



The Boundaries Act

THE BOUNDARIES Act decision reviewed here was heard in 1965. It again points up the need for thorough research, both office and field. At the initial hearing, surveyor G. who prepared the draft plan for the Boundaries Act application, was not aware that surveyor P. had also previously surveyed the boundary under application, in 1963. Since a letter of objection from owner G.S., north of the boundary under application, also referred to other evidence not shown on surveyor G.'s plan, the hearing was adjourned so that a thorough field examination could be done. The letter of objection stated that the line by surveyor G. was some 2 feet north of the line by surveyor P. and that the P. survey was in accordance with the remnants of an old fence still existing on the ground.

The boundary under application is the northerly limit of Lots 3 and 4, Registered Plan 100. J.M. the owner of Lots 3 and 4, Plan 100, retained surveyor G. to prepare the draft plan for the Boundaries Act application. Owner G.S., the objector and owner of Lots 3 and 4, Registered Plan 5, relied on the survey by surveyor P. as the basis of his objection.

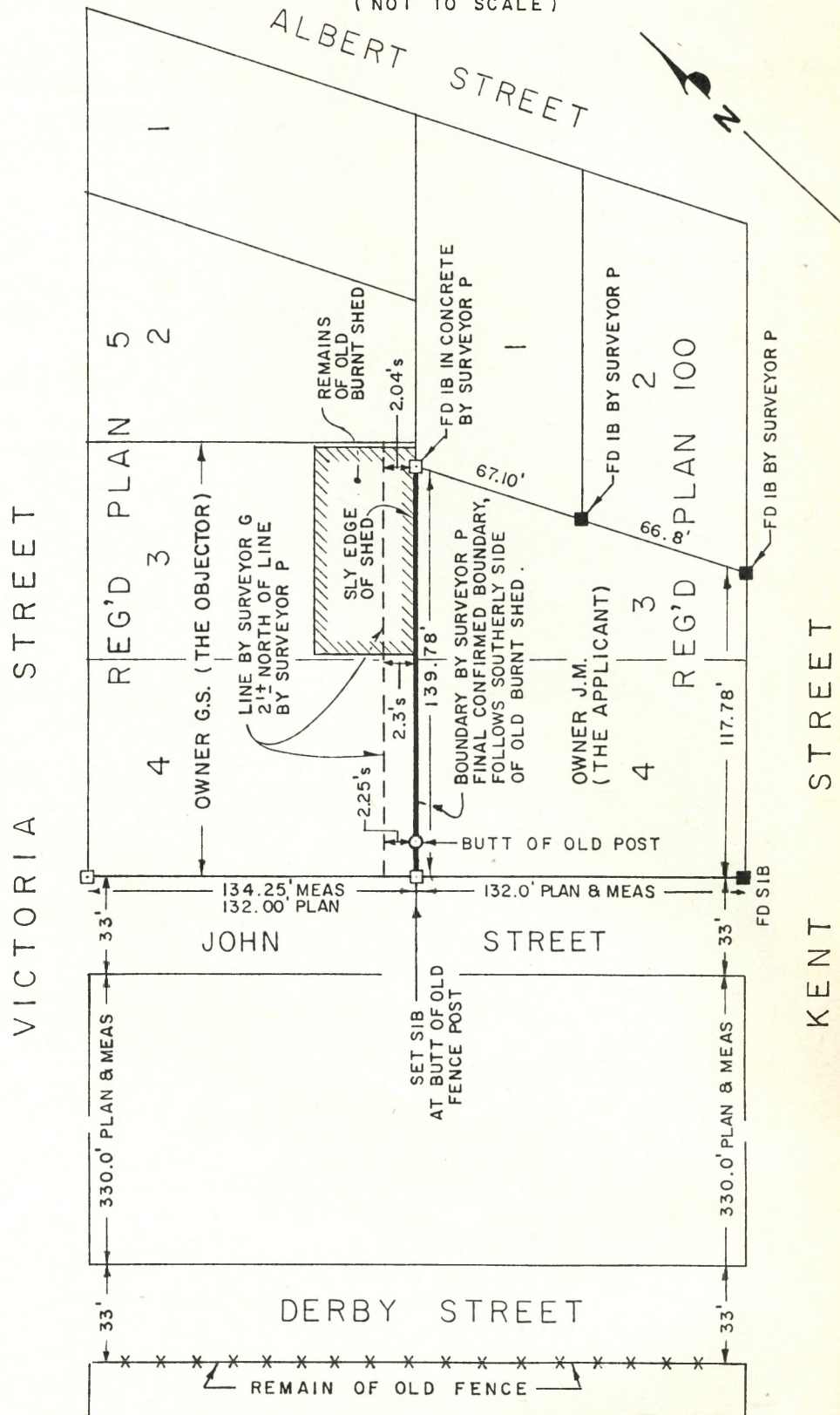
At the reconvened hearing it was established that a field examination had located the butt of an old fence post at the west end of the surveyor G. line, and 2.25 feet south. The remains of an old burnt shed with the floor and wall still distinguishable, was found to run some 80 feet along the line in question. This 80-foot long shed projected south of the surveyor G. line by 2.3 feet at the west end and

the President or Council? The above is a somewhat bizarre example, but any gossip or complaint about Council's or the Board's, or for that matter any committee's or staff's, actions is divisive and counter-productive.

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SKETCH ILLUSTRATING EVIDENCE

(NOT TO SCALE)



2.04 feet at the east end. Other occupation, both east and west of the old shed, was found to generally lie some 2 feet south of the surveyor G. line. At the easterly end of the G. line an iron bar identified as that of the surveyor P. survey, was found some 2.04 feet south of the surveyor G. line.

Surveyor P. testified that although he had established his line according to net theoretical measurement, he found that his positioning of the line harmonized with the position of the old burnt shed and that occupational evidence was taken into account in his positioning.

Evidence established that both surveyors G. and P. had positioned the line in question in accordance with theoretical plan measurements. However, they were different by some 2.25 feet in establishing the same point on the easterly limit of John Street. Surveyor P. testified that although both surveyors used net plan measurements in their re-establishment methods, they were working from opposite directions towards the disputed boundary. Surveyor G. also testified as to his method of establishing the disputed boundary. As previously stated, when he did his survey in 1965, he was not aware of surveyor P.'s 1963 survey, or of the occupational evidence of the line.

In its judgement the Boundaries Act Tribunal made it clear that the burden of proving that the settled possession was NOT evidence of the original position of the boundary, lay squarely with surveyor G. The tribunal stated, ". . . 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 tribunal went on to point out the legal principle by which the burden of proof lies on the person who affirms, not on the person who denies. In this respect the tribunal referred to the case of *Palmer vs. Thornbeck*, (1877) 27 U.C.C.P. (291) C.A., which reflects the principle that the burden of proof lies within the person seeking to change the possession.

The tribunal continued by quoting from the case *Home Bank of Canada vs. Might Directories Limited* (1914) 31 O.L.R. 340, 20 D.L.R. 977 (C.A.):

". . . The original posts or monuments not being in existence and there being no direct evidence as to their position . . . the best evidence is usually to be found in the practical location of the lines made at a time when the original

posts or monuments were presumably in existence and probably well known."

The tribunal concluded its decision stating:

"After listening to all of the evidence and in consequence of the field examination . . . 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."

Accordingly, the tribunal confirmed the true location of the boundary in question along the line surveyed by surveyor P., namely joining the butt of the old fence post to the bar by surveyor P. and running along the southerly edge of the old burnt shed, as shown in heavy outline on the sketch. Surveyor G. was judged to have failed to shift the burden of proof away from the settled possession.

Confirmation and Condominium Section
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