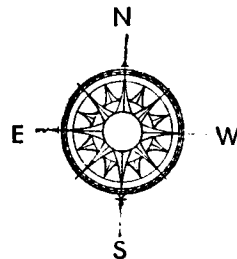


# The Nova Scotian Surveyor



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## The Association of Provincial Land Surveyors of Nova Scotia Incorporated

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## MINUTES OF THE FIFTH ANNUAL MEETING

OF THE ASSOCIATION OF PROVINCIAL LAND SURVEYORS OF NOVA SCOTIA

November 29th and 30th, 1955

1. The meeting was opened at 10:15 a. m. Tuesday, November 29th at the Nova Scotia Technical College, Halifax, N. S. with President J. E. R. March, Chairman.

Members present were as follows:—

L. O. Smith	E. B. Hebb
E. O. T. Piers	C. S. Creighton
J. E. R. March	C. M. Douglas
E. Adams	E. B. Ritchie
Spencer Ball	E. Boehk
H. B. Robertson	G. W. I. Creighton
M. F. Cossitt	R. H. Burgess
J. S. Pope	E. A. Crawley
R. E. Dickie	D. L. Eldridge
G. F. MacDougall	S. G. Snow
J. L. Ryan	F. Newberry
G. W. G. Allen	H. K. Wedlock
Chester Keen	B. Alexander
M. McMullin	A. H. Murray
Freeman Tupper	R. Kendall
G. T. Bates	W. S. Crooker
J. A. H. Church	H. Martell
R. Chisholm	A. F. Chisholm
F. E. Saltman	W. Servant
J. W. Byers	J. F. Kelly
F. C. Wightman	R. E. Millard

Besides the members, there were present the following:—

H. E. Tait, Fredericton, N. B.  
W. L. Roberts, Fredericton, N. B.  
H. P. Lingley, Saint John, N. B.  
Visiting delegates from the New Brunswick Land Surveyors Association.

2. President J. R. March opened the meeting with a welcoming address. He asked the visit-

ing delegates from the Association of New Brunswick Land Surveyors to stand and be introduced:—

Mr. Roberts, President  
Mr. Lingley, Vice-President  
Mr. Tait, Secretary-Treasurer

He also introduced Mr. Hattie of Eastward Industries Limited, Mr. Carver and Mr. Mitchell of Hughes-Owens Company Limited, Mr. Garnett of Garnett Optical Company Limited and Mr. Peden of Wild of Canada Limited, all of whom put on a very attractive display of Surveying and Drafting Instruments and Equipment of the various companies they represented.

He mentioned with deep regret the passing away of two of the Association Members since the last Annual Meeting: Mr. Allan M. James of Halifax, and Mr. Alexander R. J. MacDonald of Reserve Mines, Cape Breton.

President March, in his address, mentioned the Torrens System of Land Registration and deplored the fact that due to lack of time a brief had not been prepared to present to the Economic Council re the adoption of the Torrens System in Nova Scotia.

President March asked Mr. Roberts, President of the Association of New Brunswick Land Surveyors to say a few words. Mr. Roberts said he was very happy to be present and brought greetings and best wishes from the New Brunswick Association. He said he was very hopeful of seeing reciprocity between New Brunswick and Nova Scotia Land Surveyors.

President March then asked Mr. Lingley, Vice-

President of the New Brunswick Association to say a few words. Mr. Lingley said that he too hoped for reciprocity. He said he and his colleagues appreciated very much the invitation from the Nova Scotia Association to attend this Annual Meeting.

President March called on Mr. Tait, Secretary-Treasurer of the New Brunswick Association, who said he also hoped for reciprocity and was very glad to be present.

3. The minutes of the last Annual Meeting were read by the Secretary.

Mr. Wightman moved that the minutes as read be adopted. Seconded by J. A. S. Church. Motion carried.

4. President March brought up the subject of an Honorarium to the Secretary-Treasurer. Spencer Ball moved that an Honorarium of \$150.00 be made to the Secretary-Treasurer. Seconded by E. O. T. Piers. Motion carried.

5. Copies of the Financial Report were passed out to the members present.

Moved by Spencer Ball that the Financial Report be accepted.

Seconded by E. O. T. Piers. Motion carried.

6. President March read a letter from J. B. Carlin, regarding the title given to a Nova Scotia Land Surveyor, and asked for remarks from the floor. It was explained that N. S. L. S. would mean a Nova Scotia Land Surveyor as distinguished from a Provincial Land Surveyor (P. L. S.) from any province.

7. H. B. Robertson of the Department of Lands and Forests then read a very interesting paper on "Construction of Base and Type Maps for Forest Inventory."

Mr. Eldon Adams lead the discussion on Mr. Robertson's paper, which proved to be a lively discussion, with many members taking part.

8. President March asked Mr. G. W. I. Creighton to say a few words. Mr. Creighton said he was very glad to be present, but would not attempt to make a speech. Mr. R. H. Burgess, Forester for the Province, rose and expressed his pleasure of being present, as did also Mr. Brian Alexander of Minas Basin Pulp and Power Company, Limited.

9. President March brought up the subject of a reciprocal arrangement with the New Brunswick Land Surveyors Association. He asked for comments from the floor regarding this reciprocity. Mr. Roberts, President of the New Brunswick Land Surveyors Association outlined the New Brunswick Land Surveyors Act. He said their first Act of 1874 was inadequate. Two years ago they drew up a new Act that had no ties with the Provincial Government. The old Act of 1874 was thrown out. President March explained the Nova Scotia Land Sur-

veyors Act, which was revised about two years ago. Mr. Adams mentioned a clause in the Nova Scotia Revised Land Surveyors Act re surveys made "for gain". He spoke of several cases of unauthorized persons making surveys for the public. President March explained that such actions were gradually being stopped by the Association. President March read a "suggestion" put forth by the Visiting Delegates from the New Brunswick Association as a start of reciprocity between the two Associations.

#### SUGGESTION

Suggested stipulations regarding a person holding a Provincial Land Surveyors Licence in Nova Scotia and registered as a member of the Association and wishing to obtain a New Brunswick Land Surveyors Licence (1) If he has ten years or over experience as a Provincial Land Surveyor of Nova Scotia, he be granted a New Brunswick Land Surveyors Licence after he is examined by the Examining Committee on a Legal and Practical Examination.

(2) That he serves one month's apprenticeship to a registered New Brunswick Land Surveyor for each year under the ten years. The above to be reciprocal insofar as is consistent.

A general discussion from the floor followed, Mr. Piers, Mr. Wightman, Major Church, Mr. Adams, the Delegates from the New Brunswick Association, and others participating.

Mr. Roberts said that their New Brunswick Association have a lot of surveyors from Nova Scotia requesting New Brunswick Land Surveyors Certificates, particularly near the Nova Scotia border.

Mr. Dickie said that he thought that reciprocity with New Brunswick would be of great advantage to surveyors living near the border between Nova Scotia and New Brunswick, and suggested that the two Associations each appoint a Committee to study the problem and to report to each other on their findings. Mr. Adams moved that the new Executive be appointed as the Committee to study the problem of reciprocity with the New Brunswick Association.

Seconded by Spencer Ball. Motion Carried.

Mr. Creighton suggested that the Committee appointed study the Land Surveyors Act and if a change in the Act be required, it would call for a recommendation from the Association for a change in the Act.

Mr. Martell moved that the Committee be empowered to complete and bring to a finish the problem of reciprocity.

Spencer Ball approved the motion on grounds of Democracy.

Mr. Martell moved to amend the motion to the effect that the Committee call a Special Meeting to report their findings re reciprocity.

Seconded by Ralph Kendall. Motion carried.

10. President March asked Mr. R. E. Millard, Editor-in-Chief of the "Nova Scotian Surveyor" for some remarks regarding the journal. Mr. Millard asked for more material for the journal and urged the members to contribute articles for publication.

Moved by E. O. T. Piers that the meeting be adjourned. Seconded by Spencer Ball. Motion carried.

The meeting adjourned at 12:15 p. m. for lunch.

#### Minutes Tuesday Afternoon

1. The Afternoon Session was opened by President March at 2:30 p. m.
2. Mr. Malachi Jones of the Attorney's General Department read a paper on "The Legal Aspects of Surveying", which proved to be of very great interest to those present, having been ably presented by Mr. Jones. A lively discussion of this paper followed and many questions were asked from the floor and answered by Mr. Jones.
3. President March appointed Donald Eldridge and Walter Servant for scrutineers and they retired to count the Ballots for the Election of Officers for the coming season.
4. Herbert Martell read a paper on "Surveying and Survey Problems in Cape Breton". This interesting paper dealt largely with historical surveys in parts of Cape Breton.
5. Mr. Adams said that owing to the distance from Cape Breton to Halifax, some of the Cape Breton Surveyors have been holding their own meetings, having held three such meetings to date. He said they have agreed to set their minimum charge for a survey at \$25.00 and the minimum rate per day at \$35.00. He put before the meeting a suggestion that two members be on the Executive to represent Cape Breton instead of one, and that those two members be Mr. Herbert Martell and Mr. John Pope.

Officers for 1956 were elected as follows:

President — R. E. Millard  
Vice-President — Freeman Tupper  
Secretary-Treasurer — R. M. Schofield  
Halifax City Area — Spencer Ball  
Halifax County Area — Layton Reid  
Western Part Province — R. E. Dickie, J. A. H. Church  
Eastern Part Province — Ronald Chisholm, Donald Eldridge  
Cape Breton — Herbert Martell

J. A. H. Church moved that John S. Pope be appointed as an additional member of the New Executive to represent Cape Breton. Seconded by Walter Servant. Motion carried.

7. The new President, R. E. Millard, then took the chair, and continued the meeting.
8. William Crooker of the Nova Scotia Power Commission, read a paper on "Instructions for Nova Scotia Power Commission Surveys."
9. Matthew McMullin moved that the meeting be adjourned until Wednesday morning. Seconded by Walter Servant. Motion carried. The meeting adjourned at 5:30 p. m.

#### Minutes Wednesday Morning, November 30th

The Meeting was called to order by the new President, R. E. Millard at 9:45 a. m.

1. The first item was Special Business  
Mr. Kendall brought up the matter of minimum fees for Surveyors, and asked if the Association had ever set Minimum Fees.  
Mr. Dickie said that the subject had been discussed at the Executive Meetings.  
Major Church said that he did not think that the Association had enough power to establish a Minimum Rate.  
President Millard asked Mr. Roberts of the New Brunswick Association to speak on Minimum Fees in New Brunswick.  
Mr. Roberts outlined the New Brunswick Act, and said that any surveyor who was not a member of their Association was not allowed to practice.  
Mr. Lingley of the New Brunswick Association congratulated the Cape Breton surveyors on their attitude regarding other land surveyors. He spoke of cut-throat practices in New Brunswick, and how it was detrimental to surveying in general.  
Mr. Kendall spoke of salaried men doing sideline surveying for a lower rate than the surveyor in private practice had to charge.  
Mr. Adams spoke of part time surveyors doing survey work in competition with surveyors in private practice. He said that surveyors in the Sydney area were charging about the same rates, and that business did not seem to suffer. He asked for a uniform rate for surveyors all over Nova Scotia working as a body and not as individuals.  
Mr. Dickie stated that, although he agreed with Mr. Adams, he did not think that the Nova Scotia Association could enforce a minimum Rate, but should secure the power to do so.  
E. O. T. Piers agreed with Mr. Adams' views, but said that he had not personally run into any trouble with surveyors undercutting on his rates in the Halifax area.

Mr. Adams stated that their minimum rate was \$35 per day with \$10. for a helper. He said a survey would run at about \$65 per day.

### Wednesday Morning, November 30th, 1955

E. O. T. Piers stated that the usual rate in the Halifax area was \$30 per day plus expenses. He said he did not think we should put things in our Act that we could not enforce.

J. R. March moved that the present Executive be appointed as a Committee to study the matter of minimum fees, and report their findings at the next Annual General Meeting. Seconded by Mr. Adams. Motion carried.

2. J. R. March moved that this meeting go on record as expressing its appreciation for the presence of Mr. Roberts, Mr. Lingley and Mr. Tait, the Delegates from the New Brunswick Land Surveyors Association. Seconded by Major Church. Motion carried.

3. Donald Bird of the Halifax County Planning Board gave a paper on County Planning. He spoke of the large number of sub-division plans coming before the County Planning Board.

A discussion regarding sub-division plans followed Mr. Bird's paper.

4. E. B. Ritchie then gave a talk on Woodland Surveys in Nova Scotia. An interesting discussion on woodland surveys followed.

5. Mr. Adams suggested that, in regard to the old surveys in the vicinity of Liverpool, Mr. Thomas Raddall be asked to speak at the next Annual Meeting.

6. Mr. E. A. Crawley gave an account of the original survey of the Township of Horton.

7. Mr. Dickie suggested that the Association reward the janitor of the Nova Scotia Technical College for the use of the building during the Annual Meeting.

8. Mr. Roberts expressed his appreciation and pleasure of attending this Annual Meeting, and extended an invitation to attend the Annual Meeting of the New Brunswick Land Surveyors Association.

9. J. R. March expressed appreciation to the press for covering the Meeting. President Millard expressed appreciation to the press for coverage of the Meeting.

10. Mr. Adams moved that the meeting be adjourned. Seconded by Major Church. Motion carried.

The meeting adjourned at 11.30 a. m.

## FALL EXECUTIVE MEETING

October 14, 1955

Meeting held at 310 Robie Street, Halifax.

Present were: — President J. R. March, R. E. Dickie, Major J. A. H. Church, Layton Reid, Ronald Chisholm, and R. M. Schofield, secretary.

The meeting was opened by President March at 2:45 p. m.

The first subject on the agenda was the date of the next Annual Meeting.

President March stated that Mr. Roberts of the Association of New Brunswick Land Surveyors had asked to arrange a meeting of some of the Executive of their Association and the Nova Scotia Association at Amherst during the latter part of November to discuss reciprocity between the two Provinces. A discussion followed regarding the advisability of holding the Annual Meeting after the proposed meeting at Amherst.

R. E. Dickie moved that the date of the Annual Meeting be set for November 29th and 30th. Seconded by Layton Reid and carried.

It was decided to hold the meeting at the Nova Scotia Technical College and the Banquet at the Lord Nelson Hotel, on November 29th. A discussion

regarding details of the Annual Meeting followed.

President March suggested the Association present a brief re the adoption of the Torrens System to the Maritime Economic Council. Major Church expressed himself as being very much in favour of it.

It was moved by Major Church that the Association present a brief to the said Economic Council. Seconded by R. E. Dickie. Carried.

It was suggested that a committee be appointed to study the Torrens System as against the present system of Deed registration and to work out the skeleton of a brief.

President March brought up the matter of a nominating committee for the nomination of Officers for the coming year. The following nominating committee was appointed: —

E. O. Temple Piers — Chairman  
Layton Reid  
Roy Schofield

The preparation of the agenda for the coming general Annual Meeting occupied the balance of the meeting.

Meeting adjourned at 6:00 p. m.

# LEGAL ASPECTS OF LAND SURVEYING

By MALACHI JONES

Paper read at the Annual Meeting of Association of Provincial Land Surveyors of Nova Scotia, November 29th, 1955

I wish to deal gentlemen with the question of boundaries more particularly as to the law applicable to boundaries insofar as it effects your profession or occupation. I will endeavour to outline very briefly a few of the legal principles which may be of some assistance to you in dealing with your everyday problems in this regard.

A **boundary** has been defined as an imaginary line which marks the confines or lines of division of two contiguous estates or in common language properties. The term is also used to denote the physical objects by reference to which the line of division is described as well as the line of division itself. In this sense boundaries have been divided into natural and artificial, according as such physical objects have or have not been erected by the agency of man. As illustrations of natural or physical objects forming or locating boundaries, the following may be mentioned; water, the seashore, fences and party walls.

In cases where the ownership of the surface and minerals is severed, boundaries are not necessarily confined to the surface. In general, of course a division of land into separate parts is either horizontal or vertical, but there appears to be no reason why the division may not be made in any other way; but where no such severance of the minerals has taken place, the surface boundary probably carries with it the right to the column of air over the land to the sky although there is considerable doubt about this matter and certainly the soil to the centre of the earth.

Whether a boundary is, or is not, included in the property which it is described as bounding depends upon the particular circumstances in each case. Thus, in the case of adjoining properties bounded by a hedge and ditch there is no inaccuracy in describing either property as so bounded though the boundary may be wholly included in one and excluded from the other.

Boundaries are fixed either (1) by proved acts of the respective owners, or (2) by Statutes or Orders of the authorities having jurisdiction, or (3) in the absence of such acts, statutes or orders, by legal presumption.

## **Boundaries fixed by Acts of the Parties**

### **By Agreement**

Boundaries may be fixed by an agreement made between two or more adjacent owners where their boundaries become lost or confused. Such an agreement need not be in writing and, therefore need

not be by deed, for, if it be fairly made, the boundaries so settled will be presumed to be the true and ancient limits.

### **By Assurance**

Boundaries may, and of course should, be fixed by the deed or deeds conveying one or both of the properties concerned. It is always a question of fact whether a parcel of land is contained in the description of the land conveyed by deed, or not. In a conveyance of land it should be described with the utmost accuracy, and it is the duty of the grantor to see that this is done, the rule being that the grant shall be constructed most strongly against the grantor, except where the grantor is the Crown.

The property may be described in any way sufficient to identify it but the best method is by area, location and County and, if it can be stated, by well marked boundaries such as highways and rivers or, if not, by stating the names of adjacent owners coupled with reference to a plan for the purposes of better identification. It is, however, unsafe to rely exclusively upon a plan the lines on which are to be taken as a true description of the boundaries of the property conveyed just as if they were contained in the body of the deed; for the person who prepares the plan may easily make a mistake, which might be irreparable and would at all events necessitate either another deed or judicial rectification.

### **By Undisturbed Possession**

The right to boundaries fixed by agreement or assurance may be lost and a new boundary may be acquired under the Statute of Limitations by twenty years undisturbed possession of the land falling between the old and the new boundaries. Thus, where the owner of a hedge and a ditch beyond it has covered in the ditch, and the adjoining owner has erected buildings and planted trees on the site of the ditch more than twenty years before an action is brought, the boundary will be the hedge, as the former owner of the ditch has discontinued the possession of its site by allowing these acts of adverse ownership; and climbing over the hedge once or twice a year to clip it will not be evidence of the continued possession of the site of the ditch but only of a right in the nature of an easement. Similarly, filling up a ditch and sewing and cultivating the site of it together with the rest of the field will be sufficient dispossession to bring the Statute of Limitations into operation. In order that

the Statute may operate, however, it is not sufficient to prove mere acts of ownership, that is to say, acts which an owner may do. Actual possession on the part of the person claiming under the Statute and dispossession on the part of the former owner must be proved, for this reason, that if discontinuance of possession on the part of the former owner has not been proved his right to bring an action has never arisen, and the Statute has never commenced to run against him. Mere non-user on the part of the owner is not sufficient evidence of discontinuance of possession without some other acts of definite adverse possession on the part of the person claiming the land by long possession.

#### **Boundaries Fixed By Statute or other Authority**

I do not wish to dwell on this particular heading other than to point out that boundaries may be established under statutory or other authority. In the case of expropriations under the Expropriation Act boundaries are established for the area expropriated by means of the plan and description filed in the appropriate registry office. This is very common of course in cases where land is expropriated for highway purposes. Boundaries may also be established by means of a Court order for example the Supreme Court has power to make an order for the partition of lands as between, for example, tenants in common. Such orders are, of course, not very common in practice.

#### **Boundaries Fixed by Legal Presumption**

In certain instances boundaries may be fixed by legal presumption. In other words the law presumes that certain facts exist until the contrary is shown. All the presumptions recognized and obtained in the case of boundaries may be rebutted by satisfactory evidence but until such evidence is produced the presumptions necessarily hold. For example the boundary between the seashore and the adjoining land is as a general rule the line of the medium high tide between the ordinary spring and neap tides; but the boundary of land described in a conveyance as bounded by the sea may in certain circumstances, include the foreshore below this line.

Where land abutting upon tidal waters is granted and is described in the conveyance as extending back from the high water mark a stated number of feet, the line from which such distance is to be measured must be taken to be the ordinary or usual and customary high water mark, but where the word "beach" is used to describe land granted at or near the sea or arms of the sea, it is taken to mean the land lying between the lines of high water and low water over which the tide ebbs and flows. However, where the place is so situate that there is only a slight rise and fall of the tide, and there is a distinct freshet mark, in that case the beach may be taken to include the foreshore between the

ordinary high water mark and the freshet mark. As stated previously these presumptions are rebuttal presumptions that is to say evidence can be produced to show that the situation is otherwise. The right to the seashore depends wholly upon the construction of the grant. Where the line in the deed is a fixed and a permanent one, when first conveyed, so as to indicate a definite parcel of land, the water mark at the date of the deed remains, and does not follow the changes which may result from the subsequent action of the water.

#### **Shifting of Boundary Line**

The boundary of land abutting upon the seashore may vary from time to time, and in the case of a conveyance of land described as bounded by the seashore, then as the medium high and low water marks shift so does the boundary of land shift also; for there may be a moveable freehold. Thus, as the sea gradually and by imperceptible degrees recedes and leaves a quantity of land uncovered, then as the general law of accretion applies, and the land so gained belongs to the owner of the adjoining land, the boundary will be correspondingly advanced. It is one condition of the operation of the rule that the accretion shall be natural and shall be slow and gradual . . . so slow and gradual as to be in a practical sense imperceptible in its course and progress as it occurs. Conversely, the boundary will recede if the sea or an arm of the sea by gradual and imperceptible progress encroaches upon the land of a subject; for the land thereby covered with water belongs to the Crown or to the owner of the foreshore as the case may be.

These principles do not apply where the change occurs owing to a sudden advance or recession of the sea, or where the boundaries are well known and have not disappeared by the influx of the sea, but, provided the change is gradual, they apply notwithstanding the former boundary was well known and readily ascertainable. They are, however, limited to the seashore and land abutting on rivers of running water, and do not extend to stagnant waters, such as a lake.

#### **Boundaries by Survey**

Evidence of boundaries differs in kind and in degree. As a general rule, where a deed refers to known physical and natural objects by means of which the boundaries of land conveyed are described, and also contains a statement of area, the former will control the latter in case of discrepancy; and if reference is made to some physical object not in existence at the time, and the parties subsequently erect some object intending it to conform to the deed, the boundary indicated by such object will be binding upon them, even although it may not actually conform to the line of boundary or to the acreage contained in the deed. In running

the boundary line of any property, the marks of the original survey should be sought and adhered to as far as possible. 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 at least liable to mistake. 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. If in a deed conveying land the description of the land intended to be conveyed is couched in such ambiguous terms that it is very doubtful what were intended to be the boundaries of the land, and the language of the description equally admits of two different constructions, the one of which would make the quantity of the land conveyed agree with the quantity mentioned in the deed and the other would make the quantity altogether different, the former construction would prevail.

#### **Description by Reference to Boundary Marks**

When plans, and monuments as well, are mentioned in a grant, or the latter are marked on a plan attached to such grant, it is the duty of the Court in construing the same, to give full effect if possible to all that is so written or delineated. Having regard both to the description set out in a grant as well as to an attached plan in all its particulars, precedence is to be given to monuments laid down on the ground, if the plans and monuments mentioned are shown as aforesaid do not coincide in meaning. However, where no monuments are referred to, the limits of the land conveyed must be determined by the courses and distances stated in the grant. When, in a deed, the boundaries of land conveyed are uncertain, the number of acres which the land is stated to contain may become an important, and very often the decisive, element in determining what are the true bounds of such land. But, when the boundaries of the lot conveyed are defined in the deed, no erroneous statement as to acreage comprised in the land can change such specified boundaries. In construing a deed, extrinsic evidence of monuments and actual boundary marks is inadmissible to control the deed, but if reference is made by the deed to such monuments and boundaries, they control, though they may call for courses, distances or computed contents, which do not agree with those in the deed. Where it is sought to ascertain the land conveyed by deed, it is necessary to resort to extrinsic evidence to ascertain what the parties intended to

indicate by any expression or words in the deed purporting to describe any monument, such as an old line, marked stake or other object used to designate and define the bounds of the lot conveyed. Artificial monuments are regarded by the law as evidence of the intention of the parties, second only in controlling force to that of natural monuments. In case of a discrepancy in the description of the premises between the distances and the boundaries, the former are controlled by the latter, on the ground that the latter must yield to the greater certainty, and where land is conveyed by a particular description and with an enumeration of the quantity of acres, the latter is held to be a matter of description merely and cannot be deemed an implied covenant for quantity. But the rule that monuments control courses and distances does not hold good when the grantee's evident intention was that courses and distances should govern. When the lines or corners of an adjoining tract are called for in a deed or patent, the lines must be extended to them without regard to distance, provided that those lines and corners be sufficiently established and that no other departure be permitted from the words of the patent or deed than necessity enforces or a true construction renders necessary, and this holds true whether the line be marked or unmarked. As a general rule, a call for the line of an adjoining survey means the true line not a supposed line nor a line agreed on between the adjoining owners. Before the boundaries of a junior grant can be determined the lines of an older survey called for must be located. When a deed refers to lines as laid down in a map or plot they must be taken as giving the true description of the boundary as much as if they had been set forth in the deed.

#### **Description by Reference to Plan**

Where reference is made in the description in a deed to a plan attached, the interpretation to be given to the description must be one that accurately fits and describes what is to be found in the plan. Where maps, plans and field notes are referred to in descriptions of land, they are to be regarded as incorporated into the descriptions, and in case of a conflict of calls the usual rules of construction are to be applied, and those calls which are most certain and definite, or most in accord with the true intent of the parties, are to be adopted. A description in a conveyance of lands by reference to a plan is equivalent to description by metes and bounds. When lands are described by reference to a plan, the plan is considered as incorporated with the deed, and the boundaries of the lands conveyed as defined by the plan are to be taken as part of the description. Where land is granted by reference to a plan upon which is shown a certain land mark, the position of this land mark on the ground will not be allowed to control the des-

cription in the grant, if it is not mentioned therein; and an inaccuracy in the plan will not control the dimensions in the deed. Where a lot is described in a grant as bounded by the adjoining lot and by reference to a certain plan, if the plan is subsequently lost, the boundaries may be ascertained by locating the boundaries of the adjoining lot, if its boundaries can be located by reference to monuments on the ground. A second plan of subdivision of land cannot be invoked as evidence of the limits of land conveyed by description according to a first plan, unless there be evidence of error in the first one.

#### **Description by Reference to Road or Street**

When a highway or street is referred to in a grant or other conveyance, the way, as opened and actually used, rather than as plotted, is construed to be the boundary intended by the parties, but when the grant or conveyance refers to a map, the line of the way as actually surveyed is held to determine the boundary of the line.

#### **Surveyor's Monuments**

When the plan and monuments made by an original survey do not coincide, the monuments govern, and this is also the case when the monuments are made by one survey and the plan afterwards by another, and the plan only is referred to in the deed. Where there is some doubt whether or not a surveyor's post is correctly located, the original plan and field notes are conclusive of the question. Where the owners of adjoining properties cannot agree as to the boundary line between them, or upon the employment of a surveyor to settle same, and one of them employs a surveyor who runs the line in accordance with the nearest old monuments recognized as marking the true boundaries of other lots in the neighbourhood, there being no plan of the lots, no objection can be made to the owner who employed the surveyor erecting a fence upon the line so established.

#### **Location of Lost Boundary Marks**

No rule in real estate law is more inflexible that monuments control course and distance. But its application in other cases is quite as proper, and quite as necessary to the protection of substantial rights. If the actual location of the original landmarks can be discovered they must govern. If there are no longer discoverable, the question is where they were located; and upon that question the best possible evidence is usually to be found in the practical location of the lines, made at a time when the original monuments were presumably in existence and probably well known. As between old boundary fences, and any survey made after the monuments have disappeared, the fences are by far the better evidence of what the lines of a lot actually are.

# MINUTES OF MEETING OF THE NEW EXECUTIVE

Held at the Nova Scotia Technical College, Halifax,  
N. S., Wednesday, November 30th, 1955.

Those present were:—

R. E. Millard, President  
J. R. March  
Freeman Tupper  
Donald Bird  
J. A. H. Church  
Donald Eldridge  
H. B. Robertson  
R. E. Dickie  
Ronald Chisholm  
John Pope  
R. M. Schofield

The meeting was opened by President Millard  
at 11.45 a. m.

1. The secretary read the minutes of the last Executive Meeting.  
J. R. March moved that the minutes as read be adopted. Seconded by Donald Eldridge. Motion carried.
2. The New Brunswick Land Surveyors Act was the first matter taken up. J. R. March read the part of the New Brunswick Act relating to Land Surveyors' Certificates of other Provinces.
3. Major Church moved that Mr. J. R. March be empowered to draft up a resolution to present to legal minds for presentation to the proper authorities for an amendment to the Nova Scotia Land Surveyors' Act to apply to reciprocity with the New Brunswick Land Surveyors Association.  
Seconded by Freeman Tupper. Motion carried.
4. President Millard brought up the matter of minimum fees for surveyors.
5. John Pope moved that J. R. March be empowered to draft a Form to be sent to all surveyors in Nova Scotia in an effort to determine their ideas of a minimum rate. Seconded by R. E. Dickie. Motion carried.
6. J. R. March moved that the meeting be adjourned. Seconded by Donald Eldridge. Motion carried.

The meeting adjourned at 1:15 p. m.



# OPENING ADDRESS

OF THE FIFTH ANNUAL MEETING OF THE ASSOCIATION OF PROVINCIAL LAND SURVEYORS  
OF NOVA SCOTIA

By President J. E. R. March, P. L. S.

Distinguished Guests and Fellow Members;

I have the honour to declare the Fifth Annual Meeting of the Association is now officially open. May I say it has been a real pleasure, even if at times a somewhat strenuous one, to have served as your President during the past year. Your executive has worked hard in the interests of the surveyors, and this meeting, this get-together of the surveyors, is the climax of our efforts. We have done our best to make this meeting a success, and from now on it is up to you. This is your meeting.

We have here to-day a number of distinguished visitors and we extend a most cordial welcome to you all. I should like to extend a special welcome to our visitors from the New Brunswick Land Surveyors Association. Mr. Willis Roberts, Director of Surveys for New Brunswick, Mr. H. E. Tait, of Fredericton, and Mr. H. P. Lingley of St. John. These gentlemen are here partly in connection with a reciprocal agreement between the surveyors of our two provinces, now being studied. We will be hearing more from them later.

I thank the exhibitors for the magnificent display they have put on here. It is one of the best I have ever seen, and does them great credit. It also adds much colour to these meetings.

I am very sorry to have to report the death during the past year of two of our members. Mr. A. M. James, Lands and Rights Engineer for the Nova Scotia Power Commission, and Mr. Alexander MacDonald, of Reserve, N. S. Suitable expressions of sympathy were forwarded to the relatives of the bereaved by our Secretary.

Gentlemen, our Association has now reached the point where its success is certain. Each year our attendance has greatly increased and this year is no exception. I note with pleasure the increased number here from Eastern Nova Scotia, and particularly from Cape Breton. I almost said Cape Breton Island, but remembered the Causeway in time. We have come a long way in the past few years but there is still much to be done to bring the surveyors' position into its proper place in the economy of our Province. There is one matter in which I feel I have fallen down somewhat in my duty. Recently there has been a great deal in the Press regarding the Gordon Commission on economic prospects in the Maritimes. I have read all I could find out about this Commission and its act-

ivities, but nowhere did I see a single word about the system of land registration in use, or any comments regarding a revision of it. Speaking as a land surveyor, I say no picture of our economic prospects can be complete without an examination of this system, and I say further that the present system now in use is a hydraulic brake on our progress. I wonder how many of you here know that the best system in the world, the Torrens System, has been on our Statutes since about the year 1905, but has never been proclaimed law. It is of course quite understandable why this Act was not proclaimed at that time. Land values were in general very low, and the standard of land surveying was hardly good enough to make the adoption of the system feasible. Both these reasons are now things of the past. Land values have risen greatly in recent years, and the standard of surveying is infinitely better than it was even a few years ago. At a recent executive meeting I proposed that this Association present a brief to the Gordon Commission. Initial steps were taken but the project was abandoned when it was found that time was too short to assemble all the facts required. I very strongly recommend that the incoming executive continue with this work.

Before closing I wish to express our very great appreciation to the officials of The Nova Scotia Technical College for their generous offer of the use of this room for our meetings.

Thank You.

## NEW MEMBERS

Since August issue of Nova Scotian Surveyor

187 — Gerald F. MacDougall, 15 Minto St., Amherst, N. S.

188 — Glen E. Jefferson, New Germany, N. S.

189 — James C. Sherren, 186½ Botsford St., Moncton, N. B.

38 — J. Roy Hale, Church St., Westville, N. S.

51 — John E. MacKenzie, 35 Catherine St., Glace Bay, N. S.

# FINANCIAL REPORT

For period December 21st, 1954 to October 26th, 1955

Bank Balance Dec. 21, 1954	\$417.77	
Receipts (Deposits)	478.90	
Expenditures		\$351.48
Bank Balance Oct 26, 1955		545.19
	<hr/>	<hr/>
	896.67	896.67

## Detail of Expenditures

Expenses Annual Meeting 1954	\$36.80
Publishing "N. S. Surveyor" (Nov.)	24.00
Postage	10.00
Refund (J. A. Fraser)	5.00
Legal Fees (Incorporation)	80.00
Printing Letterheads & Certificates	20.63
Framing Incorporation Certificate	1.50
Post Office Box Rent	6.00
Postage	8.50
Expenses Spring Executive Meeting	10.00
Expenses re "N. S. Surveyor"	3.36
Postage	10.00
Publishing "N. S. Surveyor" (Feb)	30.00
Publishing "N. S. Surveyor" (May)	40.00
Ad. Meeting C. B. Surveyors	13.44
Printing Envelopes	19.25
Expenses Summer Executive Meeting	23.00
Postage	10.00
	<hr/>
	351.48

# REMARKS

## FROM THE PRESIDENT

By R. E. Millard, P. L. S.

With the coming of the Christmas Season I wish to extend to all members of the Association of Provincial Land Surveyors of Nova Scotia, and fellow Land Surveyors in New Brunswick the compliments of the Holiday Season and Wish you all a Happy and Prosperous 1956.

During the past five years under strong and determined leadership the Association has moved ahead steadily, with definite and marked purpose.

It is my hope that during 1956 I shall be able to assist you to reach our ultimate goal, that is Recognition within this Province as being a Strong, Reliable and just organization; dedicated to our work and the trust that will be ours. Today we have 189 members, over 75% of those holding Nova Scotian Land Surveyors licenses, as members of the Association. Only as a united organization can we attain our goal and a 100% membership. This we must and will have, if we go all out in 1956. It is up to each one to help put it over.

# MINUTES

Meeting of Committee appointed to Study Improvement of Nova Scotia Provincial Land Surveyor's Exams.

N. S. Technical College, Wednesday, November 30th, 1955.

The meeting was opened at 2:45 p. m. by Spencer Ball, Chairman of the Committee.

Others present were:—

J. R. March  
J. A. H. Church  
R. E. Millard  
Freeman Tupper  
E. O. T. Piers  
R. E. Dickie  
R. M. Schofield, Secretary

The first matter discussed was that of apprenticeship. J. R. March said that apprenticeship is required now, but is not on oath.

Spencer Ball said that the first qualification is education.

It was decided to draft the following recommendations:—

1. It is our opinion that preliminary requirements for apprenticeship should be Junior Matriculation including Physics and Mathematics.

He will be required to write further examinations on Mathematics, Physics, Geology and English of first year University grade.

A reasonable equivalent of the above would be acceptable.

Texts for these subjects will be available from the Association of Provincial Land Surveyors of Nova Scotia.

2. It is our considered opinion that apprenticeship is necessary.
3. It is our opinion that a minimum of fifty per cent of the apprenticeship term should be spent in the field.
4. It is also our opinion that the apprentices should serve under one or more Provincial Land Surveyors who are duly registered with the Association of Provincial Land Surveyors of Nova Scotia, for a minimum period, in the aggregate, of three years, half of which time must be spent on field surveys.

5. The required apprenticeship period must be completed within five years of the date of his apprenticeship.
6. Documentary evidence, supported by affidavit, must be presented by the candidate to the Board when making application for Examination.
7. It is also our opinion that the Examinations should consist of:—

(a) Intermediate

Including the subjects of English, Geology, Mathematics and Physics of first year University standards:

(b) Final

Including theoretical surveying and related subjects, photogrammetry, descriptions and legal aspects.

(b1)

Practical Examinations of two days' duration to include a field survey, plotting of same, Astronomical determination and Magnetic Declination.

It was decided that the next meeting of the Committee be held at the Lands and Forests Drafting Room on the eight floor of the Provincial Building, Halifax, on Wednesday, January 25th, 1956 at 7:30 p. m.

The meeting adjourned at 5:00 p. m.

## RETIRED

We would like to mention in this issue Edward S. Foster, a member of the Association, who has recently retired from the Mersey Paper Company, Limited, after completing more than twenty-five years in its service.

Ted, as he is familiarly known to his many friends, was instrumental in the preparatory surveys for this mill, and during its construction was on the Engineering staff up until its completion, he then joined the Engineering staff of Mersey. Ted can tell many a tale of "Staff House" days and of the hectic construction period. He speaks two languages fluently, one being English, the other being one that we all use more or less frequently.

We, and all his friends, wish Ted many years of enjoyment in the future.

## OBITUARY

It is with deep regret that we announce the passing away of two of our members.

Mr. A. M. James, P. L. S., Land and Rights Engineer for the Nova Scotia Power Commission, Halifax, N. S.

Mr. Alexander MacDonald of Reserve, Nova Scotia.

NOTICE: to all members of the Association

You are requested to send in materials for the Nova Scotian Surveyor to R. E. Millard, P. L. S, Editor, Liverpool, N. S.

Every item will be carefully read and considered.

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the opportunity to  
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and their families a  
gladsome Noel and  
the best New Year  
ever.



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