SUPREME COURT OF NOVA SCOTIA
Citation: Webster v. Duncanson 2014 NSSC 152

Date: 20140428
Docket: SY. 284509
Registry: Yarmouth

Between:

Marilyn Webster, Dorothy Leon Melanson, Elaine Marie Mahar,
James Phillip Mooney, Joseph Fraser Mooney and Grace Allison Nickerson

Plaintiffs

- and -

Robert K. Duncanson, Neil Duncanson and Michael Hurlburt

Defendants

Judge:	The Honourable Justice C. Richard Coughlan
Heard:	November 25, 26, 27, 28, 29 and December 2, 2013 in Yarmouth, Nova Scotia
Counsel:	Rubin Dexter, counsel for the Plaintiffs Jonathan G. Cuming, counsel for the Defendants

[1] In 1966 Fraser Mooney purchased property for use as a family cottage at Canaan, Yarmouth County, Nova Scotia from Frederick Duncanson. In the years following, the Mooney children grew to adulthood enjoying summers at the cottage. The tranquillity of the setting was shattered by the sound of chainsaws in the summer of 2007. Robert Duncanson, grandson of Frederick Duncanson, had a surveyor run a line which was supposed to represent the boundary between the Mooney and Duncanson lands. This new line, if correct, would result in the Mooney lands having an area less than the Mooneys thought they owned. In 2007 Neil Duncanson, a brother of Robert Duncanson, started to cut out an access road to a lot Robert was planning to give him on the lands in dispute. Thus, the chainsaws.

[2] Fraser Mooney died in 2006. Barbara Ann Mooney, Fraser Mooney's widow, commenced action against Robert K. Duncanson, Neil Duncanson and Michael Hurlburt by Originating Notice (Action) and Statement of Claim issued August 16, 2007. Barbara Ann Mooney died in 2009. The action was continued by her children who are her successors in title. The Statement of Claim has been amended. The claim in trespass by the plaintiffs was withdrawn without costs as were the claims against Neil Duncanson and Michael Hurlburt. The relief the plaintiffs are seeking is a declaration the boundary line between their property and the property of Robert K. Duncanson is as shown on the Plan of Survey No. Y8377-07 prepared by Everett B. Hall, N.S.L.S. No. 323 dated June 26, 2009 and described in the Further Amended Statement of Claim.

[3] The Defence and Counterclaim were amended, the last amendment occurring during the trial. Robert K. Duncanson is seeking a Declaration that the boundary line between the lands of the plaintiffs and his land is as shown on a Plan of Survey by Nova Scotia Land Surveyor Derik R. DeWolfe, Plan No. 2010-111 dated May 9, 2013 and described in the Further Amended Defence and Counterclaim or, in the alternative, for a Declaration Robert K. Duncanson is the owner of the lands between a boundary line surveyed by Ronald Dearman, N.S.L.S. Plan No. 4707Y03 dated March 3, 2003 and a boundary line surveyed by Everett B. Hall, N.S.L.S. Plan No. Y8377-07 dated June 26, 2009 by adverse possession and a permanent injunction preventing the plaintiffs from entering upon the lands of Robert K. Duncanson.

[4] Fraser Mooney, the plaintiffs' predecessor in title, was conveyed the cottage property in Canaan by deed from Frederick Duncanson, Robert K. Duncanson's predecessor in title, dated July 26, 1966 and recorded at the Registry of Deeds at Yarmouth, Nova Scotia on July 26, 1966. In the deed the property conveyed was described as follows:

> " All that certain lot, piece or parcel of land lying situate and being on the Northern side of the Canaan Road, in the County of Yarmouth and Province of Nova Scotia, and bounded and described as follows:-
>
> Beginning at a stake where the Kemp Road, so called, meets the Southern boundary of land of Keith Duncanson; thence in a Westerly direction and following the said Southern line of land of Keith Duncanson until it reaches the shore of Little Wilson Lake, so called; thence in a Southerly direction and following the several contours of said Little Wilson Lake and the contours of School House Brook, so called, until it reaches the Northern line of the Canaan Road, so called; thence in an Easterly direction and following said Northern line of the Canaan Road until it reaches the Western Line of Kemp Road; thence in a Northerly direction and following the Western line of Kemp Road to a stake on the Southern line of land of Keith Duncanson and the place of beginning and containing One Hundred (100) acres more or less."

[5] I must interpret the deed. The general principles applicable to the interpretation of a deed were 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 page 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 . ...

[6] In *Metlin v. Kolstee* 2002 NSCA 81, the Court of Appeal stated the above statements correctly set out the general principles to be applied in interpreting descriptions of land as spelled out in a deed. The governing rule in all cases of construction is the intention of the parties.

[7] Turning to the 1966 deed from Frederick Duncanson to Fraser Mooney, the parties agree three of the boundaries are certain, Little Wilson Lake also known as Somes Lake; the School House Brook; and the Canaan Road. However, the description contains a latent ambiguity with regard to the fourth boundary.

[8] The description provides;

> "Beginning at a stake where the Kemp (sic) Road, so called, meets the Southern boundary of the land of Keith Duncanson; thence in a Westerly direction and following the said Southern line of land of Keith Duncanson until it reaches the shore of Little Wilson Lake...".

[9] The ambiguity arises as the evidence is and I find Keith Duncanson did not hold title to any land in the area of the subject property. What did the parties intend when they stated in the 1966 deed the property being conveyed was bounded on the north by property of Keith Duncanson. Parol evidence is admissible to establish the intention of the grantor.

[10] In the deed from Frederick Duncanson to Muriel E. Duncanson and Robert K. Duncanson dated January 17, 1964 and recorded at the Registry of Deeds at Yarmouth, Nova Scotia on March 9, 1977 in Book K.S. at page 172 (1964 deed) the following land was conveyed;

> "All that certain lot, piece or parcel of land situate, lying and being at Canaan aforesaid, and bounded and described as follows: BEGINNING on the Northern side of the Main Canaan Road, at or near the site where the mill of Isaac Hatfield once stood; thence westwardly by said Road 300 yards, or until it comes to Corning's line, and land formerly of George Hurlburt, now of Job B. Hurlburt; thence Northwestwardly by said Hurlburt land and crossing, but not including, the Cross Road or Tinkham Road, so called, to Little Wilson Lake; thence Westwardly by Little Wilson Lake to the base line; thence Westwardly by the baseline to the Old Kempt Road; thence Northwardly by said Old Kempt Road until it meets the Cross Road, or Tinkham Road; thence Southeastwardly by said Tinkham Road to a point opposite the Southwest corner point of land formerly of Frank White, now of Arthur Hurlburt; then crossing, but not including, said Tinkham Road to the Southeast corner bound of land formerly of Frank White, now of Arthur Hurlburt; thence Eastwardly by said land formerly of Frank White, now of Arthur Hurlburt to a Mill Brook and meadow; thence Southwestwardly by the said Brook to said Main Road, and the place of beginning. Containing 300 acres more or less and being a portion of the first lot conveyed to said Grantor, by [illegible] of Fred Duncanson, by Bernard Tinkham and wife by deed dated September 30th, 1922, and recorded in the Registry of Deeds in and for said County of Yarmouth, on October 25th, 1922, in Book D.Q, Page 587."

[11] George Duncanson, the son of Keith Duncanson and grandson of Frederick Duncanson testified. He is the brother of Robert K. Duncanson. George Duncanson was the executor of his father's estate. George Duncanson stated the land conveyed by the 1964 deed was always described by his brothers and grandfather as being his father Keith's property. The land was conveyed to his mother Muriel and his brother Robert as Keith Duncanson had a judgment against him.

[12] Paul Shand, born September 18, 1946 resides in Pubnico, Nova Scotia. Since 1979 he spent six months each year at his cottage in Canaan. It was Mr. Shand's understanding the land north of the Mooney property was Keith Duncanson's land. He was told it was Keith's land by everybody in the community. Keith was the boss of the land.

[13] Eric Matthew Goodwin was born November 13, 1961. His parents owned the property to the south of the Mooney property. His family visited their property. When Mr. Goodwin was 18 he moved to the property in Canaan. Mr. Goodwin thought the land to the North of the Mooney land was Keith Duncanson's land. Everybody in the area knew Keith owned up against the Mooney line.

[14] In his direct evidence, the defendant, Robert Duncanson testified everybody thought the land conveyed by the 1964 deed was owned by Keith who acted as if it was his land. During cross-examination of Robert Duncanson, the following exchange took place:

> Question: The land was registered in the name of you and your mother?
>
> Answer: Yes.
>
> Question: Everybody in the village thought it was Keith's land?
>
> Answer: Everybody thought it was his land, yes.
>
> Question: And, in fact everybody in your family referred to it as Keith's land?
>
> Answer: Yes, they did.
>
> Question: In fact your grandfather referred to it as Keith's land?
>
> Answer: Yes.
>
> Question: That's Fred Duncanson referred to the land that's registered in your name as Keith's land. Correct?
>
> Answer: Yes.

[15] Robert Duncanson testified he heard the evidence concerning a judgment against his father but understood from his mother the judgment had been paid before 1964. Mr. Duncanson did not know why, in discovery, he said the land conveyed by the 1964 deed was his father's land.

[16] Mr. Duncanson also testified his father was terribly injured when a log fell on him in the late 1950's or early 1960's and he looked after the family after the accident. That may be why the property was conveyed to him in 1964.

[17] Neil Duncanson, brother of Robert Duncanson, was born November 2, 1944. When he was 15 or 16 years old he walked the lines in the area of the Mooney property. His grandfather and father advised him. Nobody showed him the lines. Shortly before Fraser Mooney's death Mr. Duncanson says Mr. Mooney came into his convenience store and told him that he, Fraser Mooney, thought the Dearman line was o.k. but his children had a problem with it. Everett B. Hall, the land surveyor hired by Fraser Mooney in late 2004 or 2005, stated Mr. Mooney told him the Dearman line was incorrect. I accept Mr. Hall's evidence and do not accept Neil Duncanson's evidence about his alleged conversation with Mr. Mooney.

[18] Frederick Keith Duncanson, the brother of Robert Duncanson, son of Keith Duncanson and grandson of Frederick Duncanson, was born December 9, 1939. He testified the property conveyed by the 1964 deed was thought to be his father's property by most people. It was always referred to as Keith's land. The judgment against his father may have had something to do with why the land was conveyed to his mother Muriel and brother Robert in 1964. The judgment was cleared but it took a period of time to clear it. In cross-examination, he stated he could not answer yes or no whether his father thought the land was his.

[19] Muriel E. Duncanson, Keith F. Duncanson and Robert K. Duncanson by deed dated in 1977 and recorded at the Registry of Deeds at Yarmouth, Nova Scotia on March 9, 1977 in Book K.S. at page 176 conveyed to Robert K. Duncanson and Janice D. Duncanson land which was referred to as a portion of the lands conveyed in the 1964 deed as follows:

> "THE LANDS HEREIN CONVEYED being and intended to be a portion of those lands deeded from Frederick Duncanson to Muriel E. Duncanson, Keith F.

> Duncanson and Robert K. Duncanson as joint tenants by deed dated January 17th, 1964 and recorded at the Registry of Deeds office at Yarmouth contemporaneous with the recording of this present Indenture."

[20] The land described as being conveyed in the 1977 deed is also referred to as being bounded by other lands of "Muriel E. Duncanson, Keith F. Duncanson and Robert K. Duncanson".

[21] In his Last Will and Testament dated September 13, 2000 and recorded at the Registry of Deeds at Yarmouth, Nova Scotia on November 2, 2000 in Book 603 at page 686 as number 2757, Keith Frederick Duncanson devised his home to his daughter, Carole Duncanson. The house was on land conveyed by the 1964 deed. Mr. Duncanson also devised the rest and residue of his real property to be divided equally between his seven children giving each child an equal share of the approximately four hundred acres he owned. Keith Duncanson considered he owned the land to the north of the Mooney property.

[22] I find the reference to the lands of Keith Duncanson in the 1966 deed from Frederick Duncanson to Fraser Mooney is a reference to the land conveyed to Muriel E. Duncanson and Robert K. Duncanson by the 1964 deed from Frederick Duncanson. The evidence is clear Frederick Duncanson, Keith Duncanson and members of Keith's family referred to the land conveyed by the 1964 deed as Keith Duncanson's land. It was also well known by members of the local community that Keith Duncanson owned the land to the north of the lands conveyed to Fraser Mooney by the 1966 deed.

[23] The next issue to be determined is the location of the southern boundary of the land described in the 1964 deed.

[24] Robert Duncanson hired a surveyor in 2003. He stated he went to his barn to look after his cattle and, when walking home, he saw Wayne Nickerson, who was married to one of the Mooney daughters, and another person around his logging road. They were going to run a line. Mr. Duncanson said he told them it was not their line. The man, other than Wayne Nickerson said, "That is all we can do today." The man said Mr. Duncanson will have to hire a surveyor - so Mr. Duncanson hired a surveyor. He spoke to a Frank Cottreau who worked for Ronald Dearman. He told Mr. Cottreau the line was to the right of a big rock where his Aunt Joyce used to hunt in the 1970's and part of the 1980's. In cross-

examination, Robert Duncanson conceded he may have spoken to Mr. Dearman. Mr. Duncanson just told the surveyor what he was told by his father, do not go beyond the big rock and you will be safe. Mr. Dearman surveyed a line.

[25] Fraser Mooney retained Everett B. Hall, the President and owner of Scotia Surveys Ltd., a land surveyor licensed to practice land surveying in Nova Scotia since 1964. Mr. Hall continued to work on this project after Mr. Mooney's death. He prepared a plan of survey dated June 26, 2009 and a report dated June 30, 2009. Fraser Mooney told Mr. Hall the Dearman line was incorrect.

[26] Sometime in 2005 Mr. Hall visited the property. He examined the line described by Ronald Dearman as the boundary between the Mooney and Duncanson properties. He walked the line a couple of times looking for evidence of old lines, wire fences, etc. He saw no such evidence on the Dearman line. Mr. Hall did not speak to Mr. Dearman.

[27] To locate the boundary between the Mooney and Duncanson properties he took the description in the 1964 deed which states, "Beginning on the Northern side of the Main Canaan Road, at or near the site where the mill of Isaac Hatfield once stood; ...". His firm looked for evidence of the mill. They found evidence of an old stone dam which was part of the mill operation. The description continues, "Thence westwardly by said road 300 yards or until it comes to Corning's line and land formerly of George Hurlburt, now of Job B. Hurlburt." They looked for the Corning line and found an old wire fence. The piece of fence was 932.7 feet from the stone dam instead of the 300 yards (900 feet) mentioned in the deed. Then they ran a prolongation of the fence and the prolongation was within a degree or so of the original Corning line. The boundary line run by Mr. Hall's firm corresponds to the line "AB" on the Instrument of Subdivision signed by George Duncanson. On the line run by Mr. Hall one old blaze was found midway between the road and the lake. Mr. Hall is of the opinion the old blaze was on the original grant line. Evidence of a woods road was found on the line.

[28] Mr. Hall did not look for evidence of a boundary line south of the Dearman line. Mr. Hall did see evidence of a hauling road to the south of the line he ran. He thought it looked like someone cut a load of wood. It was evidence of an encroachment not occupation.

[29] Mr. Hall did have difficulty putting the various deeds together which was partly the reason it took him from 2007 to 2009 to complete his plan of survey and report.

[30] Mr. Hall determined the southern boundary of the land conveyed to Muriel Duncanson and Robert Duncanson from Frederick Duncanson in the 1964 deed. He did not find any deeds conveying land to Keith Duncanson in the Canaan area. The instrument of subdivision signed by George Duncanson describes the lands to the north of the Mooney property as belonging to the Estate of Keith Duncanson.

[31] Derik R. DeWolfe, a licensed Nova Scotia Land Surveyor since 1984 was retained by Robert Duncanson in 2012 to survey the north boundary of the Mooney property and the south boundary of Robert Duncanson. At the time he was retained he was unaware Robert Duncanson was taking the position in this proceeding his southern boundary line was that established by R.C. Dearman.

[32] Mr. DeWolfe prepared a report and plan of survey in which he gave an opinion as to the common boundary between lands of the plaintiffs and lands of Robert K. Duncanson. His opinion is the general location of the southern boundary of Robert Duncanson's property begins at a point approximately 40 feet north of the Canaan Road sign and extends westerly to a point in a cove on Somes Lake approximately 60 feet south of the Dearman line as shown on the plan of survey Mr. DeWolfe prepared.

[33] Mr. DeWolfe stated the Mooney lot was well defined on three sides and 100 acres in size. His line was consistent with a property 100 acres in area.

[34] Mr. DeWolfe did not find any physical evidence on the ground of a boundary line for his line or the Dearman line.

[35] Mr. DeWolfe based his opinion as to the location of the boundary between the plaintiffs' property and that of Robert K. Duncanson on his opinion the reference in the 1966 deed from Frederick Duncanson to Fraser Mooney to the northern abutting landowner as Keith Duncanson was an error as Keith Duncanson did not own any property in the area, and secondly, the description set out the land conveyed contained 100 acres more or less.

[36] Mr. DeWolfe did accept the boundary line located by Mr. Hall is the "Corning" line described as one of the boundaries of the land described in the 1964 deed from Frederick Duncanson to Muriel E. Duncanson and Robert K. Duncanson.

[37] Mr. DeWolfe was of the opinion the land conveyed to Mr. Mooney in 1966 was not part of the 1964 deed to Muriel and Robert Duncanson but rather out of another lot owned by Frederick Duncanson. Prior to the completion of Mr. DeWolfe's report and plan of survey, Robert Duncanson obtained a Quit Claim Deed to the area between Mr. Hall's line and the line located by Mr. DeWolfe from Alma Hurlburt described as the heir of Frederick Duncanson.

[38] In reaching his conclusion that the plaintiffs' land was not bounded on the north by lands of Keith Duncanson, Mr. DeWolfe gave little weight to evidence the Mooney property was abutted by lands considered to be owned by Keith Duncanson.

[39] Mr. DeWolfe asked Robert Duncanson why Keith Duncanson was not a party to the 1964 deed to Robert and his mother Muriel. Robert was vague as to why Keith was not mentioned and did not give Mr. DeWolfe a definitive answer.

[40] Mr. DeWolfe may not have discussed with Robert Duncanson the 1977 deed from Muriel E. Duncanson, Keith F. Duncanson and Robert K. Duncanson to Robert K. Duncanson and Janice D. Duncanson which was described as being part of lands conveyed by the 1964 deed.

[41] Mr. DeWolfe did not follow up with George Duncanson about an instrument of subdivision signed by Mr. Duncanson as Executor of the Estate of Frederick Duncanson which showed land of the Estate of Frederick Duncanson abutting the Mooney property. Although Robert Duncanson signed an instrument of subdivision showing the boundary between the Mooney property and Robert Duncanson property in approximately the location determined by Mr. Hall, Mr. DeWolfe made no further inquires when Robert Duncanson had a concern about the location of the boundary.

[42] Mr. DeWolfe was not concerned with the fact Frederick Keith Duncanson dealt with the property to the north of the Mooney property in his Last Will and

Testament. Mr. DeWolfe was not concerned that James Stockman showed the Mooney boundary in the same location as the Hall line.

[43] Mr. DeWolfe was of the opinion Frederick Duncanson and Fraser Mooney intended the property conveyed to Mr. Mooney to contain 100 acres because the receipt written by Fraser Mooney and signed by Frederick Duncanson stated the land sold was 100 acres and the deed stated the land conveyed contained 100 acres more or less. Actually, the receipt stated the land involved was "approximately" 100 acres. On cross-examination Mr. DeWolfe agreed acreage is the least reliable indication of boundary.

[44] Considering the reference to lands of Keith Duncanson an error, Mr. DeWolfe took the reference to 100 acres as the control to the boundary between the Mooney and Duncanson lands stating in his report:

> "The fact that there is no natural boundary, no original monuments placed or recognized by survey, no possessory evidence that can be related to the original survey, leaves only the measurement of 100 acres as the control to establish the boundary between the "Mooney" lands and the "Duncanson" lands."

[45] I do not accept Mr. DeWolfe's line as it is based on the false premise that the description of the northern boundary of the Mooney lands as property of Keith Duncanson was meaningless.

[46] Paul Shand stated in the early or mid 1990's Keith Duncanson showed him the boundary between his land and the Mooney land. They entered the land around the Canaan Road sign and Mr. Shand followed Keith Duncanson. Mr. Shand thought the boundary ended at the lake in the middle of the cove or perhaps to the left of the middle of the cove. At the cove there was a spruce or hemlock tree with an "X" mark on it.

[47] Eric Matthew Goodwin testified when he first visited the area of the Mooney property he saw a boundary line marked in the area of the DeWolfe line. Later he testified he did not see the line anymore. However, he knew there was a line there before. Later a new line appeared in the area. This line he believes was cut when he was 16 or 17 years old - in any event before 1980. The line narrowed down by the lake. Mr. Goodwin remembers a mark on a big tree. There was a huge rock close to the line.

[48] Neil Duncanson testified the line was in the area of the DeWolfe line when he was 15 or 16 years old. As he was born November 2, 1944, he would have walked the line in approximately 1959 to 1961 - years before the conveyance to Fraser Mooney. His father and grandfather advised him of the line but nobody showed him the lines. Neil Duncanson found out about the Mooney deed after his father's death. He then went to the property and found a line going down by a rock going to the lake. The boundary was to the south of the rock where his Aunt Joyce used to hunt. As I previously stated, I do not accept Neil Duncanson's evidence.

[49] Frederick Keith Duncanson, the brother of Robert Duncanson, testified when he was about 12 years old in approximately 1951 or 1952 while walking with his grandfather from Little Wilson or Somes Lake, when to the right of the big rock or hunting rock where his Aunt Joyce sat, his grandfather looked south to the crook in the road and said, "This is where the line is going to be." He had no idea what his grandfather meant. Frederick Keith Duncanson also told of a conversation Fraser Mooney had with his grandfather Frederick Duncanson in approximately 1956 or 1957 when Mr. Mooney said he wanted 100 acres. His grandfather told Mr. Mooney to go to a point where the Canaan Road sign now is and go due west to the lake and that will give him 100 acres. The events recounted by Frederick Keith Duncanson are alleged to have occurred 9 to 15 years before the 1966 deed and are of no assistance in determining where the boundary line between the Mooney and Duncanson properties are located.

[50] Both Mr. Hall and Mr. DeWolfe agree that the line run by Mr. Hall is the Corning line which was the southern boundary of the property described in the 1964 deed.

[51] Robert Duncanson signed an amended Instrument of Subdivision in 2002 which showed the common boundary between his land and the Mooney lands in the approximate location of the Hall line. Mr. Duncanson testified he told his lawyer twice the line between his property and the Mooney lands was in the wrong location.

[52] Robert K. Duncanson granted a right of way to Kenny J. d'Entremont, Yvette M. d'Entremont, Weldon R. d'Entremont and Patricia M. d'Entremont by

Grant of Right-of-Way dated June 24, 2004 recorded at the Yarmouth Registry of Deeds on September 8, 2004 in Book 686 at page 728. The right of way contains the following:

> "WHEREAS d'ENTREMONT is the owner of land located on the Western side of Somes Lake located at Canaan, Yarmouth County, Nova Scotia, the deed description of which is attached hereto and marked as Schedule "A";
>
> AND WHEREAS DUNCANSON is the owner of land located on the Eastern side of Somes Lake located at Canaan, Yarmouth County, Nova Scotia, the deed description of which is attached hereto and marked as Schedule "B";
>
> AND WHEREAS DUNCANSON has agreed to grant d'ENTREMONT a 20' wide Right-of-Way, over his land for the benefit of d'ENTREMONT gaining access to Somes Lake in order to gain access d'ENTREMONT's property located on the Western side of Somes Lake;
>
> NOW THIS INDENTURE WITNESSETH THAT in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:
>
> 1. DUNCANSON grants to d'ENTREMONT a 20' wide Right-of-Way over his property as shown on the attached sketch marked Schedule "C", the said Right-of-Way to run along the Southern boundary of DUNCANSON's property for the benefit of d'ENTREMONT gaining access to Somes Lake and access to their property on the Western side of Somes Lake. The said Right-of-Way shall be for the use and benefit of d'ENTREMONT and their successors in title for all uses including passage of motor vehicles from the Gavel Road (Canaan Road) to Somes Lake."

[53] The land described as Mr. Duncanson's property in Schedule B of the right-of-way is the same property conveyed in the 1964 deed. Schedule C shows the Right-of-Way as running along the approximate location of the Hall line and is described as running along Mr. Duncanson's southern boundary. When shown the Right-of-Way at trial, Robert Duncanson testified he had seen it but did not know what it was. He did say he gave Kenny d'Entremont a Right-of-Way across his property so Mr. d'Entremont could subdivide his property.

[54] Until the DeWolfe plan was completed in 2013, Robert Duncanson took the position his line was the common boundary between his property and the Mooney

lands - that their properties adjoined each other. When Mr. Duncanson retained a surveyor in 2003 he told the surveyor, Mr. Dearman or Frank Cottreau, an employee of Mr. Dearman, the boundary was to the right of the big rock where his Aunt Joyce used to hunt.

[55] I have no confidence in Robert Duncanson's evidence. Every time he was faced with evidence against his position he could not explain it or said he did not understand it or said it was wrong but acted on it anyway. Mr. Duncanson did not know why he called the land in dispute his father's land. Before the DeWolfe survey he always considered his southern boundary abutted the Mooney property but his claim to the DeWolfe line is based on there being land between the Mooney land and the lands conveyed by the 1964 deed to Muriel and Robert. He signed Instruments of Subdivision showing the boundary between his land and the Mooney land in the approximate location of the Hall line. He testified he told his lawyer twice the boundary was in the wrong location but signed it anyway.

[56] When he commenced his action he plead the Dearman line was the boundary and after the DeWolfe survey he changed his position to claim to the DeWolfe line. Where does he think his boundary is located? He testified the land in question was always Duncanson's land and of the upset between his father Keith and grandfather Frederick when his grandfather conveyed the land to Fraser Mooney, as Keith was to have the land to the school house brook which includes the Mooney land.

[57] Mr. James Stockman operated a Forest Consulting business, Forsite Forestry Ltd. from 1980 to 2004. The company, based in Yarmouth, operated in Nova Scotia and New Brunswick. Mr. Stockman received a Bachelor of Science in Forest Resource Management degree from the University of New Brunswick in 1978.

[58] His company prepared a Forest Management Plan for Fraser Mooney in 1985 for the Mooney property in Canaan, Yarmouth County. Mr. Stockman visited the site with Fraser Mooney as part of his investigation to confirm what was on the land.

[59] The only line in question was the north boundary line. Mr. Stockman told Mr. Mooney the line needed to be confirmed. Mr. Mooney told Mr. Stockman he

knew where the line met the road. They walked up the Canaan Road past the fork and Mr. Mooney showed Mr. Stockman where the boundary was located. The boundary Mr. Mooney pointed out is the northern boundary of the lot as shown on the aerial photograph contained in the portion of Mr. Stockman's report entered in evidence.

[60] Mr. Stockman asked Mr. Mooney how he knew where the boundary was and Mr. Mooney said the former owner of the property showed him, and the owner also showed Mr. Mooney where the line met the lake. Mr. Mooney showed Mr. Stockman where the boundary line met the lake. Mr. Stockman drew a straight line between the two points and obtained a rough bearing.

[61] Mr. Stockman tried to find evidence of the line. He found no evidence of a boundary line. He found old barbed wire running in the same direction Mr. Mooney showed him. Mr. Stockman and Mr. Mooney walked the line. Mr. Stockman took sights on his compass. They followed the bearing through the fence. Mr. Stockman did not see any marks except a couple of blazes on the line which Mr. Stockman could not say were boundary blazes. However, following the bearing they did come out at the point on the lake Mr. Mooney said the former owner told him was the boundary line.

[62] During the visit Mr. Stockman did not see any evidence of recent cutting on the property. There was an old woods road from the 40's or 50's at least 800 feet in from the Canaan Road. There were 30 to 40 old woods roads on the property. There was evidence of old logging roads going back 50 years.

[63] Mr. Stockman's company did some cutting on the south side of the driveway to the Mooney cottage. Mr. Stockman would not cut on the north side of the driveway without the boundary line being established.

[64] In section 9 of the Mooney property as set out in the Forest Management Plan the trees were not of merchantable size. The trees were under ten years old and Mr. Stockman recommended trimming. The area could have been cut ten or twenty years earlier.

[65] Mr. Stockman denied Fraser Mooney told him to speak to Neil or Keith Duncanson about the location of the north boundary of the Mooney property. Mr.

Stockman testified he did not need to speak to anyone as Mr. Mooney told him where the boundary was located.

[66] I found Mr. Stockman gave his evidence in a forthright, careful manner - not favouring one party over another but rather, just testifying as to what he observed on the ground and what took place. The northern boundary of the Mooney land as shown in the Forest Management Plan he prepared is in the approximate location of the Hall line. I give a great deal of weight to Mr. Stockman's evidence.

[67] The 1966 deed from Frederick Duncanson to Fraser Mooney ends with the phrase "and containing One Hundred (100) acres more or less". Mr. DeWolfe testified he considered it was the intention of the parties that the land conveyed be 100 acres in area because of that phrase and the receipt signed by Frederick Duncanson for the purchase of land approximately 100 acres on Somes (Little Wilson) Lake. However the description prior to the phrase concerning acreage, contains a sufficient description to ascertain definitely what was to be conveyed.

[68] The maxium - *falso demonstratio non nocet cum de corpore constat* is described in *Anger & Honsberger Law of Real Property Third Edition* at section 25:90 at page 25-39 October 2012 as follows:

> "Apart from the question of mutual mistake, there is a legal maxim respecting interpretation of deeds - *falsa demonstratio non nocet cum de corpore constat*. It may be freely, although inadequately, translated as "a false demonstrative particular or reference does not prejudice what was clear before". ... In its application to property, the maxim means that if there is a sufficient description in a conveyance to ascertain definitely what is intended to pass, a subsequent erroneous addition or error in the description does not vitiate the conveyance and may be rejected. The characteristic of the cases within the rule is that the description, so far as it is false, applies to no subject at all and, in so far as it is true, applies to one only. The rule is not confined to cases where the first part of the description is true and the latter is untrue, it being immaterial in which part of the description the *falsa demonstratio* occurs.

[69] Mr. Hall testified most deeds will attempt to give acreage but, in his opinion, such a statement was at best a guess.

[70] Although Mr. DeWolfe premised his opinion on the reference to 100 acres in the 1966 deed as the control to the boundary between the Duncanson and Mooney lands, he agreed on cross examination acreage is the least reliable indication of a boundary.

[71] Bryson, J.A. in giving the Court's judgment in *Podgorski v. Cook* 2013 NSCA 47 stated:

> ... "But a description that refers to property as one acre "more or less" is imprecise. The case law is replete with erroneous acreage estimates; for extreme examples see: Aberg v. Rafuse, (1979) 36 N.S.R. (2d) 56 deed: 374 acres - actual: 58 acres; Bent v. Nova Scotia Farm Loan Board, (1978) 30 N.S.R. (2d) 552 deed - 576 acres actual - 446 acres." ...

[72] Another example is *Amos v. Helmke* (1981), 45 N.S.R. (2d) 69 (N.S.S.C. - A.D.) - deed 200 acres - actual 110 acres in which MacKeigan, C.J.N.S. in giving the Court's judgment commented on rural deed descriptions at paragraph 32:

> "Anyone who has searched country titles in areas such as Halifax and Lunenburg Counties would confirm that the old description here is a model of clarity and accuracy compared with the old, imprecise, homemade descriptions so often encountered."

[73] I am satisfied on the whole of the evidence the 1966 deed was intended to convey the lands bounded by the lands of Keith Duncanson, Somes or Little Wilson Lake, the School House Brook and the Canaan Road and was not a sale by acreage. The phrase in the deed stating the land contains 100 acres more or less is a *falsa demonstratio*.

[74] Considering all of the evidence, I find the line surveyed by Mr. Hall is the southern boundary of the lands conveyed in the 1964 deed and the northern boundary of the lands conveyed to Fraser Mooney in 1966.

[75] In the alternative, Robert Duncanson is seeking a declaration he is the owner of the lands between the Hall line and the Dearman line by virtue of adverse possession.

[76] The relevant sections of the *Limitations of Actions Act*, R.S.N.S. 1989 c. 258 state:

> "...10 No person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress or to bring such action first accrued to some person through whom he claims, or if such right did not accrue to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing the same. R.S., c. 258, s. 10.
>
> 13 No person shall be deemed to have been in possession of any land, within the meaning of this Act, merely by reason of having made an entry thereon. R.S., c. 258, s. 13.
>
> 22 At the determination of the period limited by this Act to any person for making an entry, or distress, or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, or action respectively might have been made or brought within such period, shall be extinguished. R.S., c. 258, s. 22.

[77] The type of possession required to advance a claim of adverse possession is well established. In *Anger & Honsberger: Law of Real Property Third Edition* at section 29:60:80 page 29-19, October 2012, it states:

> "Whether there has been sufficient possession of the kind contemplated by the statute is largely a question of fact in each case in which due regard is to be had to the exact nature and situation of the land in dispute. Possession must be considered in every case with reference to the peculiar circumstances, for the facts constituting possession in one case may be wholly inadequate to prove it in another. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to their own interests, are factors to be taken into account in determining the sufficiency of possession."

and the necessary possession described at page 29-21 October 2012.

> "The possession that is necessary to extinguish the title of the true owner must be "actual, constant, open, visible and notorious occupation" or "open, visible and continuous possession, known or which might have been known" to the owner, by some person or persons not necessarily in privity with one another, to the

> exclusion of the owner for the full statutory period, and not merely a possession which is “equivocal, occasional or for a special or temporary purpose”.

[78] The type of possession necessary was addressed by Jones, J.A. in giving the Court’s judgment in *Conrad v. Nova Scotia (Attorney General)* [1994] N.S.J. No. 564 (C.A.) at paragraph 25:

> ... “In Sherren v. Pearson [1888], 14 S.C.R. 581 and Wood v. LeBlanc [1904], 34 S.C.R. 627 the Supreme Court of Canada dealt at length with the type of possession necessary to extinguish the title of the true owner. In Wood v. LeBlanc, Davies J. stated at p. 633:
>
> > ...The nature of the possession necessary to do this in the absence of colourable title was fully considered by this court in the case of Sherren v. Pearson, 14 Can. S.C.R. 581. It was there decided that isolated acts of trespass committed on wild lands from year to year will not, combined, operate to give the trespasser a title under the statute.
> >
> > In the carefully reasoned opinions of the judges in that case statements on the point are made which do not seem to leave the matter open to any doubt. Chief Justice Ritchie formally approved of the law as laid down in Doe d. DesBarres v. White 3 (N.B. Rep.) 595 and at page 585 goes on to say:
> >
> > > ‘To enable the (trespasser) to recover he must show an actual possession, an occupation exclusive, continuous, open or visible, and notorious for twenty years. It must not be equivocal, occasional or for a special or temporary purpose.
> >
> > And in another place he says,
> >
> > > The trespasser to gain title must as it were "keep his flag flying over the land he claims."
> >
> > Strong J. and Fournier J. concurred. Taschereau J., (now the Chief Justice of this court, said (pp. 594-5):
> >
> > > The fact that the wrongdoer or trespasser supposes he has a claim or title to the land does not alter the character of his acts. His unfounded belief cannot diminish or destroy the legal claims of the

> true owners or deprive them of their right to treat him as a wrong doer in entering on their land. The effect to be given to repeated entries upon the land, or acts of user or possession, depend largely upon the nature of the property. What might be sufficient evidence in the case of cultivated lands to go to a jury would not constitute any evidence in those of wilderness lands. If the property is of a nature that cannot easily be protected against intrusion, mere acts of user by trespassers will not establish a right.
>
> Owners of wilderness or wooded lands lying alongside or in rear of other cultivated fields are not bound to fence them or to hire men to protect them from spoliation. The spoiler, however, does not by managing without discovery even for successive years to carry away valuable timber, necessarily acquire, in addition, title to the land. The law does not so reward spoliation.

Henry J. said, (page 592):

> Numerous acts of trespass only amount to so many acts of disseisin; when a man trespasses on the land the true owner ceases to have full possession for the time being; but the moment the trespass is at an end the trespasser's disseisin is at an end and the complete possession is again in the actual owner. It is therefore required that the party should not only take possession, not only disseise the owner, but that he should continue that disseisin so as to amount to an ouster, and that ouster maintained for the statutory period. That can only be done by some act of possession not merely by a temporary disseisin, and it must be over every inch of land of which the party claims possession." ....

[79] *In Spicer v. Bowater Mersey Paper Co.* [2004] N.S.J. No. 104 (C.A.) Roscoe, J.A. in giving the Court's judgment stated at paragraphs 12, 18 and 20:

> [12] What must be proven in order for a squatter to establish adverse possession as against a true owner was clearly stated by MacQuarrie, J. in Ezbeidy v. Phalen (1958), 11 D.L.R. (2d) 660 (N.S.S.C.) at p. 665:
>
> > ... where there is a contest between a person who claims by virtue of his title, as the defendant does here, and a person who claims by long adverse possession only, such as the plaintiff must rely on here, there is first of all a presumption that the true owner is in possession, that the seisin follows the title. This presumption is not rebutted or in any way affected by the

fact that he is not occupying what is in dispute. In order to oust that presumption it is necessary to prove an actual adverse occupation first which is exclusive, continuous, open and notorious, and after that has been proved, the position is that the owner is disseised and the other person is in possession. If that person who is in adverse possession continues openly, notoriously, continuously and exclusively to exercise the actual incidents of ownership of the property, that possession in time ripens into title: cf. Lord Advocate v. Lord Lovat (1880), 5 App. Cas. 273.

In Des Barres v. Shey (1873), 29 L.T. 592, Sir Montague Smith, delivering the judgment of the Judicial Committee, said, p. 595:

> 'The result appears to be that possession is adverse for the purpose of limitation, when an actual possession is found to exist under circumstances which evince its incompatibility with a freehold in the claimant.'

Cf. Halifax Power Co. v. Christie (1915), 23 D.L.R. 481, 48 N.S.R. 264.

What the person in adverse possession gets is confined to what he openly, notoriously, continuously and exclusively possesses. Possession of a part is not possession of the whole as between an actual possessor and an actual owner.

Possession may be roughly defined as the actual exercise of rights incidental to ownership as such, that is, the person who claims to be in possession must exercise these rights with the intention of possessing. Where a man acts toward land as an owner would act, he possesses it. The visible signs of possession must vary with the different circumstances and physical conditions of the property possessed. [emphasis added]

[18] In Sherren v. Pearson (1887), 14 S.C.R. 581 , Henry J. who agreed with the majority, said:

> In all the provinces the law is well settled that acts of trespass cannot amount to what the law requires to give title under the statute of limitations, that is, the ouster of the true owner. An act of trespass in going on the property amounts to a disseisin for a time, but it is not an ouster; what the law requires is an ouster of the owner for twenty years. Numerous acts of trespass only amount to so many acts of disseisin; when a man trespasses on the land the true owner ceases to have full possession for the time being; but the moment the trespass is at an end the trespasser's

> disseisin is at an end and the complete possession is again in the actual owner. It is therefore required that the party should not only take possession, not only disseise the owner, but that he should continue that dissiesin so as to amount to an ouster, and that ouster maintained for the statutory period. That can only be done by some act of possession not merely by a temporary disseisin, and it must be over every inch of the land of which the party claims possession. [emphasis added]
>
> [20] From this review of the authorities it is clear that the claimants of possessory title have the burden of proving with very persuasive evidence that they had possession of the land in question for a full 20 years and that their possession was open, notorious, exclusive and continuous. They must also prove that their possession was inconsistent with the true owner's possession and that their occupation ousted the owner from its normal use of the land. As well, possession by a trespasser of part is not possession of the whole. Every time the owner, or its employees or agents, stepped on the land, they were in actual possession. When the owner is in possession, the squatter is not in possession."

[80] The following evidence was adduced concerning any adverse possession. Everett Hall saw evidence of a hauling road and it looked to him as if someone had cut a load of wood. James Stockman saw no evidence of recent cutting. He did see evidence of 30 to 40 old woods roads going back 50 years before his report of 1985. In the area defined in his report as area 9, in the area between the Hall and Dearman lines, he observed trees under 10 years old. Mr. Stockman agreed trees could have been cut in the area 10 or 13 years earlier or perhaps 20 years earlier.

[81] Robert Gable hunted in the area Mr. Duncanson is claiming by adverse possession from approximately 1992 to 2006 and 2007 and did not see any evidence of human activity.

[82] Peter Wood testified he and Robert Duncanson cut firewood and logs on the property in issue every year throughout the 1970's. He also saw Roland Hurlburt, Robert Duncanson's uncle cut wood a few times.

[83] Paul Shand who hunted on the land in the 1990's saw old stumps and evidence of old cutting. He never saw anyone working the land in dispute, except when Neil Duncanson cut his road.

[84] Robert Duncanson testified in 1974-1975 he cut 40 or 50 logs in the area between the Hall and Dearman lines for use in building his house. In the early 1970's his uncle, Roland Hurlburt cut wood between the Dearman and DeWolfe lands for three or four years but only for a week or so each year. Mr. Duncanson said he cut hardwood from before he had the land until six or seven years ago - cutting a couple of cords a year to use as firewood. When a tree needed to be thinned or taken out, Mr. Duncanson would cut the tree. He cut all over the land taking more wood from some places than others. Mr. Duncanson hunted on the land but not for years. Mr. Duncanson's Aunt Joyce hunted in the area in the 1970's and 1980's. He constructed a road with his tractor which he purchased in 1983. Mr. Duncanson cannot remember when he stopped logging but agreed it could have been in the early 2000's. Mr. Duncanson continued to cut firewood after 2002-2003. In his discovery, he testified the last time he cut firewood was 2002-2003. Mr. Duncanson testified he cut a little bit of firewood six years ago. He would cut the odd tree. He cut four to five cords of wood on the point in 2003-2007. In cross examination he mentioned a few years ago he planted Christmas trees saying he forgot to mention the Christmas trees at his discovery and agreed it was probably the first time he mentioned Christmas trees. In summary, Mr. Duncanson testified he cut wood six or seven times a year, hunted once or twice a year, and walked the land once a month. Mr. Duncanson testified he never did anything to keep people out of the area he was claiming.

[85] Marilyn Webster stated the area in dispute was not used by her or members of her family. She was not aware of any activity between the Hall and Dearman lines. She said the only time she heard chainsaws at the cottage, other than when the road was cut out in 2007, was when she occassionaly heard one on the Goodwin property - the Goodwins were the Mooneys neighbours to the south. She would occasionally hear a chainsaw in the summer.

[86] Grace Allison Nickerson testified the land between the Hall and Dearman lines was not used and her mother, Barbara Ann Mooney, liked the land as it was. Ms. Nickerson stated she never heard chainsaws and never saw any evidence of logging.

[87] Both Dorothy Leone Melanson and Elaine Marie Mahar stated the area in dispute was not used with Ms. Melanson, adding there were no plans to use the area.

[88] I find that Robert Duncanson exaggerated the use he made of the land he is seeking to claim by adverse possession. Mr. Stockman testified when he visited the lands in 1985, although he saw many old woods roads, he saw no evidence of recent cutting. In the course of preparing his report, Mr. Stockman determined the wood growing throughout the area. Mr. Stockman did comment on area 9 where the trees were under 10 years old and that might well have been the area Mr. Duncanson cut the 40 to 50 logs in 1974-1975. In the 1990's Paul Shand saw evidence of old cutting but did not see anyone working on the land in dispute. Robert Gable hunted in the area from approximately 1992 to 2006 or 2007 and did not see any evidence of human activity. The Mooney siblings did not see anyone cutting in the area, hearing only the occasional chainsaw during the summers. In his discovery, Mr. Duncanson said the last time he cut firewood was 2002-2003, but at the trial, testified he cut firewood six years ago. At the trial, for the first time Mr. Duncanson mentioned Christmas trees which he forgot to mention at the discovery. The usage of the land described by Robert Duncanson conflicts with what was observed by other individuals who testified as to what they observed on the land. Mr. Duncanson's summary of the use made of the land is cutting wood possibly six or seven times a year, hunting once or twice a year, and walking on the land once a month.

[89] I find any use made of the area between the Dearman and Hall lines by Robert Duncanson was not sufficient to extinguish the plaintiffs' title under the *Limitations of Actions Act, supra*. The acts were not exclusive, continuous, and notorious as required by the Act.

[90] Mr. Duncanson's claim for title to the area between the Dearman and Hall lines by virtue of adverse possession fails and his claim is dismissed.

[91] The plaintiffs are entitled to and shall have a Declaration the boundary line between their property, and the property of Robert K. Duncanson is the boundary line shown on the Plan of Survey No. Y8377-07 prepared by Everett B. Hall, N.S.L.S. No. 323 dated June 26, 2009 described in the Further Amended Statement of Claim as follows:

> "**ALL** that certain boundary line situated on the west side of Canaan Road No. 401, at Canaan, County of Yarmouth, Province of Nova Scotia, being shown on Plan No. Y8377-07, Plan of Survey showing former lands of J. Fraser Mooney

and Barbara Ann Mooney, now lands of the Estate of Barbara Ann Mooney at civic #1519 Canaan Road No. 401, Canaan, County of Yarmouth, Province of Nova Scotia, dated June 26, 2009, as prepared by Everett B. Hall, Nova Scotia Land Surveyor, and being more particularly bounded and described as follows:

BEGINNING at a placed survey marker located on the westerly side line of Canaan Road No. 401, on a grid bearing of South 78 degrees 51 minutes 28 seconds East a distance of 22,902.37 feet from Nova Scotia Coordinate Monument No. 26213, said survey marker marking the southeasterly corner of lands of Robert K. Duncanson, and marking the northeasterly corner of lands of the Estate of Barbara Ann Mooney said survey marker marking the Easterly extremity of the herein described boundary line.

THENCE in a northwesterly direction along the mutually agreed upon boundary line marking the southerly side line of lands or (sic) Robert K. Duncanson and the northerly side line of lands of the Estate of Barbara Ann Mooney, on a grid bearing of North 62 degrees 59 minutes 06 seconds West a distance of 1,976.93 feet to a placed survey marker located on the easterly shoreline of Somes Lake, said survey marker marking the westerly extremity of the herein described boundary lines.

The herein above described boundary line being shown on the above mentioned plan of survey as the Southerly boundary of lands of Robert K. Duncanson and the Northerly boundary of lands of the Estate of Barbara Ann Mooney."

[92] If the parties cannot agree I will hear them on the issue of costs.

Coughlan, J.