

# A Boundaries Act Hearing

BY G. R. WILSON  
Cadastral and Engineering Surveys  
Committee.

## THE BOUNDARIES ACT, 1959

7-8 Eliz. II, 1959, c. 8.

In the matter of the Boundaries Act,  
1959

AND

In the matter of Parcels 6846 S.W.S.,  
6879 S.W.S., and 6890 S.W.S.

This is a hearing under Section 7 of the Boundaries Act, 1959, to establish the true location of the boundaries of Parcels 6846 S.W.S., 6879 S.W.S., and 6890 S.W.S., being parcels registered in the Land Titles Office, the respective owners of which are Mr. "T", Mr. "K" and Mr. "F.H.". Parcel 8033 being a severance from the "T" parcel, is now owned by one Mr. "H".

These proceedings have been initiated by me as Director of Titles, under Sections 7 and 15, inclusive, The Boundaries Act, 1959, 7-8 Elizabeth II, Chap. 8.

Upon this hearing there appeared before me —

For Mr. "T" and Mr. "Hy" (the now owner of the "F.H." Parcel (6890 S.W.S.) — K. E. Maki,

For Mr. "K" — F. A. Eloranta  
Mr. "H", in person (Parcel 8033 S.W.S.)

Upon hearing the representations of Counsel, the Surveyors, and the individual parties, the facts and records in their chronological order appear to be as follows:

1. 1903, Mr. "F.H." located on the west half of Lot 2 Concession 5 and the south-east corner of the north half of Lot 3 Concession V, both in the Township of Lorne, District of Sudbury.

2. 1918, W. S. Stull, O.L.S., surveyed and monumented the line of division between the north and south half of Lot 3 Concession V and at the point of intersection of this division line with the east limit of Lot 3 planted an iron bar. (This iron bar has been found in subsequent surveys.) A portion of this division line was then and still is fenced.

3. April 4th, 1924, Mr. "T" applied for Patent to the south half of Lot 3 Concession V Township or Lorne, and as appears by his affidavit No. 3 —

- (a) he had been an actual resident upon, had cultivated the land continuously for 6 years and was resident thereupon (since 1917);
- (b) he had constructed a house 20'

x 16', a barn 30' x 30', a hay barn 50' x 22', a bath house 18' x 12', a stable 20' x 28' and cleared 30 acres;

- (c) that there were no adverse claims to or occupation of the said land;
- (d) and in affidavit No. 1, sworn on the same day (April 4th, 1924) he deposed that the said land is wholly unoccupied and unimproved, except 30 acres cleared and the buildings he had built as itemized above.

4. Sometime after Messrs. "T" and "F.H." had located on their lands, one Mr. "K" located on the north half of Lot 3 Concession V and a smaller parcel in the north-west corner of Lot 2, Concession V, (the boundaries of which lesser parcel are not involved in this matter). 5. Subsequently on the 7th of October, 1924, Mr. "K" applied for purchase of the north half of Lot 3 Concession V and the small part of Lot 2, saving and excepting part of Lot 3 Concession V and the small part of Lot 2, saving and excepting part of Lot 3 Concession V occupied by "F.H.", and upon which Mr. "F.H." has his buildings, and described as follows:

Commencing at the south-east angle of the said north half of Lot 3 and running northerly and along the eastern boundary thereof six hundred and thirty (630) feet; thence westerly and parallel with the southern boundary of said north half a distance of four hundred and twenty (420) feet; thence southerly and parallel with the eastern boundary of said north half six hundred and thirty (630) feet, then easterly and along said southern boundary four hundred and twenty (420) feet to the place of beginning.

By a subsequent application dated 28th November 1924, Mr. "K" applied for a Patent of the same lands which he had applied for on 7th October, 1924, but in the subsequent application he excepted the portion on which Mr. "F.H." had his buildings by describing the north and south boundaries as being 630 feet long and the east and west boundaries as being 420 feet long. This subsequent application merely transposed the boundary distance from those mentioned in the original application.

6. Mr. "K" further deposed in the said affidavit (No. 1) that the land was wholly unoccupied and unimproved, except log house 24' x 17', barn 30' x 20', hay barn 20' x 22', barn 16' x 20', small building 10' x 22' and 18 acres cleared, done by himself.

7. Mr. "F.H." applied for his purchase of the west half of Lot 2 Concession V and that part of Lot 3 Concession V, described above as an exception to Mr. "K" 's application.

8. In his affidavit sworn on 28th November, 1924, he deposed that he had constructed a house 36' x 20', 3 barns 20' x 25' each, 2 stables 20' x 25' each, tool shed and had cleared 55 acres. In the same clause he deposed that the lands were wholly unoccupied and unimproved but for the foregoing.

9. In his affidavit No. 7 sworn on 28th January, 1925, he deposed that he had resided on the said lands for 22 years and had constructed thereon the buildings mentioned in para. 8 above, and had cleared 55 acres.

10. We now have the events which if strictly construed might disrupt the whole status quo.

Although each of the locatees, Mr. "F.H.", Mr. "T" and Mr. "K", had toiled to clear their lands and build a substantial number of buildings on the lands, they had occupied all in relation to the centre line of division between the north and south half of Lot 3 as established by Stull in 1918, the Department of Lands and Forests issued Patents substituting a new division line between the north and south halves of Lot 3, 420 feet south of that previously established.

The reason advanced was that there was a small lake on the north half and that by the artificial rule (existing only in the Ontario jurisdiction, according to my understanding) divided the lands into aliquot parts.

It would seem to me to be an anomalous situation when a locatee deposed in his application and affidavit in support that he had occupied, cultivated, etc., and has erected buildings upon a certain piece of ground (a condition precedent), then the Department of Lands and Forests would, through such an artificial rule, patent lands never so occupied, cultivated nor upon which any buildings were constructed by the applicants, yet this is what they have in effect done.

A recapitulation of the more important facts outlined above, are these,—

- (a) All 3 locatees have for over 40 years occupied, cleared and built buildings upon the lands divided by Stull's survey of 1918, and still so occupy them in 1959.
- (b) "K" 's patent specifically excluded the land upon which "F.H." 's buildings stood and now stand.
- (c) Each of the applicants applied for the purchase of the lands as divided by Stull in 1918.

(d) The purchase price to each applicant was approximately 50 cents an acre. (Total purchase prices as shown in patents, being as follows, — "T" \$64.26, "K" \$66.50 and "F.H." \$80.00).

(e) If the dividing line were altered to that created by the aliquot part theory —

(i) "F.H." or his successor would lose 6 acres, all his buildings worth at least \$3000.

(ii) "T" would lose 21 acres and all his buildings worth over \$3000.

(iii) Neither "F.H." nor "T" after 40 years of diligent effort would have complied with the Department's condition, namely — that they had cultivated the lands and built buildings on the lands patented to them.

The problem to be resolved in this case is where is the dividing line between the north and south halves of Lot 3 Concession 5 Township of Lorne.

The evidence produced by the parties, in so far as it concerns their occupation on the ground and in their respective applications for Patent, clearly shows that the division established by Stull in 1918 should govern.

In support of this CAIN v COPELAND 66 D.L.R. 806 (C.A.) states,—

"Where it is sought to establish the boundary line between adjoining properties . . . the submission of evidence as to the existence and location at one time of a certain original mound, according to the rules governing surveys, is a proper way of establishing the boundary line and such as will control the description in a Certificate of Title."

And in KRISTIANSON v SILVERSON (1929) 1 W.W.R. 256 (C.A.), it was said,

" . . . recourse must be had . . . not to patents, certificates of title or other instruments, but to the several mounds, posts, monuments or boundaries, erected, marked, placed or planted in the survey, the evidence of which can be found on the ground."

The granting of the patents by the Department of Lands and Forests in a manner inconsistent with the applications does not in my opinion destroy the effect of an existing monument.

I find, therefore, that the iron bar planted by Stull in the course of his survey in 1918 marks the line of division between the North and South halves of

Lot 3 Concession 5, and I confirm the boundary between the North and South half of Lot 3 as so established by Stull in 1918 and re-surveyed by Lane in 1958, and I do confirm the boundary of the lands of "F.H." (now "Hy") as that rectangular parcel of land 630' x 420' lying at the south-east angle of the North

half of Lot 3 Concession 5, the southerly boundary of which is the line established by Stull in 1918 and Lane in 1958.

And I make no order as to costs.  
DATED at Toronto this 6th day of November, 1959.

DIRECTOR OF TITLES

