

COMMONWEALTH OF PENNSYLVANIA

THE STATE BOARD OF PROPERTY

**LONG RUN TIMBER COMPANY,
Petitioner**

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
Respondent**

DOCKET NO. BP-2012-0001

FINAL ADJUDICATION AND ORDER

**Jason E. McMurry, Esquire, designee of the
Secretary of the Commonwealth, Chairman**

**Arthur F. McNulty, Esquire, designee of the
Secretary of Community and Economic Development**

**Sean M. Concannon, Esquire, designee of the
General Counsel**

**Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street, 400 Plaza Level
Harrisburg, PA 17120**

TAB

HISTORY

This matter comes before the State Board of Property (Board) to determine ownership of certain real estate within this Commonwealth otherwise claimed by the Commonwealth pursuant to section 1207 of the Administrative Code of 1929, 71 P.S. § 337. By complaint in action to quiet title filed on January 18, 2012, Long Run Timber Company (Petitioner) sought to quiet title in certain real estate situate in Morris Township, Tioga County. On May 8, 2012, the Department of Conservation and Natural Resources (Commonwealth) filed an answer with new matter. Petitioner filed its reply to the new matter on May 29, 2012.

The formal hearing in this matter was held February 12-13, 2015, before the full Board, with Board counsel Thomas A. Blackburn, Esquire, presiding. Petitioner attended the hearing in the person of its general partner Robert Sher and was represented by Helen L. Gemmill, Esquire. Petitioner presented the testimony of Mr. Sher and its expert witness professional land surveyor K. Robert Cunningham, PLS. The Commonwealth was represented by Mark Baldwin, Esquire, who presented the testimony of its expert witnesses Rodger O. Cook, PLS, and Justin J. Daubert, PLS. On March 31, 2015, the parties filed post-hearing briefs, and on April 14, 2015, they both filed reply briefs.

The Board deliberated this matter at its meetings on April 23 and July 30, 2015, and on October 23, 2015, issued a final adjudication and order dismissing Petitioner's complaint. The Board concluded that the boundary between the parties' property based upon land warrants issued and surveyed in the 1790s was located where asserted by the Commonwealth and not as Petitioner argued. The Board also found that there was no evidence in the record for the Board to review and consider Petitioner's alternative argument that the Commonwealth and Petitioner's predecessor had reached a settlement agreement.

On November 23, 2015, Petitioner filed a petition for review with the Commonwealth Court. By opinion and order dated August 30, 2016, the Court vacated the Board's adjudication and remanded the matter to the Board with instructions to review the existing record evidence and issue a new determination in accordance with the Court's opinion. The Court rejected all of Petitioner's arguments concerning the boundary between the warrants. However, the Court concluded that the Board erred in finding that there was no evidence in the record for the Board to review and consider Petitioner's alternative argument that the Commonwealth and Petitioner's predecessor had reached a settlement agreement.

Following additional briefing by the parties, the Board¹ deliberated this matter at its meetings on January 19, 2017, and April 20, 2017, and now issues this adjudication and order as a final determination of Petitioner's complaint, limited to the asserted settlement agreement.

¹ Prior to deliberation on remand, the Secretary of the Commonwealth designated Jason E. McMurry, Esquire, the Secretary of Community and Economic Development designated Arthur F. McNulty, Esquire, and the General Counsel designated Sean M. Concannon, Esquire, as members of the Board in place of them respectively and the prior designees. All members of the Board reviewed the entire record prior to participating in the deliberation and decision in this matter.

FINDINGS OF FACT

1. Petitioner is Long Run Timber Co., LP, a Pennsylvania limited partnership with its principal office located in Kutztown, Berks County, Pennsylvania. (Complaint and answer at ¶ 7).

2. Respondent is the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, with an address of 400 Market Street, 7th Floor RCSOB, Harrisburg, PA 17105. (Complaint and answer at ¶ 8).

3. On April 21, 1792, warrants were issued to Charles Willing for adjacent rectangular properties in what became Tioga County – Warrant 1180 (patented May 26, 1807) to the north and Warrant 1179 (patented May 26, 1806) to the south, each approximately 1,099 acres with allowance. (Exhibits P-1C, P-2A, P-2B, P-29, P-30, P-31, P-32).

4. As surveyed by James Ellis in June 1793, Warrant 1179 and Warrant 1180 were each 432 perches² along the east/west axis and 431½ perches along the north/south axis, and the common boundary was marked by a birch tree to the west and a beech tree to the east. (Exhibits P-1A, P-1B, P-31, P-32).

5. By the time of his death in 1804, William Bingham owned extensive amounts of real estate in Pennsylvania, including both Warrant 1179 and Warrant 1180 and much other surrounding real estate. (Exhibit P-25B).

6. The Bingham Estate was the common owner of both Warrant 1179 and Warrant 1180. (N.T. at 164, 329).

7. By deed dated June 1, 1850, the Bingham Estate conveyed to Martin Repherd approximately 48.5 acres described as:

Beginning at fourteen perches West from the Northwest corner of lot No. 43 of

² A perch, also referred to as a rod, is a linear unit of measure equal to 16.5 feet. (N.T. at 309-10).

the allotment of the Bingham lands ..., thence North one hundred and thirty-four perches, thence West sixty-one perches and four tenths of a perch, thence south one hundred and thirty-four perches, thence East sixty-one perches to the place of beginning, ... it being lot No. 67 of the allotment of the Bingham lands ... and part of Warrant Number 1179.

(Exhibit P-45).

8. No survey was completed accompanying this conveyance to Martin Repherd.

(N.T. at 67).

9. By deed dated December 28, 1875, the Bingham Estate conveyed to the Blossburg Coal Company real estate including the unsold remainder of Warrant 1180, described in part as:

Beginning at a hemlock the northeast corner of lot No. 76 of the allotment of the land of the Bingham estate [and] along the ... line of unsold land of the Bingham Estate aforesaid, being also the south line of warrants Nos. 1181 & 1180 east two hundred and forty nine perches and six tenths; thence along lines of lot No. 67 (Liberty and Morris) conveyed to Martin Repherd North fifty-four perches, West sixty one perches and four tenths; and south fifty-four perches; thence along the South line of warrant No. 1180 in Morris Township west two hundred and twenty perches to a dead Birch, the southwest corner of Warrant No. 1180 aforesaid;

(Exhibit P-23A).

10. No survey was completed accompanying this conveyance to the Blossburg Coal Company. (N.T. at 126).

11. By deed dated November 10, 1954, and recorded November 12, 1954, in Tioga County, Blossburg Coal Company transferred to the Commonwealth various parcels including former Warrant 1180 and what it owned in former Warrant 1179. (Exhibit P-24C).

12. In October 1952 Allen R. Fine, Jr., surveyed the Blossburg Coal Company property being acquired by the Commonwealth and opined that the northern edge of the disputed area constitutes the boundary between Warrant 1180 and Warrant 1179, because he found stone piles at the endpoints of this line consistent with the corners of the Martin Repherd lot and

property to the east of that lot. (Exhibits P-24D, R-O).

13. Mr. Fine found a stone pile marking the northern-western corner of the Martin Repherd lot approximately 50 rods north of a stone pile he found marking the boundary between Warrants 1180 and 1179 abutted against the western side of the Martin Repherd lot, and he found a stone pile along that same line at the eastern side of the Martin Repherd lot. (Exhibit R-D, N.T. at 348-49).

14. Mr. Fine was not licensed as a professional surveyor until March 5, 1954, but he performed the survey under the direction of John C. Rex, PE. (Exhibits R-B, R-B and R-D, N.T. at 296-97).

15. By deed dated June 23, 1882, the Bingham Estate conveyed to William Hoyt, Oliver Hoyt and Mark Hoyt the unsold remainder of Warrant 1179, described in part as:

Beginning at a Dead Birch, the South West corner of Warrant No. 1180 of the lands of the Bingham Estate in Morris Township, Tioga County, Pennsylvania, conveyed to ... Boalsburg Coal Company; thence along the South line of said Warrant, East two hundred and six perches; thence along the South and East lines of lot No. 67, conveyed to Martin Repherd, eighty perches; East sixty-one perches and four tenths, and North eighty perches, thence along the south line of Warrant No. 1180 as aforesaid, (in Liberty Township) East one hundred and sixty-four perches and six tenths; thence along the West line of Warrant No. 1178 South

(Exhibit P-5A).

16. No survey was completed accompanying this conveyance to the Hoyts. (N.T. at 76).

17. By deed dated April 22, 1893, the Hoyts conveyed this property and additional parcels to Union Tanning Company. (Exhibit P-6).

18. Due to Union Tanning Company's failure to pay taxes, Morris Manufacturing purchased this property and the additional parcels through the county tax assessor, and Union Tanning Company executed a deed to do so on November 17, 1902. (Exhibits P-7 and P-8, N.T.

at 83-84).

19. By deed dated November 6, 1909, and with certain pieces separately sold out but the same description for the line abutting the Martin Repherd lot, Morris Manufacturing Company conveyed the property to John Vandergrift and Albert Spicer. (Exhibits P-9A, P-9B).

20. In October 1910 L.M. Otto, Jr., surveyed this area. (Exhibits P-28A and R-A, N.T. at 88, 294).

21. By deed dated October 26, 1910, Vandegrift and Spicer conveyed the property to T.R. Harter and Company, still reciting the depth of the property along the Martin Repherd lot as 80 perches though the total description does not close because it recites returning north to Warrant 1180 a total of 357.48 perches and not 431.5 perches as recited going south – a difference of 74 perches. (Exhibits P-10A, P-10B, N.T. at 85-86).

22. By deed dated October 22, 1909, T.R. Harter and Company acquired the land to the west of the above property covering whatever gap had existed. (Exhibit P-11, N.T. at 88-89).

23. By deed dated March 20, 1916, T.R. Harter and Company conveyed to Edward Dieffenbacher and Frank Dieffenbacher the above property with the same non-closing description, together with the Martin Repherd lot. (Exhibits P-12A and P-12B, N.T. at 90-91).

24. By deed dated October 4, 1920, the Dieffenbachers conveyed the property to C.C. Slaght Lumber Corporation, and on July 13, 1925, C.C. Slaght Lumber Corporation executed a mortgage describing the property as above. (Exhibits P-13A and P-13B).

25. By deed dated May 9, 1952, C.C. Slaght Lumber Corporation conveyed all of its lands in Morris Township, Tioga County, including the above property, to the Woodhouse Hunting Club. (Exhibit P-17A).

26. According to maps created in March, 1910 on behalf of the Bingham Office by

William S. Woodhouse and referencing the Blossburg Coal Company and the Hoyts as neighboring owners, the 134-rod long Martin Repherd lot straddles Warrants 1180 and 1179, extending north 54 rods into Warrant 1180 and south 80 rods into Warrant 1179. (Exhibits P-28A and P-28B).

27. According to an undated map of the Bingham Estate not showing any cut-outs or identified property owners, the dimensions of Warrant 1179 were 456 perches across the southern and northern borders, but 440 perches on the eastern border and 432 perches on the western border; the dimensions of Warrant 1180 were also 456 perches across the southern and northern borders, but 432 perches on the eastern border and 434 perches on the western border. (Exhibit P-25D, N.T. at 61-63).

28. In April 1952 professional land surveyor Tom O. Bietsch surveyed the property being acquired by the Woodhouse Hunting Club. (Exhibits P-17B and P-17C, N.T. 96-97).

29. Mr. Bietsch was concerned about locating the northern line of Warrant 1179 and suspected it might be 80 rods north of the southwest corner of the Martin Repherd lot; legal counsel for the Woodhouse Hunting Club was “unable to locate for [Mr. Bietsch] a definite point whereby [he] would be able to fix the Northern line of Warrant No. 1179.” (Exhibit P-17D).

30. Mr. Bietsch ultimately placed the northern line of Warrant 1179 simply 431.5 rods north of the identified southern line without any reference to the Martin Repherd lot and showed this boundary of Woodhouse Hunting Club property as a single straight line. (See, exhibit P-17B).

31. By deed dated August 16, 1952, the Woodhouse Hunting Club conveyed to Benjamin Kreger part of the property at the southern edge of Warrant 1179 to form a consented boundary with his property. (Exhibit P-18B).

32. By deed dated December 12, 1952, the Woodhouse Hunting Club conveyed to the Hammermill Paper Company substantially all of this property but retaining mineral and hunting rights, and by deed dated November 21, 1958, Hammermill Paper Company conveyed its property to L.G. Niles Lumber Company. (Exhibits P-18A and P-19).

33. By deed dated January 2, 1982, Leon G. Niles, the proprietor of L.G. Niles Lumber Company along with his wife Betty H. Niles conveyed all interest in the property and additional properties to Mr. and Mrs. Niles. (Exhibit P-20A, N.T. at 105).

34. By deed dated April 28, 1998, Leon G. Niles and his wife Betty H. Niles conveyed essentially all the their real estate to Citizens and Northern Bank, Leon G. Niles and Betty H. Niles as trustees of Niles Family Unitrust. (Exhibit P-20H, N.T. 107).

35. In January 1998 Boyer Kantz, PLS, surveyed the Woodhouse Hunting Club property for sale by Niles. (Exhibit P-21E, N.T. 107-08).

36. Mr. Kantz marked the northwest corner of Warrant 1179 as a witnessed stone and marked the boundary of Warrants 1179 and 1180 where this boundary crosses the Martin Repherd lot as witnessed stone piles, though he did not identify those points by reference to Martin Repherd. (Exhibit R-S4, N.T. at 353).

37. Mr. Kantz referred to these stone markers as "state corners" and did so consistent with Mr. Otto's survey and inconsistent with Mr. Bietsch's survey. (N.T. at 356-57).

38. By deeds dated November 15, 2001, and recorded December 6, 2001, in exchange for \$623,220, Citizens and Northern Bank, Leon G. Niles and Betty H. Niles as trustees of Niles Family Unitrust conveyed to Petitioner, and L.G. Niles, Inc. quitclaimed all interest in, real estate of approximately 2,183 acres per the March and April 1952 survey of T.O. Bietsch, PE, as recorded in Map File No. 347 in Tioga County. (Exhibits P-22A and P-22B).

39. According to Mr. Sher's CAD calculations, the disputed property constitutes a strip 45 rods wide along the boundary of Warrants 1180 and 1179 that from the west abuts the Martin Repherd lot beginning about 41.8 rods from the southern border of that lot. (Exhibits P-22C, P-34, P-35, P-36, N.T. at 72-73).

40. In 2004 K. Robert Cunningham, PLS, surveyed the disputed area of this property for Petitioner; in his opinion the line between the Commonwealth's property acquired through the Boalsburg Coal Company and Petitioner's property acquired through the Hoyts is the boundary of Warrants 1180 and 1179 and is at the northern edge of the disputed area. (Exhibit P-25E, N.T. 209-267).

41. By letter dated February 15, 2005, DCNR's director of field engineering Rodger O. Cook, PLS, notified prior counsel for Petitioner that, based upon the monumentation of its 1953 survey (Fine) and rejecting the Bietsch survey that was inconsistent with monumentation, DCNR views the property identified by Mr. Cunningham as an encroachment. (Exhibits R-J and R-K, N.T. at 301-03).

42. In Mr. Cook's opinion, the surveys of Mr. Otto and Mr. Fine are consistent with the survey of Mr. Ellis and the physical features of the land, based upon the data collected by various surveying parties of the Bingham Estate, and thus the boundary between Warrants 1180 and 1179 and therefore the southern boundary of the Commonwealth's property is the line used by Mr. Otto and Mr. Fine and is the more southerly line identified by Mr. Sher and Mr. Cunningham. (Exhibit R-P, N.T. at 340-44, 350, 353-54, 363-64, 373-74).

43. In approximately 1969 in order to resolve the discrepancy about the boundary line Niles and Hammermill Paper Company and the Commonwealth discussed a compromise line running diagonally from the upper left to the lower right of the disputed area, though no

deed was executed and recorded to show that a settlement had been reached. (N.T. at 137-39, 169, 199; exhibit P-38 at 27-29).

44. In June 1969, the Commonwealth produced in Department of Forest and Waters Map File 2730 a drawing by D.E. Carson based upon a survey by H.F. Hartman entitled "Compromise Boundary Line between Hammermill Paper Company and the Commonwealth of Pennsylvania" showing a line extending diagonally from a built and witnessed stone pile on the western boundary of Warrant 1180 66.00 rods north of the boundary with Warrant 1179 to an old stone pile on the boundary between Warrants 1180 and 1179 that is 272.12 rods east from the western boundaries. (Exhibit P-27).

45. The western terminus of this compromise line is farther north along the western edge of Warrant 1189 than Petitioner claims is the boundary between the Warrants, and the eastern terminus is near the eastern edge of the Repherd lot. (*See*, exhibits P-25E, P-27, P-34).

46. The compromise line identifies part of the disputed property to the south of the compromise boundary line as lands claimed by Niles Lumber Company and acknowledges that the Commonwealth will have certain other land that is also part of the disputed property. (*See*, exhibit P-25E, P-27, P-34).

47. In 1971, the county tax assessment was adjusted based upon the compromise line. (N.T. at 139-40, exhibits P-41 and P-42).

48. In 1989, a drawing of lands of Fall Creek Hunting Club showing the compromise line was filed in the Tioga County Recorder of Deeds office. (Exhibit P-20C).

49. The compromise line is marked in the field by white paint and blaze on the trees. (N.T. at 151, 225, exhibits P-25E, P-37 at 19-29 and 31-32 and 35-38).

50. By letter dated June 16, 1971 from the chief of the division of land acquisition of

the Department of Environmental Resources (a predecessor agency of the Department of Conservation and Natural Resources) and assistant land survey engineer Henry F. Hartman, Jr., to Niles Lumber Company, the Commonwealth acknowledged that it and Hammermill Paper had agreed on a compromise to resolve a dispute concerning the southwest end of the Department's Boalsburg Coal Company purchase and had surveyed and blazed the line, though no agreement document had yet been prepared; this letter provides a copy of the drawing separately marked as exhibit P-27. (Exhibit R-O).

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter under section 1207 of the Administrative Code of 1929, 71 P.S. § 337.

2. Petitioner has established through the doctrine of consentable line that the common boundary between its property and that of the Commonwealth is the compromise line of exhibit P-27 and thus Petitioner is the owner of a portion of the real estate in the disputed area otherwise claimed by the Commonwealth.

DISCUSSION

Petitioner brought this action to quiet title against the Department of Conservation and Natural Resources, a Commonwealth agency claiming the real estate. The Board has jurisdiction under section 1207 of the Administrative Code of 1929,³ 71 P.S. § 337. *See, International Dev. Corp. v. Davidge*, 26 A.3d 1234 (Pa. Cmwlth. 2011) (Board of Property has exclusive jurisdiction to adjudicate action to quiet title to mineral estate where a Commonwealth agency owns and occupies the surface estate and asserts claim to mineral estate). The burden is on Petitioner to establish a prima facie case by showing title sufficient to base a right to recovery; Petitioner must recover on the strength of its own title and not on any weakness of the Commonwealth's. *Kaiser Energy, Inc. v. Commonwealth, Dept. of Env'tl. Resources*, 535 A.2d 1255, 57 (Pa. Cmwlth. 1988).

Alternative to its claims concerning the true boundary line, Petitioner asserts that it is the owner of a portion of the disputed property under the doctrine of consentable line. The doctrine of consentable line is a rule of repose for the purpose of quieting title and discouraging confusing and vexatious litigation. *Plauchak v. Boling*, 653 A.2d 671, 675 (Pa. Super. 1995). The Superior Court has described the doctrine as follows:

The doctrine of consentable lines has emerged as a separate and distinct theory from that of traditional adverse possession. There are actually two ways in which one may prove a consentable line: by dispute and compromise, or by recognition and acquiescence. ... [O]ne may prove a consentable line by evidence of:

³ Section 1207. Board of Property.

The Board of Property shall, subject to any inconsistent provisions in this act contained, continue to exercise the powers and perform the duties by law vested in and imposed upon the said board.

* * *

The Board of Property shall also have jurisdiction to hear and determine cases involving the title to land or interest therein brought by persons who claim an interest in the title to lands occupied or claimed by the Commonwealth.

* * *

71 P.S. § 337.

(1) a dispute with regard to the location of a common boundary line, (2) the establishment of a line in compromise of the dispute, and (3) the consent of both parties to that line and the giving up of their respective claims that are inconsistent therewith. ... Where such line has been clearly established and the parties on each side take possession or surrender possession already held up to that line, it becomes binding, under the application of the doctrine of estoppel. ...

The establishment of this kind of boundary is always a matter of compromise, in which each party supposes he gives up for the sake of peace something to which in strict justice he is entitled.

Niles v. Fall Creek Hunting Club, Inc., 545 A.2d 926, 930 (Pa. Super. 1988) (en banc) (internal citations and quotations omitted). A consentable line by dispute and compromise is not a conveyance of land within the meaning of the statute of frauds because no estate is thereby created; such a line may be initiated by oral agreement and proved by parol evidence. *Plauchak* at 675.

As established by the findings of fact, by 1969 there had been a dispute between Petitioner's predecessor and the Commonwealth about the proper boundary between their property. As acknowledged by the Commonwealth in 1971, these parties reached an agreement, though it was never memorialized in a deed or other document. While it appears that Petitioner's predecessor received a majority of the disputed property, the Commonwealth received some as well; thus both parties gave up some part of their claims in this compromise. The Commonwealth marked the compromise line on the ground by placing white paint and blaze markings on the trees along this line and has apparently accepted in fact that this compromise line divides the two respective properties.

Given that there was a dispute as to the location of the common boundary line, the clear establishment of a line in compromise of that dispute and the consent of both parties together with the giving up of inconsistent claims, Petitioner has established through the doctrine of

consentable line that the boundary between its property and the Commonwealth's is the compromise boundary line as described in exhibit P-27.

Wherefore, the Board enters the following order.

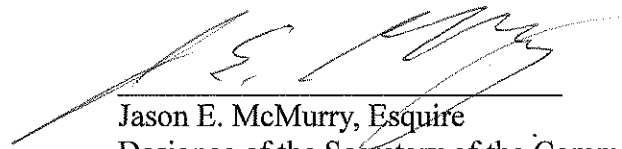
COMMONWEALTH OF PENNSYLVANIA
BEFORE THE STATE BOARD OF PROPERTY

Long Run Timber Company,	:	
Petitioner	:	
v.	:	Docket No. BP-2012-0001
Commonwealth of Pennsylvania,	:	
Department of Conservation and	:	
Natural Resources,	:	
Respondent	:	

FINAL ORDER

AND NOW, this 21st day of April, 2017, having duly convened and considered the entire record of the proceedings, and based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, the State Board of Property hereby **GRANTS IN PART** Petitioner’s prayer for relief and orders that, as the boundary line between Petitioner’s property and that of Respondent is as shown as the compromise boundary line of Department of Forest and Waters Map File 2730, Petitioner and not Respondent is the owner of the real property within the triangle identified as “lands claimed by Hammermill Paper Co. (now Niles Lumber Co.).” Respondent shall not assert any right, title or interest inconsistent with this boundary line.

BY ORDER:



Jason E. McMurry, Esquire
Designee of the Secretary of the Commonwealth
Chairman, Board of Property

Counsel for Petitioner:	Helen L. Gemmill, Esquire McNEES WALLACE & NURICK, LLC 100 Pine Street P.O. Box 1166 Harrisburg, PA 17108-1166
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Date of mailing:

April 21, 2017