

CASE NO.

VOLUME

PAGE

Cite as: Partington v. Musial, 1998 NSCA 191

KATRINA PARTINGTON, CHARLES and MARY MUSIAL, MIKE and EDNA MUSIAL, MIKE and LENORA MERRIGAN, GREGORY and ANNE MUSIAL, ARCHIE and BERTHA MacDONALD, CONRAD and HAZEL MUSIAL, ISABEL MUSIAL and SUE MUSIAL

(Appellants)

- and -

CHARLES MUSIAL, VALENTINA SCATTALONE, THOMAS MacNEIL, MARY MacNEIL, READY GARDINER and THE ATTORNEY GENERAL OF THE PROVINCE OF NOVA SCOTIA

(Respondents)

C.A. No. 142822

Halifax, N.S.

HALLETT, J.A.

APPEAL HEARD:

October 1, 1998

JUDGMENT DELIVERED:

November 19, 1998

SUBJECT:

Quieting of Titles Act, R.S.N.S. 1989, c. 382
Limitation of Actions Act, R.S.N.S. 1989, c. 258, ss. 10 & 11
Assessment Act, R.S.N.S. 1923, c. 86, s. 155
Assessment Act, S.N.S. 1938, c. 2
Assessment Act, R.S.N.S. 1969, c. 14, s. 178
Assessment Act, R.S.N.S. 1989, c. 23, s. 161
Real Property - Possessory Title

SUMMARY:

At trial the appellants claim for a certificate of title to a parcel of land was dismissed. The trial judge granted a certificate of title to the respondent Scattalone and to the estate of Duncan Gardiner for parcels of land claimed by them respectively in the proceedings under the **Quieting of Titles Act**.

They appeal, on the ground that the trial judge's decision in which he found that the respondents and their predecessors in title had acquired possessory title was against the weight of the evidence, was dismissed.

The Court held that the 1939 quit claim deed from the Municipality to M.A. Musial (the appellants' predecessor in title), was not a tax deed, and therefore, did not have the benefit of s. 155 of the **Assessment Act** of 1923 or any of its successor sections.

The Appeal Court held that the time limitation for bringing an action, asserting ownership of the lands began to run in 1929 as the respondents predecessor in title were then in possession of the lands claimed by the appellants. The possession in 1929 by the respondents predecessors was open and exclusive and adverse to the interests of the successive owners, the Municipality, M.A. Musial, Bertha Musial and the appellants. The predecessors in title (the MacDonald family) to the present respondents were in possession from 1929 to 1950 and beyond. The Appeal Court held that by 1950 the right of the appellants and their predecessors in title to bring an action was barred by the **Limitation of Actions Act**.

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 43 PAGES.