



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**Citation:** *Jacobs v. Jacobs*, 2025 NLSC 175

**Date:** December 9, 2025

**Docket:** 201701G3348

**BETWEEN:**

**SHAWN JACOBS**

**FIRST PLAINTIFF**

**AND:**

**BRADFORD JACOBS**

**SECOND PLAINTIFF**

**AND:**

**JAMES JACOBS**

**FIRST DEFENDANT**

**AND:**

**WAYNE JACOBS**

**SECOND DEFENDANT**

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**Before:** Justice Irene S. Muzychka

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**Place of Hearing:**

St. John's, Newfoundland and Labrador

**Dates of Hearing:**

January 20-23, 2025

**Summary:**

The Plaintiffs brought an action for a declaration that they had better title to a disputed parcel of land than the Defendants, under Rule 7.16 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.



## **REASONS FOR JUDGMENT**

**MUZYCHKA, J.:**

### **SUMMARY**

[1] This matter is about ownership of land in Ochre Pit Cove. The Plaintiffs acquired land via a quit claim deed from the Estate of the late John (Jack) Jacobs (“Subject Property”), which allegedly encompasses a smaller parcel of land claimed by the First Defendant, James Jacobs (“Disputed Parcel”). The Plaintiffs seek a declaration from the court that states that the Plaintiffs’ claim to the Subject Property is better than or superior to that of the First Defendant, James Jacobs.

### **INTRODUCTION/BACKGROUND**

[2] The land in question is in Ochre Pit Cove, in an area off the Conception Bay South Highway, which consists of 0.982 hectares. The parties agree that the land originally belonged to Everett Jacobs, grandfather of the Plaintiffs.

[3] The Defendant, James Jacobs, is the son of Everett Jacobs. The Second Defendant, Wayne Jacobs, is James’ son.

[4] The Plaintiffs are the grandsons of Everett Jacobs and the sons of Raymond Jacobs.

[5] Everett Jacobs had eight children - John (Jack), Fred, Frank, Reginald, Audrey, Grayson, Raymond, and James. James is the only surviving child of Everett Jacobs.

[6] Everett Jacobs died on December 19, 1975, after making his Last Will and Testament (“Will”) on April 24, 1975. Letters of Probate were granted by the Supreme Court of Newfoundland and Labrador on June 12, 1991, to John Jacobs. Letters of Administration c.t.a., d.b.n., of the Will and Estate of the late Everett Jacobs were granted out of the Supreme Court of NL on February 4, 2008.

[7] In his Will, Everett Jacobs left a parcel of land which included the Subject Property to his son, John Jacobs, described as being north of the Road to the Pasture, including the area with the barn and meat shop. The meat shop was operated by Everett’s sons, James Jacobs and Fred Jacobs, at the time of Everett Jacobs’ death. The Will provided that his sons Fred and James could continue to use the meat shop as long as they were engaged in the butcher business.

[8] The Will states as follows:

First. To my son, John Jacobs, I give and devise my dwelling house and all its contents, the old shop, the barn and the land on which the said buildings are erected, together with the garden in the immediate vicinity of the said buildings and to the south of them; also the small garden located in the immediate vicinity of William Pennell’s property and William Dwyer’s property; also that part of the Church Hill Garden below and to the south of the Wall, together with the Pasture in the immediate vicinity; also all land on the north side of the road leading to the pasture, including the pasture, of the Old Property, together with the barn and the meat shop; also the potato garden in Tin Town; to him and his heirs and assigns forever.

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The access road leading to the said dwelling house, the said old shop, the said new shop and said fish stores and said barn is to be used by my said sons, John Jacobs and Fred Jacobs.

The Meat Shop may be used by my said son Fred Jacobs and my son, James Jacobs, as long as they are engaged in the Butcher Business.

[9] John Jacobs was appointed as executor of Everett Jacobs’ Will, which was signed on April 24, 1975. Everett Jacobs passed away later that year, on December 19, 1975.

[10] Fred Jacobs and James Jacobs continued running the meat shop for over 20 years after Everett Jacobs' death. They later built a new meat shop at the site of a former garage near James Jacobs' family home, which had burned down in 1971. This new location, opened in July 1998, is very close to the original meat shop and sits between the barn and the old shop.

[11] It is the title to the Disputed Parcel, which is currently occupied by the new meat shop built by Fred and James, which is the subject of the dispute between the parties. James claims that the garage originally owned by Everett Jacobs was part of the family homestead, which he acquired in 1960. The garage portion of the Subject Property, upon which the new meat shop was relocated in 1998, is identified in this decision as the Disputed Parcel.

[12] John Jacobs died intestate on May 11, 2005, being possessed of the Subject Property bequeathed to him by his father, Everett Jacobs. No deed of assent was ever executed in favour of John Jacobs regarding the Subject Property.

[13] John Jacobs' estate was administered by the Public Trustee through Letters of Administration issued to the Registrar of the Supreme Court on September 11, 2007.

[14] Fred Jacobs died suddenly on May 17, 2007, intestate. His estate was administered by his brother, Raymond Jacobs, who is the father of the Plaintiffs herein.

[15] At the time of trial, James Jacobs testified that he continues to work in the meat shop, although it is now primarily run by his son, Wayne. James Jacobs, who is 88 years old, testified that he continues to work in the business six days a week from 7:30 am to 4:00 pm, packing and cutting meat, even though he is not paid.

[16] On August 7, 2014, by way of a Quit Claim deed from the Public Trustee on behalf of the Estate of the late John (Jack) Jacobs, and registered in the Registry of Deeds on August 11, 2014, the Plaintiffs acquired the Subject Property measuring

0.982 hectares, consisting of the land bequeathed to John Jacobs by his father, Everett Jacobs.

[17] The Quit Claim deed specifically provides:

...the Grantor releases, quit claims and transfers unto the Grantees all the estate, right, title, interest, claim and demand of the Grantor whatsoever both at law and equity or otherwise howsoever and whether in possession or expectancy, in and to ALL THAT piece or parcel of land at Ochre Pit Cove, in the Province of Newfoundland and Labrador and more particularly described in Schedule “A” annexed hereto (which said Schedule “A” forms part and parcel of these presents) TOGETHER WITH all buildings and erections thereon **SUBJECT NEVERTHELESS to a licence in favour of Fred Jacobs and James Jacobs allowing them to use the meat shop on the property “as long as they are engaged in the Butcher Business”**, as more particularly set out at pages 2-3 of the Last Will and Testament of Everett M. Jacobs, a true copy which is attached as Schedule “B” (which said Schedule “B” forms part and parcel of these presents), TO HOLD the same unto the Grantees, as Joint Tenants, absolutely and forever. (emphasis added)

[18] Despite the language of the Quit Claim deed, James Jacobs informed the Plaintiffs that he owns a parcel of land within the Subject Property acquired by them. He claimed title to the land which is the site of the new meat shop.

## **PARTIES POSITIONS**

### **The Plaintiffs**

[19] The Plaintiffs claim to have better title to the Disputed Parcel than the Defendants.

[20] The Plaintiffs claim ownership of the Subject Property by virtue of the Quit Claim deed from the Estate of the Late John (Jack) Jacobs. They submit that with the move of the old meat shop to its new site adjacent to the old one, the old meat shop was essentially abandoned and thereby terminated the terms and conditions of the Will of the late Everett Jacobs.

[21] The Plaintiffs dispute the Defendants' claim of ownership and state that the Disputed Parcel was owned by and remained in John's estate, having been bequeathed to him in 1975. Additionally, the Will granted a license to James and Fred to continue operating the meat shop, so their occupancy of the property since Everett's death did not dispossess John or his estate of title.

### **The Defendants**

[22] James Jacobs claims his title to the Disputed Parcel is better than that of the Plaintiffs.

[23] The Defendants claim ownership of the Disputed Parcel, stating that James acquired the family homestead, which consisted of a house and a separate garage, from his brother Grayson, who had received it from their father, Everett. James Jacobs states that Grayson deeded him the land for \$1,200 however, the deed was never registered and has since been lost or destroyed in the fire.

[24] James occupied the family homestead with his wife and three children from 1960 until the house was destroyed by fire in 1971. The Defendants state that the site of the new meat shop is located on the Disputed Parcel of land claimed as part of the homestead and is therefore not part of the land bequeathed to John Jacobs by Everett Jacobs.

[25] After the fire, James rebuilt his family home on a different piece of land, gifted to him by his father, Everett Jacobs. The site of the burned home remains vacant and is not included in the Disputed Parcel or the Subject Property.

[26] The Defendants do not contest the title to the Subject Property except for the Disputed Parcel. The main issue in this case is whether the Plaintiffs or the Defendants hold better or superior title to the Disputed Parcel.

[27] The Parties entered a Consent Book of Documents at the start of the trial. The survey plan attached to the Deed of Quit Claim, and included in the Consent Book of Documents, identifies the following structures along the Road to the Pasture: beginning from the west, an “Old Rock Foundation,” followed by the new meat shop and then the old meat shop. The survey plan does not indicate the location of the old homestead, which appears to be situated across the road. There appears to be no dispute regarding the identification of the structures on the land as described by both Shawn Jacobs and James Jacobs.

## **ISSUES**

[28] The issues are:

- a. Are the Plaintiffs entitled to a declaration that they have superior title to the Disputed Property than the Defendants?
- b. Is the Plaintiffs’ request for declaratory relief appropriate in the circumstances?
- c. Who, as between the Plaintiffs and the Defendants, has established better title?

- d. Did the act of relocating the old meat shop to a new location result in terminating the terms and conditions of the Will of the late Everett Jacobs?
  
- e. Are the Plaintiffs' claims against the Defendants statute barred?

[29] The Subject Property consists of 0.982 hectares. The Defendants have not provided a survey of the Disputed Parcel within the survey of the Subject Property, other than to state that it includes the land surrounding the site of the old garage.

[30] The Plaintiffs submit that their claim to the Subject Property is based on title derived from Everett Jacobs's Will. The Defendants' case relies on a lost bill of sale from Grayson Jacobs to James Jacobs, which was never registered. Alternatively, the Defendants assert ownership of the Disputed Parcel through adverse possession.

## **EVIDENCE**

[31] The court heard evidence from the following witnesses:

- a) Shawn Jacobs (the First Plaintiff)
  
- b. James Jacobs (the First Defendant)
  
- c. George Loveys (neighbour of the Jacobs family)
  
- d. Wayne Jacobs (the Second Defendant)

## Shawn Jacobs

[32] Shawn Jacobs is the grandson of Everett Jacobs and lives in Victoria, British Columbia, where he runs a general dentistry practice. He is 58 years old. He grew up in Ochre Pit Cove with some time in Toronto during his childhood. During his childhood, he lived in Ochre Pit Cove, attended school there in grades 3 and 4, and after grade 7. He went to high school in Western Bay, living in Ochre Pit Cove until age 16, when he moved to St. John's to attend school. Before moving to St. John's, Shawn worked part-time with his uncles Fred, James and John from 1979 to 1982.

[33] Shawn Jacobs earned a certificate in meat cutting in 1982 from the College of Trades and Technology. He attended Memorial University full-time from 1982 to 1985, living in St. John's until he started dentistry studies at Dalhousie University in 1985. During those years that Shawn attended Memorial University he returned to Ochre Pit Cove on weekends and summers until 1985.

[34] While he lived in Halifax from 1985 – 1989, Shawn returned to Ochre Pit Cove in the summers. He also worked as a meat cutter at a supermarket in St. John's and in Carbonear.

[35] Following his graduation, Shawn returned to Carbonear to practice dentistry. He planned to live at his father Raymond's house, which needed renovations. During the renovations, Shawn lived next door with his uncle James. From 1990 – 1998, Shawn's practice took him to Carbonear, Old Perlican, St. John's and Bay Roberts, all the while maintaining his residence in Ochre Pit Cove. Between 1995 and 1997, Shawn rented out his Ochre Pit Cove home when he moved to Bareneed. He visited Ochre Pit Cove every month to check on his house.

[36] Starting around 1998, Shawn left Newfoundland to pursue further studies for about three years. During the summers, he returned to the province, visited his uncles in Ochre Pit Cove, and checked on his house. Between 2005 and 2011, Shawn visited Ochre Pit Cove monthly. He continued working in Newfoundland until 2015, when

he left the province to pursue additional training. His wife and children remained in St. John's until he graduated in 2017. Afterward, he moved with his family to Victoria, B.C.

[37] Shawn Jacobs states that he was in Newfoundland regularly from 1979 to 1982, 1995 to 1997, and from 2003 to 2011, and thus he is familiar with the lands in question. He spent time in Ochre Pit Cove visiting and working with his uncles at the old meat shop during the early years of his life. He is confident he can say he did not observe James Jacobs' alleged possession of the Disputed Parcel.

[38] After his uncle Fred passed away in 2007, Shawn observed his cousin, Wayne, start running the meat shop around 2010.

[39] Shawn remembers his grandfather, Everett, and recalled going to Branch with him to buy lambs. He does not remember the old homestead apart from the site itself being blackened with ashes and charred remains. In 1979, at age 13, Shawn worked in the old meat shop, saying he spent a lot of time with his uncles, Jack and Fred. He worked with Fred Jacobs in the meat shop and believed Fred owned the business, as he helped Fred with the meat operations. He said he did this from ages 13 to 16. During the summers, Shawn worked full time with Fred.

[40] Shawn recalled helping with the slaughter of lambs and storage of hides in what he called the "hide house". He described the hide house as being in the vicinity of the meat shop, near the "barn/dry goods store". He said the new meat shop is built on the site of the hide house and the barn.

[41] Shawn said they would sell the hides to a tannery in Carbonear. He recounted how he, along with his uncle Grayson and a few cousins, were involved in slaughtering animals alongside his uncle James. Fred was also a farmer and had 200 sheep and worked as a fisher in the summer. James did not own animals.

[42] He recalled that James worked under Fred's supervision. According to Shawn, James's main duty at the meat shop was to operate the meat saw and place the cut meat on the counter for packaging, while Shawn helped with wrapping. Shawn remembered that Fred handled all the accounting, banking, and reconciliations for the business, and he never saw James doing those tasks.

[43] Shawn lived in Bay Roberts from 1997 to 1998. He recalled the construction of the new meat shop, explaining that Fred's business was expanding and required additional space. The new building was constructed approximately 30 feet from the original meat shop and was located on the site of the former barn or dry goods structure, near the hide house.

[44] Shawn recalled seeing Wayne working in the meat shop during his visits to the area in 2010.

[45] Shawn understood that Everett Jacobs' Will left John the land situated north of the road leading to the pasture, which included the old meat shop and the barn.

[46] Shawn testified that he believes the land described in the Quit Claim Deed from the estate of the late John Jacobs corresponds to the bequest made to John by his father, Everett. This bequest included all the land on the north side of the road leading to the pasture—encompassing the pasture itself—of the Old Property, together with the barn and the meat shop.

### **James Jacobs**

[47] James Jacobs testified that he is the only surviving child of Everett Jacobs. He lives in Ochre Pit Cove on land gifted to him by his father in 1974. James claims title to the Disputed Parcel based on a bill of sale from his brother Grayson.

[48] He testified that the Disputed Parcel includes part of the site of the old family homestead, consisting of a house and garage. He says that he grew up in the old family homestead and that his brother, Grayson, acquired the family home from their father, Everett Jacobs, sometime in 1953. Grayson occupied it as his family home until 1960, when he decided to move his family to Mount Pearl. Grayson sold the homestead property to James in 1960 for \$1,200. James testified that Grayson had given him a paper on which the transaction was written. James and his family lived in the old homestead until it was destroyed by fire in December 1971. After the fire, James left Ochre Pit Cove for Labrador, returning in 1972.

[49] James Jacobs testified that the garage was considered part of the homestead property and was not destroyed by the fire. He stated that the garage was located on the Disputed Parcel and is the site where the new meat shop was built.

[50] James Jacobs testified that after his home was destroyed by fire, his father gave him a parcel of land in Ochre Pit Cove on which to rebuild his family home. A Deed of Conveyance was executed by Everett Jacobs on December 21, 1974, and registered in the Registry of Deeds on the 20th of April 1994. James described the land as being near the Disputed Parcel.

[51] James Jacobs stated that his wife, Violet, planted a garden and grew vegetables on the homestead property before the fire. James testified that the vegetable garden was not maintained after 1972 or 1973. He says that the property was fenced in the 1960s to keep the cattle from roaming.

[52] After the fire destroyed the house, James stated that he continued to use the garage on the Disputed Parcel despite moving to another property. James claimed he went to the old house site every day as he used the artesian well located on the property.

[53] James Jacobs explained that the garage was in the same yard as the house and that the fence present in the 1960s was no longer there. He described the barn as being in the pasture and the garage as located between the old meat shop and the

barn. James denied that the garage was ever referred to as the “hide house,” contradicting Shawn Jacobs’s testimony that he worked in the “hide house,” which Shawn described as the garage next to the old meat shop.

[54] James Jacobs recalled that Shawn only worked in the old meat shop for one summer, contrary to Shawn’s testimony that he worked there for three summers.

[55] James Jacobs’ description of the garage’s use was inconsistent. He stated that between 1972 and 1980 he sometimes stored items there, but at other times it sat idle. He also said he used the garage for everything, yet claimed that nobody else used it, while simultaneously stating that anyone could come and use it. He mentioned storing bottles in the garage as well as old washing machines, which he would repair.

[56] He described the dimensions of the garage as 25 feet x 30 feet.

[57] After testifying that he built the new meat shop on the site of the old garage, James Jacobs contradicted himself on cross-examination. When asked whether he built the new meat shop on the garage’s footprint, he responded, “No, I did not tell you that.”

[58] James Jacobs was also confused about the Notice of *Lis Pendens* that his solicitor filed on his behalf on November 8, 2013, concerning the Subject Property. When asked to identify it, he stated, “This is the first I have heard of this.” He later clarified his evidence the following day, saying that the notice “came to him” while he and his son were driving home and that “I didn’t talk to anybody about it.” He confirmed that he was only claiming the Disputed Parcel (the meat shop on his own land), not the entire Subject Property, and that he was not claiming the site of the barn.

[59] James Jacobs denied that Fred Jacobs employed him. He says they each had their own business. When they built the new meat shop, Fred told him that the

building would be James' after he dies. James believes that he owns 100% of the building housing the meat shop.

[60] When asked about John Jacobs' estate, James Jacobs denied any involvement, stating that he had never offered to act as Administrator. However, the estate documentation included in the Consent Exhibit indicated otherwise. During the application to appoint the Registrar of the Supreme Court, affiant Stephen Henley stated that James had agreed to serve as the administrator.

[61] James was aware of the administration of John Jacobs' estate and had expressed to the administrator that he claimed ownership of the Disputed Parcel. This was noted in the Administrator's affidavit referred to earlier and was reflected in the Quit Claim deed granted by the Public Trustee.

[62] James Jacobs' testimony raises concerns with its reliability. I do not believe that he was deliberately misleading; rather, it was because there were many things he could not remember or was confused about from time to time.

### **George Loveys**

[63] George Loveys was called to give evidence on behalf of the Defendants. Mr. Loveys, 77 years old, grew up in Ochre Pit Cove. He left at age 15 to work in St. John's and returned to Ochre Pit Cove upon his retirement in 2004.

[64] He left Ochre Pit Cove in 2006 for Grand Falls-Windsor where he remained for three years.

[65] Mr. Loveys testified that he returned to Ochre Pit Cove in 1979 and commuted to St. John's. Upon his return, he stayed at his parents' home, which he stated was

approximately 150 feet from the old meat shop. In 1981, he built his own home on land that his father had given to him.

[66] Mr. Loveys had signed an affidavit at the request of the Defendants' counsel which stated that: "James Jacobs is the owner of land upon which the New Meat Shop is located and I know of no party who could own the land upon which the New Meat Shop is located."

[67] Mr. Loveys affidavit further provided that the "aforesaid garage was used in conjunction with James Jacobs home".

[68] In his oral testimony at trial, Mr. Loveys recanted these portions of the affidavit, stating that he had not read the document before signing and that he would not have signed it had he done so.

[69] He testified that he has no idea who built the meat shop. He described James Jacobs property (which included the Disputed Parcel) as being fenced with two gates on the property. He said the garage was only used for storage of hides. The garage was taken down after Mr. Loveys moved into his home in 1981.

[70] When asked about the location of the "road to the pasture," Mr. Loveys stated that it started at a "gate #2" and ended at the old smoke house. He said that he had never seen any title documentation relating to his neighbours' lands, but saw the Jacobs family living there and raising a family. He recalled that Grayson Jacobs lived in the home before James.

[71] On cross-examination, Mr. Loveys clarified his evidence regarding James' ownership, stating that he could only assume James owned the property while he lived there. He testified that he never saw James use the garage, except that he recalled some hides being stored there and that the garage was where the hides were taken to be salted.

[72] Mr. Loveys could not speak to the use of the garage after 1971. He recalled that “skipper” Everett was the boss of the operation with his sons Fred, James, John and Frank.

[73] Mr. Loveys disagreed with the statement that the garage was used in conjunction with the old homestead, stating that it was “not in my recollection.” He could not confirm whether James owned the home or the garage. All he could verify was that, before the fire, James lived in the old homestead, but he was unsure about the garage.

[74] Mr. Loveys left Ochre Pit Cove in 1963. This is the period he was referring to when recalling that the garage was used to store hides.

### **Wayne Jacobs**

[75] Wayne Jacobs, 64 years old, was raised in Ochre Pit Cove. He is the son of James and Violet Jacobs. Wayne left high school in 1976. He moved to St. John’s in 1979 where he obtained work as a meat cutter.

[76] Wayne stated that he had a good relationship with his uncle Fred, noting that Fred raised livestock, took part in some government programs, and worked in the meat shop.

[77] Wayne testified that Fred never claimed ownership of the land on which the new meat shop was located. He stated that both Fred and Jack (John Jacobs) knew the new meat shop was being built on the site of the old barn (note his words: barn, not garage).

[78] Wayne further testified that after the house burned down, James had little reason to be there, except for the garden, which was maintained for two or three years afterward. He stated that he did not see anyone use the garage from 1971 (after the fire) until 1984, when the garage was torn down. However, he added that he did not doubt his father's testimony regarding his use of the garage.

[79] Wayne recounted that by 1984, the house and garage were gone and the garden was no longer attended. The ground was being used for parking, and he noted that many people parked there, leaving the entire yard open.

[80] He testified that the new meat shop was built where the garage had originally stood and noted that constructing it there did not seem to pose any problems. Electricity was connected on June 1, 1998, marking the shop's opening. Wayne Jacobs began working there around 2008, when he assumed control of Fred's business.

## THE LAW

**Issue #1: Are the Plaintiffs entitled to a declaration that they have superior title to the Disputed Property than the Defendants?**

[81] This is a claim for declaratory relief. The legal principles for determining the basis for declaratory relief involving disputed land were addressed in the case of *Jefford v. Eason*, 2022 NLSC 84. In *Jefford*, O'Flaherty J, determined that an action for a declaration of title to land in the province is authorized under Rule 7.16 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D, ("*Rules*").

[82] Rule 7.16 provides:

No proceeding shall be open to objection on the ground that only a declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

[83] The remedy is discretionary in nature. The House of Lords in *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd.*, [1921] 2 A.C. 438 (U.K. H.L.), found that declaratory relief may only be granted if the following three criteria are satisfied:

1. The question must be a real and not a theoretical question;
2. The person raising it must have a real interest to raise it; and
3. The person must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought.

[84] I find that the criteria for declaratory relief is met in this case. The Plaintiffs have a quit claim deed to the Subject Property, which includes the Disputed Parcel for which their title has been challenged. Therefore, the question raised is real and not theoretical; the Plaintiffs claim paper title to the Disputed Parcel and the Defendants claim ownership through paper title and adverse possession, such that each party has a real interest to raise on the question of title; and that the Defendants who are in occupation of the Disputed Parcel have a true interest to oppose the declaration sought.

[85] The Plaintiffs, in their Statement of Claim, initially sought a declaration of title but have since amended their claim for relief to include only a declaration as to title superiority based on the Court's decision in *Jefford*.

**Issue #2 – Who, as between the Plaintiffs and the First Defendant, has better title to the Disputed Property?**

**THE LAW**

**Statute of Frauds**

[86] The English law doctrine of *The Statute of Frauds*, (1677) 29 Charles II, c 3 (Eng.) is part of the law of Newfoundland and Labrador. It requires a written memorandum evidencing title to be enforceable.

[87] In *Hiscock v. Swackhamer* (1995), 129 Nfld. & P.E.I.R. 16, 1995 CarswellNfld 391 (S.C. (T.D.)), the court described the applicability of the doctrine as follows:

The *Statute of Frauds, 1677*, was part of the law of England which was received as the law of Newfoundland. (*Hollett v. Hollett* (1993), 1993 CanLII 8441 (NL SC), 106 Nfld. & P.E.I.R. 271; 334 A.P.R. 271 (Nfld. U.F.C.)). Section IV of the Statute of Frauds bars an action on a contract relating to land unless the contract is sufficiently evidenced in writing. Case law establishes that to satisfy the requirements of the Statute of Frauds the writing must set out the essential terms of the agreement which at a minimum includes the parties, the property and the price. (*McKenzie v. Walsh* (1920), 1920 CanLII 72 (SCC), 61 S.C.R. 312; *Garland v. Jerrett* (1989), 1989 CanLII 4929 (NL SC), 77 Nfld. & P.E.I.R. 252; 240 A.P.R. 252 (Nfld. T.D.)).

[88] In this case, there is no written evidence setting out the essential terms of the Disputed Property, including its boundaries and the price. James Jacobs claims that the bill of sale he received from his brother was lost in 1971 when fire destroyed his family's home.

## Adverse Possession

[89] With respect to the Defendants' claim of title through adverse possession, the seminal authority in Newfoundland and Labrador is the case of *Wickham v. Wickham (No. 1)* (1977), 17 Nfld. & P.E.I.R. 452, 1977 CarswellNfld 211 (S.C. (T.D.)). In *Wickham*, the court determined after a review of the jurisprudence, that for one to be successful in a claim pursuant to adverse possession, someone other than the owner has entered into possession.

[90] Possession by the person claiming to dispossess the owner must be open, exclusive, notorious and continuous (*Wickham* at para. 91). In this case, the owner would have been Everett Jacobs and subsequently John Jacobs, and the person claiming to dispossess the owner is James Jacobs, the First Defendant.

[91] At paragraph 98, the Court in *Wickham* describes what "possession" entails:

It has been said that the claimant must make the same use of the land as the owner might. This is not enough. The owner might do nothing and might never enter on the land in his lifetime. The claimant must do something with the property whether it be wilderness or improved land. He must have such use and occupation as the land lends itself to for if he does not have this at least he is not in possession. If he does less he is a trespasser. If he does nothing, he has acquired nothing.

[92] Quoting from *Sherren v. Pearson*, [1887] 14 S.C.R. 581, at page 592, the Court in *Wickham* observed:

It is therefore required that the party should not only take possession, not only disseise the owner, but that he should continue that disseisin so as to amount to an ouster, and that ouster maintained for the statutory period. That can only be done by some act of possession not merely by a temporary disseisin, and it must be over every inch of the land of which the party claims possession.

[93] The Court in *Wickham* at para. 111, referred to the following passage from *Brown v. Phillips* (1964), 1 O.R. 292, 42 D.L.R. (2d) 38 (C.A.), at page 44, where Kelly J.A. states:

The right to bring an action for recovery of land accrues when possession, of the necessary quality occurs. If possession of that quality is interrupted, or there be any cessation in the exclusion of the owner, then necessarily the right of action itself terminates and time ceases to run under the statute. If wrongful possession is later resumed a new cause of action for recovery accrues and time again begins to run but will be calculated only from the beginning of the latter act of possession. To satisfy the requirements of the statute the possession of the wrong-doer must therefore be exclusive and continuous in the sense I have above described.

[94] In the case of a party claiming colour of title arising from paper title, the court in *Wickham* stated that: "... there must be a paper writing under which the claimant honestly believes he is entitled to the entire property referred to therein. He must enter into possession in good faith believing himself to be the owner. Then and only then, does he by entering upon and possessing part of the land acquire constructive possession of all."

[95] In *Wickham*, the Court made the following instructive statement at para. 178: that such acts as "mere harvesting of hay in a field some half mile from the homestead- an operation that occupies but a few weeks of the year, coupled by no other acts of possession" cannot constitute open, exclusive, notorious and continuous possession as the law contemplates. "The harvesting of hay is nothing more than reaping the fruits of nature and lies side by side with such activities as fishing, hunting or blueberry picking where no effort is employed other than the reaping itself."

[96] Similarly, the maintenance of a fence is not in itself evidence of possession. Noting that extinguishment of an owner's title by "adverse" possession is not something that is lightly taken, there must be evidence of some robustness to the possession.

[97] The court in *Wickham* concludes that the possession must be complete, and not sporadic. “Every word of the term ‘open, exclusive, notorious and continuous possession’ is important and when any one is missing, the ‘adverse’ claim fails” (*Wickham* at para. 188).

## DISCUSSION

[98] In making the determinations, which are the subject of this action, the court considered the following:

- a. Did the Will of Everett Jacobs transfer title to the Subject Property to John Jacobs with a proviso which permitted James Jacobs and Fred Jacobs to continue to operate the meat shop business from the premises on Everett’s land?
- b. Did James Jacobs acquire possessory title to the Disputed Parcel, consisting of a garage which James claims was part of the parcel of land he acquired from his brother Grayson in 1960 (consisting of the home and garage)?
- c. If so, does the fact that the new meat shop was relocated from its original site to one adjacent to the old one on land claimed by James, render the license to occupy granted by Everett’s will, irrelevant?

[99] Following Fred Jacobs death on May 17, 2007, Letters of Administration were granted to Shawn’s father, Raymond Jacobs.

[100] The Supreme Court administration file was included in the parties’ Consent Book of Documents. In a detailed affidavit sworn on September 24, 2014, and filed by Raymond Jacobs on October 14, 2014 in support of his application to be discharged as Administrator of the Estate and Effects of the late Fred Jacobs, he

outlined the history of the matter including legal proceedings commenced to that date.

[101] Of note are the following statements:

- a. Fred Jacobs operated an unincorporated proprietorship in Ochre Pit Cove referred to as Fred Jacobs Meats.
- b. The estate consisted of aging equipment located in the meat shop in Ochre Pit Cove. This equipment is of negligible value and Jim Jacobs disputes the ownership of some of the meat shop items;
- c. The physical building referred to as the new meat shop located in Ochre Pit Cove, is not built on land owned by Fred Jacobs. Further there is a dispute as to the ownership of the land on which the meat shop is built. To the best information of the Estate, the land was property of John (Jack) Jacobs. Jack Jacobs died intestate and his estate was administered by the Office of the Public Trustee.
- d. The Office of the Public Trustee conveyed the property of Jack Jacobs to Brad Jacobs. The property is also subject to a claim by Jim Jacobs who claims to have been given the property by his father.

[102] The evidence indicates that James Jacobs continued to operate the meat shop following Fred's death.

[103] Upon reviewing the evidence, I find that the absence of a document evidencing title to the Disputed Parcel from Grayson Jacobs to James Jacobs, creates a bar to the First Defendant, from enforcing his claim of ownership. There is no documentary evidence of title from Everett Jacobs to Grayson Jacobs.

[104] There is no survey or plot plan, nor any credible description as to what constituted the land James Jacobs claims was transferred to him in 1960 by Grayson. Did the homestead include just the home and land surrounding it or did it also include the garage located on the Disputed Parcel as claimed?

[105] What is not in dispute is that James Jacobs occupied the old family home from 1960 to 1971. After it was destroyed by fire, the evidence of Shawn Jacobs and James Jacobs indicates that the land consisting of the site of the old home originally occupied by Everett Jacobs and his family, subsequently Grayson Jacobs and lastly by James Jacobs, was not occupied by James following the fire which destroyed the home.

[106] I also find significant that in his Will, Everett Jacobs left all the land to the north side of the road to the pasture to John Jacobs including the barn and the meat shop, without excluding the land in between on which the garage stood. As seen in the aerial photos of the area, three structures were identified alongside each other on the north side of the road as the barn, garage and old meat shop.

[107] It is consistent with the Plaintiffs' position that Everett Jacobs never conveyed the land to Grayson nor did Grayson convey to James. One could argue that Everett maintained that the Disputed Parcel was still his. Given that the house had been destroyed four years before he made his Last Will and Testament, Everett knew at that time of writing his Will that James no longer occupied the Disputed Parcel.

[108] This is further supported by the evidence of Shawn Jacobs and George Loveys, that the garage which James claimed to be part of the old homestead property, was thought to be part of the old meat shop operation, given its proximate location thereto and its use as a hide house for storing and salting hides.

[109] Also significant, is that Everett Jacobs gifted a parcel of land to James after the fire, which was evidenced by a written deed and registered in the Registry of Deeds for Newfoundland and Labrador. It would make sense that Everett did not

bequeath the Disputed Parcel to James since he had already provided his son with another parcel of land on which he rebuilt his family's home after the fire.

[110] Following the loss of his home in 1971 and rebuilding on a new site away from the old homestead, the evidence indicated that James spent little to no time at the homestead site and made only sporadic use of the garage until 1984.

[111] I found James Jacobs' evidence on some key points to be unreliable. He appeared confused at times on significant issues, such as his use of the garage, occasionally contradicting himself. While I found the evidence of defence witness, George Loveys, concerning in that he reportedly signed an affidavit without reading it, his ultimate testimony was not helpful to James Jacobs' position as to ownership of the garage. In fact, Mr. Loveys' evidence ended up corroborating the Plaintiffs' evidence as to the activity on the Disputed Parcel, including the use of the garage as the hide house as an adjunct to the meat shop operation (a fact that James vigorously denied) and his subsequent lack of use of the site of the old homestead land and garage after the fire.

[112] Having considered the evidence, I find that it was more likely than not that Everett owned the Subject Property, including the Disputed Parcel, at the time of his death and had not conveyed the homestead property, including the garage, to his sons. The occupation by James and Grayson before him must be considered in the context of the familial relationship that existed in these circumstances. This is unlike the *Jefford* case noted earlier in which adverse possession was claimed against an arm's length party.

[113] The evidence suggests that Everett owned a significant block of land in Ochre Pit Cove where he lived with his family and carried on his various businesses. His children made their homes on or in the vicinity of the Subject Property. According to the evidence, Everett had moved from the old homestead in the 1950s to a property nearby, and Raymond (father of the Plaintiffs) lived next door to his brother, James, who lived a short distance from the old homestead. John lived with Everett and did not have his own home when Everett died. When James lost his home to fire in 1971, rather than rebuilding there, Everett formally conveyed to James a different parcel

of land on which he rebuilt. James did not provide any explanation as to why he did not rebuild on the site of the old homestead.

[114] The evidence from Shawn Jacobs and George Loveys concerning the use of the garage as an adjunct to the meat shop for the storage of hides, further supports the proposition that the garage was not part of the home previously occupied by James as it was not exclusively used by James.

[115] The Plaintiffs state that the Defendants' only right to occupy the site of the old meat shop was pursuant to the licence granted to Fred and James in Everett's Will. They submit that Fred and James' occupation of the original meat shop location was pursuant to the licence and as such could not be converted to title by adverse possession.

[116] The Defendants conceded that they do not have any ownership interest in the site of the old meat shop. In their submissions, the Defendants state that they do not dispute title to the portions of the 0.982 hectare parcel (the Subject Property) which does not encroach on the Disputed Parcel or the access thereto. Further the Defendants agree that the Subject Property, excluding the Disputed Parcel, was rightfully that of John Jacobs and is now the property of the Plaintiffs.

[117] In their same brief, the Defendants submit that the chain of title to the Subject Property is dubious at best (paragraph 55 of the Defendants Final Submissions After Trial). They submit that the Plaintiffs rely on the 1975 Will of Everett Jacobs, who bequeathed the property to John Jacobs. The Defendants note that there is no evidence of a written transfer from Everett Jacobs or his estate to John Jacobs.

[118] While that may be so, the key issue in this case is whether the Plaintiffs or the Defendants hold better title than the other to the Disputed Parcel, on which, notably, the only evidence of paper title is what is contained in the terms of Everett Jacobs' Will. There was no evidence presented by either the Plaintiffs or Defendants in the form of a formal title search report to the Subject Property. Nor was there evidence from a surveyor confirming the location of the various structures on the Subject

Property and the accuracy of the survey attached to the quit claim deed being in concurrence with Everett Jacobs Will.

[119] Absent a title report and expert evidence from a surveyor, given the agreement of the parties as to the presence of the key structures that were or are located on the Disputed Parcel, the absence of such evidence may not be fatal to the Plaintiffs' claim. The key issue in dispute is who has better title to the Disputed Parcel.

[120] The Defendants argue for an interpretation of Everett Jacob's Will that by identifying only the barn and the meat shop in his bequest of land to John, he specifically excluded the garage which was located in between the two structures. The Defendants state that there is no other reasonable conclusion.

[121] I disagree. The parties acknowledge that the three structures were in a row on the Road leading to the Pasture, from west to east being the Barn – Garage – Meat Shop.

[122] The bequest to John states:

... also all land on the north side of the road leading to the pasture, including the pasture, of the Old Property, together with the barn and the meat shop;

[123] The bequest clearly refers to all land on the road leading to the pasture, with no exception provided for the Disputed Property. In that context, I find that the two identified structures were merely "bookends" describing the structures on the parcel of land on the road leading to the pasture, thereby including the garage.

[124] The Defendants challenge the interpretation of what constitutes "the road to the pasture" and dispute that it is as depicted on the survey plan. The Defendants did not lead any expert evidence from a surveyor to suggest a different location of the old meat shop, garage and barn. The survey plan contained in the quit claim deed

was not contradicted. Moreover, the location of the three structures appears to be in the correct location on the aerial photograph believed to have been taken in 1977. There is no issue as to the location of the new meat shop being on the site of the garage, within the Disputed Parcel, notwithstanding Shawn's evidence that put the new meat shop on the site of the garage and barn. He later clarified his evidence that the new meat shop was located on the site of the garage.

[125] The Defendants also argue despite having agreed that the survey description of the land contained in the quit claim deed from the Office of the Public Trustee to the Plaintiffs represents the bequest in Everett Jacobs' Will, later in their submissions they argue otherwise.

### **Has James Jacobs established possessory title to the Disputed Property?**

[126] Having found that James Jacobs is unable to establish that he was the likely owner of the Disputed Parcel as he lacked documentary title, James' claim of ownership based on adverse possession must now be considered.

[127] James Jacobs argued that he has been in possession of the Disputed Parcel since he acquired the property in 1961. As noted earlier, after the house burned down in 1971, James had no reason to continue to occupy the site of the old homestead. While he stated that he used the artesian well on the property for an unspecified period and his wife kept a vegetable garden on the property, use of the garage appears to have been sporadic at best.

[128] The evidence of Shawn Jacobs, Wayne Jacobs and George Loveys, did not corroborate James' testimony that he had exclusive use of the garage before or after the home was destroyed by fire in 1971. James Jacobs evidence regarding his use of the garage between 1971 and when it was torn down in 1984 was both vague and inconsistent.

[129] George Loveys, a defence witness, was unable to confirm James' assertion that he used the garage on a continuous, exclusive, notorious and open basis. Mr. Loveys stated that he never saw James use the garage before the fire, however, he recalls it being used as a place to store hides.

[130] Wayne Jacobs testified that he did not see his father's use of the garage but did not doubt that he had done so. Without any corroborating evidence given James' confusing statements of his use of the garage between 1971 and 1984, I conclude that James has not established possessory title to the Disputed Parcel, being the site of the garage in question.

[131] In *Wickham*, extinguishment of an owner's title by "adverse" possession is not something that is lightly taken. There must be evidence of some robustness to the possession. Based on the evidence before me, such robustness is clearly absent.

[132] Therefore, I turn to consider whether James Jacobs has established possessory title upon relocating the meat shop to its new site, on the Disputed Parcel.

[133] As discussed, James Jacobs claims ownership of the Disputed Parcel. According to James' testimony, he and his brother Fred decided sometime in 1996 to relocate the meat shop to the site of the garage, which had been torn down in 1984. The evidence favours a finding that this land was likely Everett Jacobs' at the time of his death in 1975 and then bequeathed to John.

[134] John Jacobs was seemingly aware of his brothers' plans to relocate the meat shop to lands bequeathed to him in Everett's Will as the construction of the new building would have been obvious. No witnesses testified, nor was any documentary evidence presented at trial, indicating that John opposed the plan. Although speculative, he may have agreed with the plan based on a continuing licence under which the old meat shop was operated on his land.

[135] Unfortunately, James provided few details regarding the decision to relocate the meat shop 30 feet to the west of the old meat shop other than that Fred and James decided they needed to rebuild after outgrowing the space and the old shop was falling into a state of disrepair. James testified that Fred told James that he claimed no interest in the building and that it would be James' when he died. This statement constitutes hearsay evidence and is not admissible for the truth of its contents. It is not capable of being tested, given that Fred has long since died and there is no evidence of any written agreement between the brothers.

[136] Despite claiming that he owned the parcel of land on which the new meat shop was built, James took no steps to confirm his title, notwithstanding that he and Fred appear to have made a significant investment in constructing the new premises from which they were going to continue to operate their businesses.

[137] Can it be said that James and Fred's occupation of the Disputed Parcel through their operation of the business constituted adverse possession? If it were, adverse possession would have commenced at the latest in June 1998 when the new meat shop opened under Fred and James' management.

[138] Building and operating the meat shop business on John's land would constitute a constant and visible occupation of the Disputed Parcel. However, we do not know whether John agreed with the shop on his land as a continuation of the original licence or whether he believed that James and/or Fred owned the land.

[139] It is significant that in preparing the survey to accompany the quit claim deed, there is a reference to James' alleged life interest in the land with reference to the licence granted to Fred and James in Everett Jacobs' will.

[140] James claims he was not involved in the preparation of the survey; however there was sufficient knowledge on the part of the Public Trustee as Administrator of the Estate of the late John Jacobs, that there was an adverse claim by James to have included it in the deed.

[141] It is important to remember that this situation occurred in the context of a family where three brothers, John, Fred and James each had an interest in the Disputed Parcel.

[142] Loose and undocumented arrangements amongst family would not be unusual. As Green, J (as he then was) observed in *Hollett v. Hollett* (1993), 106 Nfld & P.E.I.R. 271, 1993 CarswellNfld 38 (C.A.) at paragraph 101:

It is not any occupation which will count for purposes of adverse possession. There must be an animus possidendi so as to distinguish, in equivocal cases, between mere acts of trespass and acts of occupation with the intention of excluding the owner as well as other people: *Re Estate of Patrick Devereaux, Sr.* (D.C.) G.B. No. 66 (Cummings, D.C.J., unreported). Generally, acts of possession by family members or relatives against other relatives will be considered to be either acts of trespass or acts of possession by licence, unless a clear intention to exclude the other persons is shown: *Re Kennedy* (1941), 15 Nfld. L.R. 424.

[143] It is entirely plausible, therefore, that John was aware of and agreed to Fred and James' use of the land for the meat shop for as long as it was in operation, consistent with the terms of Everett Jacobs' Will. It is also plausible that John acknowledged James' alleged ownership, as he asserted. We can only speculate as to what the case was. Consequently, the evidence to support the assertion that James and Fred's occupation of the land was exclusive in the circumstances is absent. There is no evidence of a clear intention to exclude John Jacobs' interest having been shown.

[144] In their Final Submissions Following Trial, the First and Second Defendants make the argument in favour of their claim in adverse possession that the act of permitting family members to use the garage allowing Fred Jacobs to operate his business on the Disputed Parcel did not dispossess James possessory title to the house and garage which he occupied for more than 11 years from 1960 to 1971 and again from 1971 to 1998. However, what the Defendants have overlooked is that without paper title to the Disputed Parcel, it was incumbent upon James Jacobs to establish that he dispossessed Everett Jacobs who ostensibly held title to the lands in question.

[145] The Plaintiffs submit that Everett's Will granted Fred and James a licence to occupy the Subject Property to carry on the butcher business. Consistent with their position that the Disputed Parcel formed part of the bequest to John, the Plaintiffs state that James Jacobs' right to maintain the new meat shop on the land is pursuant to the licence granted in the Will.

[146] Relying on the Supreme Court of Canada decision in *Ocean Harvesters Ltd. v. Quinlan Brothers Ltd.*, [1975] 1 S.C.R. 684, the Plaintiffs state that the First Defendant's occupancy pursuant to a license cannot now be converted to a claim of title by way of adverse possession:

...Exclusive possession imports the fact of sole possession or dominant control coupled with a legal right thereto against the world at large. Physical presence alone gives rise to a bare non-exclusive licence which makes the entry lawful, *Thomas v. Sorrell* (1673) *Vaughan* 330, but does not create any estate in the land at law or in equity.

[147] According to *Wickham*, for adverse possession to occur, all four of the incidents of possession must be present – the occupation must be open, notorious, exclusive and continuous. I find the Defendants have not established exclusive possession of the Disputed Parcel.

**Issue #3 - Did relocating the old Meat Shop to the site of the old garage extinguish the licence that was granted to James and Fred Jacobs to continue operating the Meat Shop of John Jacobs land?**

[148] The Defendants take the position that if James Jacobs is not found to have better title to the Disputed Property, as long as James is still engaged in the butcher business, he is still entitled to the licence specified in the Will of Everett Jacobs.

[149] James Jacobs testified that while he does not draw any income from his work in the butcher shop with his son Wayne, he still goes to the shop every day and helps with packing the meat and other tasks.

[150] The Defendants argue that James' continuing involvement constitutes being "engaged in the butcher business" and entitles James Jacobs to the benefit of the licence to continue operating the meat shop on the Disputed Parcel.

[151] The Plaintiffs' position is that the licence has now expired because (a) the meat shop moved from its original location and (b) James is no longer operating the meat shop. At 88 years of age, the Plaintiffs dispute that he is carrying on the butcher business, presumably because he is not paid and can come and go from the shop at will.

[152] The *Merriam-Webster Dictionary* (online version) defines "engaged" as "involved in activity: occupied, busy". The Will expressly uses the term "engaged" when describing the use by Fred and James in the butcher shop.

[153] James Jacobs may not be drawing a salary and may work at will; however the evidence supports the fact that he regularly spends time occupied and busy in the meat shop. This is not unheard of in family enterprises, where, in passing down the business to a younger family member, the elder remains involved albeit to a lesser extent than before.

[154] I am satisfied that James Jacobs' involvement in the meat shop business meets the definition of "engaged" as specified in Everett Jacobs' will. I further find that relocating the meat shop did not invalidate the licence granted in Everett's will. Rebuilding to replace an aging structure which no longer met their needs, a few feet away from the original structure, is in keeping with the spirit and intention of Everett's will.

[155] James Jacobs' licence to continue to operate the meat shop on the Disputed Parcel remains valid for so long as he remains engaged in the butcher business.

**Issue #4 - Are the Plaintiffs' claims against the Defendants statute barred?**

[156] The parties also raised the issue of whether either of the parties' claims is statute-barred for failure to commence an action within the applicable limitation period contained in the *Limitations Act*, S.N.L. 1995 c. L-16.1.

[157] The relevant section of the *Limitations Act* is section 19(1), which provides that an action to recover land arises at the time of:

(a) dispossession, discontinuance of possession or when that person has last received profit or rent from the land; or

(b) death where that person claims the estate or interest of the deceased person and that deceased person was, at the time of death, the last person entitled to or in possession of that estate or interest;

[158] Further, where an administrator has been appointed and that administrator claims the estate or interest of a deceased person, time shall run from the date of death of the deceased person (s. 19(2)(b), *Limitations Act*).

[159] The Plaintiffs state that in this case, the limitation period started to run upon the death of John Jacobs on November 26, 2005.

[160] The Plaintiffs argue that James Jacobs did not take any action to confirm his title to the property, and as such, the limitation period has run against him. James Jacobs would have had to assert his title against the Estate of John Jacobs within 10 years of John Jacobs' death (November 26, 2005). James Jacobs filed a Notice of *Lis Pendens* within the 10-year limitation period on November 8, 2013, stating that he intended to bring an action for recovery of the land; however, he never did.

[161] The Plaintiffs on the other hand, assert their title to the Subject Property, including the Disputed Parcel, based on the bequest to John Jacobs in Everett Jacobs' Will. They obtained on August 7, 2014, a Quit Claim deed (within the 10 year period from John Jacobs' death) for the land for \$10,000 from the Public Trustee, who was acting as Administrator of the Estate of John Jacobs. The quit claim deed does not convey title to the Subject Property, rather, as the name of the deed indicates, it simply conveys any claims that the estate of John Jacobs may have had to the land.

[162] I find that the evidence supports the Plaintiffs' position that John Jacobs was not dispossessed of his land by James or Fred Jacobs at the time of John's death in 2005, given that such occupation was pursuant to the licence granted to him under Everett's Will. Therefore, for James to have stopped the limitation clock from running against him, he would have had to have claimed to recover the Disputed Parcel by June 2015.

[163] James Jacobs was aware that his nephews were interested in the property and he was aware that there were issues as to whether he could continue to operate the meat shop on the land pursuant to a licence to occupy granted by Everett Jacobs. It should have come as no surprise that when he was approached by the Public Trustee regarding the land, steps should have been taken to assert his title.

[164] Despite his denials, I find that James Jacobs was aware there was a dispute as to ownership of the Disputed Parcel, as he had asserted his interest in communications with the Administrator of the late Fred Jacobs' estate.

[165] Unlike the circumstances in *Jefford*, decades have not passed without inaction by either party, which would raise the spectre of prejudice against the First and Second Defendants in the event of a declaration against them being made. When the decision was made to invest in a new building for the meat shop in the mid to late 1990s, the First Defendant had the opportunity to address the lack of paper title to the Disputed Property while John Jacobs was still alive.

[166] Further, James was aware that this issue persisted after Fred Jacobs' death in 2007 and failed to follow through on the proposed action expressed in his Notice of *Lis Pendens*.

[167] The Defendants' action for recovery of the land is therefore statute barred.

## CONCLUSION

[168] In the circumstances, I find that James Jacobs' claim of ownership of the Disputed Parcel is less clear than that of the Plaintiffs' ownership by virtue of the bequest in Everett's Will and the Deed of Quit Claim from the Estate of John Jacobs.

[169] The Plaintiffs have established that the Disputed Parcel was more likely than not part of the Estate of Everett Jacobs and formed part of the bequest to John Jacobs. I find that the garage property was more likely an adjunct to the old meat shop than the homestead. James Jacobs failed to lead sufficient evidence to support possessory title to same.

[170] In the circumstances, I find that the Plaintiffs, as holders of the Quit Claim deed from John Jacobs' Estate, hold better title to the Disputed Parcel than the Defendants for the reasons noted above.

[171] In summary, I make the following findings in relation to the issues:

- 1) The Plaintiffs are entitled to seek a declaration as to the strength of their title to the Disputed Property.
- 2) The Plaintiffs' request for relief is appropriate.

- 3) The Plaintiffs have established better title to the Disputed Property than the Defendants.
- 4) The licence granted under the Will continued notwithstanding the move of the meat shop business to an adjacent parcel of Everett Jacob's land within close proximity of the old shop, for the reasons stated above.
- 5) The Defendants' claim against the Plaintiffs is statute-barred for the reasons stated above.

[172] I therefore declare that:

- a. The First and Second Plaintiffs have better title to the Subject Property including the Disputed Parcel than the First and Second Defendants.
- b. The First Defendant maintains his right to conduct the butcher business on the Disputed Parcel in accordance with the terms of Everett Jacobs' will.
- c. The First and Second Plaintiffs shall have their costs against the First and Second Defendants.

[173] Order accordingly.

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**IRENE S. MUZYCHKA**  
Justice