

SUPREME COURT OF NOVA SCOTIA

Citation: MacMillan v. MacMillan, 2013 NSSC 393

Date: 20130410

Docket: PtH No. 335261

Registry: Halifax

Between:

Ronald J. MacMillan, Evelyn T. MacMillan and Gary MacMillan

Plaintiffs

v.

Norman MacMillan

Defendant

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Judge: The Honourable Justice Patrick J. Murray

Heard: September 18th, 19th, 20th, 21st, 24th, 25th, 2012 and
October 12, 2012, in Port Hawkesbury, Nova Scotia

Written

Decision: April 10, 2013

Subject: Division of land. Partition of farm land (400 acres) under the
Partition Act of Nova Scotia. RSNS 1989, c.333.

Summary: The MacMillan farm located on the Campbell Road in Judique, Inverness County, Cape Breton, has been in the MacMillan family for 150 years. The parties are ancestors and held varying title interests. The three Plaintiffs owned 3/5's collectively. The Defendant, Norman MacMillan, held a 2/5's interest.

Issue: Should partition of the land be ordered? Should it be sold? Should there be set off? Should the Defendant's interest be set off to the Plaintiffs? What is a fair, equitable and practical division?

Result:

Partition of the land ordered. Court found it was not necessary to sell the land. Court not satisfied land could not be divided without prejudice to the parties. Terrain an issue in the determination, as well as expert reports (Appraisals). Contribution of respective parties considered.

Court appointing three (3) commissioners to effect partition, and any set off, as applicable. Commissioners to be independent and sworn, and to provide a report as required under the *Act*.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***