

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

WEGMA INVESTMENTS INC.,
a body corporate

Plaintiff

- and -

JOHN J. BRITTAIN

Defendant

- and -

**THE ATTORNEY GENERAL OF THE
PROVINCE OF NOVA SCOTIA REPRESENTING
THE CROWN IN THE RIGHT OF THE PROVINCE**

Defendant

D E C I S I O N

Cite as: WEGMA Investments Inc. v. Brittain, 2001NSSC100

HEARD: at Digby, Nova Scotia, before the Honourable Justice
Gordon A. Tidman on May 14, 16 and 17, 2001

DECISION: July 4, 2001

COUNSEL: James E. Dewar, Q.C., on behalf of the Plaintiff
James L. Outhouse, Q.C., on behalf of the Defendant,
John J. Brittain
W. Bruce Gillis, Q.C., on behalf of the Defendant,
Attorney General for Nova Scotia

TIDMAN, J.:

Claims

- [1] This is an application by the plaintiff under the *Quieting of Titles Act* for a certificate of title to lands which includes a parcel comprising 137.43 acres situate on the north sideline of the Princedale Road at Princedale, in the County of Annapolis.
- [2] The defendant John J. Brittain disputes the claim of the plaintiff and counterclaims for a certificate of title to the 137.43 acre parcel.
- [3] The plaintiff also claims damages for trespass and for the conversion of wood cut from the parcel of land in issue.

Circumstances of the dispute

- [4] The defendant claims a certificate of title to a parcel of land shown as Parcel 21N on a plan of Wm. E. Ross, Nova Scotia Land Surveyor dated January 13, 1999 (Ex. 3). However, title to only a portion of that parcel is in dispute, which is a lot comprising 137.43 acres shown as “Moncton lands now lands of John J. Brittain” on a plan prepared by Everett B. Hall, Nova Scotia Land Surveyor dated November 10, 1998 (Ex. 1, Tab 20). This decision will deal only with title to that lot in dispute.
- [5] The 137.43 acre lot is part of the lands conveyed to John Thibideau from the Municipality of Annapolis County by tax deed dated December, 1948 and recorded at the Registry of Deeds for Annapolis County in Book 209 at page 637. The lands conveyed by that deed are described as being at Princedale, Annapolis County “bounded on the north First Base, south Saunders Brook, east Mrs. Charles Harnish land and west J.H. Hicks & Sons land containing 200 acres more or less, known as the Moncton lot.”
- [6] The genesis of the dispute is the imprecision of the land description in that conveyance, as well as the imprecision of the descriptions in the conveyances to the plaintiff of the lands which the plaintiff contends include the land in dispute.
- [7] The plaintiff claims that the Thibideau tax deed conveyed lands wholly on the south side of the Princedale Road. The defendant claims that the land described in the same tax deed is situate on both sides of the Princedale Road. The land in dispute is the 137.43 acre lot which is situate on the north side of Princedale Road.
- [8] The plaintiff acquired lands, including part of the lands in dispute, from Dr. Stephen Katz and his wife Catherine by deed dated February 1, 1980 and recorded in the Registry of Deeds for Annapolis County in Book 315 at pp.

484-7. The lands described therein are conveyed in two lots. Lot #1 is described as follows:

BEGINNING at a post at the Northwest corner of lands at one time owned by Robert H. Hardwick and now owned by Wegma Investments Inc.;

THENCE running southerly along said line of lands of Wegma Investments Inc. to what is known as the Second Base Line or "Moncton Lands";

THENCE westerly along said Second Base Line to lands at one time owned by Arthur Harris and now or formerly owned by R. & M. Investment Holdings Limited;

THENCE northerly along line of lands of said R. & M. Investment Holdings Limited to what is known as the First Base line;

THENCE easterly along said lands of R. & M. Investment Holdings Limited and Lot No. 2 herein, 18 rods to a stake;

THENCE northerly along the eastern line of Lot No. 2 herein to the main post road aforesaid;

THENCE easterly along said road to the place of beginning.

[9] Lot #2 is described as follows:

BEGINNING on the southern side of the main post road which runs between Annapolis Royal and Digby at the Northeast corner of lands formerly owned by Harold and Ruth Dexter and now owned by Gary and Margaret Walsh;

THENCE southerly along said Walsh's East line, 250 feet to an iron stake marking the Southeast corner of said Walsh's lands;

THENCE westerly in a straight line, 235 feet to an iron stake on the East line of lands of C.H. Reardon and also marking the Southwest corner of said Walsh's lands and said stake being the Southwest corner of said Walsh's lands and said stake being 310 feet South of the point of intersection of the Northwest corner of Walsh's lands with the South boundary of the said road;

THENCE running southerly following the east line of lands of the said C.H. Reardon and lands of R. & M. Investment Holdings Limited for a distance of 1 mile, more or less, from the said main post road or until it reaches the First Base Line;

THENCE easterly along the Base Line to Lot No. 1 herein;

THENCE northerly along the West line of Lot No. 1 herein to the said main post road;

THENCE westerly along the South side of the post road to the place of beginning;

SUBJECT HOWEVER to a presently existing right-of-way across the land herein described during the winter months to a woodlot situate South of the above described lands which right-of-way is in favour of H.R. McKay, his heirs and assigns.

BEING INTENDED TO CONVEY the same two lots of land as conveyed by Arthur John Kennedy to Dr. Stephen J. Katz and Catherine A. Katz, as joint tenants, by deed dated July 29, 1976 and recorded at the Registry of Deeds Office for Annapolis County on August 5, 1976 in Book 283 at Page 334.

As can be seen from the description the south side line of Lot #1 is the Second Base Line or the north sideline of Moncton lands.

- [10] Lot #2 runs southerly from Highway No.1 for approximately one mile to the First Base Line and its southern boundary is described as the First Base Line.
- [11] The parties agree that the plaintiff's lands extend southerly from Highway No.1 to the Moncton lands and that the defendant owns the Moncton lands.
- [12] The dispute is over the location of the northern boundary of the Moncton lands. The plaintiff claims the Princedale Road is the northern boundary of the Moncton lands. The defendant claims the Moncton lands extend northerly across the Princedale Road to a point approximately 3650 feet north of the Princedale Road at its northwest corner.
- [13] The key or solution to the dispute is to determine the location of the First Base, the northern boundary of lands described in the tax deed to Thibideau, and the Second Base Line described as the southern boundary of Lot #1, as well as the northern boundary of the Moncton lands', in the conveyance to the plaintiff from Doctor and Mrs. Katz.
- [14] The matter is further complicated by the reference in Lot #2 of the Katz deed to the First Base Line being the southern boundary of Lot #2 and being approximately 1 mile south of Highway No.1.
- [15] The lands in dispute consist of wood and scrub land and, it appears, have never been occupied by persons who actually resided on the lands. The defendant admits to cutting wood off the land in dispute.

- [16] Both parties claim ownership of the lands in dispute from the time each obtained the lands. The defendant says that he was not aware of any others claiming ownership of the property until 1982 when a solicitor on behalf of the plaintiff wrote to him claiming ownership of the land in dispute and directing the defendant to cease trespassing on the lands.
- [17] The plaintiff in support of its claim filed with the Court abstracts of title of the various lots which make up a consolidated lot (21N), to which it claimed a certificate of title and part of which is the land in dispute. The plaintiff also filed the affidavit of William Esslinger, president of the plaintiff company, setting out particulars of the conveyances of the various lots that comprise the consolidated lot 21N. It is difficult to fit together historically the various lots as described in the conveyances referred to in the abstracts.
- [18] However, it will suffice for the purposes of this decision to say that it is common ground of the parties that the lot conveyances of the plaintiff's lands east of the Katz lands part of which the plaintiff claims also form part of the land in dispute, describe a base line or the 'Moncton lands' as their southern boundaries. In those circumstances this dispute may be resolved by determining the location of the north sideline of the Moncton lands.

Position of the Plaintiff

- [19] The plaintiff rather than attempting to trace the lands in dispute to its origins, relies, mainly, on the description of the lands in the Thibideau tax deed as supporting its position, as well as attempting to discount the position put forward by the defendant.
- [20] The plaintiff points out that the defendant's land as described in the Thibideau tax deed is defined through referencing adjoining parcels of land. As supporting its position that First Base, its northern boundary, is actually the Princedale Road, it argues that the landowners described as adjoining the Thibideau lands to the east and west (i.e. Wm. Charles Harnish and J.H. Hicks & Sons respectively), owned lands extending only as far north as the Princedale Road. The plaintiff argues that if the defendants Moncton lands extended north of the Princedale Road, as the defendant claims, the description of the lot would have referred to the western and eastern adjoiners of that portion of the land extending north of the Princedale Road, and points out that it does not do so.
- [21] Secondly, the plaintiff argues that the 200 acre size of the property as described in the Thibideau tax deed supports its position since it is closer to the

actual acreage of the Moncton lands than is the acreage claimed by the defendant as the "Moncton lands." The defendant claims that the Moncton lands consisted of an area exceeding 400 acres on both sides of the Princesdale Road.

- [22] The plaintiff also presents the evidence of Wm. J. Ross, a N.S.L.S. who graduated from the Lawrencetown Survey School in 1975, and who has been operating his own land survey business since 1981.
- [23] In Mr. Ross' opinion the lands in issue are owned by the plaintiff and were acquired by it as the southern portions of the Katz lands and the southern portion of the 5th lot described in a deed to the plaintiff from Hillsdale Golf & County Club. The south line of the 5th described lot in the Hillsdale deed is described as the Bernard Alcorn north line.
- [24] The defendant claims as part of the lands in issue a portion west of the Alcorn property and adjacent to the north of lands now owned by Nova Scotia Light & Power Co. That portion of the lands in dispute is situate between the north side line of the N.S. Light & Power lot and what the defendant alleges is the north side line of the Moncton lands.

Position of the Defendant

- [25] The defendant's company purchased the Moncton lands *inter alia* from Rudolph Van der Walde (Can) Ltd. in 1972. The defendant says that he was shown the northeast corner of the Moncton lands at the same point where he now contends it to be, i.e. some distance north of the Princesdale Road. He says that his property man surveyed the property and told him the acreage he was buying was much greater than the 200 acres called for in the land description.
- [26] The defendant points to a conveyance from his title predecessor, the Van der Walde company, to N.S. Light & Power Co. Ltd. as proof of his ownership of Moncton land north of the Princesdale Road. That conveyance was of a parcel of land out of the Moncton lands located on the north side of the Princesdale Road.
- [27] In 1982 the defendant also conveyed parcels to the Province of Nova Scotia for highway use in altering the Princesdale Road. Those parcels were of property out of the Moncton lands also on the north side of the Princesdale Road.
- [28] The defendant and his son, John A. Brittain were joint owners before the latter conveyed his interest to the defendant. John A. Brittain says he was attempting to establish the exact location of the northern boundary of the Moncton lands in 1982 when he was accused in writing of trespassing on the lands in dispute by the plaintiff's lawyer. Unsuccessful attempts were made at that time by Mr.

Brittain to explain to Mr. Esslinger how the Brittain arrived at their conclusion of ownership of the lands in dispute. Subsequently Mr. Esslinger retained Mr. Ross to survey the property. Mr. Ross had previously surveyed other land in the area for one of the plaintiff's predecessors in title who now owns the lands bordering the plaintiff's lands to the west. After the survey, and as a result of the Ross survey, Mr. Esslinger was convinced that the plaintiff owned the lands in question.

- [29] In 1997 the defendant retained Mr. Hall to survey the Moncton lands.
- [30] Mr. Hall did a great deal of research on the Moncton lands and concluded that the 137.43 acre lot in dispute is part of the Moncton lands and is owned by the defendant.
- [31] I shall deal with Mr. Hall's evidence in greater detail.
- [32] Mr. Hall obtained his land surveyor's license in 1964 and has continuously been working as a land surveyor since that time. Since 1968 he has been operating his own land survey business. In addition to giving evidence Mr. Hall prepared a report on his research and conclusions which was admitted in evidence as Tab 24 of Exhibit 1 (p.10).

Mr. Hall's theory

- [33] It is Mr. Hall's contention on behalf of the defendant that the defendant's lands are bordered on the north by land that originally was known as the Cobbs and Dyson Crown grant. The Cobbs and Dyson grant was a grant from George III to Messrs. Cobbs and Dyson in 1759. The grant consisted of 1000 acres and by description extended from the south side of the Annapolis River southerly 160 chains or two miles. The grant was bordered on the west by the line separating the townships of Clements and Annapolis. It extended southerly to the north side line of another Crown grant of land referred to as the Wennet grant, part of which consisted of the Moncton lands, contends Mr. Hall. The Wennet grant contained approximately 2400 acres and was granted to six individuals including Joseph Wennet, after whom it apparently was named, and one Thomas Williams. The Wennet grant was bordered on the south in part by a 1400 acre grant of land to Thomas Williams. It is Mr. Hall's contention that the 2400 acre lot was divided among the six grantees at some point and that the northwestern part was apportioned to Thomas Williams. The result was that the apportionment added 400 acres (1/6 of 2400) to the Williams original grant extending the east line of the 1400 acre Thomas Williams grant northerly to the

Cobbs and Dyson grant. It is Mr. Hall's contention that the same 400 acre portion became known as the Moncton lands. Mr. Hall says that although the Williams 1400 acre grant included lands in both the townships of Clements and Annapolis, the 400 acres apportioned to Thomas Williams out of the Wennet grant was entirely in Annapolis Township and its western boundary was the line between the townships of Clements and Annapolis.

- [34] Mr. Hall contends that in Annapolis township the southern boundary of the Cobbs and Dyson grant was known as the First Base line which delineated the common southern boundary of the first series of lots granted by the Crown south of the Annapolis River in the mid 1700's, one of which was the Cobbs & Dyson grant. At that time Mr. Hall says the Princedale Road did not exist.
- [35] Mr. Hall says that the configuration of the Crown grants in Clements township was somewhat different than in Annapolis township. The first Crown grant in Clements township adjoined the west sideline of the Cobbs & Dyson grant and its eastern border was also the township dividing line. That grant extended southerly from the Annapolis River and was referred to as the Dugau grant. It consisted of 1700 acres granted in 1763 and extended southerly for approximately 1 1/4 miles, 3/4 of a mile less than the southern extension of the Cobbs & Dyson grant. Mr. Hall says that the southern boundary of the Dugau grant was known as the First Base line in Clements Township, but was not coincident with the First Base line in Annapolis township.
- [36] In the 1780's there was a second series of Crown grants in Clements township. Those grants had as their common north sideline the south sideline of the Dugau grant which was much larger than the individual grants in the second series. The second series of grants also had a common south sideline which Mr. Hall contends became known as the Second Base Line in the Township of Clements and which was also the Princedale Road that was constructed sometime after the granting of the Cobbs & Dyson property in 1759.
- [37] The second series grant that adjoined the township line was known as the Frederick Devoue grant which extended southerly from the south sideline of the Dugau grant approximately 1 1/2 miles to the Second Base Line in Clements which was also the Princedale Road. The Devoue grant was bordered on its east by the southerly portion of the Cobbs & Dyson grant and the northern part of that portion of the 2400 acre Wennet grant which was apportioned to Thomas Williams and became known as the Moncton lands
- [38] Mr. Hall contends that in subsequent conveyancing when the original Crown grants were being broken up into smaller parcels the terms first and second base were improperly used in some cases in describing lands in close proximity to

the township line. That is, that the term first base denoting the south sideline of the Dugau grant in Clements township was used to denote boundaries in the conveyances of lands in Annapolis township.

- [39] Mr. Hall concludes that the reference in the Thibideau tax deed to the First Base properly refers to the first base line in Annapolis Township, being the south sideline of the Cobbs & Dyson grant which Mr. Hall contends is north of the Princedale Road as shown on his plan (Ex. 1, Tab 20) and confirmed by his measurement of the depth of the Cobbs & Dyson grant southerly from the Annapolis River. During Mr. Hall's extensive survey of the lands in the area in dispute he measured the depth of the original Cobbs & Dyson grant southerly from the southern side of the Annapolis River.
- [40] By measurement the 2 mile or 160 chains distance extended to a point 896.33 feet short of what Mr. Hall eventually concluded was the actual south sideline of the Cobbs & Dyson grant and 4547.45 feet short of the north sideline of the Princedale Road.
- [41] Mr. Hall, at the point he claims to be the south sideline of the Cobbs & Dyson grant, found evidence of a blazed line that he concluded was the common south boundary of the original Annapolis River Crown grants.
- [42] In order to explain the discrepancy in the depth distance of the lot Mr. Hall theorized, based on his long experience as a Nova Scotia Land Surveyor, that many of the original Crown grants actually contained more land than the description called for, particularly if the grant was not of premium land as was the case here.
- [43] Mr. Hall during his research over the three years plus in which he has been dealing with this matter and after discussions with persons in the area, says that it was common knowledge in the community that part of the property known as the Moncton lands in the community were situate on the north side of the Princedale Road and extended to the base line of the Annapolis River lots in Annapolis Township. He says that by reputation in the community persons considered the Moncton lands as unclaimed or common lands and that many persons cut wood for their own use from the Moncton lands.
- [44] Mr. Hall's research indicated to him that Thomas Williams may have been deceased in and around 1818 when the 400 acre Moncton lands was apportioned to his estate. Mr. Hall says that after searching the Registry of Deeds for Annapolis County he could find no conveyances of the Moncton lands and advances the theory that because Thomas Williams was deceased at the time, his 400 acre share was apportioned to his estate and the lands

- remained unclaimed, or at least were not sold, so that there were no further conveyances of the land until the tax sale and deed to Thibideau in 1948.
- [45] Mr. Hall's research led him to believe that Thomas Williams' widow was the daughter of the Earl of Monkton, whose ancestry went back to Galway in Ireland. Thus he says arose the term "Monkton lands" in referencing the lands in issue and that the spelling eventually became Moncton and the Moncton lands or property lines were sometimes referred to in various conveyances as the "Galway" lines. This theory is supported by a land description in a conveyance of lands from Perkins to LeCain, a copy of which is contained in Tab 2 of the plaintiff's Supplemental Book of Exhibits. (Ex. 2) In the land description there is a reference to the "Moncton or Williams land so-called."
- [46] Mr. Hall during his research of relevant conveyances found many references to the Moncton lands although Mr. Hall says he could find no actual conveyances of the Moncton lands. He says that all the conveyance references he found to the Moncton lands were in land descriptions referring to the Moncton lands as being adjacent to the lands described in those conveyances. It is by those references that Mr. Hall finally concluded that the Moncton lands were situated on both sides of the Princedale Road.
- [47] Mr. Ross on behalf of the plaintiff has a different view. He concludes that the first base line as referred to in the Thibideau tax deed and the Princedale Road are one and the same. Mr. Ross agrees that in the Township of Clements the first Crown grant adjacent to the township line was to Degau and the southern boundary of that grant became known as the first base line. He also agrees that the second tier of grants from the Crown extended from the south sideline of the Dugau grant southerly and the northern sideline of those lots became known as the second base line and that the second base line is what is now known as the Princedale Road. Mr. Ross contends, however, that the reference in the tax deed to First Base is incorrect or refers to First Base or the Princedale Road. He says that the assessment card from the Municipality of Annapolis County correctly shows the plaintiff's property extending from Highway No. 1 north to second base or the Princedale Road. (Ex. 2, Tab 4)
- [48] Mr. Hall comments on the plaintiff's position regarding the Hicks and Harnish properties referred to in the tax deed. He agrees that the Hicks and Harnish lands adjoining the defendant's lands to the east and west as described in the tax deed do not extend northerly across the Princedale Road and also agrees with Mr. Ross' estimate of the acreage of the Moncton lands but contends that the description of the lands in the tax deed is a poor description. He contends that the municipality was in error in setting out the boundaries of the lands sold at

tax sale and relies on that portion of the description which refers to the lands as the Moncton Lot as an indication of what the Municipality intended to and did sell and that the Moncton lands are situate on both sides of the Princedale Road.

Main Issue

- [49] As stated, the essential issue in this dispute is whether the so-called Moncton lands extend north across the Princedale Road. The key in determining that issue is to determine the location of the “First Base” as used in reference to the north boundary of the lands described in the Thibideau deed. Mr. Hall agrees with Mr. Ross as to the location and origination of the appellations “first” and “second” base lines, but contends that they relate only to lands in the Township of Clements, because of the difference in the layout of the Crown grants there. As stated, Mr. Hall agrees that the use of the term first base line denoting the southern boundary of the Dugau lot in Clements Township was sometimes extended easterly in describing boundary lines in Annapolis Township north of the Princedale Road. He qualifies his agreement by pointing out that the line was extended perpendicular to the township line and not in a straight line extension of the base line. He suggests that this confirms his base line theory.
- [50] Mr. Hall also agrees with Mr. Ross that in Clements Township the second base line was the common southern boundary of the second series of grants which extended north to the Princedale Road. Thus Mr. Hall agrees with Mr. Ross that in Clements Township the terms second base line and Princedale Road are synonymous. But, Mr. Hall contends the reference in the plaintiff's deeds denoting the southern boundary of the plaintiff's lands as the second base line is incorrect. He agrees that the southern boundary of the Wegma or plaintiff's lands is the northern boundary of the Moncton lands but his disagreement is that the northern boundary of the Moncton lands is not the Princedale Road. He asserts that the north boundary of the Moncton lands is some distance north of the Princedale Road, which point he says is the south sideline of the Cobbs & Dyson grant. That point, asserts Mr. Hall, is the First Base referred to in the Thibideau tax deed.
- [51] Key to Mr. Hall's attempt to prove this assertion is a series of deeds introduced into evidence which purport to show that the “Moncton” lands, which are situated in the Township of Annapolis, were bordered on the west by lands in Clements township owned by persons whose south sideline was the Princedale Road or, in other words, whose lands were situate entirely on the north side of the Princedale Road.
- [52] Mr. Hall's thesis has as its foundation that the Crown grant to Frederick Devoue in the second series of grants in Clements Township which bordered on the township line was situate entirely on the north side of the Princedale Road. Mr.

Ross does not disagree that the Devoue grant's southern boundary was the Princedale Road.

- [53] The first deed in support of Mr. Hall's thesis is Exhibit 14, a copy of a deed dated 1816 from the Executors of Frederick Devoue to Aesop Moses. It conveys 100 acres on the Shelburne Road described as being the eastern one-half of Lot Number 1 in Clements township. Mr. Hall points out that this deed conveys the eastern half of the Frederick Devoue grant in Clements and that it borders and is situate entirely on the north side of the Shelburne Road. Its eastern border is also the line between Clements and Annapolis Townships. It is common ground that the Shelburne Road and Princedale Road are one and the same. This road has also been called the Clementsvale Road, the Birchdale Road and Mr. Hall contends the Waldec Road.
- [54] Exhibit 15 is a copy of a deed dated 1840 from Aesop Moses to Henry and William Hudson. This deed conveys seventy-acres of the land Moses received by Exhibit 14 and is described as being part of Lot Number 1 on the Shelburne Road. It is described as being bounded on the west by land of Moses and Starrat, on the north by lands of Henry Hudson and George Millidge, on the south by the Waldec Road and on the east by James McCain and Honble Monkton.
- [55] Mr. Hall says that the Shelburne or Princedale Road was also referred to as the Waldec Road. Even if the Waldec Road is not the Shelburne or Princedale Road, since the lands are situate on the northern side of the Shelburne Road, the Waldec Road would also be situate north of the Shelburne Road.
- [56] Mr. Hall says that lands referred to as those of Honable Monkton is a reference to the land in issue known as the Moncton lands and that part of the Moncton lands is obviously situate on the north side of the Princedale Road.
- [57] Exhibit 17 is a copy of a deed dated 1853 conveying lands from George S. Millidge, Attorney at Law, to James LeCain. The lands are described as part of the woodland of Millidge “beginning at the rear base line of the shore lots on the east line of land Millidge bought from Henry Hudson and thence S6°E or the common course of the lines along said east line three-quarters of a mile or to the Monkton land, so-called, thence westerly along the north line of the Monkton land two chains twenty-five links (or 9 rods), thence northerly said common course three-quarters of a mile to said base line, then, easterly to the place of beginning, containing thirteen and one-half acres, more or less.”
- [58] This deed, says Mr. Hall, is the first and only deed he could find which fixes the exact location of the north boundary of the Moncton lands. He says that “the rear base line of the shore lots” refers to the first base line of the Annapolis

River lots in Clements township and the measurement of three-quarters of a mile to the Monkton lands would place the lands approximately two miles south of the Annapolis River which point is also the south line of the Cobbs and Dyson grant. That, says Mr. Hall, places the south line of the Cobbs & Dyson grant some distance north of the Shelburne Road.

- [59] Mr. Hall acknowledged, on direct and cross-examination, that the deed incorrectly ran the line along the Monkton lands in a westerly rather than easterly direction. Nonetheless, Mr. Hall describes this conveyance as being key in establishing that the Monkton lands extended north across the Shelburne Road and to the northern boundary of the land in dispute.

Eastern Boundary of Moncton lands

- [60] In order to establish that the Moncton lands extended north across the Princedale Road to the south boundary of the Cobb & Dyson grant Mr. Hall points to evidence establishing the eastern boundary of the Moncton lands.
- [61] He first of all points out, as stated previously, that Rudolph Van der Valde Ltd., a successor in title to lands acquired by Thibideau at the tax sale in 1948 sold lands to N.S. Light & Power Ltd. bordering on the north sideline of the Princedale Road. Both sides acknowledge that conveyance. The plaintiff does not dispute that the lands conveyed therein were part of what the defendant contends to be the Moncton lands.
- [62] Mr. Hall says Van der Valde did not convey to N.S. Light & Power the full depth of the Moncton lands lying north of the Princedale Road. The east sideline of the N.S. Light & Power lot extends northerly from the Princedale Road 1700 feet and the west line of the lot extends in a northerly direction 2135 feet.
- [63] Mr. Hall says that the extension of the eastern boundary of the N.S. Light & Power lot extends northerly approximately 1081 feet to the south boundary of the Cobb & Dyson grant. Thus, Mr. Hall concludes that since Thibideau and his successors in title conveyed out of the original lands no lands north of the N.S. Light & Power lot title to that portion of the Moncton lot lying between the north sideline of the N.S. Light & Power lot and the south sideline of the Cobb & Dyson grant remains with the defendant.
- [64] Mr. Hall, as evidence of the eastern boundary of the Moncton lands north of the Princedale Road, offers Exhibit 23, a copy of a deed dated September 29, 1957 from Edward A. Hicks to Bernard Alcorn recorded in Book 220 at p. 629. The lands described therein are bounded on the south by the Princedale Road, on the east by Rex Spurr lands, on the west by lands of H.T. Warne Ltd., another predecessor in title to the defendant, and on the north by the base line containing 100 acres.
- [65] It is agreed by the parties that the lands on the north side of the Princedale Road sold by the Van der Valde company to N.S. Light & Power Co. Ltd. are bounded on the east by lands now or formerly of Bernard Alcorn.
- [66] This says Mr. Hall is evidence that the Moncton lands extended northerly across the Princedale Road and prior to the conveyance to N.S. Light & Power Co. Ltd. was bordered on the east by the lands conveyed by Hicks to Alcorn thus establishing the

east sideline of the Moncton lands which coincide with his plan (Ex. 1, Tab 20) showing the lands in dispute.

[67] Mr. Hall says the base line referred to as the north boundary is the first base line in Annapolis Township.

[68] Mr. Hall also offers Exhibits 6 and 7 as proof of his description of the Moncton lands. Exhibit 7 is a forest management agreement dated January 11, 1982 between the Queen as represented by the Minister of Lands & Forests and J.A. Brittain and his wife the then owners of the Moncton lands. The lands described therein are purported to be those lands shown on Exhibit 6 which are the Moncton lands shown to be situate on both sides of the Princedale Road. The lands covered by the agreement are described in Article 1 of the agreement as being 463 acres even though the description as obviously taken from the Thibideau tax deed describes the lands as containing 200 acres.

[69] The plan shows the Moncton lands as depicted by Mr. Hall in his plan (Ex. 1, Tab 20) and excepts the lands sold by the Van der Valde company to N.S. Light & Power Co. Ltd.

The Law

[70] Counsel do not disagree on the applicable law.

[71] Plaintiff's counsel as well as arguing that the Court should conclude the defendant owns no property north of the Princedale Road because of the described east and west adjoining owners not owning property north of that road submit that the Court should consider the amount of acreage described as being conveyed by the Thibideau tax deed. Counsel argues that the 200 acres referred to in the Thibideau deed is much closer to the actual acreage on the south side of the Princedale Road than is the amount of acreage after adding the 137 acres the defendant claims on the north side of the road.

[72] In support of that argument plaintiff's counsel cites the following passage from the *Canadian Encyclopedic Digest* (Ontario), (3rd) Edition), Volume 3, Section 99 entitled "Area":

If in a deed conveying land the description of the land intended to be conveyed is couched in such ambiguous terms that it is very doubtful what were intended to be the boundaries of the land, and the language of the description equally admits of two different constructions, the one of which would make the quantity of the land conveyed agree with the quantity mentioned in the deed and the other would make the quantity altogether different, the former construction would prevail. But, when the boundaries of the lot conveyed are defined in the deed, no erroneous statement as to acreage comprised in the land can change such specified boundaries.

[73] Both sides have referred the Court to the general rule the courts have followed in determining the true meaning or intent of ambiguous descriptions.

[74] That rule was applied by Clarke, J. (as he then was) in *Richards v. Gaklis* (1984), 63 N.S.R. (2d) 231 (NSTD), to wit:

In discussing the matter of determining the intent of the parties where an ambiguity exists in a description, I quote from the Canadian Encyclopedic Digest (Ontario), (3rd Edition), Volume 3 at Title 19, page 16, paragraph 24.

The general rule to find the intent where there is any ambiguity in a grant, is to give most effect to those things about which men are least liable to mistake. On this principle, the things usually called for in a grant, that is, the things by which the land granted is described, have thus marshalled: first, the highest regard had to natural boundaries; secondly, to lines actually run and corners actually marked at the time of the grant; thirdly, if the lines and courses of an adjoining tract are called for, the lines will be extended to them, if they are sufficiently established; fourthly, to courses and distances, giving preference to the one or the other according to circumstances.

To the extent that it is capable of being applied to the present case, I accept what the authors of the Digest say as a helpful guide.

[75] The law as cited is not of much assistance in deciding this case which turns on the meaning of the term First Base. One can only determine the meaning of that term after considering all of the evidence.

Decision and Reasons

[76] Whether or not the defendant owns land north of the Princedale Road must be determined by defining the term “First Base” as contained in the Thibideau tax deed and the term “Second Base” as used in description of Lot #1 in the Katz to Wegma deed. The most important consideration however, in the Court's view, is to define the term First Base as used in the Thibideau deed because the southern boundary of Lot #1 in the Katz deed is defined as the Second Base line or the Moncton lands. The Court must then determine the northern boundary of the Moncton lands.

[77] The Court has concluded that the northern boundary of the defendant's land is situate some distance north of the Princedale Road and accepts the boundary as established by Mr. Hall on his plan submitted in evidence as Ex.1, Tab 20.

[78] The Court has reached that conclusion based on the following:

(1) The Court accepts Mr. Hall's evidence that the term “First Base” as used in the Thibideau tax deed refers to the First Base line of the original Crown grants along the Annapolis River in Annapolis Township and as such, the term “First Base” as used in the deed refers to the south sideline of the Cobbs & Dyson Crown grant.

(2) The Court accepts Mr. Hall's determination of that south sideline based on the actual measurement of the distance from the Annapolis River to that point, being approximately 2 miles as described in the Crown grant.

(3) That actual measurement approximately coincides with an old blazed line found at the south sideline of other lots east of the lands in issue. I accept Mr. Hall's evidence that the blazed line found is the first base line being the common southern boundary of the first series of Crown grants in Annapolis Township extending south from the Annapolis River. I also accept Mr. Hall's evidence that the lack of evidence of that blazed line along the south boundary of the Moncton lands was probably the result of the cutting of the blazed trees when that area was cut over during past years by individuals who cut on the land and the Warne and Van der Walde companies which may also have cut on the land.

(4) I accept Mr. Hall's evidence that the west sideline of the Moncton lands is the dividing line between Clements and Annapolis Townships.

(5) I accept as completely plausible Mr. Hall's theory that the Moncton lands were Thomas Williams'1/6 share of the 2400 Wennet Crown grant. Also that it

contained 400 acres and bordered Williams' own property to the south and the Clements' Annapolis Township line to the west.

(6) Mr. Hall's theory of the Moncton lands remaining intact as a 400 acre parcel over the years preceding the Thibideau tax deed is consistent with the evidence that neither party was able to adduce evidence of any conveyance of all or part of the Moncton lands from the time of the Wennet Crown grant until the Thibideau tax deed in 1948. I am also satisfied that Mr. Hall conducted a thorough search for such conveyances. That is evident from his discovery of conveyances of properties adjacent to the Moncton lands which contained references to those lands as being adjacent properties.

(7) I accept Mr. Hall's evidence that the original Moncton lot was situate on both sides of the Princedale Road, based on the references to the Moncton lands in the various deeds being an adjoining boundary of lands situate wholly on the north side of the Princedale Road in Clements Township.

(8) I accept Mr. Hall's position that the description of the lands conveyed in the Thibideau tax deed is inaccurate, both in relation to the adjoining property owners and the land acreage.

If care had been taken in accurately describing the lands the Municipality intended to convey, it is reasonable to assume that if it intended to sell land wholly on the south side of the Princedale Road it would have used the Princedale Road in describing the north boundary of the lands conveyed rather than the term "First Base."

(9) I accept Mr. Hall's evidence of the community's view of the Moncton lands as being situate on both sides of the Princedale Road and the lands being cut over by members of the community at large.

(10) Mr. Hall's evidence is consistent with the defendant's predecessor in title conveying lands out of the Moncton lot situate on the north side of the Princedale Road to Nova Scotia Light & Power Co. Ltd. also with the conveyances of land and of the Moncton lot to the Nova Scotia Department of Highways by the defendant.

(11) The conveyances to Nova Scotia Light & Power Co. Ltd. and the Department of Highways were never questioned or attacked prior to the plaintiff's claim of ownership in 1982. If the lands had been claimed by the plaintiff's

predecessor in title it would be reasonable to conclude that a conveyance of those lands by a non-owner would have been questioned by the then alleged landowner.

(12) I am satisfied that Mr. Hall's research into the history of the Moncton lands was laborious and thorough and consequently where there is conflict I prefer Mr. Hall's evidence to that of Mr. Ross.

Conclusion

[79] Under the provisions of s. 12(1) of the *Quieting of Titles Act* I find that the defendant is the owner in fee simple of the lands comprising 137.43 acres shown as "Moncton lands now lands of John J. Brittain" on a plan prepared by Everett B. Hall, Nova Scotia Land Surveyor dated November 10, 1998 situate on the north side of the Princesdale Road at Princesdale, Annapolis County, Nova Scotia. A certificate of title to those lands shall be issued to the defendant.

[80] The plaintiff's claim against the defendant for damages for trespass and conversion is dismissed.

[81] The defendant shall be entitled to party and party costs and reasonable disbursements. As agreed by the parties the "amount involved" for the purposes of Tariff "A" is \$70,000.00 and costs are awarded under Scale 3. As also agreed by the parties, each shall pay ½ of the costs of the Attorney General.

J.