

A Boundaries Act Hearing

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Cadastral and Engineering Surveys Committee.

Foreward:

On behalf of the Cadastral and Engineering Surveys Committee, I submit for publication a condensation of a hearing pursuant to the provisions of the Boundaries Act.

It is hoped that the publication of these hearings will give the Surveyors some insight into the problems encountered with surveys that require a resolution. I advise that further condensations will be forwarded for future issues of our publication.

THE BOUNDARIES ACT

(R.S.O. 1960, C. 38)

In the matter of the Boundaries Act
AND

In the matter of an application for the confirmation on the ground of the northerly boundary of Lots 3 and 4 on the north side of "K" Street, west of "A" Street, in the Village of "M", according to Plan 100 (being Part of Plan 5), registered in the R.D. for the R.D. of the County of "C"; being also the northerly boundary of Instrument 25369 registered in the said R.O.

This is an Application made by Mr. "M", the registered owner of the aforementioned lands, to have the northerly boundary of his property confirmed in accordance with a plan of survey prepared by Surveyor "A", dated June, 1964.

This Application came before me in my office at Toronto, at 2:00 o'clock in the afternoon of March, 1965.

At this time there appeared before me:

Mr. "M" - Applicant
Surveyor "A" - Ontario Land Surveyor
(Surveyor for the Applicant)

Prior to the Hearing a letter was received from a firm of Solicitors on behalf of Mr. "S", the owner of the lands north of the boundary under application.

In this letter Mr. "S"'s lawyer brought to the attention of the Director the fact that Surveyor "B", had in July of 1963 surveyed the boundary under application, and located the line approximately two feet away from the line by Surveyor "A". The letter further stated that the Surveyor "B" boundary was in

accordance with the remnants of an old fence, the butts of which still existed. The letter concluded by stating that these matters were brought to the attention of the Director of Titles in the capacity of amicus curia.

In the Hearing, Surveyor "A" explained his method of survey, and stated that he was not in a position to give direct evidence as to the existence or otherwise of the conflicting evidence mentioned in the letter from the Solicitors. After exploring the matter in depth with the Applicant, the Applicant's surveyor and my own survey staff, the Hearing was adjourned to enable my surveyors to view the lines in question. The parties concerned agreed to a reconvened hearing subsequent to the field examination.

This matter came before me for the second time on the 10th day of August, 1965, at 11:30 in the forenoon.

At this time there was placed before the Hearing a report and plan prepared by my Examiner of Surveys. My Examiner of Surveys explained that this examination survey had located the butt of an old corner fence post at the extreme west end of the line in question. The said post was 2.25 feet south of O.L.S. "A"'s line, and the remains of an old burnt shed was found running along 80 feet of the line in question, the floor and wall of which was still distinguishable. This 80 foot long shed projected south of O.L.S. "A"'s line by 2.3 feet at the west end and 2.04 feet at the east end. West of the shed a new frame fence was found approximately 2 feet south of the production easterly of O.L.S. "A"'s line, and 4 foot wide cedar hedge, the north face of which was 2 feet south of O.L.S. "A"'s line. At the Albert Street end of the produced line, the floor of a very old shed was found to project 1.33 feet south of O.L.S. "A"'s line at its west corner, and 2.04 feet south of O.L.S. "A"'s line at its east corner. At the east end of the line under application an iron subdivision bar was found 2.25 feet south of O.L.S. "A"'s iron bar, and at the Albert Street end of the produced line a subdivision bar was found 2.16 feet south of O.L.S. "A"'s bar. It was explained that a composite of all of this evidence pointed strongly to the existence of a prior survey and that to upset such evidence, O.L.S. "A" would have to present better evidence. It was pointed out that it is not sufficient to lay down theoretical lines in direct conflict with old peacefully settled occupation; the problem is to locate the

lost lines not where they should have been, but where they were in fact actually located. The original surveys, no matter how crude, must prevail against imaginary theoretical lines. In this regard the Common Law principle of onus of proof is of paramount importance.

"Ei incumbit probatio, qui dicit, non qui negat — The proof lies upon him who affirms, not upon him who denies."

Surveyor "B" was placed under oath and explained his method of survey in 1963. He stated that after establishing the line according to a net theoretical measurement, he found that his positioning harmonized with the frame shed, which is referred to in this Order as the burnt shed, which at that time was intact, and that he considered the occupational evidence located at that time as contributory evidence to his positioning. It was shown in the Hearing that both surveyors had established the line in question according to theoretical measurements in accordance with the original plan, however, it was noted that the positioning of the same point differed by 2.25 feet. Surveyor "B" explained that although both surveyors were working in accordance with the plan, using net measurements, they were working from opposite directions towards the lost point.

After listening to all the evidence, and in consequence of the field examination by my own staff, I am satisfied that the best evidence available of the original positioning of the boundary in question is the peacefully settled occupation as it exists today, or its resurrection in accordance with the principles of retracement. It is emphasized that the possessory evidence so accepted is considered to be secondary evidence of the lost survey line, and in no way relates to adverse possession under the Statute of Limitations.

Having given full consideration to all the evidence before this Hearing, and for the reasons set out in this Order, and in reliance of all the material filed in connection with this Application, on the evidence adduced and the law applicable, I am of the opinion that the plan under application cannot be confirmed in its present position, and do hereby confirm the line under application as being a straight line joining the butt of the corner fence post on John Street to the found subdivision bar of Surveyor "B", placed at the north-west angle of Lot 1; the fence post and subdivision bar being those points shown on the plan by my Examiner of Surveys presented to the second Hearing.

DIRECTOR OF TITLES