

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Herrick
v. Sixby, from Canada; delivered on the 8th
March, 1867.*

Present:

SIR WILLIAM ERLE.

SIR JAMES W. COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR RICHARD T. KINDERSLEY.

THIS is an appeal from a Judgment of the Court of Queen's Bench, of Lower Canada, dated 1st March, 1864, affirming a judgment of the Superior Court of that Province, dated 31st October, 1862.

The action in which these Judgments were given was an action *en bornage* by the Appellant, to have the boundaries between two contiguous properties of the Appellant and the Respondent ascertained and determined.

The following are the circumstances out of which the action arose:—

One John Ruiter, who died in or before the year 1809, was the owner of a landed estate in the Seigniorship of St. Armand, in Lower Canada. After his death his estate was, in 1809, divided among his heirs, according to a plan of partition shown on a map, made and prepared by one Amos Lay, a surveyor. One of the heirs was Captain John Ruiter, and by the partition there was allotted to him (besides another piece of land containing about sixty acres, called Lot 4 on the map, not in question in this suit) a piece of land distinguished on that map as Lot 3, and described as containing one hundred and forty acres.

This piece of land, which it will be convenient always to call Lot 3 (that being its designation, not only on the partition map, but also in the subse-

quent deeds of both the Appellant and the Respondent) is in form (speaking with mathematical accuracy) a trapezium, but it is so nearly a rectangular parallelogram, that for all practical purposes it may be so considered, and indeed it is so represented in some of the maps given in evidence. It is bounded on the south by the boundary line between Canada and Vermont, which is a straight line running along the 45th parallel of latitude, and therefore of course running due east and west; its western boundary is a straight line drawn perpendicularly to the southern boundary; its eastern boundary is a straight line drawn very nearly, though not quite, perpendicularly to the southern boundary line; and its northern boundary is a straight line drawn from the northern end of the western boundary line, and running towards the east, parallel, or very nearly parallel, with the southern boundary. Its length from west to east is greater than its width from south to north. It consisted, at the period referred to, of wild forest and woodland; but it appears that in comparatively recent times some patches of it have been cleared for pasture. It is necessary to observe, that at a point on the southern boundary line of this Lot 3, at a distance from the southwestern corner of about one-third of the whole length of the southern boundary line, a brook crosses the southern boundary, flowing into and diagonally across Lot 3, the direction of its course being about N.N.E.; and a little to the eastward of this brook, a ledge of rocks runs also diagonally across the whole Lot 3, from the southern to the northern boundary, in a direction nearly the same as that of the brook. It is further to be observed, that by recent survey and measurement, made under an order of the Court below, this Lot 3 is found to contain 144 acres and 2 roods.

In 1813, Captain John Ruiter, being the owner of this Lot 3, sold a part of it, at the western end thereof, to two brothers, George and David Krans; and by a deed, dated 3rd March, 1813, he conveyed to them by the following description:—

“About fifty acres of land, part and parcel of that tract of land situate, lying, and being in the aforesaid Seignior of St. Armand, known and distinguished by Lot No. 3; the said fifty acres or

thereabout to extend from the westerly boundary line of said lot, and on the whole width thereof, and easterly to the foot of a ledge of rocks which runs across the said lot, at a certain distance easterly of a certain brook which also runs across said lot, the south-easterly boundary of which said part of said lot is a hemlock tree, which stands on the southerly boundary line thereof, and is marked G. and D. K., 1813."

It is upon the construction which ought to be put on that description that the controversy between the parties mainly turns.

The portion of Lot 3 thus conveyed to George and David Krans, afterwards became the property of Miles Krans. By a deed dated 23rd February, 1846, Miles Krans conveyed it to James Slade Allan; and by a deed dated 17th January, 1848, Allan conveyed it to the Respondent. In both these deeds, the property conveyed is described in the same terms as those before mentioned to have been contained in the deed of 3rd March, 1813.

The remaining portion of Lot 3, which was not comprised in the conveyance to the Kranses, afterwards passed from Captain John Ruiter, through successive holders, till it became vested in one George Chipman; and by a deed dated 15th August, 1845, the Sheriff of the District of Montreal, under a writ of execution sued out by one Abel Houghton, against the lands and tenements of George Chipman, sold and conveyed to Abel Houghton by the following description:—

"A lot of land, situate in the Seigniory of St. Armand, in the district of Montreal, being part of Lot No. 3, on a plan of division of the land of the late John Ruiter, among the heirs of his estate,—the said plan made by Amos Lay, surveyor, and dated the 6th day of December, 1809,—containing ninety acres in superficies, more or less; bounded to the south by the Province line; to the west, by the remaining part of the said Lot No. 3, owned by Miles Krans; to the north, by Miles Krans and James Allen; and to the east, by Lot No. 4 on the said plan."

It appears that, in that transaction, Abel Houghton, who was the cashier of the St. Alban's Bank, was acting on behalf of, and as trustee for, that bank; and by a deed, dated 23rd October, 1855,

Abel Houghton, on his own behalf, and on behalf of the St. Alban's Bank, and by virtue of a power of attorney from the Bank, sold and conveyed to the Appellant the land comprised in the Sheriff's deed, by the same description.

The Appellant's case is, that the property comprised in those two last-mentioned deeds was the residue of Lot 3, not comprised in the conveyance of 3rd March, 1813, to the two Kranses. He has not, however, proved the conveyances or other instruments, by which that residue passed from Captain John Ruiter, and became vested in George Chipman; and upon that ground an objection has been raised by the learned Counsel for the Respondent, that it is not shown that George Chipman ever was the owner of the eastern portion of Lot 3, and therefore that the Appellant, not having proved his title to that portion, could not maintain his action. That objection, however, their Lordships have no hesitation in disallowing. It is not suggested that any person has, or claims to have, any right or title to any portion of Lot 3, other than the Appellant and the Respondent. Moreover, the Respondent, with the view of proving that the owner, for the time being, of the western portion of Lot 3 had exercised acts of ownership on the portion of land which is in controversy, with the knowledge of, and without objection by the owner, for the time being, of the eastern portion of the said Lot 3, called as witnesses in the Court below, Miles Krans and James S. Allan, who had been successively the owners of the western portion; and their evidence shows that Chipman was, at one time, the owner of the eastern portion of Lot 3. Miles Krans, after stating that he cut wood on the Lot, says:—"During the time I so cut wood on the said lot of land, to the east of it" ('to the east of it' means *the eastern part of it*), "now owned by the Plaintiff" (*i. e.* the Appellant), "was possessed successively by John Ruiter, John Rhodes, Anthony Rhodes; after which, I think, it went into the hands of George Chipman." Allan says:—"Old Mr. Rhodes, and Mr. Chipman, and the Bank of St. Alban's were, one after another, in possession of the east part of the said Lot, to the east of the foot of the ledge of rocks. Old Mr. Rhodes was in possession of it when witness first went there in 1836; afterwards, Chip-

man, and, subsequently, the Bank of St. Alban's and Mr. Chipman, as I understood." Another witness called by the Respondent, namely, Augustin Lavoie, deposes that the Respondent's cows were impounded by Chipman, for having trespassed on his part of the said Lot ("pour avoir traversé sur sa part dudit Lot").

It cannot be doubted that Chipman was the owner of the eastern portion of Lot 3; and it is to be observed that the description in the conveyance made by the Sheriff to Abel Houghton, under the writ of execution against Chipman, is an apt and appropriate description of so much of Lot 3 as was not comprised in the conveyance of 3rd March, 1813, by Captain John Ruiter to George and David Krans. And it may be added that the Respondent, by his plea, so far from disputing the Appellant's title to the eastern portion of Lot 3, by strong implication, and almost in terms, admits it; and the plea ends with a prayer that it may be adjudged and ordered that the measure and boundaries of the said lands and properties of the Appellant and Respondent may be had and made by a sworn land-surveyor, to be agreed upon by the parties, or appointed by the Court.

Assuming, then, that the Appellant is the owner of the eastern, and the Respondent of the western portion of this Lot 3,—the question is, what is the right boundary between those two portions? That question is, in truth, the same as this,—what, according to the true construction of the words of description in the conveyance of 3rd March, 1813, from Captain John Ruiter to George and David Krans, having regard to the local features therein referred to, was the eastern boundary of the property thereby conveyed? All depends upon the construction of that deed, and nothing which has since occurred can affect that construction. The question must now be tried between the Appellant and Respondent, in precisely the same manner as it would have been tried if the dispute had arisen between Captain John Ruiter and George and David Krans immediately after the execution of the deed of the 3rd March, 1813.

The Appellant insists that, according to the true construction of that deed, the parties thereto intended that the eastern boundary of the portion

thereby conveyed should be a straight line drawn from the hemlock tree, situate on the southern boundary line, due north, *i. e.* parallel to the western boundary line, till it meets the northern boundary line. The Respondent, on the other hand, insists that the parties intended that the eastern boundary of the portion conveyed should be the foot of the ledge of rocks along its whole course.

Now, whichever of these two views is the right one, it appears from the evidence, that if the Appellant's view be adopted, then the effect will be that the portion conveyed by that deed would contain a little more than fifty acres,—agreeing, therefore, with the quantity mentioned in the deed, which is “about fifty acres.” Whereas if the Respondent's view be adopted, and the ledge of rocks is held to be the eastern boundary of the portion conveyed by the deed, then the effect will be that that portion would contain eighty-two acres, instead of “about fifty.” This consequence of the success of the Respondent's contention is, it must be confessed, somewhat startling.

Let us now see how the case was dealt with by the learned Judges of the Superior Court, and afterwards by those of the Court of Queen's Bench, on appeal.

In the Superior Court the case was heard before Mr. Justice Smith, who decided in favour of the Respondent (the then Defendant); and made an Order, dated 27th of May, 1862, directing that a line should be run, by a sworn surveyor, to be agreed upon by the parties, or (if they could not agree) to be appointed by the Court, along the base of the ledge of rocks as the boundary between the Appellant and Respondent respectively. We have not the advantage of knowing the reasons for which Mr. Justice Smith came to this conclusion. The parties not agreeing on a surveyor, one Amos Vaughan, a sworn surveyor, was appointed by the Court; and in obedience to the Order of Mr. Justice Smith, he drew a boundary line along the base of the ledge of rocks from the southern to the northern boundary of the lot; and he duly made his report, stating in detail what he had done, which report was filed on the 17th October, 1862. On the 31st October, 1862, the case came again before the Superior Court, on the report of

the surveyor, and on two motions by the Appellant, that the Order of Mr. Justice Smith might be revised, and that the surveyor's report might be rejected, and on a motion by the Respondent that the surveyor's report might be approved and homologated; whereupon Mr. Assistant-Justice Monk, before whom the matter came, made an Order rejecting the Appellant's motions, and granting that of the Respondent, homologating the surveyor's report, and establishing the boundary as set out in that report.

In the Appellant's case on the appeal to the Court of Queen's Bench, some remarks of Mr. Assistant Justice Monk on that occasion are set out, from which it would appear that he considered the Order of Mr. Justice Smith as final, and not as interlocutory, for which reason it was not in his power to revise it, but that he used expressions which might lead to the inference that he was not satisfied with the decision of Mr. Justice Smith. However this may be, it seems certain that he (Mr. Assistant Justice Monk) expressed no opinion in favour of the Respondent's case.

The Appellant having appealed to the Court of Queen's Bench, the case came on for hearing before that Court, on the 1st March, 1864, in the presence of Mr. Assistant Justice Badgley, Mr. Justice Meredith, and Mr. Justice Mondelet, and the decision of the Superior Court was affirmed. We have the reasons or judgments of the three learned Judges printed in the supplemental Record.

Mr. Justice Badgley, in his judgment, seems to assume that the description in the deed of 3rd March, 1813, specified all the boundaries of the portion of Lot 3 which was thereby conveyed, and in particular, that it specified the ledge of rocks as the eastern boundary; and then he cites several authorities to show that if, in a deed of conveyance, the description of the piece of land conveyed states its boundaries on all sides, and states also its contents, but states them incorrectly, then that part of the description which specifies the boundaries must prevail, and the specification of the quantity must be disregarded. If the assumption of the learned Judge be correct, there would seem to be no reason to challenge the conclusion. But the assumption that the deed of the 3rd March, 1813,

specifies the boundaries of the land conveyed on all its sides, is simply begging the whole question. The very question between the parties is whether, upon a true construction of the language of the deed of 3rd March, 1813, it *did* make the ledge of rocks the eastern boundary of the piece of land thereby conveyed. And to that question the Judgment of Mr. Justice Badgley is not addressed. Indeed, it may be doubted whether the learned Judge had not before him by some mistake, instead of a true copy of the description in the deed, some paper which (though purporting to be a copy) was altogether incorrect. For towards the earlier part of his Judgment, after a statement of the facts, and observations on the circumstance that the Appellant produced no title deed earlier than the Sheriff's conveyance to Abel Houghton in 1845, we find this passage :—"The piece of land, the Krans's purchase and the Respondent's property, is described as inclosed within fixed boundaries, plainly described on the four sides, with a south-east point of departure for (misprinted *from*) the eastern boundary, as follows:—(Now what follows is in inverted commas, as if it was a quotation from the deed.) 'Running north-west' (clearly a misprint for north-east) 'at the foot or along the 'foot of a ledge of rocks, which run across the Lot 'at a distance east of a certain brook, which runs 'across the said Lot.' (After that quotation he proceeds:—) The ledge of rocks and brook being natural boundaries, can admit of no dispute, and are shown on the map or plan of division mentioned in the Sheriff's deed." If the learned Judge was accidentally led to suppose that the passage which he puts in inverted commas, was a true copy of the words of the deed, it is no wonder that he made the assumption that in the deed the piece of land was (as he says) "described as inclosed within fixed boundaries plainly described on the four sides."

The Judgment of Mr. Justice Meredith is not open to the same remark. He discusses the question of the construction of the description in the deed, and arrives at the conclusion that it was intended that the ledge of rocks should be the eastern boundary. The substance of his able reasoning on the point is contained in the following passage in his Judgment :—

"That description certainly is not clearly worded; but still it seems to me impossible to suppose that if, as the Appellant alleges, the parties intended the line in question should run parallel with the ends of the Lot, and at right angles with the north and south lines, the description could have been worded as it is. Not only is there not one word tending, however remotely, to indicate such an intention; but there are words clearly indicating, I think, a contrary intention. To what purpose did the description refer to 'the ledge of rocks which runs across the said Lot,' and specify the situation of that ledge as being 'at a certain distance easterly of a certain brook which runs across the said lot,' if the division was to be a straight line uninfluenced by the course of the ledge of rocks so carefully described? The ledge of rocks which runs across the said Lot cannot, I think, have been referred to for the purpose of determining the south-easterly boundary of the Lot sold, for that was placed beyond the possibility of doubt by the hemlock-tree marked 'G. and D. K.' (the names of the purchasers) '1813,' and if the ledge of rocks were not referred to for that purpose, it must, I think, have been referred to as indicating the course of the line."

These observations of the learned Judge seem to present the arguments in favour of the Respondent's view as clearly and as strongly as it is possible to put them. Those arguments will be noticed presently.

Mr. Justice Mondelet differed from his two colleagues, and thought the decision of the Superior Court ought to be reversed. The reason he assigns is, that the effect of that decision was to give the purchaser eighty-two acres instead of the fifty, or thereabouts, intended for him by the deed.

There being thus two members of the Court for affirmance, and only one for reversal, the decision of the Superior Court was of course affirmed. And from that decision the present Appeal is brought.

The question what construction ought to be put upon the language of the description in the deed of the 3rd March, 1813, in order to determine the eastern boundary of the piece of land thereby conveyed, is certainly one of considerable difficulty, and it is not surprising that there should have been a difference of opinion among the Judges of the

Courts below. But, after full consideration, their Lordships are unable to concur in the conclusion arrived at by the majority of those learned Judges.

The language of the deed is extremely indefinite and ambiguous. It is impossible to say that it is quite incapable of the construction contended for by the Respondent; but, on the other hand, we are of opinion that it is at least equally capable of the construction contended for by the Appellant; and, upon the whole, we think that the latter construction is the one which best satisfies all the language of the deed. By the terms of the deed the fifty acres of land, or thereabouts, intended to be conveyed, are to extend from the westerly boundary of Lot 3 (which, it is to be recollected, is a straight line at right angles, or as nearly as possible at right angles, to both the southern and the northern boundary of the Lot) and on the whole width thereof (that is, on the whole width of the Lot), and easterly to the foot of a ledge of rocks, etc.; that is, the portion of land intended to be conveyed, is to extend from the western boundary-line towards the east,—it is to extend on the whole width of the Lot, which seems to imply that its width is to be the width of the whole Lot,—and it is to extend eastward till you come to the foot of the ledge of rocks, and there you are to stop. Now, it is obvious that, if after first reaching the foot of the ledge of rocks as you proceed towards the east, the portion to be conveyed is carried on still further to the east, so as to make the ledge of rocks its eastern boundary, all that additional part which would be thus included, would not be of the width of the whole Lot; for, inasmuch as the ledge of rocks does not run direct from south to north, but diagonally towards the north-east,—the width of that latter part of the portion, instead of continuing to be of the width of the whole Lot, would be gradually diminishing in width until it terminated in a point at the north-east. It would be too much to say that the language of the deed *must* necessarily receive this construction, and that it is incapable of any other; but it is not too much to say that it is at least as capable of this construction as of the construction contended for by the Respondent.

With respect to the argument that if the parties

had intended the eastern boundary to be that which is insisted upon by the Appellant, the deed would not have been worded as it is, but that intention would have been expressed in clear and unambiguous terms,—that argument seems to bear not less strongly against the Respondent's view; for it may be asked, with equal force, if the parties intended the ledge of rocks to be the eastern boundary, why did they not express that intention in clear and unambiguous terms. And with respect to the argument, that the careful description of the ledge of rocks as running across the Lot could only have been introduced for the purpose of indicating the whole course of the ledge of rocks as the line of the eastern boundary,—the answer is, that there was this sufficient reason for describing the ledge of rocks as running across the Lot, namely, that (as appears from the map made by Vaughan, the surveyor appointed by the Court) there are other ledges of rocks in different parts of the Lot, which do not run across the Lot, and therefore the ledge of rocks in question was described as running across the Lot, in order that there might be no doubt which ledge of rocks was intended.

With respect to the argument founded on the mention of the hemlock-tree as the south-eastern boundary of the portion intended to be conveyed, it appears to their Lordships that this mention of the hemlock-tree as the south-eastern boundary, so far from supporting the Respondent's view, affords a strong argument the other way. The position of this tree, the stump of which still remains, appears from the evidence to be near to, but a little to the west of, the ledge of rocks where it crosses the southern boundary. Now if the ledge of rocks through its whole extent across the Lot was intended to be the eastern boundary of the portion conveyed, why was the hemlock-tree carefully specified as its south-eastern boundary? Why was not the south-eastern boundary to be the foot of the ledge of rocks where it crosses the southern boundary of the Lot? If the foot of the ledge of rocks was a sufficiently defined eastern boundary throughout all the other part of its course across the Lot, why was it not equally so at its extreme southerly end, where it crosses the southerly boundary of the Lot? Why was not *that* (an imperishable object)

to be the south-easterly boundary of the portion of land intended to be conveyed? Why was it thought necessary to select, as the object which was to mark the south-easterly boundary (*i. e.* the south-easterly corner) of the portion of land intended to be conveyed, so perishable a thing as a tree? Why, indeed, was it necessary to specify any south-easterly boundary at all? Why was it necessary to specify a south-easterly boundary more than a north-easterly boundary? It seems impossible to account for this careful specification of a particular defined spot as the south-eastern boundary, and the selection of a particular tree to mark that spot, consistently with the theory of the Respondent, that the parties to the deed intended the ledge of rocks along its whole course to be the eastern boundary of the portion of land thereby conveyed. But if, on the other hand, we adopt the theory of the Appellant, and suppose the intention to have been that the eastern boundary should be a straight line drawn from the southern to the northern boundary-line parallel with the western boundary-line, then, indeed, we see an obvious reason why it was necessary to specify a precise spot for the south-eastern corner of the portion of land, and why a tree was selected to mark that spot in preference to the foot of the ledge of rocks. For to enable a surveyor or engineer to draw such a line from south to north, it would be necessary to have some precisely defined spot from which the line should start, and that that spot should be marked by a precisely defined object, such as a tree, and not by such an indefinite and uncertain object as the foot of a ledge of rocks where it crosses a boundary line,—for a ledge of rocks does not (ordinarily at least) spring suddenly and perpendicularly from the ground, like a brick wall, so as to enable a person to lay his hand on any precise spot and say, that precise spot, and none other, is the foot of that ledge of rocks where it crosses the boundary line. The provision in the deed, that the hemlock-tree should be the south-easterly boundary (that is, should mark the south-eastern corner) of the portion of land intended to be conveyed, is fully and reasonably accounted for if the Appellant's construction be adopted; but quite unaccountable according to the Respondent's view.

But suppose that, notwithstanding these reasons, the question what the parties to the deed intended to be the eastern boundary is still to be considered so doubtful that neither of the two constructions contended for by the parties has any better claim to be adopted than the other, so far as any arguments can be drawn from that part of the language of the deed which we have hitherto dealt with,—still, even upon that supposition, there is one consideration which seems decisive in favour of the Appellant's contention. It is a clear principle that if one part of a deed is so ambiguously worded that it is equally capable of two different constructions, one of which is in accordance with, and the other conflicts with, another part of the deed, about the meaning of which there is no doubt, the former construction must be adopted as the right one. And (as an instance of the application of that general principle) if, in a deed conveying land, the description of the land intended to be conveyed is couched in such ambiguous terms that it is very doubtful what were intended to be the boundaries of the land, and the language of the description equally admits of two different constructions, the one of which would make the quantity of the land conveyed agree with the quantity mentioned in the deed, and the other would make the quantity altogether different, the former construction must prevail. Applying that principle to the present case, the deed states the intention to be to convey "about fifty acres:"—The language of the deed with respect to boundaries is (for the present purpose) to be considered as equally susceptible of each of the two constructions contended for:—The effect of the one construction is to make the portion conveyed fifty-one acres, that is, "about fifty acres," the quantity mentioned in the deed; whereas the effect of the other construction is to make it no less than eighty-two acres, instead of "about fifty acres." According to the principle before referred to, the former construction must prevail.

Indeed it is impossible to read this deed, bearing in mind the nature and character and condition of Lot 3 at that time, without feeling satisfied that the dominant idea and intention of the parties was that out of this rectangular block of wild uncultivated woodland, which was known to contain about

a hundred and forty acres, Captain John Ruiter should sell and convey to the two Kranses about fifty acres at the western end thereof, in consideration of 225 dollars. The question of boundaries was to their minds altogether subordinate to that of the quantity. It is not like the case of a conveyance of a certain ascertained piece of land, described precisely and accurately by its boundaries on all sides, adding a statement that it contains so many acres or thereabouts,—in which case, if it turns out that the quantity is incorrectly stated, it shall not affect the transaction. It is the case of a conveyance of a certain number of acres or thereabouts, to be taken out of a larger block of land, and never yet measured off or ascertained, followed by directions, expressed in ambiguous language, as to the mode in which it is to be measured off. And therefore none of the authorities or of the reasons which apply to the cases of clearly described boundaries, accompanied by an erroneous statement of the quantity, apply to the present case.

Their Lordships are of opinion that the construction contended for by the Appellant is the true construction, and ought to be adopted.

The Respondent went into a good deal of evidence in the Court below, with the view of proving that the possession and enjoyment had always been in accordance with the construction of the deed which he insists upon; but, upon examination, this evidence, so far from establishing an uniform, continuous, uninterrupted possession and enjoyment from the date of the deed, merely goes to show that during the later portion of the period which has elapsed since that date, some scattered isolated acts, few and far between, and not of any important character, nor satisfactorily proved to have been known to the owners of the eastern portion,—have been occasionally done by some of the owners of the western portion of the Lot, upon that part which lies between the two boundaries asserted respectively by the Appellant and the Respondent, such as cutting some wood, or tapping maple trees for sugar,—acts which, in the opinion of their Lordships, can have no effect in determining the rights of the parties under the deed of the 3rd March, 1813.

The same evidence is relied upon by the Respondent to support an objection which he raises to the action, that the Appellant is barred by the rule of prescription. By the law of Lower Canada the time of prescription is thirty years. Now, so far from proving (to use the language of his plea) "public, open, peaceable, uninterrupted possession and ownership for a period exceeding thirty years" of the part of Lot 3 which is in controversy, no one of the occasional acts of ownership deposed to by the witnesses, is proved to have taken place at a time nearly so far back as thirty years before the commencement of the action. The plea of prescription entirely fails.

Upon the whole, their Lordships are of opinion that the proper boundary between the two portions of Lot 3, belonging to the Appellant and the Respondent respectively, is a straight line to be drawn from the hemlock tree before-mentioned, on the southern boundary line of Lot 3, across the Lot, parallel to the western boundary line, up to the northern boundary line. They will therefore humbly advise Her Majesty to reverse the decision of the Court of Queen's Bench, and to remit the cause to the Superior Court of Lower Canada, with instructions to that Court to make such orders and take such steps as shall be necessary and proper to make and establish the boundary between the two portions of Lot 3, belonging to the Appellant and Respondent respectively, by a line drawn from the hemlock tree in the manner before-mentioned.

The Respondent must pay the costs of the Appeal to the Court of Queen's Bench, and also the costs of this Appeal.

