JOHN McARTHUR *et al* (PLAINTIFFS)..APPELLANTS; 1888

AND *Oct. 11.
*Dec. 15.

DAVID WILBUR BROWN *et al* (DEFENDANTS) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Estoppel—Lease of mining rights—Option of locating.

J. McA. *et al's*, (plaintiffs') *auteurs* having leased a certain portion of a lot of land for mining purposes described in the deed by metes and bounds with the following option: "Pourra le dit acquéreur changer la course des lignes et bornes du dit lopin de terre sans en augmenter les bornes, l'étendue ou superficie en suivant dans ce cas la course ou ligne de la dite veine de quartz qu'il peut y avoir et se rencontrer en cet endroit, après que lui, le dit bailleur, aura prospecté le dit lopin de terre susbaillé," adopted certain lines of a survey made by one Proulx, as containing the vein of quartz. B. *et al's* (defendants') *auteurs* leased another portion of the same lot. In an action *en bornage* between the parties the court appointed three surveyors to fix the boundaries. Each surveyor made a separate report, and the report and plan of the surveyor Legendre, adopting Proulx's lines, was adopted and homologated by the court.

Held,—affirming the judgment of the court below, Gwynne J. dissenting, that plaintiffs' *auteurs* having located their claim in accordance with the terms of their deed they were now estopped from claiming that their property should be bounded according to the true course of the vein of quartz, and that the judgment homologating the survey adopting Proulx's lines and survey was right and should be affirmed.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) (1), affirming the judgment of the Superior Court.

*PRESENT.—Sir W. J. Ritchie C.J. and Strong, Fournier, Taschereau and Gwynne JJ.

(1) 13 Q. L. R. 168.

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The following special case was submitted to the Court of Queen's Bench by consent.

"The action brought by appellants in the court below was *en bornage*.

The parties appellant and respondent were both mining firms who acquired the following emphyteutic leases for the purpose of working the gold lead on Lot 11, in the St. Charles concession of the seigniory Rigaud-Vaudreuil, St. François parish, Beauce, formerly belonging to Jos. Poulin, who granted the leases to both parties to mine on different portions of the said lot.

The appellants' *auteurs* acquired the following leases held by appellants at the time of the institution of their action.

1o. Lease for ten years by deed before Ls. Blanchet, N. P., granted on the 27th June, 1876, and conveying the following portion of the lot.

"Un lopin de terre de trois-quarts d'arpent de terre "de front sur environ deux arpents de profondeur, "faisant partie d'une terre de trois arpents de front sur "vingt-six arpents de profondeur, étant le numéro onze "de la concession Saint Charles, en la seigneurie de "Rigaud-Vaudreuil, susdite paroisse de Saint François, "borné le dit lopin de terre comme suit: par le nord-"ouest au terrain déjà vendu par le vendeur dans la "même terre à Ned Sands, par le nord-est au bout des "dits deux arpents, en suivant la course d'une certaine "veine de quartz, par le sud-est à la terre de George "Veilleux, et par le sud-ouest au bailleur. Pourra "cependant le dit acquéreur changer la course des "lignes et bornes du dit lopin de terre, sans en "augmenter l'étendue ou superficie, en suivant dans "ce cas la course ou ligne de la dite veine de quartz "qu'il peut y avoir et se rencontrer en cet endroit, "après que lui le dit preneur aura prospecté le dit lopin

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" de terre sus-baillé, avec de plus un chemin ou passage " pour communiquer au susdit lopin de terre par et sur " la dite terre numéro onze, sans cependant causer de " dommage. Tel que le tout est actuellement, et dont " le preneur se déclare content et satisfait, l'ayant vu " et visité.

" Pour par le dit preneur, ses dits héritiers, repré- " sentants ou ayant cause, jouir, faire et disposer les " dites prémises sus-baillées aux termes des présentes, " au dit bailleur appartenant, à justes titres, dont il " s'oblige aider le dit preneur en cas de trouble à " l'avenir.

" Cède de plus le dit bailleur au dit preneur, ce " acceptant comme ci-dessus, pour et pendant la durée " du présent bail seulement, et sans aucune garantie " quelconque de sa part, tous les droits et prétentions " généralement quelconque qu'il a et peut avoir et " prétendre dans et sur toutes les mines d'or, minéraux " et d'autres métaux précieux qui pourraient se trouver " dans l'étendue du dit lopin de terre sus-baillé durant " le dit bail, ainsi que le droit d'y faire des travaux " nécessaires à la découverte et l'exploitation des dites " mines, minéraux et autres métaux susdits, et d'y " prendre à cet effet toutes les voies nécessaires à la con- " fection des dits travaux, sans pour ce payer aucune " indemnité ni dommage quelconque au dit bailleur."

The respondents' *auteur* acquired emphyteutic leases for mining purposes, also held by the respondents, dated the 15th, 17th and 29th days of March, 1879, and granting the following properties.

" 1. Toute cette partie de terrain comprise entre les " claims et placers de William P. Lockwood, James " Forgie et Cie, Louis St. Onge et Cie, et le côté sud- " ouest de la rivière Gilbert, le tout enclavé dans la " terre du bailleur, connu et désigné par le numéro

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" onze de la concession Saint Charles, en la dite paroisse " Saint François, contenant la dite partie de terrain en " superficie deux arpents de terre plus ou moins sans " garantie de mesure précise, et borné comme suit, " savoir : par le nord-ouest, au dit William P. Lockwood ; " par le nord-est, au dit James P. Forgie et Cie ; par le " sud-est, au dit Louis St. Onge, et par le sud-ouest, au " côté sud-ouest de la rivière Gilbert.

" Pour les preneurs jouir de la dite partie de terrain " sus-louée pour les fins minières seulement en pleine " propriété aux termes des présentes.

" 2. Un arpent de terre en superficie plus ou moins " et sans garantie de mesure précise, enclavé dans la " terre du bailleur, connu et désigné par le numéro onze " de la concession Saint Charles, susdite paroisse Saint " François, et borné le dit arpent de terre comme suit, " savoir : par le sud-est, par la ligne de division entre la " terre du bailleur et celle de George Veilleux ; par le " sud-ouest, au côté sud-ouest de la rivière Gilbert, et " par le nord-ouest et le nord-est, au canal claim ou " placer de la Compagnie St. Onge.

" 3. Toute cette partie de la rivière Gilbert dans " toute sa largeur d'un équerre à l'autre, en front du " claim ou placer de William P. Lockwood, le tout " enclavé dans la terre du Bailleur, étant le numéro " onze de la concession Saint Charles, paroisse Saint " François ; borné la dite partie de rivière, comme suit, " savoir : par le nord-est, au dit William P. Lockwood ; " par le sud-est, au preneur ; par le sud-ouest, partie au " bailleur et partie à Jean-Baptiste Bélanger, et par le " nord-ouest, au Preneur."

The appellants by deed before Doyle, N. P., passed on the 28th April, 1881, acquired the said lot of land No. 11, of the said St. Charles concession, as proprietors, subject however to all of the leases above mentioned.

The prayer of the declaration was the usual one in

actions of *bornage*, praying to have the boundaries of all of the said properties established and the *bornes* planted.

The defendants declared that they were ready to bound in accordance with the rights acquired by title and possession of themselves and their *auteurs*; and by consent of all the parties, three surveyors were appointed by the court, each of whom made a separate report. By the judgment of the Superior Court at Beauce the plan and report of the surveyor Legendre were adopted.

The reports, plans and evidence are referred to at length in the judgments hereinafter given.

D. McCarthy Q. C., and *Gibson* Q. C., appeared on behalf of the appellants: and *Pentland* Q. C., and *Fitzpatrick*, on behalf of the respondents.

The points of argument relied on and cases cited by counsel are referred to in the judgments.

Sir W. J. RITCHIE C.J.—As the majority of the court think that this appeal should be dismissed (the surveyors appointed by the court having all differed in their reports and the courts having adopted Legendre's report) I am not able to say that the judgments of the courts below are so clearly wrong as to justify me in reversing them.

STRONG J. -The evidence establishes that Boissoneau and Poulin deliberately adopted Proulx's lines and survey as shown by the photographed plan (found amongst Proulx's papers after Legendre's survey was made, but duly put in proof) and that Legendre, not having this plan before him, after ascertaining the lines of Proulx's survey as well as he could by the testimony of witnesses, made his plan which the Court of Appeal have homologated upon what he assumed and

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found from evidence to be Proulx's lines, but which when Proulx's plan was afterwards discovered, were found to give the appellants rather more than they were entitled to according to Proulx's survey, and so to prejudice the respondents to a small extent of which, however, they do not complain. Therefore as the "*auteurs*" of both the parties, the appellants and the respondents *i. e.* Boissoneau the appellants' "*auteur*" and Poulin the respondents' "*auteur*," adopted these lines which Legendre's plan establishes and according to which Poulin, with the express assent of Boissoneau, sold to the respondents or their "*auteurs*;" and inasmuch as the *acquéreurs* from Poulin bought on the faith of this plan of Proulx's and have worked mines made improvements and expended large sums of money, all on the strength and faith of the assurance and representation of Boissoneau that he acquiesced in and would be bound by Proulx's survey, it is out of the question to say that the appellants can now be permitted to return on what their predecessor in title Boissoneau agreed to, and question the accuracy of the survey he deliberately adopted. They are met by what in English law is technically called an estoppel and cannot now be heard to repudiate Boissoneau's acts and agreements. There is no technical difficulty in the way of adopting this view of the case for Proulx's plan was a sufficient commencement of proof, and the fact of the possession could of course be proved by testimony. For these reasons I am of opinion that the judgment of the Court of Queen's Bench homologating Legendre's survey was entirely right and should be affirmed with costs.

FOURNIER J.—Par leur action en cette cause, les appelants ont demandé le bornage judiciaire des immeubles décrits dans leur déclaration, appartenant res-

pectivements aux parties en cette cause. Les défendeurs, présents intimés, ont répondu à cette demande par une déclaration invoquant un jugement rendu par l'honorable juge Angers, entre les parties en cette cause, lesquelles étaient aussi les parties dans une demande d'injonction ayant pour but de contraindre les intimés à cesser d'exploiter comme terrain minier le lopin de terre à raison duquel s'élève la principale difficulté au sujet du bornage des immeubles en question. Dans cette déclaration ils ont invoqué un bornage par les auteurs des appelants, antérieur au jugement de l'honorable juge Angers, sur lequel ils fondent une allégation de chose jugée, déclarant en outre que sans renoncer à leurs droits acquis en vertu de ce jugement, ils sont encore prêts comme ils l'ont toujours été, à borner suivant la loi.

Les parties dérivent d'un auteur commun, Joseph Poulin, leurs titres aux propriétés dont le bornage est demandé et qui sont décrites comme suit dans le *Special Case*, signé par les deux parties (1).

Après la production de la déclaration des intimés, les appelants firent une motion pour référer la cause à des arpenteurs experts, sur laquelle le jugement suivant fut prononcé :

In the presence of the said parties, or in their absence after due notification to them given in the manner required by this court, to draw the boundary line of separation and division between the contiguous lands of the plaintiffs and defendants mentioned and described in the title deeds of the parties cited in their declaration in this cause, and fyled in this cause by the plaintiffs ; the said surveyor or surveyors to have communication of the record in this cause especially of all deeds fyled, and also of the titles herewith fyled, being deed of lease passed before Ls. Blanchet, N. P., on the twelfth of October, eighteen hundred and seventy-six, from Joseph Poulin to Edward Sands.

Resiliation of said deed before same Notary, passed on the seventeenth day of March, eighteen hundred and seventy-nine, and deed of

(1) See p. 62.

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lease passed before same Notary, on the eleventh day of February, eighteen hundred and seventy-nine, from Joseph Poulin to James Forgie, with power also to examine witnesses if required to establish any pretention of the parties which may be made at the time of the survey, the said surveyor or surveyors to prepare a plan of the locality and properties aforesaid, showing the respective pretentions of the parties, and indicating the localities of the said boundaries and division lines between all the said properties, according to the titles of the said parties, the said surveyor or surveyors to produce and fyle the said plan with a report or reports thereon, and of the proceedings by them taken in the preparation of the said plan.

MM. Sewell, Legendre et Ross, arpenteurs de profession, ayant été nommés pour procéder à l'exécution de ce jugement interlocutoire, et n'ayant pu s'entendre sur un rapport commun, firent des rapports séparés, dans lesquels ils en sont arrivés à des conclusions contradictoires. Ce résultat était inévitable, car chacun d'eux a pris un point de vue différent de l'autre, suivant l'interprétation qu'il a donnée à l'acte du 27 juin 1876, sur lequel repose toute la difficulté. La description du terrain baillé par cet acte est donné plus haut sous le numéro 1. Il est borné par le nord-ouest au terrain de Ned Sands, par le nord-est au bout des dits deux arpents, en suivant la course d'une certaine veine de quartz; par le sud-est à la terre de Georges Veilleux, et par le sud-ouest au bailleur. Il est ensuite donné à l'acquéreur la faculté de changer la course des lignes en ces termes: "pourra cependant, le dit acquéreur changer la course des lignes et bornes du dit lopin de terre, sans en augmenter l'étendue ou superficie, en suivant dans ce cas la course ou ligne de la dite veine de quartz qu'il peut y avoir, et se rencontrer en cet endroit après que lui le dit bailleur aura prospecté le dit lopin de terre sus-baillé." Comme on le voit la ligne par le nord-ouest doit diviser le terrain en question de celui de Ned Sands, et courir deux arpents pour rejoindre au nord-est la ligne de division entre le bailleur et Georges Veilleux son voisin propriétaire du

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No. 10, et par le sud-ouest au bailleur. N'était la faculté accordée, comme on vient de le voir, de changer les lignes en suivant la course d'une certaine veine de quartz, il ne pourrait y avoir de difficulté à localiser et borner le terrain en question.

Quelle peut être la véritable signification à donner à l'option ainsi accordée? Peut-elle, comme le prétendent les appelants, être exercée en tout temps et quand bon leur semble, et une fois exercée, peuvent-ils encore changer les lignes et bornes pour suivre la veine de quartz à mesure qu'ils la découvrent en poursuivant leurs travaux souterrains. Ou bien ne devait-elle pas, suivant la prétention des intimés, être exercée une fois pour toutes et les lignes demeurer ensuite fixées et déterminées? La limite à l'exercice de cette faculté me paraît avoir été déterminée par la convention même qui impose au preneur l'obligation de faire son option, *après que lui le dit preneur aura prospecté le dit lopin de terre sus-baillé.*

Le preneur et ses associés ont pris possession du terrain en question et y ont travaillé à l'exploitation de l'or pendant plusieurs années, jusqu'à ce qu'ils aient vendu aux présents appelants. Leur possession, sans trouble, a déterminé les limites du terrain en question, qui plus tard ont été fixées d'une manière plus certaine par l'arpenteur Proulx. C'est cette opération que les intimés ont invoqué dans leur déclaration en réponse à l'action, comme un bornage antérieur, en se déclarant toutefois prêt à borner de nouveau, mais suivant la possession telle qu'elle avait alors été déterminée. Il est clair que cette opération, où toutes les parties intéressées n'étaient pas présentes ou représentées, ne peut empêcher le bornage judiciaire, mais elle peut être invoquée comme preuve de la possession des auteurs des appelants et servir à fixer les bornes et limites de leur terrain suivant la possession qu'en ont eu leurs auteurs, Louis

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St-Onge et ses associés, maintenant représentés par les appelants.

La pièce No. 5 du dossier est un plan de l'opération de l'arpenteur Proulx pour fixer les lignes des terrains en question. Il n'y a pas eu de procès-verbal de l'opération, du moins il n'en a pas été produit, mais l'opération parait avoir donné pleine satisfaction aux seules parties intéressées à cette époque, le bailleur Poulin et le preneur Louis St-Onge, comme on va le voir par leurs témoignages, approuvant positivement l'opération de l'arpenteur Proulx.

Le principal intéressé, Louis St-Onge, dit :

Le morceau de terrain en question n'était pas divisé, alors M. Lockwood a fait diviser ce terrain après que je l'ai acheté. Quand cette ligne a été tirée par M. Lockwood, je l'ai acceptée comme notre borne ; j'ai accepté cette ligne telle qu'elle était, à tout risque, parce que je croyais qu'on était alors sur la course de l'or

Quoiqu'il ne puisse dire la date à laquelle cette ligne a été tracée, il sait que c'est après son acquisition, et que d'après leurs opérations ils se croyaient sur la course de l'or. Cette date est fixée au 14 novembre 1876, dans le plan de Proulx, un peu plus de quatre mois après la date du bail du 27 juin 1876. Il ajoute :

Quand Lockwood a tiré sa ligne, il y a planté des piquets tout le long de notre terrain.

A la question suivante :

Y a-t-il eu un bornage entre vous et Poulin ?

Il répond comme suit :

Réponse.—Non, mais le bornage a été tel comme ceci : On s'est arrangé avec M. Lockwood pour le droit de miner et de travailler la grandeur qu'on avait chez Poulin, et c'est là que M. Lockwood a fait tirer la ligne, et c'est là qu'on a compris que la ligne était tirée entre Poulin et nous autres. En tirant la ligne avec Lockwood, on comprenait qu'on prenait seulement notre terrain. Quand je dis qu'on comprenait, je veux dire que moi et mes associés et Lockwood, nous comprenions que c'était là notre ligne. Poulin n'est pas intervenu dans cette ligne, mais il savait qu'on la tirait.

Pour bien comprendre toute la valeur de ce témoi-

gnage, il ne faut pas perdre de vue le rôle important de M. Lockwood dans cet arrangement au sujet de la ligne. Il était alors le gérant de la compagnie des mines d'or De Lery. Cette compagnie, comme on sait, avait acquis les droits aux mines d'or, appartenant au Seigneurs de Lery, en vertu d'une patente de la Couronne. Ce droit fut longtemps contesté par les propriétaires du sol réclamant pour eux le droit aux mines d'or qui se trouvaient dans leurs propriétés. Il n'était pas encore reconnu à cette époque, parce que les tribunaux n'avaient pas encore décidé la question de propriété des mines en faveur de la compagnie. C'est ce qui explique l'arrangement avec M. Lockwood, représentant de la compagnie pour le droit de miner et travailler la grandeur qu'on avait chez Poulin. Sans un arrangement à cet effet St. Onge et ses associés ne pouvaient travailler sur leur propre terrain. Cet arrangement fut fait avec le propriétaire en titre, Louis St. Onge, et après la ligne ainsi tirée lui et ses associés ont travaillé et possédé leur terrain sans trouble comme il le dit :

Après que la ligne de Lockwood a été tirée je sais que Poulin en a eu connaissance, mais je ne me rappelle pas s'il l'a acceptée formellement, toujours est-il qu'on a travaillé notre terrain et nous n'avons pas été troublés par personne.

La seule personne intéressée à se plaindre de cette opération aurait été le bailleur Joseph Poulin, propriétaire d'un terrain voisin ; mais loin d'en manifester aucun mécontentement, il s'est au contraire déclaré satisfait, comme il le dit dans son témoignage.

J'ai vu la ligne tirée par Proulx, l'arpenteur, après qu'elle l'a été, et je n'étais pas présent dans le temps qu'elle a été tirée. Je ne sais pas s'il y a eu un procès-verbal, je n'en ai pas signé, dans le temps j'ai vu la ligne tirée par Proulx et j'en ai été content.

St. Onge travaillait sur le terrain en question dans ce temps-là et il ne m'a jamais parlé que la ligne n'était pas bonne, c'est eux-mêmes qui l'ont pris. Je peux vous montrer à peu près la ligne sud-ouest, là où on rencontre la terre de Veilleux.

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Ces deux témoignages positifs établissent incontestablement deux faits de la plus haute importance. 1o. la ligne tirée par l'arpenteur Proulx, en suivant une course oblique de la ligne de Sands à celle de Veilleux, au lieu d'une ligne à angle droit entre ces deux points indiqués, à laquelle les seuls intéressés, St. Onge et Poulin ont donné une adhésion formelle; 2o. le fait de la possession et de l'exploitation. Ainsi, c'est non seulement après avoir "prospecté," mais après avoir fait constater les lignes de son terrain par Proulx, que Louis St. Onge en a pris possession et l'a exploité avec ses associés, pendant plus de quatre ans avant de le vendre aux appelants. Il n'était pas possible de donner une preuve plus positive et plus certaine de l'exercice du droit réservé de changer les lignes.

Les appelants ont vainement essayé d'ébranler cette position en se fondant sur le témoignage d'Amable Coupal, un des membres de la société St-Onge, qui dit avoir été présent au bornage et déclare qu'il n'a jamais considéré cette ligne de Lockwood comme ligne de leur terrain et qu'ils l'ont dépassée par place. S'il était présent, comme il le dit, il ne paraît pas avoir fait alors aucune objection, du moins Louis St. Onge, le propriétaire en titre et le seul autorisé à consentir à l'opération, n'en fait aucune mention. Coupal dit encore qu'on se disputait parce qu'on ne voulait pas faire borner par Lockwood. Il a, sans doute, pu avoir quelque hésitation en voyant l'intervention de Lockwood, représentant de la compagnie, à qui appartenait la mine d'or; mais St. Onge, le propriétaire, n'en a pas eu, car on a vu dans son témoignage que ce bornage avait été le sujet d'un arrangement qui lui assurait de la part de l'agent de la compagnie De Lery le droit d'exploiter l'or. Toutefois Coupal confirme la preuve de l'acceptation de ce bornage en disant: "On a accepté "le bornage de Lockwood, mais pour ne pas déranger

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"notre contrat." Ce motif fait voir que déjà on s'en tenait à la possession qu'on avait prise d'après le contrat, et que la crainte exprimée, si toutefois elle l'a été alors, par Coupal était vaine, puisque l'opération de bornage de Proulx n'a fait que les confirmer dans leur possession conforme au contrat et qu'ils l'ont ainsi continuée jusqu'à ce qu'ils aient vendu aux appelants. Cette possession a duré depuis la date de leur acquisition, 27 juin 1876, jusqu'à la date de leurs ventes respectives aux appelants, en septembre 1880.

En se déclarant prêts à borner suivant la loi, comme ils l'ont fait par leur réponse à l'action, les intimés n'ont pas dit autre chose qu'ils borneraient d'après leurs titres, leur possession et celle de leurs auteurs.

C'est la signification des expressions dont ils se sont servis. Si le bornage de Proulx n'a pas l'autorité légale suffisante pour empêcher un bornage en justice, il établit du moins avec la preuve de la possession le droit des intimés à un bornage suivant leur titre et leur possession qui a été conforme au plan de Proulx. On ne peut certainement pas les déranger de cette position. C'est cependant la prétention des appelants qui, sans tenir aucun compte du bornage, de la possession pendant plusieurs années, ni de l'option exercée, voudraient faire faire aujourd'hui le bornage comme s'ils avaient encore le droit de changer les lignes. Cette faculté n'existant plus, le bornage doit être fait conformément à la possession et au titre de leurs auteurs, car la possession doit servir à déterminer le lieu où il devait être planté des bornes. Duranton (1). C'est le principe adopté par l'arpenteur Legendre dans le rapport qu'il a fait accompagné d'un plan, montrant les endroits où les immeubles en question doivent être bornés. Son rapport est fondé sur les témoignages

(1) Vol. 5, No. 260, p. 234.

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cités plus haut, de Louis St. Onge le preneur, et de Joseph Poulin le bailleur.

En face de cette preuve il m'a semblé (dit-il) devoir baser mon rapport sur ces données et travailler avec soin à retracer le plus correctement possible les lignes tirées par l'arpenteur Proulx.

Ce dernier n'ayant pas planté de bornes permanentes, il n'est pas surprenant que les témoins n'aient pas été d'accord à les retracer exactement, car la face du terrain a été bien changée et bouleversée depuis ce temps-là. Ayant à choisir entre les différentes lignes mentionnées par les témoins, soit la ligne E. D. indiquée par George Thérien et Joseph Poulin, soit la ligne E. B. indiquée par Louis St. Onge, ou la ligne N. E. indiquée par Anthony Miller, il a donné la préférence à la ligne E. B. indiquée par Louis St. Onge,

Parce que le témoin étant sur les lieux lors du tracé des premières lignes; et ayant exploité pour des fins minières ce lopin de terre pendant plusieurs années, il doit être plus en état qu'aucun autre témoin, qui n'a vu ces lignes qu'en passant, de fixer la place primitive de leur trace.

J'ai ensuite tiré la ligne I. A. parallèlement à la ligne E. B., donnant ainsi au dit lopin de terre trois quarts d'arpent de front, ce qui d'après moi répond parfaitement aux limites et mesures mentionnées dans le bail et fixées par consentement des parties.

Cette conclusion est certainement correcte puisqu'elle est conforme non seulement aux mesures et limites mentionnées dans le bail du 27 juin 1876, mais parce-qu'elle l'est aussi au plan de Proulx, ou du moins s'en rapproche beaucoup, ainsi qu'à la possession de la compagnie St. Onge, auteurs des appelants.

Il explique ensuite la différence d'étendue du placer (*claim*) représenté sur son plan par les lettres J K L B, baillé aux auteurs de D. W. Brown, par l'acte du 17 mars 1879, auquel il donne un arpent quatre-vingt-cinq perches, tandis qu'il est limité par le contrat à un arpent, plus ou moins. Il attribue cette différence à ce que les parties n'ont jamais mesuré le terrain en question avant la transaction.

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L'arpenteur Sewell, partant d'une fausse interprétation du bail du 27 juin 1876, est arrivé à une conclusion bien différente de celle de Legendre, et tout-à-fait en contradiction avec le titre et les faits prouvés. Le titre, comme on l'a vu, donne au lopin en question trois quarts d'arpent de front sur environ deux arpents de profondeur, c'est-à-dire, les deux arpents qui restent à partir de la ligne de Sands à aller à celle de Veilleux. Les lignes de ce lot, sur sa profondeur, sans la réserve accordée de suivre la veine de quartz, auraient dû être tracées en ligne directe de celle de Sands à celle de Veilleux. Au lieu de cela, St. Onge en prenant possession, ayant exercé son droit d'option de changer les lignes, les a fait tirer par Proulx dans une direction diagonale, au lieu d'une ligne à angle droit sur celles de Sands et Veilleux, parce qu'il se croyait, comme il le dit dans son témoignage, dans la direction de l'or.

Malgré l'exercice bien prouvé de cette option, Sewell se fondant plutôt sur des travaux souterrains postérieurs que sur la possession de St. Onge, a, sous prétexte de suivre la veine d'or, tracé une ligne partant, il est vrai, du même point A., sur la ligne de Sands, adopté par les trois arpenteurs, et lui fait suivre une course légèrement diagonale qui se prolonge au delà de la rivière Gilbert, à une distance d'au delà de quatre arpents. Il est vrai qu'il arrive là aussi à toucher la ligne de Veilleux. Il aurait été tout aussi raisonnable de conduire cette ligne jusqu'à l'extrémité de la terre de Veilleux, où elle aurait encore pu toucher la ligne latérale qui la sépare du No. 11. Le titre ne fait aucune mention de la rivière Gilbert dans sa désignation du lot, il donne au contraire des lignes bien clairement indiquées, celle de Sands d'où il faut partir pour arriver à celle de Veilleux, avec l'option de changer la direction sans toutefois augmenter l'étendue en superficie du terrain concédé. Il est vrai qu'avec

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l'option accordée on ne peut pas se départir des lignes directes entre Sands et Veilleux, pour adopter une ligne oblique sans donner au lot plus de deux arpents d'une ligne à l'autre, de Sands à Veilleux. Mais outre que ce changement a été fait lors de l'arpentage de Proulx, avec le consentement ou du moins l'approbation de tous les interessés, s'il était à faire aujourd'hui ne faudrait-il pas le faire conformément au titre, c'est-à-dire, sans augmenter l'étendue en superficie. L'opération de Sewell a pour effet de donner au lot en question quatre arpents et 58 perches, au lieu de trois quarts de front sur deux de profondeur, ou une superficie d'un arpent et demi. Ce résultat démontre à l'évidence l'absurdité du rapport de Sewell.

Pour changer les lignes adoptées lors de l'arpentage de Proulx, on ne peut pas dans l'intérêt des appelants prétendre que St. Onge s'est trompé sur la direction de la veine d'or. On a vu, au contraire, par la preuve ci-dessus citée que ce choix a été fait délibérément. St. Onge dit à ce sujet :

> Quand la ligne a été tirée par M. Lockwood je l'ai acceptée comme notre borne, j'ai accepté la ligne telle qu'elle était à tout risque, parce que je croyais qu'on était alors sur la course de l'or. Notre intention était de travailler à percer des puits (*shafts*) pour avoir l'or d'alluvion. Ce n'était pas notre intention d'acheter une veine de quartz.

Coupal, l'un des associés, dit :

> C'était notre intention d'acheter le terrain entre la ligne de Sands et la ligne de Veilleux, on a pris trois quarts d'arpents, plus ou moins, joignant d'une ligne à l'autre. Notre intention était d'acheter l'or d'alluvion qui se trouverait sur le morceau de terre acheté.

D'après cela il est évident qu'il n'y a pas eu d'erreur dans le choix qui a été fait des lignes de Proulx,—mais lors même qu'il y aurait eu erreur de calcul de leur part, en exploitant l'or d'alluvion de préférence à la veine de quartz, cela n'empêche pas que leur choix a été fait en connaissance de cause, puisqu'ils disent tous que leur objet en achetant n'était

pas d'exploiter une veine de quartz. Leur choix a eu l'effet non seulement de les lier aux lignes qu'ils ont adoptées et d'après lesquelles ils ont possédé, mais il a également l'effet de lier les appelants, qui ne peuvent réclamer plus de droits que leurs auteurs.

On aurait tort de considérer comme lignes établies par une convention verbale celles qui ont été tracées par Proulx. Elles sont, au contraire, bâsées sur le bail du 27 juin 1876 et tracées spécialement pour localiser le terrain baillé,—et c'est en exécution de la convention au sujet du pouvoir de changer les lignes et bornes que ces lignes ont été tracées diagonalement, parcequ'on croyait, en les adoptant, se trouver dans la direction de la veine d'or. Je serais fort enclin à adopter le plan de Proulx, mais comme celui de Legendre s'en approche beaucoup et que, d'ailleurs, il donne au terrain en question les lignes modifiées suivant l'option réservée et l'étendue mentionnée dans le bail, j'en viens à l'opinion avec la majorité de cette cour d'adopter le rapport de Legendre.

Les parties possèdent d'autres terrain dont le bornage est aussi demandé, mais leur location dépendant de celle du terrain ci-dessus baillé par l'acte du 27 juin 1876, Legendre leur a aussi assigné leurs limites et bornes d'après les titres des parties, à l'exception du lot comprenant partie du lit de la rivière Gilbert, dont il a omis d'indiquer les bornes. A l'argument, cette omission a été signalée et invoquée comme un moyen de faire rejeter son rapport. Cette omission a été expliquée par le conseil des intimés qui a déclaré qu'il ne s'était élevé aucune difficulté à propos des autres lots, et qu'il n'y en avait positivement aucune par rapport au lot ainsi omis. Le conseil des appelants en est convenu. L'arpenteur qui sera nommé pour planter les bornes conformément au rapport approuvé, pourra si les parties sont encore d'accord lors du règle-

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ment de la minute du jugement, recevoir instruction de placer aussi les bornes de ce lot.

En conséquence de ce qui précède je suis d'avis que le rapport de l'arpenteur Legendre doit être homologué et l'appel renvoyé avec dépens.

TASCHEREAU J.—This was an action *en bornage*, by which the plaintiffs, now appellants, seek to have the boundaries of their property, which is contiguous to that of the defendants, now respondents, ascertained and determined.

The defendants by their plea declared that they were ready to bound in accordance with the rights acquired by title and possession of themselves and their *auteurs*; and by consent of all the parties, three surveyors were appointed by the court, each of whom made a separate report. By the judgment of the Superior Court the plan and report of the surveyor Legendre, which are in entire accord with the pretensions of the defendants, were adopted.

This judgment was confirmed in appeal.

The facts are as follows:

One Joseph Poulin, being proprietor and in possession as such of lot 2, Concession St. Charles, Seigniory of Rigaud-Vaudreuil, which is supposed to contain three arpents in front by twenty-six arpents in depth, by deed before Blanchet, N. P., 12th October, 1876, leased to one Edward Sands a portion of the said farm described in the said deed as follows:

Un lopin de terre d'un arpent de front sur un arpent de profondeur, enclavé dans la terre du bailleur,

and whereof the said Sands was at the time in possession. On the 27th June, 1876, by deed before Blanchet, N. P., Poulin leased to Boissoneau (plaintiffs' now appellants' *auteur*) another portion of the said farm described in the deed as follows (1).

(1.) See p. 62.

and finally on the 17th March, 1879, by deed before Blanchet, N.P., defendants' (now respondents') *auteurs* leased from the said Poulin another portion of the said farm described in their deed as follows (1).

There are different other deeds alleged in plaintiffs' declaration, and produced in the record, which show that the parties, plaintiffs and defendants, subsequently acquired other portions of the same lot for mining purposes, but the controversy turns specially upon the interpretation of the above cited deeds.

The respondents contend that if the language of the description of the land intended to be conveyed admits of two different constructions, the one making the quantity conveyed agree with the quantity mentioned in the deed, and the other making the quantity altogether different, the former construction must prevail. *Herrick* v. *Sixby* (2).

What is the plaintiffs' (now appellants') mining claim and what are its bounds?

The primary intention of the deed, and also Mr. William Sear's understanding of it, was that their claim was three-quarters of an arpent by two arpents, extending from Sands' claim on the north to George Veilleux's or the division line between lots 10 and 11 on the south. It is well to remember that Mr. Smart was at one time the plaintiff's manager, and also their chief witness in this case.

This is shown by the fact that the whole lot was three arpents wide. Sands' claim covered one arpent and plaintiffs' had the balance adjoining Sands' and extending to Veilleux.

Now where does plaintiffs lot begin?

Evidently at Sands' boundary line, the deed so states. The action of plaintiffs and their predecessors confirm this—they worked up to Sands' lot.

(1) See p. 64 .

(2) 17 L. C. R. 146; L.R. 1 P.C. 436.

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Chapman, a witness, says "Sands' shaft was on a line between Sands' Company and St. Onge. St. Onge worked close to us, viz: up to the drift made for the dividing line." Whether this drift was on the exact line of one arpent distant from the division line between lots 11 and 12 is of minor importance. This drift and the line are near enough for the purpose of this trial—Sands' claim as worked, was fully one arpent from the bank of the river.

Now according to the lease under which plaintiffs claim, they could run from Sands' claim two arpents, either directly across lot 11 South, to lot 10, George Veilleux, or they could change the direction according to the lead, but in no event could they extend two arpents in length or the distance from Sands' lot directly across to lot No. 10.

Have the plaintiffs or their predecessors made a location of their claim in accordance with the terms of their deed which is as follows:—

> Pourra cependant le dit acquéreur changer la courses des lignes et bornes du dit lopin de terre---sans en augmenter l'étendue ou superficie, etc., etc., après que le bailleur aura prospecté le dit lopin de terre?

St. Onge, appellants *auteur* did so—he so told George Thérien, and showed him the pickets as put down by his surveyor, and told him that his upper line, viz: the one to the east from the river, was along the line of Forgie & Co. and three-quarters of an arpent wide from the line. This conforms with the plan of Legendre.

St. Onge also informed Joseph Poulin of the same fact. Poulin asked them if they did not want to buy the land now in dispute, viz: between their land and the river, and between the canal on the north and division line between lots 10 and 11 on the south, and they said "no," and, further, they said to Poulin "if

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you find a chance to sell, then sell, perhaps they will set up a wheel and that will serve us," viz: drain the water and assist us so much. That was before the present plaintiff had purchased.

Louis and John St. Onge pointed out to Thomas Richards their location, bounded on the east by the Forgie and Company line, and having a width of three-quarters of an arpent, the westerly line running close to their wheel shaft (McArthur's shaft No. 2 on plaintiffs' plan and D on defendants' plan). Mr. Richards says he thinks Mr. Smart was then present, Mr. Smart does not deny this.

This Louis St. Onge held the title, and was manager after they formed a company. The evidence fixes the fact that the plaintiffs' lot was then definitely located. I think the courts below were right in adopting Legendre's plan and I would dismiss the appeal with costs.

The parties admitted at the hearing that Legendre's report was incomplete, as it did not include the *bornage* of the other lots described as No. 3 in the special case. The necessary order to cover this omission is to go with the judgment, and the surveyor should be ordered also to put *bornes* between the parties' said lots if the parties agree where these *bornes* should be. The parties will see that this order is duly and correctly entered when the minutes are settled. If they do not agree as to the exact locality where these *bornes* should be, then the judgment to stand as it is in the Superior Court.

GWYNNE J.—In the month of June, 1876, one Poulin was seized of concession lot No. 11, in the St. Charles Division of the Seigniory of Rigaud-Vaudreuil. This lot was in the shape of a right angled parallelogram of about three arpents in width and twenty-six

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arpents in depth. The northerly and southerly limits or side lines of the lot cross a river, known as the River Gilbert, which traverses the whole width of the lot in an oblique devious course from the northerly to the southerly side line of the lot, which latter line constitutes the boundary line between the said lot No 11 and lot No. 10 in the same concession then the property of one Veilleux. Through the lot No. 11 a vein of quartz containing gold passed or was supposed to pass from the northerly to the southerly side line of the lot, but in what precise course, as it was altogether some distance under the surface, was unknown. It was supposed, however, to be situate within the area of a square arpent of land measured off the northern extremity of the lot, the north-west angle of such arpent being at a point distant about one arpent from the north-easterly side of the River Gilbert as it crosses the northerly side line of the said lot. Being so seized the said Poulin verbally agreed to let to one Sands the said arpent, and on the 12th October, 1876, executed a lease demising the same to him for the term of three years computed from the 24th day of June, 1876, by the following description:

> A piece of land having one arpent of frontage by one arpent of depth enclosed in the land of the lessor in the concession St. Charles, in the parish of St. Francis, in the Seigniory of Rigaud-Vaudreuil, the said piece of land to be taken at about one arpent distant from the north-east side of the River Gilbert as it intersects and crosses said land, and is bounded on the north-west by George Ferrier, and on all other sides by the lessor.

The George Ferrier here mentioned was then the proprietor of, or in possession of, lot No. 12 in the said concession which lot therefore constituted what is called the north-west boundary of the piece of the adjoining lot No. 11 demised to Sands. The piece of land thus demised to Sands was one square arpent situate upon, and at the northern extremity of, the said lot No.

11, the northerly boundary line of which arpent was the northerly side of the said lot No. 11, and the north westerly angle of which arpent was at a point in the said northerly side line of lot 11, distant *à peu près un arpent* from the intersection of such side line with the north-easterly side of the river Gilbert; and the southerly limit or boundary of this arpent demised to Sands was distant from the said northerly side line of lot No. 11 precisely one arpent or 180 French feet, measured on a line drawn at right angles therewith, and such southerly limit was parallel with both side lines of said lot No. 11, thus leaving on the said lot No. 11, between Sands' southern line and the side line between the said lot No. 11 and Veilleux's land on lot No. 10 in the same concession, *environ deux arpents de profondeur.*

About the same time that the verbal agreement was made between Poulin and Sands for the demise to the latter of the said arpent, Poulin and one St. Onge entered into an agreement for a lease from the former to the latter, for the period of ten years, of a portion of the same gold bearing land to be enclosed within lines of three-fourths of an arpent in length, measured upon the southerly boundary line of Sands' arpent as above described and on the line of Veilleux' land on lot No. 10, that is to say at the line between said lots 11 and 10, and extending from Sands' said line to that of Veilleux, across that portion of lot No. 11, of *environ deux arpents de profondeur* lying between Sands' line and that of Veilleux. St. Onge the lessee as to this point says:

Quand j'ai acheté le terrain en question, mon intention était d'acheter la terre entre le terrain de Sands et celui de Veilleux, sur trois quarts d'arpent. Dans le premier temps, c'était notre intention d'acheter toute la largeur du lot numéro onze sur trois quarts d'arpents, mais Sands ayant pris un arpent nous avons pris *les deux arpents*, ce que nous comprenons la terre avait trois arpents, et Sands en ayant un arpent *il en restait deux pour nous.*

Poulin the lessor upon the same point says:

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Mon intention quand j'ai vendu à St. Onge, était de lui vendre un lopin de terre *de trois quarts d'arpents mesurés sur les lignes de Sands et de Veilleux et qui traverserait d'une ligne à l'autre.*

The intention of both the lessor and the lessee in the contract made by them for the lease plainly was that Poulin should demise and that St. Onge should acquire a piece of land having its base or front of three-fourths of an arpent, or 135 French feet in length, measured on Sands' southerly line and its rear line of like length measured on Veilleux's line and extending across the remaining width of lot No. 11 of *environ deux arpents* lying between Sands' said line and that of Veilleux's on lot No. 10. Such a piece of land would contain an area of 1½ arpents more or less accordingly as the precise distance in a direct line drawn at right angles with the base on Sands' line should be more or less than two arpents or 360 French feet. The intention and agreement of the parties as above expressed was reduced into writing in a lease bearing date the 27th June, 1876, whereby Poulin leased to St. Onge for a term of ten years to be computed from the said 27th of June a piece of the said lot No. 11 described as follows (1)

This is the only piece of land described as being leased thereby to which any lines and boundaries are assigned and it conforms precisely (if such an inartistic, inaccurate, and loose description can be said to be precise) with what both the lessor and the lessee declare was their intention, namely, that the piece of land intended by the former to be let, and by the latter to be acquired, was a piece of land to be comprised within a regular figure constructed on a base line of three-fourths of an arpent or 135 French feet in length measured on the southerly side of Sands' arpent as hereinbefore described, and having its opposite or rear

(1) See p. 62.

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line of like length measured on Veilleux's line or the boundary line between lots 11 and 10 and extending from such front or base line to such rear line across the two arpents or thereabouts lying between Sands' line and that of Veilleux. The natural meaning and plain intent of the parties and of the language of the lease to give effect to such intent, as it appears to me, was that the figure comprising the piece of land as above described should be a quadrilateral figure the side lines of which drawn across the said "two arpents or thereabouts" should be drawn in a direct line from either extremity of the base line to the opposite extremities of the rear line, and as these base and rear lines were prescribed to be equal, and were in fact parallel, the side lines uniting their extremities must of necessity be equal and parallel. The result must therefore needs be that whatever might be the angles formed by such side lines with the base—whether right angles or however obtuse or acute any of them should be—the area of the figure would be precisely the same, namely $1\frac{1}{2}$ arpents. If the vein of gold should be found to proceed into the space of "two arpents or thereabouts" between Sands' line and that of Veilleux on a course at right angles with the base of three-fourths of an arpent measured on Sands' line and should fall short of reaching Veilleux's land and then disappear wholly, still the side lines must needs be continued to Veilleux's line on the original course of a perpendicular with the base; so, likewise, at whatever angle with the base the vein of gold should cross the base, and however acute, therefore, or obtuse the north-east and north west angles of the demised piece might be, the side lines forming such angles at either extremity of the base must be continued on the same course to Veilleux's land to locate the rear line of three-fourths of an arpent in length on Veilleux's line, although the

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vein of gold should happen to fall short of reaching that line. What the person who drew the description appears to have had in view was to prescribe a mode by which the four corners of the piece of land intended to be demised should be located on the ground. He describes the piece of land as "*bornée par la nord-ouest au terrain déjà vendu par le vendeur dans la même terre à Sands.*" By reference to the plans now produced we find that in point of fact Sands' arpent bounded the piece intended to be demised to St. Onge upon the north; the southern boundary line of Sands' arpent was intended to be the northern boundary line of the piece demised to St. Onge and in this line, of necessity, must be found both the north-west and the north-east angles of the piece intended to be demised to St. Onge but where in particular within the limits of this line they are to be found the draftsman does not say. If the point where the south-western angle of Sands' arpent was should be adopted as the point where the north western angle of St. Onge's piece should be formed it would follow that the north-east angle of St. Onge's piece must be at a point precisely three-fourths of an arpent, or 135 French feet, distant from such north-west angle, measured in an easterly direction on Sands' line. So, if the south-easterly angle of Sands' arpent should be adopted as the point where the north-easterly angle of St. Onge's piece should be found, it would necessarily follow that the north-westerly angle of St. Onge's piece must be at a point precisely the 135 French feet distant from such north-easterly angle measured in a westerly direction upon the said southerly line of Sands' arpent, or both the north-westerly and north-easterly angles of St. Onge's piece might be formed at any two points distant from each other the prescribed distance of 135 French feet on Sands' southerly line between the south-westerly

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and south-easterly angles of Sands' arpent, as above described. The draftsman, however, indicates only the line within the length of which both the north-easterly and north-westerly angles of St. Onge's piece must be formed, the intention most probably having been that as the site of the vein of gold was unknown St. Onge was left at liberty to locate his northern boundary line of 135 French feet in length wherever he pleased, upon, and within, the prescribed length of Sands' southern boundary line of one arpent or 180 French feet. The draftsman proceeds with his description thus—"*par le nord-est au bout des dits deux arpents.*" What was meant by these words "*au bout des dits deux arpents*" as here used it is difficult to understand; the only "*deux arpents*" coming under the designation "*les dits deux arpents*" are "*les deux arpents de profondeur*" of the demised piece, and as the front or base line of three-fourths of an arpent in extent is beyond all doubt to be found within the southern boundary line of the arpent let to Sands, and as the description goes on to show that the other extremity of the demised piece is on Vielleux's line, it is clear that "*les deux arpents de profondeur*" must refer to the space between the southern boundary line of Sands' arpent and Veilleux's line, between lots No. 11 and 10. Again as the north-east angle of the demised piece equally as its north-west angle must be at either extremity of the same front or base line, the words "*en suivant la course d'une certaine veine de quartz*" can not be read as indicating the course to be followed from the north-western extremity of the front or base line to the north-eastern extremity of the same line, following such a course from the north-western extremity of the base wherever it may have been located by St. Onge within Sands' southern line, would never, as appears by the plans produced, lead to the north-

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eastern extremity, but would lead in a quite different, and, indeed, an opposite direction, namely, to Veilleux's line. It is obvious, therefore, as it appears to me, that the words, "*bout des dits deux arpents*," which is said to bound the demised piece on the north-east, must be the extremity of the base or front line of the demised piece within Sands' line, thus establishing that these words as here used, can have no meaning attached to them unless they be construed as referring to that extremity or "*bout des deux arpents*" which is coincident with Sands' line, and that "*les deux arpents de profondeur*" of the demised piece must be the space between that line and Veilleux's land on lot 10.

Having thus the base or front line of the demised piece determined so far as to be wherever it should be selected and located by St. Onge, within the 180 French feet prescribed as the length of Sands' line, how are the lines to be drawn which will form the south-eastern and south-western angles of the demised piece ?

Having determined the north-eastern extremity of the front or base line, it is necessary that a course should be given in order to determine the point on Veilleux's line which should be the south-eastern extremity of the rear line of the demised piece. Here and here only, as it appears to me, can the words "*en suivant la course d'une certaine veine de quartz*," be introduced, and read so as to give any appropriate and sensible application to them. Having determined the north-eastern extremity of the demised piece, the description proceeds to define its south-eastern extremity thus : "*En suivant la course d'une certaine veine de quartz par le sud-est à la terre de George Veilleux.*" Thus, by drawing (parallel with the vein of quartz as it proceeds from the base line in the direction of Veilleux's land) a straight line from the north-eastern extremity of the base to the land of Veilleux, on lot 10

we get the south-easterly angle of the demised piece, extending thus three-fourths of an arpent in width across "*les dits deux arpents de profondeur*," at whatever angle the vein of quartz may be found to intersect the base. Having thus got the south-easterly angle, the south-westerly angle of the demised piece is readily obtained, either by measuring from the south-easterly angle so obtained 135 French feet in a westerly direction along Veilleux's line, or by drawing, from the north-westerly extremity of the base or front line, a line in like manner parallel with the vein of quartz as it intersects the base, and therefore parallel with the easterly side line already drawn, a straight line until we reach lot 10 or Veilleux's land. We shall thus have the precise piece intended to be demised "*de trois quarts d'arpent de front sur environ deux arpents de profondeur*." The superficial contents or area of which piece of land so determined will be one arpent and one half, and this is the only way in which a definite area can be given to the piece of land intended to be demised as above described. It is clear from the terms of the demise that the piece of land as described should have certain lines and bounds or limits, and that it should contain a definite area, and that such area should be that which would be comprised within a regular figure "*de trois quarts d'arpent de front sur environ deux arpents de profondeur*," or one arpent and a half. The description as given was, no doubt, based upon the assumption that the gold, lead, or vein of quartz, would continue through "*les deux arpents de profondeur*" upon the same course that it should be found to cross the base or front upon Sands' line ; and this, as it appears, is made more clear from the subsequent provision in the lease which seems to have been designed to meet the possible contingency of its being found not to be so. The privilege was thereby

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granted to the lessee, if he should think fit to exercise it after prospecting the piece of land above described and leased, of substituting for that piece a different portion of the same lot No. 11, and such as the lessee should himself select within the terms of the provision, which contained a peremptory condition that the substituted piece should not be of greater superficial area than the piece of land as above described, that is to say than 1½ arpents. The provision prescribes the manner in which this change may be made as well as sets limits to it, in the words following:—

Pourra cependant le dit acquéreur changer la course des lignes et bornes du dit lopin de terre sans en augmenter l'étendue ou superficie, en suivant dans ce cas, la course ou ligne de la dite veine de quartz qu'il peut y avoir et se rencontrer en cet endroit après que lui le dit preneur aura prospecté le dit lopin de terre sus-baillé.

This last sentence plainly shows that the piece as before described was the piece intended to be leased unless and until the lessee, under the privilege contained in the above provision, should designate by precise boundaries the piece of land, if any, which he should select in substitution for the piece described as leased. The right of exercising this privilege which was given to the lessee under the above provision would seem to have been conferred upon him personally, and to have been intended to have been exercised by him within a reasonable time. It never could have been intended that he might exercise it at any time he pleased during the term created by the lease, thus keeping the lessor in doubt during all that time as to the land remaining to him over which he had disposing power. Now in point of fact the lessee never did, nor did his assigns, assuming them to have had the power, at any time exercise this privilege, and it is impossible that it could be exercised after the expiration of the term.

On the 11th February, 1879, the same Poulin

demised to George Forgie for the term of three years to commence and be computed from the first day of May, which should be in the year 1881, a piece of the same lot No. 11 having :

Trois arpents et demi plus ou moins de front sur une ligne oblique au travers ou largeur de la dite terre (No. 11),

and bounded as follows :

Par le nord-ouest au terrain de William P. Lockwood, par le sud-est à la terre de George Veilleux, par le sud-ouest au terrain de la compaigne St. Onge et par le nord-est au terrain ci-après designé et loué.

The site of the line to be drawn from the north-westerly extremity of the piece of land as above described to its south-westerly extremity is all that, in so far as this lease is concerned, is necessary to be determined.

Now the William P. Lockwood in the above description mentioned whose land is said to bound the demised piece on the north-west had no land upon lot No. 11 except the northerly half of the square arpent demised to Sands, and this he only had in virtue of some arrangement made between him and Sands the nature of which has been suggested but not proved; it is not, however, claimed to have been, nor could it have been, more extensive than the interest of Sands himself. This piece of land as above demised to Forgie had its north-western extremity abutting on the north-easterly side line of Sands' arpent, and its northerly boundary line of "un demi-arpent de profondeur" must have been the line between said lots 11 and 12, and its westerly side line must have extended from such last mentioned line along the easterly side line of Sands' arpent to the south-east angle of that arpent and must have thence followed and have been coincident with the easterly side line of the piece demised to St. Onge, to the point on the line between lots Nos. 11 and 10 where the south-easterly angle of the piece demised to St. Onge as described in his lease was situate. A reference to the description of the piece designated as "*ci-après*

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designé et loué" and which is said to bound on the north-east the piece first demised, places this beyond all doubt, although that description is confused by the introduction of the other words "*partie au terrain de William P. Lockwood,*" who had no land at the point indicated, that is to say abutting on the north-east side of the piece firstly demised. This piece "*ci-après designé et loué*" is also stated to be part of the same lot No. 11, and to have a front of the same extent as that of the piece firstly demised, namely:

Trois arpents et demi plus ou moins de front sur une ligne oblique au travers ou largeur de la dite terre, sur un arpent de profondeur.

And bounded as follows:

par le nord-ouest partie au terrain du dit William P. Lockwood et partie à celui de George Terrain; par le nord-est au Bailleur, par le sud-est à George Veilleux, et par le sud-ouest au terrain sous loué."

Now as Lockwood had no land in the vicinity other than the northerly half of the square arpent demised to Sands the introduction of the words "*partie au terrain de William P. Lockwood*" in this description appears to be an error of the draftsman, but the words "*et partie à celui de George Terrain,*" who owned lot No. 12, show that the northerly boundary line of the piece above described must be on the line of Sands' northerly boundary line continued that is to say, the line between lots Nos. 11 and 12; and as the front line of both of the pieces demised to Forgie measured in an oblique direction across lot No. 11 to lot No. 10 are designated as of the same length namely "*trois* (3) *arpents et demi plus ou moins*" it is obvious that the northerly boundary line of both of the demised pieces equally as the southerly were intended to be on the same lines respectively, that is to say, the northerly on the line between lots 11 and 12 and the southerly on the line between lots 11 and 10; the piece, therefore, as first above demised to Forgie must have its westerly

boundary line coincident with the easterly boundary lines of the square arpent demised to Sands and of the piece demised to St. Onge.

On the 15th of March, 1879, Poulin demised to Henry Powers and Archibald McDonald for a term of fifteen years to commence upon, and to be computed from, the 24th day of June then next a piece of the same lot No. 11 by the following description :

Toute cette partie de terrain comprise entre les claims et placers de William P. Lockwood, James Forgie, Louis St. Onge, et cie et le côté sud-ouest de la rivière Gilbert, le tout enclavé dans la terre du Bailleur connue et designé par le numéro onze de la concession St. Charles en la dite paroisse de St. François. Contenant la dite partie de terrain deux arpents de terre en superficie plus ou moins sans garantie de mesure precise et borné comme suit-savoir : par le nord-ouest au dit William P. Lockwood—par le nord-est au James Forgie et Cie par le sud-est au dit Louis St. Onge et Cie et par le sud-ouest au côté sud-ouest de la dite rivière Gilbert."

It is to be observed that this lease provided that the term thereby granted in the piece of land therein described was not to commence until the 24th day of June then next, when the lease of the square arpent demised to Sands (the north half of which was the only land in which William P. Lockwood had any interest) would expire by effluxion of time. It is apparent also that the piece intended was bounded on the north-east by the piece demised to James Forgie by the lease of the 11th February, 1879, and firstly therein described, (which piece of land, as already shown, abutted on the north-easterly boundary line of the arpent demised to Sands) and on the south-west was bounded by the land demised to St. Onge, that is to say, by the southerly line of the arpent demised to Sands which constituted the northerly boundary line of the piece demised to St. Onge. Now the piece of land thus extending from Forgie's line to the river Gilbert and bounded on its south-eastern extremity by the piece

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demised to St. Onge, that is to say, by the line between the pieces demised to Sands and to St. Onge, and extending along that line continued to the river Gilbert, would contain just "*deux arpents plus ou moins*"—the quantity of land expressed to be demised by the lease, and consisting of the arpent let to Sands, (whose term would expire before the new term, expressed in the lease to commence on the 24th of June, should commence) and the arpent or thereabouts lying between it and the river Gilbert, and this piece would be well described as lying between James Forgie's land and the river Gilbert, and having its south-easterly boundary line abutting on the land demised to St. Onge, and this appears to me to have been the piece intended by the description in the lease, which is confused by the reference to the name of William P. Lockwood, who would have no interest in any land there situate on the 24th June, when the term granted by this lease of the 15th March, 1879, would commence.

Upon the 17th day of March, 1879, Poulin demised to the same Henry Powers and Archibald McDonald for a term of fifteen years, to commence upon, and to be computed from, the said 17th March, another piece of the said lot No. 11 :

Borné comme suit, savoir par le sud-est à la ligne de division entre la terre du dit bailleur et celle de George Veilleux ; par le sud-ouest, au côté sud-ouest de la rivière Gilbert, et par le nord-ouest et le nord-est au canal—claim ou placer, de la compagnie St. Onge.

This piece of land is declared in the lease to contain un arpent de terre en superficie, plus ou moins.

On the 29th March, 1879, Poulin demised to the same Henry Powers and Archibald McDonald, for a term of fifteen years, to commence upon and to be computed from, the said 29th of March, another piece of the same lot No. 11—namely, all that part of the river Gilbert lying in front "*du claim ou placer de William*

P. Lockwood." Although William P. Lockwood did not possess any "claim ou placer" on the said lot No. 11 bordering on the river Gilbert, or in fact any part of the said lot No. 11, except the north half of the square arpent demised to Sands in which he appears to have some interest through, and only through, Sands, who, by notarial deed, duly executed upon the 17th March, 1879, surrendered his lease to Poulin, and annulled the term thereby granted, there can be no doubt that the portion of land covered with the waters of the river Gilbert, demised by the lease of the 29th March, 1879, was that part which may have been said to have been in front of, though not contiguous to, the north half of the arpent demised to Sands, which was the only land there situate in which Lockwood had any interest.

In the month of August, 1880, Poulin, by a notarial deed, duly executed, sold and conveyed all the said lot No. 11, and all his estate and interest therein, unto Louis St. Onge and others in the said deed named, who were then the only persons interested in and possessed of the term granted by the said lease bearing date the 27th June, 1876, and who, upon the execution of the said deed of sale, became seized of the said lot, subject only to the said leases executed by Poulin to James Forgie, and to the said Brown and McDonald for the several and respective terms granted of the lands respectively described in the said respective leases bearing date the 11th of February and the 15th, 17th and 29th days of March, 1879, and the said grantees in that deed of sale mentioned, in the month of April, 1881, by like notarial deed duly executed, sold and conveyed the said lot No. 11, and all their estate, right, title and interest therein, to the above appellants, subject only to the said last mentioned leases and the terms thereby granted.

Upon the 1st day of May, 1884, the term granted

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to the said James Forgie by the lease of the 11th February, 1879, expired by effluxion of time, and the above appellants thereupon became absolutely seised of the lands so demised to the said James Forgie.

Now, the present appellants, being so seized and entitled, instituted an action *en bornage* against the above respondents, who then were, and still are possessed of the terms granted by the said several leases, bearing date the 15th, 17th and 29th days of March, 1879, executed as aforesaid by Poulin, for the purpose of having established the boundaries between the lands in the said respective leases comprised, and the other lands of the appellants situate upon the said lot No. 11. In this action *en bornage* the above respondents admitted that no boundaries had by law been established between them and the now appellants, and that it is the interest of both parties to have the boundaries established between the said properties; and thereupon it was ordered and adjudged by the judgment of the court in the said action that the boundary line of separation and division between the contiguous lands of the plaintiffs and defendants, mentioned and described in the title deeds of the parties cited in their declaration in the cause, and filed by the plaintiffs, should be drawn by a surveyor or by surveyors chosen by the parties, or in default to be named by the court, and that the said surveyor or surveyors should have communication of the record in the cause, especially of all deeds filed, and also of the titles therewith filed, being deed of lease passed before Louis Blanchet, N.P., on the 12th day of October, 1876, from Joseph Poulin to Edward Sands, resiliation of the said deed before the same notary passed on the 17th day of March, 1879, and deed of lease passed before the same notary on the 11th day of February, 1879, from Joseph Poulin to James Forgie, with power also to examine witnesses if requir-

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ed to establish any pretension of the parties which may be made at the time of the survey ; the said surveyor or surveyors to prepare a plan of the locality and properties aforesaid, showing the respective pretensions of the parties, and indicating the localities of the said boundaries and division lines between all the said properties according to the titles of the said parties ; the said surveyor or surveyors to produce and file the said plan, with a report or reports thereon, and of the proceedings by them taken in the preparation of the said plan. In accordance with this judgment the plaintiffs nominated as their surveyor one Alexander Sewell, the defendants nominated as their surveyor one Alphonse Le Gendre, and these so nominated selected one Robert J. Ross as a third surveyor, and these three so appointed were ordered to proceed with the survey as above directed and to report to the court.

Inasmuch as the plaintiffs are seised of the whole of the lot No. 11, whereof Poulin was formerly seized, and subject now only to the leases of the 15th, 17th and 29th March, 1879, under which the defendants claim, the only lines which are material to be determined are, first, the line referred to in the lease of the 17th of March as bounding the piece of land thereby described on the north-west and the north-east, "*un canal claim, ou placer de la compagnie St. Onge*" or, in other words, where is the site of the line which, under the description in the lease of the 27th June, 1876, constituted the westerly or south-westerly, whichever it may be called, side line of the piece thereby demised to St. Onge, for as to the site of the canal there is no dispute; secondly, where is the site of the westerly or south-westerly boundary line of the piece firstly demised to James Forgie by the lease of the 15th March, 1879, at its north-westerly extremity contiguous to the arpent demised to Sands as described in the lease of

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the 12th October, 1876. This line, as I have already hereinbefore shown, is identical with the easterly or north-easterly boundary line of the arpent demised to Sands; and thirdly, the site of the piece of the river Gilbert demised by the lease of the 29th March, as to which however the parties are all agreed.

Now Sewell, one of the surveyors appointed to establish the aforesaid boundaries, made a report and plan showing the piece of land which, in his opinion, was that which was comprised in the lease of 27th June, 1876, which, if adopted, would not only not leave one arpent, but would leave no land at all to pass under the description in the lease of the 17th March, 1879, from Poulin to Brook and McDonald. The mode adopted by Sewell for determining this to be the piece of land which in his opinion was described in the lease of the 27th, June, 1876, was as follows:

All three of the surveyors concurred, first in determining the course taken by the vein of gold as it passed through the lot No. 11, and they laid it down on a map; then from a point "A" designated on the plan accompanying his report and which was agreed to by all the parties as being, and was taken to be, the north-westerly angle of the piece demised by the lease of the 27th June, and as corresponding with the south-westerly angle of Sands' arpent, Sewell let fall a perpendicular upon the vein of gold as laid down on the map as proceeding from Sands' line; this perpendicular he continued across the vein of gold until he reached a point distant on the perpendicular precisely one hundred and thirty-five French feet,or three-fourths of an arpent, from the point "A;" through the point so reached he drew, from a point assumed, but not established, to be the south-east angle of the arpent demised to Sands, a line in a southerly or south-westerly direction for the distance of about 500 English feet to a point on the

map designated by the figure "5," and from thence he drew another line in a direction still more west of south for the distance of about 450 English feet until he reached Veilleux's line, or the line between lots 11 and 10 at a point designated on the map by the figure "4;" then from the point "A" he drew a line parallel with the line first drawn for the distance of about 387 English feet from the point "A" to a point designated on the map by the the figure "1," and from thence he drew a line parallel with the line from "5" to "4," and distant from it on a perpendicular to it 135 French feet, until he reached the river Gilbert at a point designated on the map by the figure "2," and from this last mentioned point he drew a line across the river Gilbert to a point on Veilleux's line about 340 English feet distant in a southerly and easterly direction from the point designated by the figure "4." The piece of land comprised within the above lines contained 4 arpents 58 perches.

As an alternative proposal, in case the above piece should not be accepted by the court as conformable with the lease of the 27th June, Sewell suggested the continuation of the line as above drawn from "A" to the figure 1, until such line so continued should reach Veilleux's line, at a point designated on the map by the letter "W." His only object for the suggestion of this line appears to have been in order to provide 90 perches to supply the piece described in the lease of the 17th of March as "*un arpent plus ou moins.*" The surveyor Ross has approved of this line. Now, it is very clear, as it appears to me, for the reasons given when I defined the lines and boundaries of the piece demised by the lease of the 27th June, 1876, in the manner that the terms of that lease, in my judgment, required them to be laid down, that neither of the pieces as suggested by Sewell can be adopted as that demised

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by the lease of the said 27th of June, or as at all conformable with the description contained in that lease, although the line alternatively suggested when slightly altered may prove to be the line proper to be adopted as the boundary line of the piece demised to St. Onge on its westerly or south-westerly side,—that is to say, from the point "A" to Veilleux's line, and identical with the line of such westerly or south-westerly boundary ascertained and determined in comformity with the description in the lease, interpreted, as in my judgment it should be, as hereinbefore explained, assuming the point "A" to be the north-west angle of the piece demised to St. Onge, as it is now admitted to be by the parties hereto. Both of the pieces as suggested by Sewell are much in excess of the quantity assigned by the lease of the 27th June to the piece therein described, and that portion of the lease, which required the 135 French feet constituting the front and rear of the demised piece to be measured on the respective lines of Sands and of Veilleux, has been wholly disregarded. There can therefore, I think, be no doubt that the court below adjudged rightly in rejecting the report of Sewell as wholly erroneous.

The surveyor LeGendre has furnished a separate report and plan wherein he has adopted a wholly different piece of land as that which, in his opinion, is to be regarded as the piece comprised in the lease of the 27th June, 1876.

In arriving at this conclusion he does not seem to have thought it necessary to comply with the direction of the court to define the boundaries according to the titles of the parties as appearing on the deeds filed in the action. He does not seem to have exercised his own judgment in laying down the boundaries of the piece of land demised by the lease of the 27th June, 1876, which was the governing instrument in accord-

ance with the description as contained in that deed. He did not start upon the front or base line as given by that deed, controlled by the lease of the 12th October, 1876, defining the piece let to Sands. On the contrary, he set out by trying to find a line which appears to have been run in October or November, 1876, by one Proulx not for the lessor and the lessee, or either of them, but for Lockwood, who claimed some interest in the gold which might be found on the said lot No. 11; and being unable to find that line accurately or by any traces or indices upon the ground, he substituted another for it upon vague and unsatisfactory evidence, and this he assumes to be the line run by Proulx, and he undertook to make it the front or base line of the piece he has described, wholly disregarding the description given by the lease. He in fact constituted himself a court to take evidence and thereupon to adjudicate and determine as a matter of fact and law that the lessee of that lease by adoption of the line run by Proulx had estopped himself and his assigns from now contending that such line was erroneous, and does not correctly lay down the boundary line of the land demised by the lease of 27th June, 1876, which adjoins the piece demised to Brown and McDonald by the lease of 17th March, 1879.

Apart from the objection that LeGendre had no power in this manner to affect the rights of the parties and to usurp the functions of the court and vary its judgment, the evidence upon which he proceeded was of the loosest possible character and utterly insufficient to work the estoppel which is asserted and relied upon. Neither Proulx or St. Onge could with any degree of justice be now heard to give evidence which, if it should prevail to make the terms of the lease of the 27th June, 1876, yield to a verbal agreement for a conventional line, would enable them to detract, the for-

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mer from the express terms of his deed of sale to St. Onge and others of August, 1880, and the latter from the terms of their deed of sale to the plaintiffs of April, 1881, whereby the whole estate of Poulin and his vendees respectively became vested in the plaintiffs, subject only to the rights of Poulin's lessees, as expressed in their respective leases.

St. Onge indeed, in the evidence which he gave, admits that whatever recognition he gave to Proulx's line was based upon the assumption and belief that it was correctly run on the course of the vein of gold, an assumption and belief which proves to have been utterly erroneous if the vein of gold runs through the lot on the course which LeGendre and the other surveyors employed to lay down the boundaries under the order of the court agree that it does; and it is well established that such a recognition of a line, upon the assumption and belief that it has been run correctly, will never estop a party from showing the true line.

But, in truth, however much Poulin and St. Onge may now desire to detract from the title sold and conveyed to the plaintiffs, it sufficiently appears, by acts and conduct which admit of no doubt, that neither St. Onge or his assigns ever did adopt the line as run by Proulx as their true boundary line, for during the whole existence of the lease of the 27th June, 1876, and ever since it became merged in the fee, they always have carried on and still do carry on their works, which are of very considerable extent and nature, far outside of the line run by Proulx, and upon land which has ever been and still is in their actual possession. Now it is well established that the principle upon which the validity of a verbal agreement for a conventional line rests is that it has always been acted upon by both parties, and that possession has always since been held in accordance with the agreement.

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No question arises here as to what length of occupation of land, in accordance with a verbal agreement as to a boundary line between contiguous properties, and what acquiescence in such boundary line, is necessary to be established in order to estop the parties from showing that the line is not the true one. In *Mooney* v. *McIntosh* in this court (1), several cases in our own courts and in those of the United States upon that point were reviewed, all of which recognized the principle that acquiescence for some length of time in a possession of land, held in accordance with the conventional line, is absolutely essential to be shown in order to raise the estoppel. In the present case it clearly appears that possession has never at all been held in accordance with Proulx's line; it, therefore, could not now be established, unless it be the true line according to the description contained in the lease of the 27th June, 1876.

When Poulin executed the lease of the 17th of March, 1879, it is plain that he believed himself to possess only one arpent between St. Onge's line under the lease of 27th June, 1876, and the St. Onge canal and the river Gilbert, and this is all that the lessees of that lease expected or contracted to acquire. The lease calls it one arpent more or less. Now, if Proulx's line should be adopted there would be little short of three arpents; if LeGendre's survey should be adopted there would be more than two arpents ; whereas, if the line should be drawn from the point "A," in the manner in which I have above stated that, in my opinion, it should be drawn to comply with the terms of the lease of the 27th June, 1876, and the intention of the parties thereto, there would be something over the one arpent, and so the intention and expectations of the parties to the lease of the 17th March, 1879, would be realized.

After LeGendre had prepared his report a diagram

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of the lines run by Proulx was found. By this diagram it appeared that in November, 1876, when he ran the lines, Sands' arpent was treated as being, as I have held it should be, a square arpent having its southerly boundary line parallel with the line between lots 11 and 12, which constituted its northerly boundary, and distant from that line precisely 180 French feet, measured upon a perpendicular to it.

This southerly line of Sands' arpent is made the northerly or front line of the St. Onge piece, which, however, by some great mistake, is made to extend along and beyond the whole length of the 180 French feet constituting the line of Sands' arpent, instead of being limited to 135 French feet, or three-fourths of that arpent. It is said, however, and not disputed, that the point which Proulx treated as the south-west angle of Sands' arpent and the north west angle of the St. Onge piece is about 70 feet further from the river Gilbert, measured on such southerly line of Sands' arpent, than is the point "A" on the surveyor's plans, and the point from which Proulx is said to be shown by his diagram to have proceeded is accordingly shown on the surveyor's plans furnished to the court upon the argument; so that it appears that LeGendre's plan is not at all in accordance with Proulx's line, although it must be admitted that it is more favorable to the plaintiffs than would that of Proulx's be, but both of them cut off from the plaintiffs and would have the effect of depriving them of almost the whole of their extensive works. Now, this difference between the line run by Proulx (which is shown on the surveyor's plan, furnished to the court, by — — — a black dotted line) and the line run by LeGendre as for Proulx's line, serves to illustrate the absurdity and disregard of all principle which would be involved in the adoption of Le Gendre's line, which neither agrees

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with Proulx's line nor is in conformity with that designated by the lease.

Proulx's line, so far from having been adopted and acted upon, had no marks whatever upon the ground by which it could be traced by LeGendre; it could not, it is said, and not questioned, have been drawn from the same point as that from which LeGendre drew the line which he drew for it.

Possession never had been held in accordance with Proulx's line. Now, assuming it to have had any validity as a conventional line, the clear duty of LeGendre when he failed to find it was to run his line in accordance with the requirements of the lease. The difficulty which he experienced in discovering the line whose only validity, if it had any, was as a conventional line, was fatal to its adoption, and he had no authority whatever to run a new line in substitution for the one he was unable to find.

To adopt LeGendre's report, instead of affirming a verbal agreement acted upon by the parties, and confirming them in a possession which has followed, and has always been held in accordance with, such agreement, would have the effect of transferring now for the first time into the possession of the respondents a considerable portion of land covered with the extensive underground works of the plaintiffs, of which piece of land and of the works thereon they have always held exclusive possession; instead, in fact, of establishing a line in accordance with the title of the parties as expressed in their title deeds and as ordered by the court, there would be established a line inconsistent with and in defiance of those deeds. The court below has therefore, in my opinion, erred in homologating that report.

1° As all parties are agreed that the point "A" on the surveyors' plans furnished with their reports is the

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north-west angle of the piece demised to St. Onge by the lease of the 27th June, 1876, the true line to be run from that point to the line between lots 11 and 10 according to the lease will, in my opinion, be a line drawn parallel with the gold vein as shown on the surveyors' plans from "H" to "I" and continued in a straight line to the lot No. 10. The portion of that line which shall extend from its intersection with the canal St. Onge to lot No. 10 will be the true boundary of the piece demised by the lease of the 17th March, 1879.

2. The true boundaries of the piece of lands demised by the lease of the 15th March, 1879 are: *First*, the easterly line of Sands' square arpent which constitutes the westerly boundary line at the northerly extremity of the piece first demised to James Forgie by the lease of the 11th of February, 1879; *Secondly*, the line between lots 11 and 12, from the north-east angle of Sands' said arpent to the river Gilbert. *Thirdly*, A line drawn parallel with the line between said lots 11 and 12, from the south east angle of Sands' said arpent (which is a point distant from the said north-east angle 180 French feet, measured upon a perpendicular to the line between lots 11 and 12) and continued to the south-west side of the river Gilbert; the piece demised by the lease of the 15th March, 1879, is the piece lying between these lines.

3. As to the piece demised by the lease of the 29th March, 1879, there is no difference; that piece is so much of the land covered with the waters of the river Gilbert as lies in front of the northerly half of the piece as lastly described—that is to say, in front also of the northerly half of the square arpent demised to Sands, which is the only piece of land upon said lot No. 11, in which it appears that William P. Lockwood can be said to have had any interest.

The appeal, in my opinion, should be allowed, and

the case should be remitted to the court below, with directions to have the boundaries established as herein above stated. Each party should, I think, bear their own costs of this appeal.

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Appeal dismissed with costs.

Solicitors for appellants: *Gibsone & Aylwin.*

Solicitors for respondent Richards: *Caron, Pentland & Stuart.*

Solicitor for respondents Brown, *et al: C. Fitzpatrick.*