

1895 DAME MARIE CAROLINE MER- } APPELLANTS ;
 *Oct. 1, 2. CIER, ET VIR (PLAINTIFFS)..... }
 *Dec. 9. AND

EDOUARD BARRETTE (DEFENDANT)...RESPONDENT.

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

*Title to land—Action en bornage—Surveyor's report—Judgment on—
 Acquiescence in judgment—Chose jugée.*

In an action *en bornage* between M. and B. a surveyor was appointed by the Superior Court to settle the line of division between the lands of the respective parties, and his report, indicating the position of the boundary line, was homologated, and the court directed that boundaries should be placed at certain points on said line. M. appealed from that judgment to the Court of Review claiming that the report gave B. more land than he claimed and that the line should follow the direction of a fence between the properties that had existed for over thirty years. The Court of Review gave effect to this contention and ordered the boundaries to be placed according to it, in which judgment both parties acquiesced and another surveyor was appointed to execute it. He reported that he had placed the boundaries as directed by the Court of Review but that his measurements showed that the line indicated was not in the line of the old fence and his report was rejected by the Superior Court. The Court of Review, however, held that the report of the first surveyor, having been homologated by the court, was final as to the location of the fence and that the judgment had been properly executed. The Court of Queen's Bench reversed this judgment, set aside the last report and ordered the surveyor to place the boundaries in the true line of the old fence.

Held, reversing the decision of the Court of Queen's Bench, that the judgment of the Court of Review in which the parties acquiesced was *chose jugée* between them not only that the division line between the properties must be located on the line of the old fence but that such line was one starting at the point indicated in the plan and report of the first surveyor. The Court of Review was right, therefore, in holding that the surveyor executing the judgment could do nothing else than start his line at the said point.

*PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

APPEAL from a decision of the Court of Queen's Bench for Lower Canada (appeal side), reversing the judgment of the Court of Review in favour of the plaintiffs.

1895
MERCIER
v.
BARRETTE.

The material facts of the case are set out in the above head-note.

Belleau Q.C. for the appellants.

Lane for the respondent.

The judgment of the court was delivered by .

TASCHEREAU J.—It is *chose jugée* between the parties by the judgment of the Court of Review of September 30, 1893, not only that the division line between their respective properties must be located on the line of the old fence C.L.H., but also that this line of the old fence is a line starting at point C. 30 feet, 4 inches from point B. as indicated in Bignell's plan and report. Roy therefore, could do nothing else than start his line, and place his boundary post as he did at point C, at a spot 30 feet, 4 inches from point B, and the Court of Review's judgment of November 30th 1894 was right in so determining. The judgment of the Court of Appeal should therefore, in my opinion, be reversed, and the judgment of the Court of Review of November 30th 1894 restored. If deemed necessary, a special judgment in the same sense should be entered with the special direction that the post at point C. should be on a spot 30 feet, 4 inches from point B. as the starting point for the line C.L.H.

Appeal allowed with costs.

Solicitors for the appellants: *Belleau, Stafford & Belleau.*

Solicitors for the respondent: *Lemieux & Lane.*
