

A Boundaries Act Hearing

BY G. R. WILSON

Cadastral and Engineering Surveys Committee.

THE BOUNDARIES ACT

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

In the matter of the Boundaries Act
AND

In the matter of the eastern boundary of the lands described in Instrument No. _____ registered in the R.O. for the _____ of _____ in Book E.N., being part of the eastern boundary of Lot "E" according to R.P. "O", registered in the said R.O.

This is an application by Mr. and Mrs. "H" for the purpose of confirming the true location on the ground of the eastern boundary of the lands described in the above Instrument in accordance with a draft plan of survey made by Surveyor "A", dated _____ 19_____.

This application first came before me in my office at 10:30 o'clock in the morning in January _____ 1964.

Prior to this time written objections were received from:

Surveyor "X", on behalf of his employer.

Solicitor "X", the owner of the lands on the east of the boundary under application,

and a written statement was received from Company "S", the owner of the lands immediately to the south of the applicants' land, that the Company considers its lands to extend to the centre line of the presently existing creek, and that the Company asks leave to make such further representations and objections at the Hearing as it may be advised.

At this Hearing there appeared before me the following parties:

For the Applicant —

Solicitor "A"

Surveyor "A"

Surveyor "B"

For the Objectors —

Solicitor "X",

representing himself

Mr. "Y", representing

Company "S"

Surveyor "X", and

Solicitor "Z",

representing his municipality.

Surveyor "B" was sworn and gave evidence as to the method of the survey upon which the application is based. The line in question was originally surveyed and created in 1874 by Peter S. Gibson, Provincial Land Surveyor, who surveyed and prepared Registered Plan

"O". The particular boundary in question is shown on Plan "O" as a natural feature, namely the creek flowing in a southerly direction through the lands subdivided by Plan "O". The ties to this creek from undisputed points on either side determine the fact that the creek had apparently moved towards the west approximately 63 feet at the northern extremity of the boundary in question.

The Objectors' contention at this Hearing was, basically, that the terrain in the vicinity of the creek was such that it would have been physically impossible for the creek to ever have been in the position as stated on Plan "O", and that the original surveyor, Peter S. Gibson, had made an error in preparing his plan.

The Hearing was re-convened at 10:30 o'clock in the morning on the 13th day of August, 19_____.

A report titled "Old Stream Relocation at "Blank" Street East, had been prepared by "T" and Associates Ltd., a firm of soil mechanics consultants, signed by _____ which indicated that the stream has progressively migrated across the area in question and that the stream appears to be cutting the valley floor in a westerly direction. It states in conclusion that to positively confirm the eastern extent of the former stream bed, a trench would have to be dug in the approximate location and obtain a continuous profile of the soils.

In addition to the report, a letter was also received from and signed by the Director of the Department of Physiography of the Ontario Research Foundation, which states in part, "I think it is quite clear that the stream has been at some time in every position within the valley."

From this, it seems apparent that the question raised at the first Hearing, namely, that the topographical conditions in the area would not permit the stream ever to have been in the position indicated on the applicants' plan, was not founded on fact. The report and the letter from the consultant indicate that the stream at one time was located there and possibly even east of the line at some time.

Solicitor "X" brought out the point that there are trees of substantial size in the area in question and that in his opinion this would indicate that the stream could not have moved across within the life of these trees, without having the trees washed away. He also suggested that the determination of the age of

these trees would be conclusive evidence that the creek had not moved across their position within the time of their first appearance to the present time. It was Solicitor "X" 's opinion that this evidence could be considered better evidence than that stated in the report, since the question of time was of great importance. Obviously the report prepared from the soil tests could not date the time of the movements of the creek across the valley floor, and we are certainly not concerned with the creek's position before the original survey in 1874.

The Hearing was again adjourned so that a determination of the age of the large trees in the contested area be obtained.

A report by Dr. "L", Professor, Faculty of Forestry, University of Toronto, was presented. This dealt with the two large willow trees located in the area of dispute and stated in summary, that the total age of the one was not more than 78 years and the total age of the other not more than 76 years.

Therefore, the original survey of Plan "O" in 1874 pre-dated the two largest trees in the area disputed by at least 12 years.

Solicitor "X" in the third Hearing stated that he was of the opinion that the original measurements (which locate the creek as shown on Registered Plan "O"), along the south boundary of "Blank" Street were in error.

He suggested that the surveyor might have triangulated across the valley from crest to crest and measured the original plan distance of 5.91 chains as a slope distance, omitting to correct to a horizontal distance. He presented no evidence to support his opinion. After due consideration, I am of the opinion that the original plan and field notes must speak for themselves and can only be varied if they can in fact be shown to be wrong. The original plan shows that the distance between the north-west angle of Lot E and the creek as 5.91 chains. The plan also shows that distance from the creek to the north-east angle of Lot D to be 3.30 chains. The original field notes repeat these measurements and elaborate on their accuracy by the surveyor adding the word "about" to them. It would appear that there is no basis for suggesting that the surveyor may have shown erroneous slope measurements on his field notes and plan. The word "about" following the measurements indicates in my opinion that the measurements were not intended to be precise measurements but were considered by the surveyor to be approximately correct. In this regard, it was pointed out in the Hearing that the accuracy of the original

measurements to the creek could be verified today by adding the west distance to the east distance and determining if the total measurement agreed with the distance between the undisputed extreme limits of this line. In this regard it was stated by the applicants' surveyor that the overall distance between the north-west angle of Lot 3, and the north-east angle of Lot D agreed with the measurement obtained by adding together the two original plan measurements to the creek.

With reference to the objection by Company "S", their lands were found to be entirely outside of the area in question, and are in no way affected by the line under application.

The objection from the municipality signed by Surveyor "X", was studied in the Hearing. The objection states:

"Where an accretion or erosion takes place gradually and imperceptibly, the title to land is added to or diminished as the case may be."

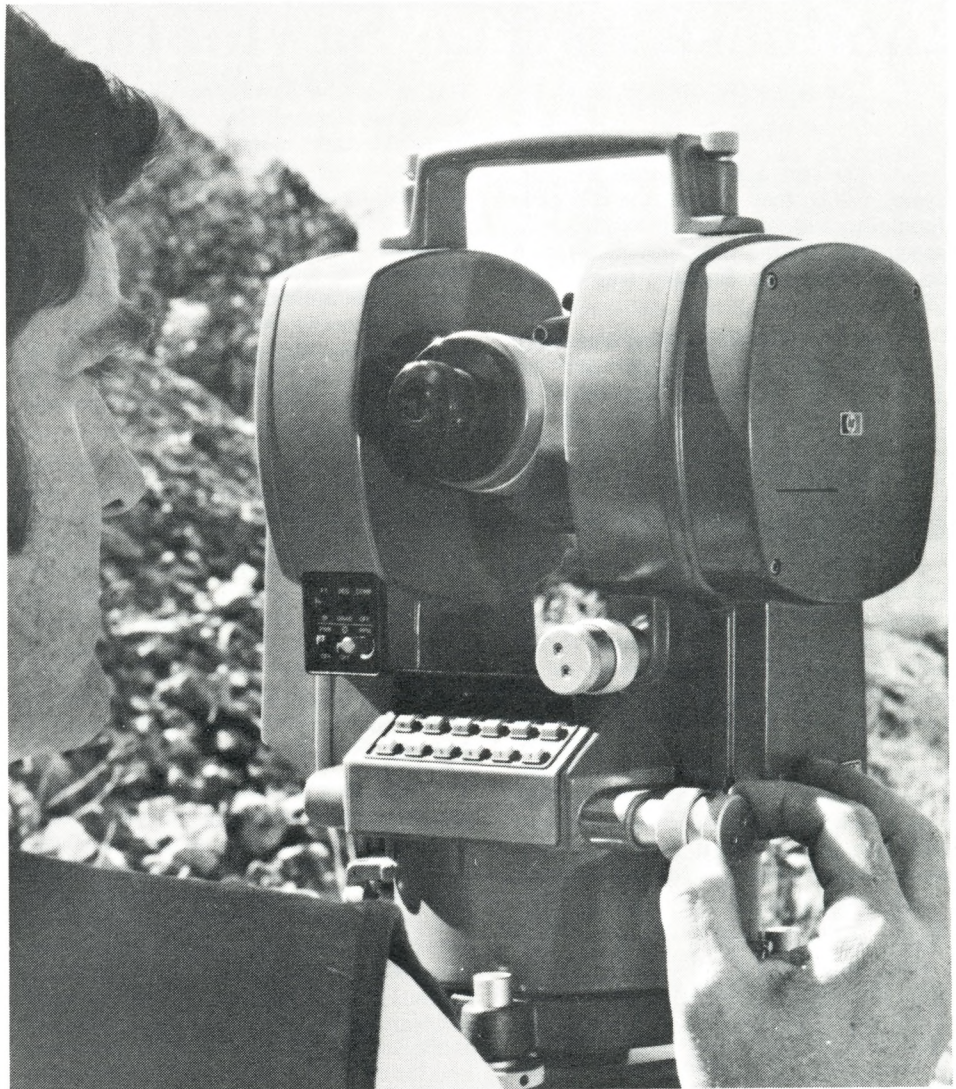
It was pointed out to Surveyor "X", that the Boundaries Act is not concerned with rights which may have been acquired in and around boundaries, but is concerned only with the true location on the ground of lost boundaries; such boundaries being re-established according to the best available evidence of their original positions. My decision as to the location of the creek appearing on Registered Plan "O" is in no way concerned with title to the lands which the creek crosses. My concern is only as to where in actual fact the creek shown on Plan "O", was located on the 4th day of June, 1874.

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 objections must fail. I am of the opinion further that the original Plan "O" together with material brought in support before this Hearing, constitutes the best available evidence of the true location on the ground of the creek dividing Lot E and D.

I do therefore order that the disputed boundary be confirmed in accordance with the plan under application, being a plan of survey by Surveyor "A", dated 1963 with additions and revisions dated 1964.

I do further order that a final plan be prepared of this confirmed boundary to the satisfaction of my Examiner of Surveys, and that all monuments conflicting with the confirmed position be removed.

DIRECTOR OF TITLES



The Hewlett-Packard 3820A Electronic Total Station

The 3820A is a combination electronic one second theodolite, laser E.D.M. with a 5km range, and a micro-processor. It boasts an automatic level compensator. Once the fish-eye level is centered, a bi-directional electronic level sensor measures the mis-level along the trunnion and telescope axes, automatically compensates for mis-level and displays corrected horizontal, as well as vertical, angles.

Directions and angles (differences

between directions) are available, as are slope, vertical and horizontal distances.

A 12 oz. NiCd battery in the left trunnion powers the instrument continuously for four hours.

The instrument, including battery, weighs only 23 lbs., and costs \$17,750 U.S.

Data may be outputted to a peripheral device in the form of a 56 bit word consisting of 14BCD digits. A battery powered semi-conductor memory therein can store from 1000 to 4000 lines of data.



**SURVEYORS
ON THE
MOVE**

Lyn Cole, formerly of Napanee, then in Toronto with the Dept. of Energy, Mines and Resources, is now in Ottawa, with the Legal Surveys Branch of E.M.R.