous public survey, an inhabitant living in the front concession Crooks *vs.* Calder. Crooks *vs.* Ten Eyck.

of the township of Binbrook, cannot be dispossessed by an ejectment brought, after a prior submission to arbitration, by the husband of a married woman, owning land in the adjacent township of Saltfleet—the husband not being the owner of the land—to whom alone these acts apply. *Doe. d.* Crooks *v.* Ten Eyck; *doe d.* Crooks *v.* Calder, 7 Q. B., 581.

TOWNSHIP OF CUMBERLAND.

23 VIC., CH. 101—EJECTMENT—COMPENSATION FOR IMPROVEMENTS.

Smith *vs.* Sparrow.

The 23 Victoria, ch. 101, declares the mode in which the side lines in the 1st concession of Cumberland shall be run, and provides a particular method by which those injured by the change from the original plan of survey may obtain compensation.

Held, that the provisions of the general statute, 20 Vic., ch. 78, were thereby excluded, and that the defendant was confined to the remedy pointed out by the Special Act. Smith *v.* Sparrow, 21 Q. B., 323.

AS TO THE TOWNSHIP OF MONAGHAN.

16 VIC., CH. 228, SEC. 1—LIMIT BETWEEN 12 AND 13, 1ST CON. MONAGHAN—BIRDSALL'S LINE.

Otty *vs.* Davis.

Ejectment for part of lot No. 12 in the 12th concession of the township of Monaghan, described by metes and bounds.

Held, that under 16 Vic., ch. 228, sec. 1, Birdsall's line as laid out on the ground, must govern as the allowance for road between lots 12 and 13 along their whole extent, and not merely up to park lot 10 on lot 1[illegible]; and that it was immaterial whether such line was correctly described in the statute. Otty *v.* Davis, 12 Q. B. 454.

AS TO THE TOWNSHIP OF NIAGARA.

STAT. 18 VIC., CH. 156, SEC. 3—APPLICATION OF.

Clement *vs.* Clement.

This was an action brought by the plaintiff for trespass by the defendants, upon a road allowance between lots numbers 110 and 111 in the township of Niagara, which the plaintiff claimed as his, by operation of the statute 18 Vic., ch. 156, sec. 3.

Held, that the preamble and enacting clause of the statute 18 Vic., cap. 156, apply to all that part of the township of Niagara which lies between the east and west lines of the township to the Queenston and Grimsby macadamized road, and should not be limited to the first concession only. Clement *v.* Clement, *et al*, 14 C. P., 146.

MUNICIPAL SURVEY, SUFFICIENCY OF PETITION FOR—NUISANCE —DISPUTED SURVEYS—C. S. U. C., CH. 93, SEC. 6.

Regina *vs.* McGregor

On an indictment for nuisance in obstructing a highway, the Crown put in the application by way of petition, under C. S. U. C., ch. 93, sec. 6, to the County Council of the County of Kent, in these words: "We, the undersigned freeholders of the fourth ward of, etc., humbly show: That your humble petitioners are labouring under a most weighty grievance in consequence of a dispute having arisen out of the different surveys of the, etc., and as it would appear that no final adjustment can be brought about other than is provided by the 31st clause of the 12 Vic., ch. 35, your petitioners humbly pray that the County Council of, etc., will give this our prayer due consideration, and by acting upon the above named clause of the 12 Vic., ch. 35, you will further and preserve the best interests of your petitioners. As the matter now stands it is impracticable for us to expend our public money or perform our statute labor, having no guarantee than the same will prove to be properly applied." There was also produced a memorial by the County Council of Kent, to the Governor-General, under the same Act, stating that over two-thirds of the freeholders, etc., had petitioned the council for a survey to be made of the line in dispute, in order to clear up a doubt that existed as to the site of the concession in question, owing to the dispute that had arisen out of the different surveys, and referring His Excellency to a copy of the petition, by which it would be seen that the petitioners bound themselves to be governed by the conditions of 12 Vic., ch. 35, sec. 31 (C. S. U. C., ch. 93, sec. 6). and praying that the said line might be surveyed. It was proved and not disputed that the necessary number of resident landholders under the Act had applied for the survey, but it was objected that the petition did not show this:

Held, following Cooper *v.* Wellbanks, 14 C. P. 364, that everything was to be presumed to be done correctly until the contrary was proved, and here it had been proved that the necessary number of persons under the Act had applied for the survey.

Held, also, as to the other objections, viz., that the petition did not show any want or obliteration of the original survey, and that neither petition nor memorial prayed for placing monuments, that the two documents could not be read in any other sense than as containing an application to the Governor requesting the making of a survey under the Act, and if to be made under the Act, then that the marking by permanent stone boundaries

under the direction of the Commissioner of Crown Lands, in the manner prescribed by the Act, was an incident to the survey necessarily involved in the application for the survey; and—therefore, *Held*, that the petition was sufficient. Regina v. McGregor, 13 C. P., 69.

MUNICIPAL SURVEYS WHEN ILLEGAL, LEVYING RATE FOR—SURVEYS MADE UPON APPLICATIONS BY MUNICIPALITIES SURVEY—12 VIC., CH. 81, SEC. 31—18 VIC., CH. 83, SEC. 8—LEVYING RATE.

Walker *vs.* Municipality of Burford.

The statute 12 Vic., ch. 35, sec. 31, provides for a survey of *concession lines* being made, on application to the Governor by the municipal council, which application need not be at the request of the landholders. The 18th Vic., ch. 83, sec. 8, provides for making a survey, and placing monuments *to mark the front and rear angles of lots*, on application to the Governor by the municipality, made at the request of one-half the resident landholders to be affected.

An application was made under the first Act, without any request of the landholders, to mark out concession lines, and under it the survey provided for in the second Act was afterwards made, *to define the boundaries of lots*: *Held*, that such survey was illegal.

The rate to pay for a survey, made under these Acts, must be levied, not upon the assessed value of the land, but in proportion to the quantity held by the respective proprietors. Walker and the Municipality of Burford, 15 Q.B., 82.

MUNICIPAL SURVEY BY-LAW.

C. S. U. C., CH. 93, SECS. 6-9—C. S. C., CH. 77, SECS. 58-61.

Scott *vs.* Peterboro' Co.

The county council passed a by-law directing a township municipality to levy and collect from *the patented and leased lands* of the township, a certain sum required to reimburse the expenses incurred in a re-survey of the township. *Held*, that the by-law was illegal, for the statute directs that such expense shall be defrayed by the "*proprietors*" of the lands interested.

Semble, that the jurisdiction to pass such a by-law should appear on the face of it, by shewing a survey such as the statute contemplates.

Quære, whether the Act authorizes the re-survey of a whole township. In *re* Scott and the Corporation of the County of Peterborough, 25 Q.B., 453.

MUNICIPAL SURVEY BY-LAW.

BY-LAW OF UNITED TOWNSHIPS—SEPARATION—APPLICATION TO QUASH—PRACTICE—SURVEY.

A by-law was passed by the united townships of Smith and Harvey to levy a certain sum on lands in Harvey, to defray the expense of a re-survey of that township The union having been dissolved. *Held*, that an application to quash was properly made by a rule calling on the corporation of Harvey, upon a certified copy obtained from the clerk of Smith, the senior township. Scott *vs.* Harvey Tp.

The certificate was under the corporate seal of Smith, but there was no seal to the copy of by-law, nor anything but the certificate to shew that it had been sealed.

Held, sufficient.

The by-law directed the money to be levied "on all lands patented, leased, sold, agreed to be sold, and located as free grants" in the township of Harvey. *Held*, bad, following Scott and the Corporation of Peterborough, 25 U. C. R., 453. In *re* Scott and the Corporation of the Township of Harvey, 26 Q. B., 32.

MUNICIPAL SURVEY, BY-LAW, LEVYING RATE.

C. S. U. C., CH. 93—RE-SURVEY OF TOWNSHIP.

The County Council, under Consol Stat., U. C., ch. 93, sec. 6, having caused the re-survey of an entire township, and directed a certain sum to be levied for the expenses, by a by-law which had been quashed, by a subsequent by-law directed the collection of a further sum for the purpose, to be levied on the proprietors of land in the township in proportion to the quantity of land held by them respectively in such township. This by-law was quashed, on the grounds: 1. That the Statute does not authorize the re-survey of a whole township, 2. That it directs the expense of each concession to be borne by the proprietors of land there. In the matter of Scott and the Corporation of the County of Peterborough, 26 Q. B., 36. Scott *vs.* Peterboro Co.

MUNICIPAL SURVEY—IMPROPER APPLICATION FOR CONCESSION LINE.

A concession line having been laid out by a Provincial Land Surveyor under instructions from the Commissioner of Crown Lands, upon the petition of the corporation of the township, based upon the assumed application of one-half the resident land-holders to be affected by the survey, the petition being in the following words:—"To the Cooper *vs.* Wellbanks.

Reeve and Councillors in council assembled,—We, the undersigned freeholders in the 2nd and 3rd concessions, south side of Black River, west of Point Travers, in Marysburg, beg to ask your honourable body to petition the government to send a surveyor to establish the concession line according to law between the 2nd and 3rd concession commencing at the township line running towards South Bay, and by complying with this request your petitioners in duty bound will ever pray. Milford, April 14th, 1860." On receipt of this petition the corporation passed a resolution in these words: "Resolved, That in accordance with the statute 18 Vic., ch. 83, sec. 8, and the prayer of the petition of a majority of the householders to be affected thereby, that there be a survey made between the 2nd and 3rd concessions south of Black River from the township line of Athol, to lot number one in the third concession of Marysburg." On the 29th of May, 1860, the corporation of the township of Marysburg petitioned His Excellency to cause this survey to be made, and on the 9th of July, 1860, the Honourable the Commissioner of Crown Lands gave instructions to a Provincial I and Surveyor to survey and establish the concession line between the 2nd and 3rd concessions of the township of Marysburg, commencing at the township line, and running towards South Bay in accordance with the provisions of the Provincial Statute, 12 Vic., ch. 35, and 18 Vic., ch. 83.

Held, that the application to the corporation, and the resolution by the corporation not being such as the statute requires to authorize an application to the government to cause the survey to be made, that the survey made by the instructions of the Commissioner of Crown Lands, dated the 9th of July, 1860, was therefore unauthorised. Cooper *v.* Wellbanks, 14 C.P., 364.

SURVEY—WHEN LEGAL IF NOT MADE BY CROWN—MAPS, CUSTODY OF—EVIDENCE—ABBUTTALS IN DEEDS.

VanEvery *vs.* Drake.

A survey made by a private party of an unsurveyed block granted by the Crown is the "original survey and shall have the same force and effect thereof as though the said original surveys and plans thereof had been made by government authority." See 12 Vic., ch. 35, sec. 34.

When the description in a deed which was supposed to contain half a lot, in giving metes and bounds, stated as a measurement 40 chains as the length conveyed. *Held*, it was necessary for the grantee to prove the whole lot contained more than 80 chains from front to rear, to entitle him to any greater quantity, for the production of the deed alone would entitle him to 40 chains only.

A map produced from the custody of the son of the original owner of the lot and sworn to be the map upon which the township was originally sold.

Held, to be properly admitted in evidence. VanEvery *v.* Drake, 9 C.P., 478. McGregor *v.* Calcutt, 18 C.P., 39.

ERRONEOUS SURVEY—MAGNETIC BEARING AND ASTRONOMICAL BEARINGS.

Thibaudeau *et al. vs.* Skead.

Defendant claimed under a timber license which described his limits as bounded on the south by "the continuation of a line from the head of Mud Lake on the course North 54° E., formerly the boundary between T. C. and A. R M." The plaintiff claimed under a license which gave his northerly limit as the same line, describing it also as running N. 54° E Both licenses were renewals of previous licenses from about 1839.

Held, that the boundary between them was the true astronomical line N. 54° E.; and that the plaintiff could not claim according to a line run in 1874, N. 54° E. magnetically, making no allowance for the variations of the compass. Thibandeau *et al v.* Skead, 39 Q.B. 387.

TRESPASS BY SURVEYORS IN MAKING PRIVATE SURVEYS.

Turnbull *vs.* McNaught.

The declaration stated that the defendant broke and entered the east half of lot No. 20 in the sixth concession of the township of South Dumfries, and there cut down and destroyed the trees and underwood, to-wit, etc. The fourth plea alleged that as to the breaking and entering, and cutting down and destroying a small quantity of underwood, he, the defendant, at the time when, etc., was in the lawful possession and seised in fee of a part of the west half of the same lot; that the boundary between the two parts was a straight line through the centre of the lot from the front to the rear; that the boundary was in dispute between the plaintiff and the defendant, and they could not agree upon the same; and that the defendant, in order to discover and ascertain correctly the boundary, employed and instructed a duly authorized land surveyor to run the said line and establish the said boundary, who, with certain chain-bearers and other necessary assistants, in pursuance of such instructions and in discharge of their duty as such land surveyors, necessarily entered into and upon the land in the first part of the plea mentioned, for the purpose of running the said line and discovering and ascertaining the said boundary, and necessarily and unavoidably cut down and destroyed a small quantity of brush and underwood then growing upon the said land

first mentioned, in order to run such line and to discover and ascertain such boundary as they lawfully might, doing no actual damage on the occasion, which are the same trespasses complained of.

Held, on demurrer to this plea, that a surveyor has no power to enter upon the lands of one neighbor for the purpose of making a mere private survey for another neighbor. Turnbull *v.* McNaught, 14 C.P., 375.

SPECIFIC PERFORMANCE UNDER ERRONEOUS SURVEY—LACHES.

Paul *vs.* Blackwood.

The defendant had for some time used part of the plaintiff's land as a mill-pond, and differences existed between them in relation thereto, to put an end to which they entered into a written agreement that the plaintiff should sell to the defendant as much of the land as was, or had been, overflowed by the water of the mill-pond, for a price which was proved to be much beyond the intrinsic value of the piece of land so sold. To carry into effect this contract, the plaintiff had the ground surveyed; but the survey was erroneous, and the deed which the plaintiff thereupon tendered comprised, in consequence, less land than the defendant was entitled to have. The defendant refused this deed, procured a new survey to be made, and tendered a new deed for execution by the plaintiff; and this deed the plaintiff refused to execute. When the first instalment of the purchase-money became due, the defendant tendered it, but did not pay it in consequence of the non-execution of the conveyance. The defendant continued to use the land for a mill-pond, and gave no intimation of his intention to abandon the contract; and twelvemonth afterwards the plaintiff filed a bill for a specific performance of the contract, which was decreed without costs. (Blake, C., diss.) Paul *v.* Blackwood, 3 Chy., 394.

AS TO DEBT LYING AGAINST THE TOWNSHIP COUNCIL FOR EXPENSE OF A SURVEY MADE UNDER THE 38 GEORGE III., CHAPTER 1.

Roach *vs.* Council of Hamilton.

Held, *per Cur.*, that the township council of Hamilton coming in the place under the 12 Vic., ch. 81, sec. 31, heads 26 and 31, of the trustees of the Newcastle district in quarter sessions assembled, could not be held liable *in debt* to the surveyor who had been appointed under the 38 George III., chapter 1, to re-survey the township of Hamilton. Roach *v.* Municipal Council of Hamilton, 8 Q.B., 229.

SURVEY MADE AFTER GRANT.

Horne *vs.* Munro.

The question in dispute was what quantity of land was granted by the patent issued in 1797, the description in which was: "Beginning about 18 chains below a small creek which empties itself into the river Thames, in lot No. 17; thence west to the eastern boundary of lot 16, two chains, more or less; thence north 45 degrees west to the north-east angle of lot 16, 28 chains, more or less; thence south 45 degrees west to the river Thames; and thence along the bank of the river against the stream to the place of beginning, being the broken fronts of 16 and 17." The lots were supposed to contain 150 acres. There were two creeks, and the point of commencement contended for by the plaintiff (the upper creek) would give him a much larger quantity of land than the defendant claimed he was entitled to, while that sought to be upheld by the defendant would reduce it to about 50 acres. An old map from the Surveyor-General's office was put in evidence, under which the lot had evidently been granted; and a surveyor called for the defence stated that the ground contended for by the plaintiff corresponded best with the old map.

Held that as the description contended for by the plaintiff corresponded best with the oldest plan to be found in the Surveyor-General's department, and with a survey since made for the purpose of tracing out or completing parts not fully surveyed before, he was entitled to recover. Horne *v.* Munro *et al*, 7 C.P., 433.

Semble, per Draper, C. J., the crown may grant a tract of land by a sufficient description to designate the portionment, although the township within which the land lies has not been surveyed and laid out into lots and concessions; and the grantee will be entitled to hold it, although a subsequent survey made by authority of the Crown makes it by name a different lot, or places it in a different concession from that named in the patent, or the surveyor laying it out projects a road through it. Ib.

HIGHWAYS, INDICTMENT FOR OBSTRUCTING.

Regina *vs.* G. W. R. Co

In September, 1852, a tract of land upon the River St. Clair, adjoining the town plot of Sarnia to the south, was ceded by the Indians to the Crown, to be disposed of for their benefit. In the same year this tract was surveyed under instructions from the Government, and three streets laid out upon the plan, one called Front Street, running north and south, parallel with the river, and the others, Wellington and Nelson streets, running westerly through

the track, crossing Front street at right angles, and continuing to the river bank, which was distant only 1 chain 50 links from Front street along Nelson, and 50 links along Wellington street. This plan was reported to the Government, with the surveyor's field notes, but Nelson and Wellington streets were not laid out upon the ground west of Front street, and that portion of them had never been opened or used so as to give access to the water—the river bank there being abrupt. A sale was held in 1853 at which some lots were sold with reference to this plan, one on Nelson street, but none west of Front street.

In 1854 the Great Western Railway Company purchased from the Government the tract west of Front street, along the river between Wellington and Nelson streets, and beyond them to the north and south, including the water lots in front, for which they paid the sum awarded by arbitration. Afterwards a public sale of lots in the tract ceded by the Indians was held by Government, at which a plan was referred to, made for the company by the same surveyor who first laid out the tract, showing the ground which the railway and its terminus would occupy, but exhibiting no streets leading through it to the river; and this was the plan used before the arbitrators, and upon which their award was made.

The company, without objection on the part of the municipality entered upon the land bought by them, made new ground in front by filling up the river, and completed their buildings and other works which obstructed Wellington and Nelson streets running through the land purchased to the river, according to the first plan mentioned. After this the municipality by letters applied to them for compensation for the injury caused the town in consequence of the access to the water by these streets being cut off, claiming that they should be paid a fair value for the streets thus taken and remunerated for a purchase of land which it was proved they had made higher up at a cost of $3,200 in order to obtain access to the river. They made no complaint, however, that the defendants had acted illegally.

Defendants being afterwards indicted for obstructing these streets, it was left to the jury to say, with reference to the 15th clause of 22 Vic., ch. 116, whether the municipality or the government had permitted defendants to occupy the streets before that act, and if so, to find for defendants. The jury gave a general verdict of guilty, and being asked how they found as to the permission, said only that they thought the municipality ought to be compensated for the land.

By 22 Vic., ch. 116, sec. 15, it is enacted, in substance, that all highways occupied by this railway with the written assent of the municipality within which they are situated, shall be declared vested in them to the extent of the user permitted or enforced by the municipality: and all proposed or contemplated streets occupied by the company, or which they have been permitted to occupy by the license of the owner in fee, and which shall not lead to any place beyond the said railway, shall be deemed closed, and the occupation by the said railway shall be lawful.

Held, that defendants were clearly entitled to an acquittal under this clause, for, first, as to the first part of the clause, a written assent given afterwards by the municipality would suffice, and might be inferred from their letters, in which they asked only for pecuniary compensation; and, secondly, these were proposed or contemplated streets occupied by the company, and not leading to any place beyond the railway, in which case no assent was required.

Held, also, that the Consol. Stat. U.C., ch. 54, sec. 333, had no application, for it could not be said that these streets had not been opened by reason of any other road being used in lieu thereof.

That under 16 Vic., ch. 99, sec. 4, and 16 Vic., ch. 101, defendants had clearly a right to take possession of this land for their railway, with any easement thereto. *Quære*, whether the 4 W. IV., ch. 29, sec. 9, which requires this railway company on intersecting any highway to restore it to its former state, or in a sufficient manner not to impair its usefulness, could have been applied to this case; the streets in question never having been opened or used, being covered by the works of defendants, so that they could not be restored without dispossessing them, and leading to no place beyond. *Semble*, that at all events a mandamus would not, under the circumstances, have been granted at the instance of the municipality.

Under Consol. Stat. U.C., ch 54, sec. 313, these streets, being laid out on the original plan made by the Crown surveyor, would be public highways, though not staked out upon the ground, and never opened or used.

Semble, that under 12 Vic., ch. 35, sec. 41, the Indians, or the government acting for them, had power to alter and amend the survey by striking out these streets where they ran through the land sold to defendants. Regina *v.* The Great Western Railway Company, 21 Q.B., 555.

PROHIBITION TO COUNTY JUDGE AMENDING REGISTERED PLAN—STATUS OF APPLICANT—ASSIGNEE—ASSIGN—R.S.O., CH. 111, SEC. 84.

Chisholm and Town of Oakville.

Held (reversing the judgment of Proudfoot, J., 9 O.R., 274), that the status of C., as a person, or the assignee of a person, who registered a plan, was a question of law and fact combined for the county judge to determine upon C.'s application to him, under R.S O., ch. 111, sec. 84, to amend the plan, and that his decision was not examinable in prohibition.

Semble, a person not the owner of the property may register a plan, and although this would be at the time a futile proceeding, yet if he afterwards became the owner of the property and adopted the plan, he would be entitled under the Act to have it amended In *re* Chisholm and the corporation of the town of Oakville, 12 A.R., 225. In *re* the Hon. G. W. Allan, 10 C.R., 110.

EVIDENCE—SURVEYOR'S FIELD NOTES—POSSESSION—ACTS OF OCCUPATION—STATUTE OF LIMITATIONS—R. S. O., C. 108.

McGregor *vs.* Keiller *et al.*

To determine a disputed boundary line between two lots, the field notes of S., a land surveyor, were offered in evidence, but objected to on the ground that they were not made by S. in the execution of his duty as such surveyor:

Held, that the objection was good, and the evidence inadmissible. The plaintiff and M., his next adjoining neighbour, in 1868, employed a surveyor to run the line between his land and that of M. The line drawn ran through a wood. For more than ten years the plaintiff was in the habit of cutting timber up to the said line, and he and the owners of the adjoining land recognized it as the division line.

Held, that this was sufficient occupation by the plaintiff to give him a good title by possession up to the said line, whether it was the correct line or not.

Harris *v.* Mudie, 7 A.R., 414, distinguished. McGregor *v.* Keiller *et al*, 9 O.R., 677.

SUPVEYOR'S LIABILITY—PROVINCIAL LAND SURVEYOR—IMPROPER SURVEY—LIABILITY FOR DAMAGE.

Tp. of Stafford *vs.* Bell.

A surveyor in making a survey is under no statutory obligation to perform the duty, but undertakes it as a matter of contract, and is liable only for damages caused by want of reasonable skill, or by gross negligence. The

defendant, a provincial land surveyor, who was employed by the plaintiffs to run certain lines for road allowances, proceeded upon a wrong principle in making the survey, and the plaintiffs sued him for damages which they had paid to persons encroached upon by opening the road according to his survey.

Held, reversing the judgment of the Common Pleas, 31 C.P., 77, that the plaintiffs could not recover, as although the survey was made by the defendant on an erroneous principle, the evidence failed to prove that the lines as run by him were not correct.

Quære, per Patterson, J. A., whether the fact that the plaintiffs knew that the correctness of the survey was questioned before opening the road did not make them guilty of contributory negligence.

Remarks upon the impropriety of receiving the opinions of surveyors as experts as to the proper mode of making a survey under a statute. The Corporation of the Township of Stafford *v.* Bell, 6 A.R., 273.

SURVEYOR'S WITNESS FEES, TAXATION OF—COSTS—PROCURING EVIDENCE—TAXATION—LOCAL MASTER—FEES.

McGannon *vs.* Clarke.

Expense incurred for surveys and other special work of that nature made in order to qualify witnesses (surveyors) to give evidence are not taxable between party and party, the English Chancery Order 120 (1845) not being in force here.

The taxing officer refused to allow charges for maps prepared to identify the details of the line mentioned in the judgment as that which the judge considered the true line, and also for a certificate of the state of the cause, for a letter advising of judgment, and for instructions on motion for judgment.

Held, that there being no error in principle, but only an exercise of discretion by the taxing officer, the Court would not interfere with his ruling.

Held, also, that the Local Masters, who are paid by fees instead of salary, are entitled to charge one dollar per hour in money under Chancery Tariff of 23rd March, 1875, when taxing costs. (June 18th, 1883.—Boyd, C.) McGannon *v.* Clarke, 9 P.R., 555.

UNSKILFUL SURVEY—COMPENSATION FOR IMPROVEMENTS UNDER R.S.O., CH. 51, SS. 29, 30.

Plumb *vs.* Steinhoff.

Where S., having purchased a lot of land, employed a public land surveyor to mark out the boundaries of it for him and the surveyor, by reason of an unskilful survey,

included in the lot, as marked out by him, land which should not have been so included, and S., misled thereby, effected improvements upon the land so erroneously included.

Held, on recovery of the said land by the rightful owner that S. was entitled to compensation for the said improvements under R S.O., ch. 51, ss. 29, 30. Plumb *v.* Steinhoff, 2 O.R., 614