

In January, 1874, Port made application for patent, and transmitted affidavits and papers upon which it was ruled by the Commissioner: "Possession has always gone with the title as shewn; let patent issue for the land as described in the deed to Port (if consistent with the patents for the other portions of the lot.)" Thereupon the patent issued, with a description reproducing the above errors in the deed from Normandieu to Port.

Now, the evidence, oral and documentary, consisting of plans and maps registered and unregistered, shews conclusively, and with uniform consistency as to the paper evidence, that at and before the issue of the patent the limits on the ground of Port's lot and his occupation of it were as between the highway in the front and a lane or alley-way at the rear, along which was placed Normandieu's garden palisade. A fence (probably the same) was also the boundary of Port's garden at the rear of his lot—that fence formed always the north boundary of this old lane, which had been laid out on the ground and plans and divisions of lots made with reference thereto before 1852. It is delineated on the plan of the division of property by the Janettes, made by Wilkinson, P.L.S., and registered as plan No. 76 on 14th October, 1852. It is also shewn in the same place on Wilkinson's plans of 1854 and of 1856 and of 1858. There is also no manner of doubt that the "post" referred to in the first course south in the patent is "the cedar post" at the south-east corner of the fence enclosing Normandieu's garden, and along which fence as the southerly boundary of the lot the next course runs.

The evidence is simply overwhelming as to the true and actual site and boundaries of the Port lot. In 1898 defendant stated to Mrs. Shepherd that this fence formed the boundary of her lot (2). Difficulties arise from the description in the patent, which have to be solved by evidence; for, as the description is actually given and applied to the present site of Sandwich street, the courses will not enclose any piece of land down to the highway, and what they partly enclose will be on a different area from the lot now and always occupied by defendant, which is as a whole unquestionably on the site of the old Normandieu lot.

By one method of survey the rear boundary of the courses in the patent will take in the whole of the old lane and come upon nearly all of the land held by plaintiff. That was manifestly not the intent of the Crown, and the patent can be so considered and construed, in the light of the evidence and the state of affairs on the ground, as to harmonize with the real