

CASE NO.

VOLUME

PAGE

Cite as: Scott Worldwide Inc. v. McDonell, 1997 NSCA 112

SCOTT WORLDWIDE INC.

ESTATE OF EDWARD McDONELL,
by JOSEPH A. MacDONELL,
Administrator de bonis non

- and -

(Appellant)

(Respondent)

AND BETWEEN:

LLOYD A. BENT and RUBY M. BENT - and -

ESTATE OF EDWARD McDONELL,
by JOSEPH A. MacDONELL,
Administrator de bonis non

(Appellants)

(Respondent)

C.A. No. 135872

Halifax, N.S.

FLINN, J.A.

C.A. No. 135879

APPEAL HEARD:

May 23, 1997

JUDGMENT DELIVERED:

July 16, 1997

SUBJECT: Interpretation of Deeds - Reservation of Timber Rights - Whether an "Exception" excepting out fee simple interest in trees

SUMMARY: In 1990 M (the owner of 1/4 interest in property) joined in conveyance with heirs of the owner of the other 1/4 interest (although two heirs did not execute the conveyance). The conveyance reserved to M "the right to cut and carry away the standing timber on the lands hereinafter described". M died in 1908. On application for determination of a point of law, the Chambers judge decided that the reservation excepted out of the conveyance a fee simple interest in the trees, which interest related to trees alive at the date of the conveyance.

ISSUE:

Interpretation of reservation clause.

RESULT:

Appeal allowed. The Chambers judge erred in the interpretation of the reservation clause. The primary meaning of the words of the reservation clause are clear and unambiguous. The reservation does not except out of the conveyance a fee simple interest in the trees. There is nothing in the context of the conveyance to indicate any contrary meaning to the plain words

of the reservation.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER SHEET. THE FULL COURT DECISION CONSISTS OF 15 PAGES.