

Case No.

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Daniel Whiting and Mary Whiting v. Frances MacDonald and Marie MacDonald

**2000 SN No. 109462 Sydney, Nova Scotia Justice Walter R.E. Goodfellow
(Cite as: Whiting v. MacDonald, 2001 NSSC 3)**

<p>LIBRARY HEADING</p>

DATE HEARD: November 30, 2000, December 1, 2000 and December 5, 2000

DECISION: December 5, 2000 (Orally)

**WRITTEN RELEASE
OF ORAL DECISION: December 6, 2000**

**SUBJECT: LIMITATIONS OF ACTIONS ACT, POSSESSORY TITLE TO
LAND**

SUMMARY: Plaintiffs and the predecessors in title presented evidence of previous dwelling of grandmother at least partially in disputed land area and also garage/barn built by Daniel Whiting's father. They also established the existence of a fence years ago marking the boundary of the land obtained by the defendants from Marie MacDonald's father and considerable use and occupation of the disputed land by mowing, maintaining the property, children playing on it, granting of permission to third parties to park in order to access wharf etc. etc. In addition credibility determination defendant Ann Marie MacDonald's father acknowledged several times ownership of the land in dispute and knew from an earlier survey the boundary of his land. Concluded defendants paper title did not encompass the disputed land area and even if an error in that regard, on the totality of the evidence, plaintiffs met the onus of proving well beyond a balance of probabilities threshold, adverse possession and an intention to possess the land as well as exercising control of the land to the exclusion of all other persons and that they are

entitled to a Declaration . Costs allowed on the basis of amount involved \$20,000.00. Tariff A, Scale 3 \$2,625.00 plus disbursements \$353.65 for a total of \$2,978.65.

CASES NOTED: R.B. Ferguson Construction Limited v. Ormison (1988),
91 N.S. R. 2nd 226(NSCA)

Lessee of Lawson v. Whitman (1851), 1 N.S.R., 208

Wood v. LeBlanc (1904), 24 S.C.R., 627

Collins v. Speight (1993), 123 N.S. R. 2nd, 71

Whyatt v. Franklin (1993), 123 N.S.R. 2nd, 347

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COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT
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