

After the best consideration I can give to the matter, I find myself unable to agree with the defendants' contention as to the meaning of the patent. The dominant and controlling words in the description are, I think, found in the expression "following the edge of the marsh according to its different courses and windings;" and I think the words "south-easterly" are to be taken as indicating the general course. The point of termination, both in crossing lot 55 and in following the edge of the marsh as a whole, is south-east of the point of beginning.

In the copy produced of the plan of 1796 the boundary of the marsh is shewn as a dotted line, having a general south-easterly course; and I think that this goes to indicate that when the patent of this marsh land was prepared in 1798 the words that I have quoted were introduced for the purpose of giving certainty to this somewhat uncertain and indefinite boundary. The actual edge of the marsh was taken as the criterion.

I am also unable to accept the plaintiffs' contention that a possessory title has been acquired. There has been no enclosure of the marsh land inside the headlands. There has in truth been no open and notorious possession of it. The planting of the surveyor's posts upon the headlands and the planting of one post in the middle of the marsh area, where it remained for a short time, does not, I think, constitute possession of the lands within that line, nor is there any evidence from which it could be held that this was a continuous possession for the required time.

I do not think that any assistance can be gained from the assessment. The patent under which the defendants claim is for 109 acres. They admittedly have, according to Mr. McColl's survey, 128 acres. The assessment is for 134 acres. If the marsh claimed by the defendants is given to them, they will have 160 acres.

In every view, I think that the plaintiffs succeed, and there should be judgment declaring that the true boundary-line between the two parcels is the edge of the marsh, following all its courses and windings, as shewn by Mr. McColl's plan, exhibit 1.

I see no reason why costs should not follow the event.