1911

*March 8, 9.
*April 3.

JOHN REDDY (PLAINTIFF).....APPELLANT;

AND

GEORGE R. STROPLE (DEFENDANT).RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Deed of land—Description—Ambiguity—Admissions.

In an action for trespass to land both parties claimed title from the same source and the dispute was as to which title included the locus. The deed under which S. claimed contained the following as part of the description: "Then running in an eastwardly direction along the said highway until it comes to a crossway in the public highway and running in a southerly direction until it comes to the waters of Broad Cove." There were two crossways in the highway and S. contended that the first one reached on the course was indicated and R. that it was the second lying a little farther west.

Held, reversing the judgment of the Supreme Court of Nova Scotia (44 N.S. Rep. 332), Idington and Duff JJ. dissenting, that to run the course to the first crossway would take it over land not owned by the grantor; that there were other difficulties in the way of taking that course; that S. had apparently for many years treated the second crossway as the boundary; and what evidence there was favoured that view. The construction should, therefore, be that the crossway mentioned in the description was the second of the two.

APPEAL from a decision of the Supreme Court of Nova Scotia(1) reversing the judgment at the trial in favour of the plaintiff.

The question at issue on the appeal is stated in the above head-note.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

(1) 44 N.S. Rep. 332.

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Newcombe K.C. for the appellant.

Gregory K.C. for the respondent.

The Chief Justice.

THE CHIEF JUSTICE.—I agree with Sir Louis Davies; the appeal should be allowed.

DAVIES J.—I concur with the reasoning and conclusions of Justices Graham and Longley in the court below, and would allow this appeal and restore the judgment of the trial judge.

The case turns largely upon the construction to be given to the language of the description in defendant Strople's deed dated February, 1886. That deed was from the widow and heirs of the late James Reddy and conveyed to the defendant "twelve acres more or less" of fifteen acres owned in his lifetime by James Reddy. A triangular piece of $2\frac{3}{4}$ acres at the northeast corner was omitted, and it is contended on the part of the plaintiff that the little piece of land in dispute about made up the balance of the 15 acres. I think it clear beyond reasonable doubt that the person who drew the description in defendant's deed had before him the description in the late James Reddy's deed, and that the changes made in the language used in the defendant's deed were made to exclude that triangular $2\frac{3}{4}$ acres and the disputed land.

The description in James Reddy's deed of the land in dispute read,

> thence eastwardly on the margin of the said public highway until it comes to a stake standing in a heap of stones; thence due south nine rods crossing the said highway to the head of Broad Cove aforesaid at its N.W. angle.

In defendant's deed that was changed to read

> then running in an eastwardly direction along the said highway *until* it comes to a crossway in the public highway and running in a southerly direction until it comes to the waters of Broad Cove.

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The change made in the line was clear. The old description ran along the highway to a "stake standing in a heap of stones" and thence to the head of Broad Cove at its N.W. angle. The description in defendant's deed ran along the highway eastwardly until it came to a crossway and then not to the N.W. angle of Broad Cove, but simply to the waters of the Cove.

As a fact there were two "crossways" in the highway and this fact has given rise to the dispute. The heap of stones up to which the line ran in James Reddy's deed lay, it is said, about midway between the two crossways.

The majority of the court below held that by the true construction of the description in Strople's deed the line ran along the highway past the first crossway to this heap of stones and then to the waters of the bay. The reason for so continuing this line past the first crossway and on to the heap of stones was that such a course did not do violence to the description as it was a "southerly direction" and that unless such a construction was adopted the line from the first crossway to the waters of the Bay would necessarily run through another man's land and embrace part of that land in the lands conveyed to Strople. But such a construction ignores altogether the limiting word "until" in the description. The line is to run

> in an easterly *direction along the highway until* it comes to a crossway,

and then in a southerly direction to the waters of the bay. That seems clearly to shew that it was not to run along the highway past the "crossway" intended as the natural boundary mark to

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another natural mark not referred to, but apparently deliberately omitted from the description.

All these difficulties are avoided by construing the "crossway" mentioned in the description to refer to the second crossway lying a little further south.

Such a construction accords with that put upon it by the parties themselves just after Strople got his deed when the boundary fence was put up by Strople with the consent of the Reddys. It avoids any difficulty such as holding that the parties intended the line from the highway to the waters of the Bay to run across and include within the land conveyed part of another man's land, and it gives Strople the full area professed to be conveyed to him.

I do not wish to be understood as saying that the mere fact of the line crossing another man's land would be conclusive against adopting it if the language of the description was clear and certain that such line was intended. But where, as in this case, there were two crossways and it is uncertain which is meant, if the adoption of one leads to such difficulties and anomalies as I have referred to, and that of the other leads to no difficulties at all, but accords with the construction the parties themselves seem soon after the deed to have adopted, I have no difficulty in concluding that the latter construction is the true one.

IDINGTON J. (dissenting).—One James Reddy died intestate. His heirs either had disposed of all but the land sold to respondent, or thought they had done so, thirty years or more before this contest arose.

One Michael Reddy, who knew, I infer, a great deal more about what he on behalf of the heirs had to sell and intended to sell than we ever can know, sold re-

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spondent a piece of land which was supposed to be the last that the heirs had.

Henry Reddy pretends he shewed the now disputed line to Strople, but does not pretend to have bought the disputed land. He seems rather in the position of the man who had removed his neighbour's land marks, as it were, taken possession of his lands for nothing and for long years refused to recognize anybody's rights therein. And if I had to choose between his story and that of the others, I should not be too hasty in implicitly relying upon him. His evidence shews how dangerous it is to depart lightly from the express language in a deed.

I infer from what appears in the description that one Henry Reddy had before this grant to Strople, got two and three-quarter acres of what James Reddy left.

After payment of the price by Strople a deed pursuant to such sale was made on the 27th of February, 1886, by said heirs to him.

The description in that deed shews, by its reference to the course which cuts off two and three-quarter acres of the block which formerly belonged to James Reddy and runs along the lands of Henry Reddy for nine and a half chains, what the parties were doing. Taking several successive courses not disputed, it runs till, using the words,

> and then running in an eastwardly direction along the said highway until it comes to a crossway in the public highway, and running in a southerly direction until it comes to the waters of Broad Cove, etc.

The appellant contends there is another crossway on the same highway further on and that this southerly divergence whatever it implies must be from the second instead of the first crossway.

But why so? What right to carry the course being run along the highway, any further than the express language permits?

One argument says: Oh, if you turned out suddenly at that first crossway and tried to reach Broad Cove you would cross another man's land and include part of that in the deed.

Suppose it did, was that the first time another's land has been mistakenly included in a description? We have imported herein a good deal of evidence inadmissible on any theory but that of ambiguity in the deed. How can it be pretended there is any ambiguity? If "southerly" must be held to mean due south, as some contend (but I do not admit, and the surveyor's evidence says it does not mean), the line will reach Broad Cove and following the remaining course along that cove to place of beginning, the description is complete and no ambiguity exists.

The deed thereby covers and purports to convey land that is now believed to have belonged to another. But this very deed by its description includes in any way it is read, the public highway just as much as it does this other man's land.

The deed may cover error, but not ambiguity. The ambiguity is created by those who import into the express language that which it does not permit of, by carrying the course along the highway beyond the point at which that course ceases.

Any possible ambiguity arises from the use of the word "southerly" and is confined to that course alone from the point where the preceding course ended.

Now let us try to bear in mind and see if we can understand what the people framing this deed were about.

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James Reddy's heirs when represented by Michael Reddy in this transaction, had no other land there to sell but what admittedly is covered by the deed, and this quarter of an acre of beach of no particular value, but forming beyond doubt part of the same inheritance.

Are we to suppose it was designed to exclude from the sale this worthless bit? For what purpose was it to be excluded ?

A southerly course from the first crossway to the point on Broad Cove to which the land belonging to James Reddy's heirs extended, is undoubtedly what the parties had in view.

The surrounding circumstances all point to that as the meaning of "southerly." And such a line may, if intended to be a straight line, erroneously include a few feet of another man's land.

For reasons I have already assigned, how can that affect the matter ?

Giving effect to the evident purpose of the parties as gathered from the surrounding circumstances, no doubt can exist that it effectuated their purpose by connecting the first crossway and the extreme south-westerly point of the Reddy land touching the cove.

But is it absolutely necessary in view of these circumstances to say that "southerly" must be taken in an absolutely straight line ?

I think there is, if I may be permitted to say so, great good sense in the view that Chief Justice Townsend in the court below holds as to this course deviating slightly to avoid the inclusion of another man's land.

Again what is to be said when we find that for twenty-three years after the deed to respondent these

heirs never appeared to imagine they had any land there.

In the case of *Van Dieman's Land Co.* v. *Marine Board of Table Cape*(1), at page 98, Lord Chancellor Halsbury:

> The contemporaneous exposition is not confined to user under the deed. All circumstances which can tend to shew the intentions of the parties whether before or after the execution of the deed itself may be relevant, and in this case their Lordships think are very relevant to the questions in debate.

If ever parties granting manifested their intention the heirs of James Reddy did in this case. They assumed for over thirty years partly before this deed and chiefly after that they had no concern in this land.

If we turn to respondent's intention, we find he cropped for some years beyond the line he is now sought to be restricted to, and when he fenced gives reasons for placing it where he did and then kept bars in it for access to the land in question and used the land in question from time to time for purposes of hauling in sea-weed and drift wood and is corroborated in these regards.

The next neighbour never interfered, and when his acts seemed to indicate a purpose to interfere, like a man of sense he said it made no difference to him and he made no contention.

I need not follow at length the manifest absurdities in giving way to the second crossway contention.

It is easy to see how the error in description arose if respondent is to be believed, and such evidence is for this purpose admissible.

Clearly his evidence is admissible as fixing the point of the first crossway as point of the southerly

(1) [1906] A.C. 92.

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divergence. And if believed I do not see how that point can be departed from.

But he goes further and tells that Michael Reddy shewing the boundaries of what he sold said there was a corner stake, near that point, of a pile of stones and a stake in it. Being unable to find the pile of stones they took the crossway as substantially at the point from which to run southerly to the cove.

When this dispute arose then a surveyor took the most westwardly point of land Reddy's heirs had on the cove and sighted a line from there that led to the discovery of this very pile of stones and a stake.

I do not use this to shew that it is to govern, but confirmatory of what respondent says did happen and misled the parties at the time.

I cannot think there ever was a conventional line. Much contradiction exists as to that agreement. One side professes it settled everything, and the other that it settled it only if found to be correct. This latter condition is denied. A few questions and answers from the evidence of appellant near the close of the case settles that to my mind. He was recalled and says:

Q. Referring to that agreement you signed in the house, you did not see any sketch of the surveyor? A. No.

Q. Did you know he had a sketch? A. No.

Q. Did you know he was going to make a sketch? A. He said he was going to make a plan, that is what he said.

Q. "Reference may be had to the plan," that was the plan you had in mind that he was to make after he went home? A. All that I know is that he said he was going to make a plan. I supposed the plan would be a plan of the land.

Q. It was the particular plan that he was to make when he went home that agreement was referring to? A. He did not say when he was going to make it. He said he was going to make a plan.

Q. That was the one referred to in the agreement was the one he

was going to make? A. I supposed it would be a plan of all the land he was going to make.

Q. At all events you knew there was to be a plan made in connection with that agreement? A. He said that he was going to make a plan.

Q. Did you understand there was to be a plan made or not in connection with that agreement? A. I supposed when he said he was going to make a plan that he would make one.

Q. In connection with that agreement? A. I could not say.

What was this plan for if all was ended? Who was to pay for it? What does he mean? It seems to me this evidence is inconsistent with the theory of a fence existent and a fence to be so many feet from it as a finality of a dispute.

I think the appeal should be dismissed with costs.

DUFF J. (dissenting).—The controversy in the action out of which this appeal arises turns upon the true construction of a conveyance dated 27th February, 1886, made between the heirs of one James Reddy and G. R. Strople, the respondent, of a parcel of land described therein in these words:

A certain lot or parcel of land, situate and being on the north side of Broad Cove, in the Township of Manchester, in the County of Guysborough, aforesaid, and being part of Lot number one, in Hallowell's Grant. Bounded as follows: Beginning at a white birch tree on the north side of Broad Cove, aforesaid, and near a small brook, from thence crossing the public highway and running a due course north until it comes to a stake in a heap of stones, against Henry Reddy's line, a distance of eleven chains, and from thence in a northwesterly direction along Henry Reddy's, until it comes to a stake in a stone pile, a distance of nine and one-half chains, and from thence in a west, southwesterly direction until it comes to a maple tree, and continuing on from that until it comes to the public highway, and then running in an eastwardly direction along the said highway until it comes to a crossway in the public highway, and running in a southerly direction until it comes to the waters of Broad Cove, and thence in an eastwardly direction along the

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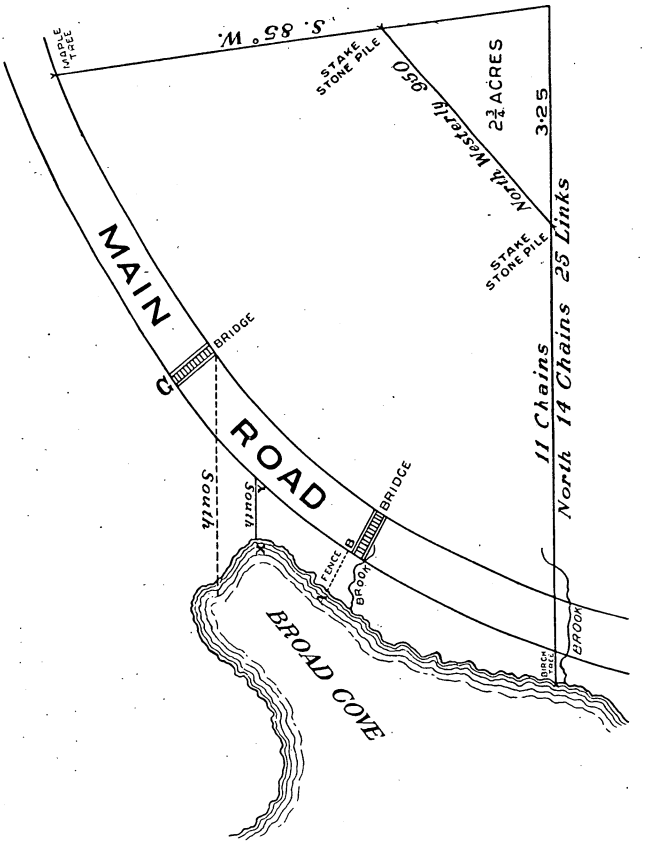
waters of Broad Cove, until it comes to the place of beginning, containing by estimation 12 acres, more or less.

This description may be conveniently followed by referring to the subjoined sketch.



The property in dispute lies between the main road and the shore of Broad Cove and is bounded on the east by the line AB, and on the west by the line XY. The respondent alleges that this piece of land is included in the tract embraced on the above description and this the appellant denies.

At each of the points marked G and B there is a

"crossway" — by which term is designated a small bridge carrying the travelled road across a narrow stream or ditch; and the crucial point in the controversy is whether the first or second of these bridges is that which is referred to as the "crossway" in the description quoted. If the first, then it is hardly disputed that the parcel in question is included in the description, but if not then that parcel is clearly excluded.

Applying the accepted canons of construction I do not think there is any difficulty in construing this deed. The difficulty, if I may say so, appears to have arisen from overlooking the rule — which, it may be observed, is a rule of law — that where parties have reduced their transaction to writing (and especially where the law requires the transaction to be expressed in writing) the words of the written instrument themselves construed with such aid as may be legitimately obtained from extrinsic circumstances are conclusively taken to express their intention.

There is a further rule which must be applied in this case, and that is, (I state it in the words of Coleridge J., in *Shore* v. *Wilson*(1), at page 525), that where the language used in the deed in its *primary meaning is unambiguous,* and that meaning is not excluded by the context, and *is sensible with reference to the extrinsic circumstances,* then such primary meaning must be taken conclusively as that in which the words are used.

There can, I think, be no doubt about the primary meaning of the words used in this description in so far as they affect the point in dispute. The deed

(1) 9 Cl. & F. 355.

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directs you to trace your boundary in an "easterly direction along" the public highway

until it comes to a crossway in the public highway and running in a southerly direction until it comes to the waters of Broad Cove.

I agree with the appellant that *primâ facie* this description requires you to change your direction when you come to the crossway; and I think that "running in a southerly direction until it comes to the waters of Broad Cove" *primâ facie* means that the line is to be run in the same direction until the destination is reached and that the direction is south. On these points I agree, I say, with the appellant's contention and with the view of the learned dissenting judges in the court below. The effect of the description then is this: In laying out the boundary you are to go along the highway in an easterly direction *until you come to a "crossway"* and then you are to turn south. There is no ambiguity about that as it stands. It means as plainly as words can express it that when you come to a "crossway" you are to change your direction and turn south. Can it affect your course in the least that having come to a "crossway" you are told that there is another crossway further on? Obviously it cannot; because you are to turn south when you come to a crossway, and you have come to a crossway. It is quite clear then that here there is nothing in the nature of an equivocation. It is quite clear, I mean, when one remembers that the essential feature of an equivocation is, as Lord Chancellor Cairns said in *ter* v. *Charter* (1), at page 377, that the description shall be "equally applicable *in all its parts*" to two persons or two things. The suggestion is that a boundary

(1) L.R. 7 H.L. 364.

traced by turning south at the first crossway and a boundary traced by turning south at the second crossway are things to which this description is *equally applicable*. That is obviously not so because it is plain that the deed having directed you to turn south when in passing along the highway you meet a crossway, you are departing from the plain terms of the direction when having met a crossway you, instead of turning south, proceed easterly until you meet a second "crossway." Nobody intending you to go on to the second crossway would think of giving the direction contained in this description. There is, therefore, nothing in the nature of equivocation.

Are then the words of this description according to which the boundary proceeds southwards from the first crossway "sensible with reference to the extrinsic circumstances." The only difficulty suggested is that a boundary so traced encloses property which at the date of the conveyance was not the property of the grantor. It is said that there is a presumption that the grantor did not intend to convey what he did not own and that this is sufficient to justify a departure from the primary meaning of this perfectly unambiguous description and the adoption of the second "crossway" as the point of divergence. The contention necessarily involves this that within the meaning of the rule of construction I have stated the words of an unambiguous description in a conveyance are not in the primary meaning "sensible with reference to extrinsic circumstances" when it appears that the parcel described includes some property to which the grantor had no title. That is a proposition for which no authority was cited for the reason, no doubt, that no authority giving it the slightest countenance can be dis-

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covered; it is a proposition quite irreconcilable with principle.

No conveyance by a vendor without title can, of course, pass a title. But at common law certain conveyances operated as it was said to convey an estate "by wrong"; and in such cases, speaking broadly, if the person making the conveyance afterwards acquired the property the title passed, as it was said, by estoppel; that is to say, the vendor was by his conveyance estopped from denying that he had a title at the time it was made. A statutory grant, it is true, has not the same effect; but in such grants there is usually, or, at all events, frequently, a covenant for further assurance or an unqualified covenant for title which if the grant were for valuable consideration would in the absence of some countervailing equity be equally effective to prevent the grantor from retaining the property as against the grantee if he should afterwards acquire it. What is the purpose of unqualified covenants for title ? Of covenants for further assurance ? To hold upon some such presumption as that suggested that a description otherwise perfectly clear is to be altered to exclude property to which the grantor had no title is simply to tear up the deed. But I need not pursue the argument into its details; the point is quite settled by the authority of a decision of this court. As Strong C.J. said delivering the judgment of the majority of the court in *Barthel* v. *Scotten*(1), at page 370:

> it matters nothing in a case of this kind whether the grantor had or had not title to all he assumed to convey; we are to construe the description according to the language of the instrument abstracted from all considerations as to title.

(1) 24 Can. S.C.R. 367.

The result, however, seems equally clear if we seek to gather the intention of the parties not (as the law requires) from the language of the deed, but as if the question of intention were at large — to be ascertained from an examination of all the facts in evidence. One thing the evidence establishes, I think, is that Strople understood he was getting the property which then belonged to the estate of James Reddy, a small part of the estate having previously passed to Henry Reddy.

The evidence of Henry Reddy is relied upon by the appellants, but two circumstances corroborate Strople in my view conclusively. First, there is no suggestion of any reason why this small disputed piece of land was omitted from the sale to Strople, and secondly, it is hardly conceivable that rational people intending to make the second crossway the point of departure would have used the language we find in the deed.

The claim to a conventional boundary clearly fails. The evidence establishes that no concluded agreement was reached.

ANGLIN J.—With respect I would allow this appeal and would restore the judgment of the learned trial judge for the reasons given by Mr. Justice Graham and Mr. Justice Longley. I should not have thought it necessary to add anything to what they have said had a different view not been taken by some of my learned brothers. On this account I shall refer briefly to the evidence.

The words of the description in the Strople deed,

> running in an easterly direction along the said highway until it comes to a crossway in the public highway,

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primâ facie refer to the first crossway met with in the highway, and only serious difficulties in the application of the description as a whole, if the reference be so taken, can justify their being referred to any other crossway. But when the evidence discloses that the next line of the boundary as described in the deed will, if run from this first crossway, necessarily include a considerable piece of land which the grantor did not own, the presumption against an intention thus to deal with a neighbour's property necessarily puts one upon inquiry whether the first crossway was really the point of departure from the line of the highway which the parties intended. When it is found that a little farther on there is a second crossway — if anything more marked and noticeable than the first — and that a line run from it in the designated direction will without any difficulty reach the place indicated in the description as its terminus, the doubt becomes very grave and a case at least of equivocation or latent ambiguity is well established. We then properly look to the circumstances to solve the doubt thus raised.

On the one hand the defendant swears that it was all the land owned by Jas. Reddy which he bought (a triangular piece of the property, $2\frac{3}{4}$ acres, he admittedly did not buy), and that, at the time he was purchasing, Michael Reddy, since deceased, pointed out to him the first or western crossway as the point where the boundary would cross the highway and turn southerly. On the other hand Henry Reddy swears that it was he who put the defendant in possession of his property, and that in doing so he indicated to him the second or eastern crossway as the point at which his boundary turned southerly from the highway to the water. He also says that the heirs of James Reddy

retained, between the highway and the beach, a piece of the land owned by James Reddy which had been fenced in with his, Henry Reddy's, adjoining property. In this conflict of testimony the acts of the parties must be looked to in the hope that they may aid in ascertaining where the truth lies.

The defendant admits that since he bought it his land has been separated by a fence from the property occupied by Henry Reddy, and later by Samuel Pyle. This fence, put up by the defendant, was never at all near the line which he now asserts to be the boundary. It was first placed—Henry Reddy says by his permission — about 50 feet west of the second crossway; some fifteen years ago it was moved back by the defendant — Henry Reddy says upon his instructions — to the line of the brook at the second crossway. After he moved the fence back to the brook Strople ceased "cropping" the 50 feet of land immediately west of it. While admitting these facts Strople denies having received the permission and instructions of Henry Reddy to which the latter deposed.

Samuel Pyle partly corroborates Henry Reddy as to the reservation of a piece of land by the heirs of Jas. Reddy. More cogent corroboration is given by the departure in the description in the Strople deed from that in the deed to Jas. Reddy, the earlier part of which was obviously followed in Strople's deed. Strople's deed names a new point of departure from the highway and it does not fix the point at which the boundary strikes the waters of the cove as it was fixed in Jas. Reddy's deed. It is very difficult to explain these changes on the hypothesis that Strople's agreement was to buy the whole of Jas. Reddy's land, except the $2\frac{3}{4}$ acre triangular piece in the northwest corner —

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no more and no less. Strople's explanation of them — that when Michael Reddy indicated the boundary to him they could not find the pile of stones and stakes beside the highway mentioned in Jas. Reddy's deed — is certainly inadequate in view of the ease with which this monument appears to have been discovered when the surveyor, Mr. Taylor, was brought down 23 years later "to run the line." Strople's explanations as to the placing of his boundary fence at and near the second crossway are equally unsatisfactory.

Mr. Taylor, who gave evidence for the defendant, says that when he was called in to run the line there appeared to be "doubt" in Strople's mind whether the second crossway "was not the right bridge." Taylor does not say that Strople then pointed out the first crossway to him as that mentioned in his deed or shewn to him by Michael Reddy when he was purchasing as the point of departure of the boundary line from the highway. On the other hand Strople says he did, on this occasion, shew the first crossway to Taylor, Henry Reddy, John Reddy, Samuel Pyle and Stephen Pyle, as the crossway mentioned in his deed. Yet he admits that after he had done this he signed a memorandum accepting the fence at the second crossway as his boundary, "if it was the correct line."

All this evidence, in my opinion, affords substantial proof that for many years the defendant treated the second crossway as the true point of departure of his boundary from the line of the highway. His certainty, when giving evidence at the trial, that it was from the first crossway that his boundary turned southerly, would seem to have been a mere doubt when Mr. Taylor was called in — a doubt so slight that he

signed an agreement placing the point from which his boundary turned southerly, at least conditionally, at the second crossway. While he may not be bound by this agreement to the line of the second crossway as a conventional boundary, his execution of it is not the act of a man who was certain that he had, when purchasing, been shewn the first crossway as the point where his boundary left the highway. George Strople's conduct at and since the time of his purchase, in my opinion, affords evidence more reliable than his testimony at the trial as to what were shewn him as, and what he really understood to be, the boundaries of the land he bought. It is, I think, reasonably clear that, until the dispute which precipitated the present litigation arose, all the parties interested acted on the assumption that the defendant's boundary followed the highway easterly until it reached the second crossway, when it turned southerly to the waters of the cove.

In view of these facts and of the difficulties involved in running a line southerly from the first crossway to the waters of the cove, I resolve the equivocation in the description in the Strople deed by determining that it was the second crossway and not the first which was intended by the words, "until it comes to a crossway." The person who prepared the Strople deed probably had not in mind the existence of the first crossway. This sufficiently accounts for his use of the words, "until it comes to a crossway," to indicate the second crossway and affords an explanation much simpler than, and quite free from such difficulties as are involved in, that suggested on behalf of the defendant, who, in order to avoid carrying his boundary line across the lands of a stranger, would continue it easterly along the highway beyond the first crossway

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until it reaches the stake and pile of stones mentioned in James Reddy's deed, situate about midway between the first crossway and the second, and would then turn it southerly to the waters of the cove along the line defined in the James Reddy deed — thus reverting to the description from which a distinct departure was made, apparently deliberately, in preparing the description of the land he purchased. Instead of turning southerly from the first crossway, to which it runs in a southeasterly direction, the boundary, as now proposed by the defendant would continue to follow the line of the highway, deflecting more to the east, and, after running in this direction about 100 feet, turning abruptly to the south. That the words of the description in Strople's deed — "and running in a southerly direction until it comes to the waters of Broad Cove" — designate a single straight line, I think, admits of no dispute. The device to which the respondent is driven, to obviate including part of Pyle's property in his deed, is not only inconsistent with the departure which that deed makes from the description in the James Reddy deed, but involves changing the single straight line defined in his own deed as running southerly from the first crossway to the cove, into two lines, one almost at right angles to the other, and the first of them running easterly, not southerly, the deflection at the first crossway being northward rather than southward as the call of the deed requires.

The only admissible solution of the equivocation or latent ambiguity raised by the evidence of the actual conditions on the ground appears to me to be to take the second crossway as the point of departure from the highway.

The appeal should be allowed with costs in this

court and in the court *en banc,* and the judgment of the learned trial judge should be restored.

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STROPLE.

Anglin J.

Appeal allowed with costs.

Solicitor for the appellant: *J. A. Fulton.*

Solicitor for the respondent: *D. P. Floyd.*