

& E. 1, *Daniel v. Wilson* ; 7 ditto, 631, *Lovelace v. Curry* ; 7 Taunton, 63 ; 1 ditto, 383 ; 2 Starkie's Ev. 792.

Mathes  
v.  
Jackson.

The practice in Pennsylvania seems to be the same. 4 Binney, 20, *Mitchell v. Cowgill*.

And we are of opinion, that, in this case, the plaintiff was not entitled to a verdict until he proved that the demand was exhibited to the executor, before the commencement of the suit.

*New trial granted.*

### JEREMIAH SAWYER *versus* JOSEPH FELLOWS.

A parol agreement, between owners of adjoining lands, that a surveyor shall run the line between them, and that it shall be thus ascertained and settled, is, when executed, conclusive against them, and all persons claiming under them.

This was a writ of entry, brought to recover a tract of land in Gilmanton. The cause was tried, upon the general issue, at August term, 1832, when it appeared in evidence that the demandant was the owner of lot, No. 7, in the third range of lots in Gilmanton, and the tenant owner of the adjoining lot, No. 9, in the fourth range of lots. The demanded premises were, a tract of land lying near the line between the said lots.

The demandant introduced evidence tending to prove that, in April, 1822, he and William Moody, under whom the tenant claims the demanded premises, and who was then the owner of the lot, No. 9, in the 4th range, procured a surveyor to run the line between the said lots ; that the line was accordingly run, that Moody and the demandant agreed to the line, so run, as the boundary line between them, and put up stakes, and built a fence.

Sawyer  
v.  
Fellows.

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upon the line. If the line thus run, is the true line, the demanded premises are the land of the demandant.

The question being submitted to the jury, they found that the said Moody, and the demandant, agreed to the line run by the surveyor in 1822, and returned a verdict in favor of the demandant.

*Ham and Barlett*, for the demandant.

*Lyford*, for the tenant.

*By the court.* We consider the law as settled, that where the owners of adjoining lots agree to a particular line, as the dividing line between them, the agreement is conclusive against them, and all persons claiming under them. 2 Starkie's Ev. 599; 4 Wheaton, 513, *Boyd's Lessee v. Graves*; 2 Caine's Rep. 197, *Jackson v. Dysling*; 12 Mass. Rep. 469, *Makepeace v. Bancroft*; 2 Johns. 224.

*Judgment on the verdict.*