

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Cnaland Development Corporation v. King, 2005 NSSC 7

Date: 20050112

Docket: SAM No. 3756-191359

Registry: Amherst

Between:

Cnaland Development Corporation, a body corporate,
with head offices at Scarborough, Ontario
and James Taylor

Plaintiffs

v.

Jeffrey L. King and Jason W. King

Defendants

Judge: The Honourable Justice Glen G. McDougall

Heard: June 16 and 17, 2004 in Amherst, Nova Scotia

Counsel: Douglas Shatford, Q.C., on behalf of the plaintiffs
Jeffrey L. King and Jason W. King, on their own behalf

By the Court:

[1] This action was first commenced by Cnaland Development Corporation (“Cnaland”) on the 10th day of July, 2001. By order of this court, James Taylor was added as a plaintiff on the 21st day of August, 2003.

[2] The plaintiffs’ claim damages for trespass to their land and for the unauthorized removal of wood and the clearing of their land by the defendants. They also seek a declaration of ownership of the land in dispute along with a metes and bounds description to the land purchased by Cnaland from Mrs. Jenetta E.

Chappell on the 19th day of October, 1990 and registered at Amherst, Nova Scotia in Book 558 at Page 1104 et sqq.

- [3] The defendants deny that they have trespassed on the plaintiffs' land and further deny that they have removed any wood or cleared any land owned by the plaintiffs. They maintain that any wood removed and any clearing was on land they acquired from Richard Coats Chapman and Ladona M. Chapman by deed dated the 12th day of May, 1999 and registered at the Registry of Deeds office for Cumberland County at Amherst, Nova Scotia in Book 702 at Pages 492-495. Although they have not, per se, commenced a counterclaim against the plaintiffs the defence filed on their behalf seeks "a declaration that the boundary line as between the properties of the parties to this action is as claimed by the defendants."
- [4] Both parties also requested costs.

BRIEF SUMMARY OF THE FACTS:

- [5] By a Warranty Deed dated the 7th day of July, 1904, Burpee Rockwell and his wife, Augusta Rockwell, conveyed a certain tract of land in the Township of

Amherst, Cumberland County, Nova Scotia to Henry Chapman. The lot was estimated to contain one hundred acres more or less. The deed was recorded on the 20th day of June, 1946 in Book 194 at Page 161.

- [6] This entire one hundred acre lot of land remained vested in Henry Chapman's name until 1947. By Warranty Deed dated the 10th day of May, 1947 and registered at Amherst, Nova Scotia on the 15th day of May, 1947 in Book 196 at Page 529 et sqq., J. Henry Chapman and his wife, Rebecca Chapman, conveyed a portion of the one hundred acre lot to Ronald Chappell. This new parcel of land was estimated to contain seventy-five acres more or less. During the time that Ronald Chappell and his wife, Jenetta E. Chappell, owned this property they sub-divided and conveyed three small lots all of which fronted on the Chapman Settlement Road, so-called. The remaining land was eventually sold by Ronald Chappell's widow, the aforementioned Jenetta E. Chappell, to Cnaland Development Corporation. This Warranty Deed is dated the 19th day of October, 1990 and was registered the 23rd day of October, 1990 in Book 558 at Page 1104 et sqq. This deed used the same legal description that had been inserted in the 1947 deed from Henry Chapman, et ux Rebecca Chapman, to Ronald Chappell, estimated to contain seventy-five acres more or less, while exempting the three lots previously conveyed.

- [7] Cnaland conveyed this land to James W. Taylor, the co-plaintiff, by warranty deed dated the 21st day of August, 2002 and registered at Amherst, Nova Scotia, on the 30th day of August, 2002 in Book 771 at Page 682 et sqq. There have been no further conveyances affecting this property since that time.
- [8] The remainder of the estimated one hundred acre lot conveyed to Henry Chapman in 1904 by Burpee Rockwell et ux, Augusta Rockwell was eventually conveyed to Logan Chapman by the heirs-at-law of the Late J. Henry Chapman. This deed without covenants is dated the 26th day of June, 1974 and was registered the 13th day of February, 1975 in Book 325 at Page 13 et sqq. The legal description in this deed is tied to the legal description used in the 1947 deed from J. Henry Chapman to Ronald Chappell by reference to the stake that was placed to mark the northwestern corner of that lot. This same stake was used as the beginning point in the deed to Logan Chapman. It should also be noted that the 1947 deed description set the northern boundary of this lot to run at right angles to this stake “along the lands of Logan Chapman, ...”. This appears to be consistent with the recital in the deed from the heirs-at-law of J. Henry Chapman to Logan Chapman where it states that the land described in that deed had been given by J. Henry Chapman to his son, Logan Chapman

“but no conveyance thereof was ever delivered to the said Logan Chapman.”

[See the second recital in deed at Book 325/Page 13].

- [9] This property along with three other lots were later conveyed in 1982 to Richard Coates Chapman and Laura Esther MacAulay. Several other transactions took place leading eventually to the conveyance from Richard Coates Chapman and his wife, Ladona M. Chapman, to Jeffrey L. King and Jason W. King in 1999.
- [10] The dispute over the location of the common boundary line first surfaced in 1996 when Richard and Ladona Chapman posted their land for sale. Cnaland had its legal counsel send the Chapmans a letter notifying them to “Please review the lines on your property to make sure you are not encroaching on Cnaland Development’s land and do not hold out to any prospective purchaser that your property contains more than the 25 acres set out in your deed.” Other letters were sent to Jeffrey and Jason King by Cnaland’s lawyer after they acquired the land and began logging it. They, too, posted a “For Sale” sign on a portion of the land that Cnaland also claimed.
- [11] In order to decide whether or not there has been a trespass to the plaintiffs’ property (the defendants do not deny cutting on the disputed land or making changes to it but they maintain that they are not doing anything wrong because

they are the rightful owners) the court must decide the proper location of the common boundary line between the two properties.

ISSUE:

[12] The issue then is:

What is the proper location of the common boundary line between the two adjoining properties?

[13] In order to answer this question the court must first look to the wording of the deeds themselves. Are they drafted in such a way that it is possible to determine the intention of the parties?

[14] The Nova Scotia Court of Appeal in the case of **Kolstee v. Metlin** (2002), 207 N.S.R. (2d) 27 at p. 44, paras 65 and 66 cited with approval the general principles for deed interpretation that had been adopted by the trial judge. Hallett, J.A., wrote:

65 In his decision, after reviewing the evidence, the trial judge referred to the principles applicable to the interpretation of a deed as set out in *Saueracker et al. v. Snow et al.* (1974), 47 D.L.R. (3d) 577, *McPherson et al. v. Donald Cameron* (1866-69) 7 N.S.R. 208, and

Humphreys et al. v. Pollock et al., [1954] 4 D.L.R. 721. Justice Coughlan stated in para 37-39 as follows:

[37] The general principles applicable to the interpretation of a deed are set out by Jones, J. (as he then was) in *Saueracker et al. v. Snow et al.* (1974), 47 D.L.R. (3d) 577 at p. 582:

... The general principles applicable to the interpretation of a deed are set forth in paras. 13 and 24, 5 C.E.D. (Ont. 2d), pp. 488-90 and 497-8, as follows:

13. Construction. - General Rule. The Court must, if possible, construe a deed so as to give effect to the plain intent of the parties. The governing rule in all cases of construction is the intention of the parties, and, if that intention is clear, it is not to be arbitrarily overborne by any presumption. The intention of the parties is to be gathered from the sense and meaning of the document as determined in the first place by the terms used in it, and effect should, if possible, be given to every word of the document. Where, judging from the language they have used the parties

have left their intention undetermined, the Court cannot on any arbitrary principle determine it one way rather than another. Where an uncertainty [still remains] after the application of all methods of construction, it may sometimes be removed by the election of one of the parties. The Courts look much more to the intent to be collected from the whole deed than from the language of any particular portion of it.

24. Extrinsic Evidence.

Patent and Latent Ambiguities. An ambiguity apparent on the face of a deed is technically called a patent ambiguity - that which arises merely upon the application of a deed to its supposed object, a latent ambiguity. The former is found in the deed only, while the latter occurs only when the words of the deed are certain and free from doubt, but parol evidence of extrinsic or collateral matter produced the ambiguity - as, if the deed is a conveyance of

"Blackacre", and parol evidence is adduced to show there are two places of that name, it of course becomes doubtful which of the two is meant. Parol evidence therefore in such a case is admissible, in order to explain the intention of the grantor and to establish which of the two in truth is conveyed by the deed. On the other hand, parol evidence is uniformly inadmissible to explain an ambiguity which is not raised by proof of extrinsic facts, but which appears on the face of the deed itself. A subsequent will cannot be used to construe an earlier deed of settlement nor as evidence that testator intended to include an additional person among the beneficiaries under the settlement.

Extrinsic Evidence as to Latent Ambiguities

Generally, Extrinsic evidence is always admissible to identify the persons and things to which the instrument refers. Provided the intention of the parties cannot be found within the four corners of the

document, in other words, where the language of the document is ambiguous, anything which has passed between the parties prior thereto and leading up to it, as well as that concurrent therewith, and the acts of the parties immediately after, may be looked at, the general rule being that all facts are admissible to interpret a written instrument which tend to show the sense the words bear with reference to the surrounding circumstances of and concerning which the words were used, but that such facts as tend only to show that the writer intended to use words bearing a particular sense are to be rejected.

[38] The relative importance to be given to various items in the interpretation of a deed is well settled. In *McPherson et al. v. Donald Cameron* (1866-69), 7 N.S.R. 208, Dodd, J., in giving the judgment of the Court, stated at p. 212:

... The question is how he is to get there, for neither the course nor distance given in his grant will take him there, without the alteration of one or the other.

The general rule to find the intent where there is any ambiguity in the grant, is to give most effect to those things about which men are least liable to mistake; *Davis v. Rainsforth*, 17 Mass., 210. On this principle the things usually called for in a grant, that is, the things by which the land granted is described, have been 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; *Greenleaf on Evidence*, p. 441, n. 2, and the case there referred to.

See also *Fraser v. Cameron* (1853-55), 2 N.S.R. 189.

[39] And as Rand, J. stated in *Humphreys et al. v. Pollock et al.*, [1954] 4 D.L.R. 721 at p. 724:

... The principle is clear that where distances and monuments clash, in the absence of special circumstances, the monuments prevail; in such cases the context shows the boundary to be the dominant intent, the distance, the subordinate

66 These statements correctly set out the general principles to be applied in interpreting descriptions of land as spelled out in a deed. As a general rule the intent of the parties to a conveyance is to be gathered from the words of the document. If there is an ambiguity, the common sense rules as quoted by the trial judge from *McPherson et al. v. Cameron* (supra) are generally to be applied. When courses and distances clash preference to one, rather than the other, will depend on the circumstances. In this appeal the principles enunciated in *McPherson et al. v. Cameron* (supra) are engaged.

[15] It should be noted that neither party is claiming title by adverse possession although what prompted this action was both the erection of a “For Sale” sign and use of the disputed area by the defendants.

[16] In order to decide on the proper location of the common boundary line one must first look to the words contained in the deeds. The legal description

included in the Cnaland / Taylor deed is attached hereto as Schedule "A". That of the defendants is attached as Schedule "B". Both deeds call for the existence of a certain stake located on the Chapman Settlement Road. Indeed the legal description in the "King and King" deed refers to a stake as the beginning point.

- [17] Is the reference to a stake in both legal descriptions a reference to the same stake or could there be more than one stake involved?
- [18] The plaintiffs case was not based on the existence of a second stake. Their argument primarily relied on the estimate of acreage contained in the property description. I find that the survey the plaintiffs commissioned from Russell Atkinson, N.S.L.S., shows both the disputed boundary line as well as a second boundary line which would give the plaintiff seventy-five acres, more or less, as called for in the deed from Jenetta E. Chappell to Cnaland Development Corporation. There was no physical evidence found on the ground to support this second boundary line.
- [19] The disputed boundary line showed evidence of the remnants of a wooden stake surrounded by painted stones. The line itself had been blazed and according to the plan of survey prepared by Mr. Atkinson which was filed as an exhibit, he estimated that the blazes were anywhere from 27 years to 34 years old.

According to Mr. Walter Rayworth, N.S.L.S., a surveyor called to testify by the defendants, he estimated the blazes to be 42 years old but allowed 2 to 3 years as a margin for error.

[20] The court heard from Jenetta E. Chappell, Mr. Willard Chapman (the brother of Jenetta E. Chappell), Mr. Joey Chappell (grand nephew of Ronald and Jenetta Chappell), and Mr. Fred Embree (an 82-year old gentleman who resided on the Chapman Settlement Road within about one-quarter mile of the disputed property for all his 82 years, save for about three years while he was in the Army during the Second World War). The court also heard from the plaintiff, Mr. James Taylor, and both defendants, Messrs. Jeffrey and Jason King.

[21] Willard Chapman was called to testify on behalf of the plaintiffs. His testimony, however, supported the defendants position. Mr. Taylor, the plaintiff, suggested that perhaps due to age Mr. Chapman's was confused. He further suggested that his evidence was inconsistent with what he had previously told both Mr. Taylor and his brother, Edward Taylor, prior to Cnaland's purchase of the property in 1990. Certainly Mr. Chapman is not a young man, but he gave no indication that he was confused. His testimony was credible and reliable and the court accepts his knowledge of the location of the

common boundary line. His evidence is consistent with that of most of the other witnesses.

[22] Mrs. Jenetta E. Chappell admitted that she had never walked the boundary line but she was certain of at least two things. One was that the common boundary line was marked by a stake and, two, that Logan Chapman had once asked her husband for permission to construct a road over their property to enable him to haul-out logs from a rear portion of his property that was difficult to access because of a swamp. The entrance to this haul-out road, so called, was off the Chapman Settlement Road near the stake marking the boundary line. It began on the Logan Chapman property (now the property of the defendants) and continued over the Chappell property (now the property of the plaintiff, James Taylor) in order to avoid a swampy area and then made its way back onto the Logan Chapman property near the rear line. This is consistent with the position taken by the defendants.

[23] As well, the evidence of Joey Chappell and Fred Embree also supports the location of the boundary line advanced by the defendants.

[24] Mr. Embree, in particular, provided clear and unequivocal evidence establishing the boundary line as far back as approximately 1946. At the time he worked cutting trees for Logan Chapman. In 1947 he recalled working both

sides of the line: on one side for Logan Chapman and on the other side for Ron Chappell. He clearly remembered the wooden stake which he estimated to have been about three feet high at one time. He also recalled that the line between the two properties was blazed. When presented with a photograph showing the remnants of the stake surrounded by the painted stones, Mr. Embree quickly identified it as the stake that marked the line. Based on his knowledge and belief the stake marked the boundary line between the two properties. He was not aware of any disputes regarding this line prior to Cnaland purchasing the property in 1990.

[25] The plaintiffs' principal argument for locating the line in accordance with the "Atkinson" plan of survey is to give meaningful effect to the estimate of acreage in both deeds. If I was to accept this, it would require me to ignore, for the most part, the metes and bounds description contained in the deeds.

[26] In Almon v. Woodill (1885), 18 N.S.R. 13 (S.C. – in banco) McDonald C.J. quoted Rawle on Covenants on the construction of deeds:

Nothing is better settled as a general rule in the construction of deeds than that in case of a discrepancy in the description of the premises between the distances and the boundaries, the former are controlled by the latter, on the ground that the latter must yield to

the greater certainty, and where land is conveyed by a particular description and with an enumeration of the quantity of acres, the latter is held to be matter of description merely and cannot be deemed an implied covenant for quantity... As therefore the descriptive boundaries control the quantity it has been repeatedly held that the covenants for title apply to the premises contained within these boundaries and not to any enumeration of acres....
[Emphasis added.]

- [27] In **Allen v. Dewolfe et al.** (1970), 2 N.S.R. (2d) 463 (N.S.S.C.– A.D.) the Appeal Division of the Nova Scotia Supreme Court rectified a deed and awarded nominal damages to the plaintiff, concluding that the defendant was bound by the rectified deed. The deed prevailed over the original property description, which referred to boundaries and acreage. The trial judge had indicated that the "quantity of land" was the "governing factor" in view of the generality of the description in the deed. On appeal, Coffin J.A. (for the Court) cited **Munroe et al. v. Pinder Lbr. & Mllg. Co., Ltd. et al.**, [1927] 1 D.L.R. 1200 (N.B.S.C. – A.D.), where White J. said:

When, in a deed, the boundaries of land conveyed are uncertain, the number of acres which the land is stated to contain may become an important and very often the decisive element in determining what are the true bounds of such land. 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. [Emphasis added.]

[28] Relying upon Almon and Munroe, the Court in Allen held that the respondent could not "assert title to the lot merely because there is a discrepancy in the acreage."

[29] Plaintiffs' counsel has cited Mauskopf v. Ring (1994), 121 Nfld. & P.E.I.R. 271 (Nfld. S.C.– T.D.), a case in which the Court distinguished Munroe on the grounds that in Munroe it was possible to establish the boundaries by reference to the deed. Puddester J. usefully summarized the law as follows:

... I conclude that references in the description contained in a conveyance to known and clearly ascertainable boundaries circumscribing the property conveyed will generally 'override' other inconsistent, internal references of measurement or area expressed within the instrument. However, the decision of the

Supreme Court of Canada in *Munroe v. Pinder Lumber* ... illustrates that boundary references may not be absolutely determinative where other circumstances, including other references in the instrument, strongly compel a contrary view.

[30] **Allen** is cited by the Canadian Encyclopedic Digest as authority for the proposition that "[a]n erroneous statement as to the quantity of acreage does not have the effect of changing boundaries." Similarly, in **K & W. Enterprises Ltd. v. Smith** (1971), 7 N.S.R. (2d) 411 (S.C.– T.D.) Gillis J. said:

... the reference to three acres, more or less, in the deed to the defendant and his wife is to be rejected by application of the principle *falsa demonstratio non nocet*. The description and the plan may be incorrect, in some measurements, but it is clear and I find, that the boundaries, consisting of two parallel lines, a highway boundary line and a base line are certain. No erroneous statement as to acreage can change them. *Allen v. DeWolfe* ... is an application of the principle. [Emphasis added.]

[31] Based on the evidence the plaintiffs have not convinced me that they are entitled to the relief sought. The boundary line between the two adjoining properties is marked by the remnants of the old wooden stake surrounded by

the stones that are now painted blue (see photographs marked Exhibit # 4 and Exhibit # 5). This line is blazed from this point just off the Chapman Settlement Road and proceeds at right angles to this road in a generally southeasterly direction.

[32] I am satisfied that the plaintiff acquired title to what was pointed out to him and his brother by Willard Chapman prior to the purchase by Cnaland. This might not be seventy-five acres but it is nonetheless what remained of the original lot of land that had been conveyed to Ronald Chappell by J. Henry Chapman and his wife, Rebecca Chapman in 1947.

[33] The defendants also only acquired title to what was described in their deed. This might happen to be greater than the estimate of acreage indicated in the deed, however, it is not a windfall. The extent of the land was pointed out to them prior to its purchase from Richard and Ladona Chapman. The boundary line is the one that has existed since the property was first sub-divided by J. Henry Chapman in 1947.

[34] The plaintiffs' claim for damages is therefore dismissed in its entirety. The defendants' request for declaratory relief is granted. The boundary line shall be the blazed line which begins at the point where the remnants of the old wooden stake surrounded by blue painted stones is found. This is the line

suggested by the defendants and shown on both the “Atkinson” and the “Rayworth” survey plans (Exhibit # 1, Tabs 1 and 24).

[35] The defendants are also entitled to have their costs of this action. If the parties cannot agree on an appropriate amount they are requested to file written submissions with the court no later than 30 days from the date of this decision.

[36] Since the defendants were unrepresented I will call upon counsel for the plaintiffs to prepare an order reflecting this decision.

J.

Schedule "A"

ALL that certain lot of cleared land and woodland situate at Chapman Settlement in the County of Cumberland, Province of Nova Scotia, bounded and described as follows:

COMMENCING at the point where the Chapman Settlement Road, so-called intersects the Rear Road, so-called, and running in a Northeasterly direction along the former to a certain stake, now placed;

THENCE at right angles thereto, along lands of Logan Chapman to a certain blazed tree;

THENCE at right angles and parallel to the line first herein mentioned, along lands of Alexander Beaton until it meets the said Rear Road, so-called 2 feet Southeast of a certain tree marked H.C.;

AND FROM THENCE following the said Rear Road, northwesterly to the point or place of beginning, the said lot containing seventy-five acres, more or less;

BEING that land conveyed to Ronald Chappell by J. Henry Chapman and Rebecca Chapman by Deed dated the 10th day of May, 1947 and recorded at the Registry of Deeds Office at Amherst, N.S. in Book 196 at Page 529.

SAVING AND EXCEPTING THEREFROM ALL that lot, piece or parcel of lands and premises situate, lying and being at Chapman Settlement in the County of Cumberland and Province of Nova scotia [sic, Scotia] which is more particularly bounded and described as follows:

ALL those 2,032.9 square metres, more or less, shown as Lot 86-1 in Plan of Subdivision showing Lot 86-1, Ronald Chappell Subdivision prepared by Michael E. Green, N.S.L.S. and dated June 6, 1986 which was given Subdivision Approval by the Municipality of the County of Cumberland on June 10, 1986 as Plan #1677, a copy of which Plan was filed at the Office of the Registrar of Deeds for the County of Cumberland and Province of Nova Scotia on June 10, 1986 as No. 317 and therein defined and described as follows:

COMMENCING at NSCM #13653;

THENCE South Twenty-Six degrees Thirty-One minutes Ten seconds West (S26°31'10"W) a computed distance along a tie line 397.258 metres to a set survey marker stamped #510 at the easterly margin of the Chapman Settlement Road;

THENCE South Twenty-Seven degrees Thirty-Eight minutes Thirty seconds West (S27°38'30"W) a distance of 32.917 metres to a second set survey marker stamped #510;

THENCE South Sixty-Three degrees Six minutes Twenty seconds East (S63°06'20"E) a distance of 61.771 metres to a third set survey marker stamped #510;

Schedule "A", continued

THENCE North Twenty-Seven degrees Thirty-Seven minutes Fifty seconds East (N27°37'50"E) a distance of 32.912 metres (computed) to a fourth set survey marker stamped #510;

THENCE North Sixty-Three degrees Six minutes West (N63°06'00"W) a distance of 61.765 metres to the first mentioned set survey marker...the lot of land hereby conveyed being a portion of lands conveyed to the aforesaid Ronald Chappell by an instrument recorded at the aforesaid Registry of Deeds in Book 196 at Page 529.

BEING that land conveyed to Ronald George Wright et ux by Ronald W. Chappell et ux by Deed dated the 24th day of June, 1986 and recorded at the Registry of Deeds Office at Amherst, N.S. in Book 510 at Page 77.

ALSO SAVING AND EXCEPTING THEREFROM ALL that lot, piece and parcel of land situate in the Chapman Settlement in the County of Cumberland, Province of Nova Scotia, more particularly bounded and described as follows:

BEGINNING at a point on the East margin of the Chapman Settlement Road, said point located 60.7 feet Northerly from the Northwest corner of Lot 86-1 of lands of Ronald Chappell as shown on a Plan of Subdivision of lands of Ronald Chappell as surveyed by Michael E. Green, N.S.L.S., said plan being dated the 6th day of June, 1986 and on file at the Registry of Deeds Office at Amherst as Plan 1986 No. 317;

THENCE in a Northeasterly direction along the said East margin of the Chapman Settlement Road a distance of 210 feet to a point;

THENCE South 63°06' East a distance of 209 feet to a point;

THENCE South 27°38' West parallel to the said East margin of the Chapman Settlement Road a distance of 210 feet to a point;

THENCE North 63°06' West along remaining lands of the Estate of Ronald Chappell a distance of 209 feet, more or less to the place of beginning, containing in all One acre, more or less;

BEING AND INTENDED TO BE a portion of lands conveyed to Ronald W. Chappell by J. Henry Chapman and Rebecca Chapman by Deed recorded at the Registry of Deeds Office for the County of Cumberland in Book 196 at Page 529;

AND BEING that land conveyed to Lorraine Dwyer as Executrix of the Estate of Harold R. Clarke by Jenetta Elizabeth Chappell by Quit Claim Deed dated the 17th day of April, 1990 and recorded at the Registry of Deeds Office at Amherst, N.S. in Book at Page .

Schedule "A", continued

ALSO SAVING AND EXCEPTING THEREFROM ALL that lot, piece and parcel of land situate on the east margin of the Chapman Settlement Road, Chapman Settlement, Cumberland County, Nova Scotia, more particularly bounded and described as follows:

BEGINNING at an iron pin situate on the east margin of the Chapman Settlement Road, said pin being located S21°50'30"W, 15.179 metres from Nova Scotia Survey Monument #13652;

THENCE S32°10'51"W along the said east margin of the Chapman Settlement Road a distance of 45.523 metres to an iron pin situate on the north margin of an Existing Road Reserve;

THENCE S62°35'05"E along the said north margin of the Existing Road Reserve a distance of 89.537 metres to an iron pin;

THENCE N25°27'51"E along lands now owned by Jenetta Chappell a distance of 45.787 metres to an iron pin;

THENCE N62°51'12"W along lands now owned by Jenetta E. Chappell a distance of 84.198 metres to the place of beginning, containing in all 3,945.1 square metres more or less;

BEING AND INTENDED TO BE Lot 90-1 as shown on a Plan of Subdivision of Jenetta E. Chappell, Chapman Settlement Road, Cumberland County, Nova Scotia as surveyed by Michael E. Green, N.S.L.S., said plan being dated July 5th, 1990, approved for subdivision by the Municipality for the County of Cumberland on the 27th day of July, 1990 as #2459, said plan also being on file at the Registry of Deeds Office at Amherst, N.S. as 1990 #1445.

BEING a portion of that land devised to Jenetta Elizabeth Chappell by Ronald W. Chappell by Will dated the 16th day of November, 1988, which Will has been recorded at the Registry of Deeds Office at Amherst, N.S. in Book 543 at Page 347.

Schedule "B"

ALL that certain lot, piece or parcel of land and premises situate, lying and being on the Southeast side of the Chapman Settlement Road, so-called, at Chapman Settlement in the County of Cumberland and more particularly bounded and described as follows:

BEGINNING on the Southeastern boundary of the Chapman Settlement Road at a stake at the northern corner of lands conveyed by J. Henry Chapman to Ronald Chappell by Deed dated May 10th, 1947 and recorded in the Registry of Deeds at Amherst in Book 196, Page 529;

THENCE at right angles to the said road in a Southeasterly direction along the said Ronald Chappell's Northeast side line to a certain blazed tree on the Northwest boundary of Crown lands;

THENCE running Northeasterly along the said Northwestern boundary of said Crown lands and lands of T. Chapman to the Southwestern side line of lands conveyed by Lewis Weeks to Ronald Windslow Chappell and Fred Westley Embree by Deed dated December 1st, 1954 and recorded in the said Registry in Book 214, Page 8;

THENCE Northwesterly along the said Chappell and Embree Southwestern line to the said Southeastern boundary of the said Road;

THENCE Southwesterly along the said Southeastern boundary of the said Road to the place of beginning.

CONTAINING Twenty-five (25) acres more or less.

AND BEING the same land conveyed to Richard Coates Chapman and Laura Esther MacAulay to Richard Coates Chapman by deed dated the 30th day of August, A.D. 1985 and duly entered and registered in the Cumberland County Records on the 9th day of September, A.D. 1985 in Book 474 at pages 5-8 as Number 6894.

AND BEING the same lands conveyed to Richard Coates Chapman and Ladona M. Chapman by Richard Coates Chapman by deed dated March 6th, 1991 and registered in the Cumberland County Records on March 19, 1991 in Book 564 at Pages 444-447 as Number 1442.