Reasons for the Report of the Lords of the Judicial Committee of the Privy Council (dated 1st August 1899) on the Appeal of Barnard v. De Charleroy and Another, from the Supreme Court of the Windward Islands (Santa Lucia); given 11th November 1899.

Present at the Hearing:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR EDWARD FRY.
SIR HENRY STRONG.

[*Given by Lord Hobhouse.*]

The substantial question in this litigation is whether the Defendant below who is now Appellant has shown that the Plaintiffs now Respondents are in occupation of land that rightfully belongs to the Defendant. It will perhaps conduce to clearness and to brevity if the precise form which the litigation has assumed is first shown.

The parties are respectively owners of two contiguous estates one called Mont Lezard which belongs to the Plaintiffs, and one called Parc which belongs to the Defendant. In the year 1872 one Albert Augier was the owner of both, and, subject to a lease of Parc which terminated in 1875 or 1876, was in possession of both. On the 4th of November 1872 Augier conveyed Mont Lezard to the Plaintiffs and soon afterwards certain steps which have supplied the largest field of controversy in this case were taken by the parties to ascertain the boundaries through the agency of one Jules Guihur a professional surveyor. In 1879 a suit was commenced by Albert Augier

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against the present Plaintiffs in which he obtained an order directing that the boundaries as established by the *procès verbal* of Guihur should be verified (Rec. p. 53). For that purpose Hermann du Boulay was appointed surveyor. He reported that the present Plaintiffs, then Defendants, had not encroached beyond the lines established by Guihur, and upon that report the suit was dismissed (Rec. pp. 54–57). In 1881 the Parc estate was sold to satisfy a judgment against Albert Augier and it is through that sale that the Defendant derives title. In 1896 the Defendant required a survey under the provisions of the Surveyor's and Boundaries' Settlement Ordinance. John Quinlan was appointed for that purpose, and he made his report on the 11th February 1897, with the effect of throwing into Parc some land occupied by the Plaintiffs as part of Mont Lezard. The legal effect of that report was to put the Plaintiffs to contest it within a year under peril of being bound by it; hence the present suit.

By their declaration which was filed on the 28th May 1897 the Plaintiffs claim, first a rightful title under the conveyance of 4th November 1872, and secondly a prescriptive title by continuous possession under that deed; and they pray that Quinlan's plan and report may be set aside and their own possession maintained.

The Plaintiffs obtained the assistance of a fresh surveyor Mr. Cooper, whose report alleged mistakes made by Quinlan and went to support the boundary of Guihur as verified by du Boulay. Their Lordships have therefore four reports before them by surveyors, two official and two non-official. The suit came on to be heard before Chief Justice Child. He thus states the question to which he proposes to address himself.

"It is conceded on the part of the Defendant that de "Charleroy has been in quiet undisturbed possession of the "piece of land in dispute for twenty-four years, that is for

" more than ten years; and it is admitted on behalf of the "Plaintiffs that Quinlan's plan and survey, except so far as " the N. line of Mont Lézard is concerned, are accurate; so " that the first question I have to decide is whether the ten " years' undisturbed possession is sufficient under our law to " give ownership by prescription, or whether 30 years is " necessary; or, in other words—Have the Plaintiffs acquired " the lands in dispute in good faith under a written title, or " have they acquired in excess of title? If I am satisfied that " ten years' possession is sufficient under our law there is an " end to the case; if not, a further question will arise and I " shall have to decide whether Quinlan's boundary line or " Guihur's is the correct one."

The effect of his judgment, is that the Plaintiffs took possession and began to work the estate under the deed of November 1872, coupled with the subsequent ascertainment of the boundaries (Rec. p. 8) and that such possession was had under a written title and in good faith. Having found in favour of the prescriptive title, it was not necessary for him to pronounce an opinion on the relative merits of Guihur and Quinlan's demarcations; but the whole controversy was before him and he gives his reasons for thinking that Guihur's is probably the more correct line. He gave judgment according to the prayer of the Plaintiffs.

An Appeal by the Defendant was heard before Chief Justices Reeves, St. Aubyn and Tarring, of whom the two former decided in favour of the Plaintiffs. Chief Justice Reeves holds (Rec. p. 87) that the title of the Plaintiffs is deduced from the two documents, the Conveyance of 1872 and Guihur's Report. Chief Justice St. Aubyn also considers that the Plaintiffs' title is made good by the effect of prescription acting on the Conveyance of 1872 combined with Guihur's Report (Rec. pp. 98, 99).

Chief Justice Tarring differed. He took the view that the Plaintiffs failed to prove that the boundary line which they claimed as Guihur's is the true boundary. As regards prescription his view is that in order to come within the 10 years' term the Plaintiffs must show that

Guihur's report either is to be read with the deed of November 1872, or is in itself a document of title. They cannot show that. In point of form, it is only signed by one of the Plaintiffs, and therefore cannot be a *titre valable*. In point of substance, it is not and does not purport to be an agreement or a transfer of property (Rec. p. 95). He dwells strongly on the discrepancies in measurement which result from taking Guihur's as against Quinlan's line.

The decree as settled by the Court of Appeal has the effect of setting aside so much of Quinlan's report and survey as affects Guihur's line of division between Mont Lezard and Parc, and of maintaining the Plaintiff's possession of the land occupied by them consequently upon Guihur's report. Their Lordships have now to decide whether that decree is to be maintained.

The governing instrument in this controversy is clearly the conveyance of 4th November 1872. Whatever passed by that deed belongs to the Plaintiffs, and if at the judicial sale the vendors professed to sell a larger tract of land than was then left to Albert Augier that is an error which cannot injure the Plaintiffs. The description of the land conveyed to the Plaintiffs is as follows :—

"The sugar estate called Mont Lezard situated in the quarter "of Laborie, of the contents of one hundred carrés of land "more or less, bounded on the north by the estate belonging "to the vendor, on the south by the Desgatières and Ballem- "bouche Estates and the lands of Tersannes, and on the west "by River Dorée, together with a portion of land known as "Tersannes of the extent of nineteen carrés more or less being "the moiety of the old estate called 'Ville Cour.' The said "nineteen carrés are bounded on the north along the entire "length by the lands of the Mont Lezard Estate and on one "side by the Ballembouche River.

"Also forms part of this sale the principal dwelling-house "the manufacturing buildings as well as the erections of "every kind on the Mont Lezard Estate without further "description."

"Such as the Mont Lezard Estate with all its appurtenances
" and dependencies and the portion of land known as Tersannes
" exist and consist without any exception or reserve and in the
" state in which the Mont Lezard is."

The deed then goes on to describe the channels by which Mont Lezard and Tersannes had become vested in Albert Augier, but it does not throw any further light upon the extent or position of Mont Lezard. The things conveyed are : 1st the sugar estate called Mont Lezard with all appurtenances and dependencies such as it exists bounded on the north by Albert Augier's estate and on the south by (among other lands) the lands of Tersannes and containing 100 carrés more or less : and secondly the portion of land known as Tersannes containing 19 carrés more or less, bounded on the north along the entire length by the lands of the Mont Lezard Estate and on one side by the Ballembouche River. No eastern boundary is mentioned for Mont Lezard. The side on which Tersannes is bounded by the Ballembouche is the eastern side, and on its western side it is bounded entirely by Mont Lezard.

It is the use of the name Mont Lezard to comprise plots of land acquired from time to time by the Augier family which has given rise to the dispute. As to Tersannes which was acquired in 1848 there is no dispute. But what did Mont Lezard signify in the year 1872? To use the language of the deed, how did it then "exist"? Of what did it then "consist"? According to the contention of the Plaintiffs, the northern boundary of Mont Lezard was, roughly speaking, a line drawn from the Dorée to the Ballembouche. According to that of the Defendants the western part of the boundary was far to the north of its eastern part. The Defendant's method of ascertaining the point in issue, and apparently the method followed by Quinlan, is to examine the various conveyances by which component parts of Mont Lezard were

acquired by the Augiers, and to show that the measurements of acreage therein correspond nearly with the 100 carrés spoken of in 1872. It is admitted that there is some under-statement in the deeds, seeing that Quinlan's survey assigns to Mont Lezard 9 carrés more than the aggregate of the conveyances referred to; but that will not account for the large excess (some 35 carrés) claimed by the Plaintiffs. The Plaintiffs contend that the measurements are misleading, seeing that the ground covered by the term Mont Lezard was ascertained upon actual investigation by vendor and purchaser on the spot, and has ever since, for a term of 24 years, been occupied and cultivated by the Plaintiffs.

The difficulties attending measurements and occupation are increased by the character of the ground, and by the circumstance that for the greater part of the time over which the inquiry extends there has been no motive for marking the boundaries with precision. In 1872 the ground was to a great extent a wilderness, with none but natural landmarks and those ill-defined. Both sides of the disputed boundary had formerly belonged to Jean Augier the grandfather of Albert. His sons René, and Pierre the father of Albert, owned (as Albert tells us Rec. p. 30) both Parc and Mont Lezard in partnership, and they worked together. How early these names became attached to the two parts of the property respectively does not appear. In 1843 a partition was made between the brothers, René taking Mont Lezard, and Pierre taking Parc; but in 1847 René conveyed Mont Lezard to Pierre who then became owner of both. In 1867 Pierre demised Mont Lezard to Antoine La Force, and in 1870 he demised to Papy Michel the sugar estate called Parc "together " with the lands known as Rousseau and Gaillard

" Bois which are joined and annexed to the Parc " estate and form part thereof " (Rec. p. 48). On Pierre's death in 1872 both Parc and Mont Lezard fell to the share of Albert. There is no evidence how the two estates were used by Pierre and René during the partition, and no survey was made on the reunion of the two in the person of Pierre. So far as appears there was no opposition of interests prior to the leases of 1867 and 1870.

The main cause of the discrepancy between the measurements extracted from the deeds and those of the ground actually held by the Plaintiffs, is the treatment of the plot called Gaillard Bois. The name of this plot appears on the title deeds as early as the year 1779 (Rec. p. 21), when it was purchased by Jean Augier. No measurements or boundaries were then recorded. It appears again in the year 1802 when a partition of the lands of Gillis and Tersannes, both subsequently purchased by the Augiers, was effected by their owners, and it is described as lying immediately to the north of the land so partitioned (Rec. p. 43). Then the name disappears from the deeds until the lease of 1870 to Michel. So completely was it unnoticed that Albert Augier (Rec. p. 31) speaks of Gaillard Bois as certain lands which he had heard of in the family. And though he says that they always formed part of Parc, he also says that in November 1872 he did not know the location of Gaillard Bois, which was in bush. Michel's lease no doubt includes lands known as Gaillard Bois which are annexed to the Parc estate. If it were established that Gaillard Bois was ever after its purchase by the Augiers held as an entire property until annexed to Parc, that would be a difficulty in the way of the Plaintiffs; but if it was divided and part only thrown to Parc the difficulty is removed, though it may be true that so much as was thrown to Parc kept the name of Gaillard Bois.

Now both the lessees of Albert Augier were examined at the trial. La Force the lessee of Mont Lezard says (Rec. p. 24)—

"I asked Augier to shew me the boundaries so that I might "know where to work. He went to shew them to me. I was "shewn Morne Calebasse with one part for Mont Lezard and "one part for Parc. The place was called Gaillard Bois. I "was shewn from the foot of Morne Calebasse to the high "road. I put the whole of Gaillard Bois which belonged to "Mt. Lezard in canes. I also had gardens there."

Michel the lessee of Parc says "I leased "Parc from Augier, senior. . . . . I was "shown the southern boundary of Parc by one "St. Louis delegated for the purpose by Augier "senior . . . . The boundary was at foot "of Morne Calebasse in a reddish soil . . . "Morne Calebasse divided Gaillard Bois in two, "giving the larger portion to Parc and the "remainder to Mont Lezard" (Rec. p. 22).

Thus the two lessees are agreed on the broad fact that Gaillard Bois was divided between the two estates; a point on which they had both an interest and the best opportunity to inform themselves. And their Lordships do not think that the evidence of La Force on such a point is seriously invalidated by the circumstance pointed out by Chief Justice Tarring and at this Bar, that in a previous lawsuit he assigned to a particular house a site on the Parc Gaillard Bois whereas he now says it was on the Mont Lezard Gaillard Bois. Other witnesses speak to the same effect but their evidence is of less importance than that of the lessees.

Another consideration showing that Gaillard Bois was partially thrown to Mont Lezard is that the deed of 1872 describes Tersannes as bounded on the north along the entire length by the lands of the Mont Lezard Estate: and again describes Mont Lezard as partially bounded on the south by Tersannes. But in Quinlan's plan Tersannes, as to whose situation there is no controversy at all, is bounded on the north along its entire

length by the plot which he identifies with the original Gaillard Bois and which he marks as belonging to the Parc Estate and to the Defendant: and again no portion of what he allows to Mont Lezard is bounded on the south by Tersannes. That suits his theory that Mont Lezard is to be ascertained by adding together those component parts of Mont Lezard which he finds specified in the conveyances of that estate prior to 1872 and wholly omitting Gaillard Bois which is not specified. But so doing he flatly contradicts the deed of 4th November 1872. Some portion of what he shows to be Gaillard Bois must belong to Mont Lezard and then the only question is how much.

The starting-point for determining the boundary between Parc and Mont Lezard is the partition effected by the brothers Pierre and René in 1843. They were in Paris when they executed the deed, but, as above stated, they had previously worked both estates in partnership together. The material parts of the deed are translated as follows :—

"Totality of property under distribution.

"The property consists of * * *

"3rd. A sugar estate named Mont Lezard situated in the "Island of Saint Lucia parish of Laborie.

"4th. A sugar estate named Parc same Island and same "parish.

"The boundaries of these two properties are fixed at the "southern foot of Morne Calebasse and run in a straight line "from east and west up to the Ballembouche River and river "Dorée."

This should be collated with the reconveyance of Mont Lezard by René to Pierre in 1847. He then conveys "the sugar estate called Mont "Lezard . . . bounded . . . on the east "by the Ballembouche River and the lands of the "Tersannes estate." Tersannes was not acquired by Pierre till the next year. It may be inferred with confidence that this early step towards the demarcation of the two estates was imperfect; that the precise locality of the southern foot of

Morne Calebasse was left in uncertainty; and that the character of the ground is such as to make it difficult to draw a straight line between the two rivers. But the broad features of the Dorée on the west, the Ballembouche on the east, and Morne Calebasse in the middle were there and those would be the leading features in the minds of the two brothers. It is clear that they considered the Mont Lezard Estate to be one which extended from the Dorée to the Ballembouche and that the boundary was, roughly speaking, a straight line. That is the case with the land occupied by the Plaintiffs. But Quinlan's plan interposes the whole southern part of Gaillard Bois, apparently some 600 yards wide, between Mont Lezard and the Ballembouche. So that according to him the two do not touch at any point, and thus his report contradicts the two earliest deeds which turn on the division of the two estates.

The Plaintiff Charleroy states that having taken possession of the land conveyed to him, he asked Albert Augier to point out the Parc boundary, and that Augier showed him the south end of Morne Calebasse saying "this is your "separation from Parc." Guihur was then called in (Rec. p. 16). Augier does not contradict this, though he makes the highly improbable assertion that Charleroy asked only to have a temporary line drawn so as to enable him to work until he should be in a position to have the property surveyed. By way of instructions a paper stating the terms of the partition deed of 1843 was given to Guihur. He occupied three days in his work, and his report was made in March 1873.

The survey took place in the presence of the two owners. It was also attended by Michel who came to look after his interest as tenant. The material part of the report is as follows:—

"The boundaries of these two properties are fixed at the "southern foot of Morne Calebasse and extend in a straight "line from east to west to the Ballembouche River and "Rivière Dorée. Accompanied by Messieurs Albert de "Charleroy and Albert Augier I searched for the southern "foot of Morne Calebasse and found it. As we were all "agreed I placed my surveying instrument in position and "going from east to west I opened a trace and had it marked "out. When I had reached a certain distance Mr. Albert "Augier observed to me that he noticed that lands belonging "to Mont Lezard Estate were falling to Parc, on the other "side of the line. Then by common consent they pointed out "a straight line on my compass west twenty degrees north. I "traced and marked out a line up to the Ballembouche "River."

Then he states his operations westward which need not be stated in detail.

Unfortunately Guihur made no plan, and there is no plan existing of his survey except one made afterwards by Du Boulay. Neither was the survey registered. As has been justly observed it does not purport to be a transfer, or an agreement except in the sense that the parties concurred in appointing a surveyor, and in the surveyor's finding of the foot of Morne Calebasse, and in thinking that he had at first worked too directly to west and east, for the reason that a line so drawn would take into Parc land which was known to belong to Mont Lezard. But it is a document signed by the two proprietors showing how carefully they, acting with Michel the occupant of Parc, endeavoured to ascertain what were the actual parcels of land indicated by the name of Mont Lezard. Its statements are not contradicted by anybody. After it was finished the Plaintiffs began plantations of cocoa and canes on the lands so ascertained to belong to them, and have been carrying on those plantations ever since (Rec. p. 17).

In March 1879 Augier commenced the suit in which Du Boulay's report was made. It is somewhat unfortunate that the record does not contain any copy of the proceedings prior to

the order directing that the boundaries as established by the *procès verbal* of Guihur shall be verified. Du Boulay's survey was not attended by Albert Augier himself because he was ill, but his overseer St. Louis attended on his behalf. The material part of the report is as follows :—

" That he went for that purpose to the quarter of Laborie " where these estates are situated, and after the usual pre- " liminary interviews with each of the interested parties, " proceeded with the verification and measurement of the " boundaries in question in the same order as they appear in " Mr. Guihur's *procès verbal*, and with the following " results :—

" 1. Along the whole length of the boundary lines recognised " as having been laid down by late Mr. Guihur to divide the " 'Mont Lezard' Estate from the 'Parc' Estate there is no " encroachment or trespass committed by Mr. A. de Charleroy, " in as far as there are no plantations of his, or of his labourers, " no gardens, no clearing up of wood or timber, &c., &c., " extending beyond the division lines which he showed to the " undersigned in presence of Mr. Augier's overseer as the very " ones laid down by Mr. Guihur (the truth of which statement " was confirmed by witnesses who had assisted at the first " surveyor's operation) besides the fact of their being marked " by a row of 'immortel' trees almost along the whole course ; " whilst the Plaintiff has not been able to show any other " division line anywhere, nor the vestige of a surveying tract, " which could be traced back to Mr. Guihur as being different " from the tracts shown by the Defendant in this case."

Then he goes on to show that Guihur's description of his own process is faulty, matter which Chief Justice Amstrong describes as surplusage.

In dismissing the suit the Chief Justice says :—

" The surveyor in his report goes a long way beyond what " he was required to do but surplusage does not vitiate. It " suffices to say that the surveyor found that Defendant was " in possession of the land forming the Mont Lezard Estate as " set forth in the said *procès verbal* and no more. The " Defendant had made no encroachment whatever. The " Plaintiff and Defendant in 1873 agreed upon a surveyor who " bounded their respective properties. The work was supposed " by both parties to be accurately done and the *procès verbal* " was accordingly signed by both. If there has been error " the Plaintiff ought to have set forth the *procès verbal* and " stated wherein the error consisted, and the conclusions of his " action ought in that case to be different from those he has " made. He of course is not bound by any manifest error, if

" such exist, as long as the Defendant cannot plead prescription.
" The action of the Plaintiff ought to have been one to rectify
" the supposed error of the surveyor Guihur, the whole facts
" of the case being brought before the Court."

Augier never took any further steps, nor has the correctness of Guihur's survey ever been called in question till Quinlan was appointed at the instance of the Defendant. The importance of the proceedings of 1879 is to show that, whatever may have been the shortcomings of Guihur as a describer, the boundaries actually determined by him on the spot could be plainly made out, and that the land occupied by the Plaintiffs is within those boundaries. There is now no dispute that the Plaintiffs have only taken what was ascertained in 1873 to be part of Mont Lezard.

The only other expert evidence is that of Mr. Cooper who has given evidence for the Plaintiffs in this suit. He occupied four days in his survey and was attended by St. Louis, Albert Augier's old overseer, by both the lessees of Pierre, and by three old inhabitants who were examined at the trial. After stating the effect of his examination of the ground with the witnesses, he concludes,—

" The 'Pied sud Morne Calabasse' is therefore the true
" boundary line between the Parc Estate and the Mont Lezard
" Estate and is clearly defined and well marked with very
" large immortelle trees on the ground. There is therefore no
" possibility of mistaking that line.

" Mr. Quinlan's line started from the correct corner boundary
" stone in the Balembouche River but he ignored the visible
" line of the 'Pied sud Morne Calabasse' which starts from
" the very same corner stone, and having departed from that
" established boundary line, has therefore conducted his survey
" operations inside the planes of the Mont Lezard and the
" Tersannes lands."

It is indeed impossible to doubt that Quinlan's report is erroneous, seeing that it stands in flat contradiction both to the title deeds of 1843 1847 and 1872 and to what has been done on the ground itself. It seems to their Lordships

that Quinlan has fallen into error by trusting exclusively to names and measurements given in deeds. The report looks as if it was prepared too much at the desk and too little on actual view of the place or information obtained from persons of local knowledge. He says (Rec. p. 68): "According to deeds, plans, documents and old "persons residing in the locality and referred to "and consulted by me in this matter, I was able "to determine accurately the boundaries" and so forth. But when asked, he could not mention any old persons except two who were not examined, nor does he in his report or evidence state what they told him. All the old persons who have been examined in this suit (unless we are to except Albert Augier who cannot carry weight when he contradicts what he said in 1872) have given evidence in favour of the Plaintiffs. Charleroy it is true held aloof, protesting against the proceeding as oppressive upon him. That may have been imprudent, but it does not supply the lack of inquiry by Quinlan. He did not obtain, and apparently did not seek, any information from the old lessees. It is difficult to suppose that if he had tried in proper quarters he would not have been put upon the track of Guihur's line. He says (Rec. p. 37) that he could not find it. But it was plain to the eyes of Du Boulay and to those of Cooper. His method appears to have been faulty, and he did not apply even his faulty method correctly, because while taking the deeds as infallible in measurements, he disregarded the boundaries stated by them.

Quinlan summarises his reasons as follows:—

"The line claimed in Mr. de Charleroy's protest as the "boundary line between the Mont Lezard and the Parc estates "is not the true line (*a*) because there is no such line referred "to in the deed of sale to Mr. de Charleroy and Mrs. de "Laubenque by Mr. Augier (*b*) because there is no plan of "any such line (*c*) because such a line is not admitted to be

" the true line (*d*) because such a line would be inaccurate
" inasmuch as it would clearly give Mont Lezard land that is
" beyond the boundary of Herault as well as land beyond the
" boundary of Gillis and Tersane ; such land in the latter case
" being part of Parc known as Gaillard Bois which was never
" sold to Mr. de Charleroy and Mrs. de Laubenque (*e*) because
" the boundary line between the properties could only be
" correctly arrived at after a survey of the Mont Lezard Estate
" and no such survey having been made previous to the present
" one."

Some of these reasons may be good to show that Guihur's line is imperfectly attested, but only one, that which is headed (*d*) is relevant to the question whether or no the line is the true one, and that one begs the question as to the dealings with Gaillard Bois.

This case has been laden with a great deal of discussion and documentary evidence, and there are some subordinate parts of it which suggest difficulties. But the main and guiding lines are in their Lordships' judgment very clear. It is clear on the face of the deeds that in November 1872 the subject matter of transfer was the same as René Augier took in partition, and the same as passed back again to Pierre. It is also clear that the subject-matter of the transfer was some land which extended to the Ballembouche on the east, and which marched with Tersannes on the north side of that plot. Quinlan's plan disregards these two fundamental requirements; and whoever be right, he must be wrong. But the Plaintiffs have a more positive case. What was included under the comprehensive name of Mont Lezard, which embraced fresh parcels from time to time, cannot be determined on the face of the deeds. It must be determined by evidence outside the deeds. The vendor and Charleroy took the most practicable way of getting such evidence. They met together on the spot, put themselves in communication with the lessee of Parc who was the only other person then interested in the

matter, called in a surveyor, worked with him, and signed his report. The Plaintiffs took possession according to that report. Two attacks have been made on their possession. One was rested on the allegation that the Plaintiffs occupied more than the report gave them, and that failed. The other, that of the present suit, rests on the allegation that Guihur's report is erroneous. There is absolutely no local evidence, and no evidence in the statements of demarcations in the deeds, to support this allegation. The only evidence is that on measuring up the acreage of the plots specifically mentioned as component parts of Mont Lezard they are found to be less in quantity than the land which the Plaintiffs occupy. But that leaves Gaillard Bois out of the account, and the deeds are unintelligible unless we suppose that a portion of Gaillard Bois was added to Mont Lezard and was included under its name. When, how, and how much, is not apparent. What is apparent is that such a combination was effected as early as 1843; and it is impossible to suppose that any evidence of what the owners meant by the name will ever be forthcoming better than that which they got for themselves in 1872. In such circumstances it cannot be held that measurements in the deeds, even if they do fall short of the quantities occupied by the Plaintiffs, can avail to shake their title.

Their Lordships conclude that the deed of 4th November 1872 conveyed to the Plaintiffs that of which they are now possessed. Such being their opinion it is not necessary for them to enter upon the question of prescription. For the foregoing reasons they have advised Her Majesty to dismiss this Appeal, and the Appellant must pay the costs.