

## REX v. HEISLER

(1913), 13 E.L.R. 375

Nova Scotia Supreme Court, Russell J., 27 August 1913

***Indian Lands--Reserve in Lunenburg County--Location and Extent Doubtful--Evidence of--  
Acts of Possession by Indians--Plan in Public Records of Province Adhered to.***

**Where oral evidence of acts of possession by the Indians, extending the boundaries of their reserve beyond the limits of a plan of the reserve in the public records of the province, was unsatisfactory the boundaries laid down on such plan were adhered to.**

Arthur Roberts, for the plaintiff.

H. Mellish, K.C., for the defendant.

RUSSELL, J.:--The only question in this case is the location of the Indian Reserve at Gold River in the county of Lunenburg, which it is claimed includes and covers a lot of land between Gold River and the road from Beech Hill, which is in the occupancy of the defendant. I have examined all the plans and documents produced at the trial. They are not consistent with one another, but I feel safe in assuming that when Mr. Howe took charge of the Indian Department and made a painstaking and thorough inquiry into the condition of the Indians, he must have discovered the proper location of their reserves. In his detailed and interesting record of his "Western Tour" in 1842, he refers to the Gold River settlement as almost the only one to be found on the whole south-western shore where anything like an approach to settlement, combined with some agricultural improvement, was perceptible. The reserves have, he says, embraced 40 acres of land on the eastern side of the river, chiefly interval, skirting the margin of the river for about a quarter of a mile above and below the bridge over which the post road passes and 960 acres on the western side of the river. The 40 acres are on the side of the river opposite to the lot claimed by the defendant, whose occupancy is on the western side of the river. The 960 acres reserved on the western side of the river are west of the Beech Hill road and do not cover the portion between this road and the river claimed by the defendant. There was evident occupation of the Indians' grant, but the only names referred to were those of the Indian witness Frank Pennall which was west of the Beech Hill road and that of his father which was east of the river. No doubt the Indians moved over the land between the river and the road, cut ex handles and paddles and used the wood for other purposes, but I do not think there is anything in such evidence as this to aid in locating the grant and in any event I could not accept it as satisfactory against the plan annexed to Mr. Howe's report in 1820; or, if I am wrong in understanding it to be so annexed, let me refer to it as the one in the book containing the correspondence on Indian Affairs, 1842-3, being No. 9432 of the Public Records of Nova Scotia.

The minutes of the Council in 1820 do not define the boundaries at all. In one copy of those minutes there is a blank which indicates that a description was to

be filled in, but it seems never to have been supplied. The plan in the book referred to indicates that the eastern line of the 960 acres is the rear line of the lots fronting on Gold River, and there is evidently more than one grant made between the river and the road which could not have happened or would not have been likely to happen if the land was part of the Indian Reserve. It is true that as to one of these grants the grantee took it at his own risk but I cannot imagine that any Commissioner of Crown Lands or that the Governor in Council would make such a grant at all if the land had been within the reserve.

There has been a mistake made somewhere, in locating the grant by some of the later surveyors, but I do not think I can offer any safe conjecture as to its origin. It may have arisen from the fact that there is a plan dated apparently 1818 in which the Indian lands on both sides of the river are continuous with no such break between the river and the road as the plan in the Record Book shews. This 1818 plan, however, is evidently not the plan of the present Indian Reserve. It does not correspond in acreage, containing only 200 acres. It would seem from the surveyor's memo on the plan that the Indians were asking for more land and it is possible that this request resulted in the subsequent location of the land as indicated in the plan contained in the book referred to.

The plaintiff's claim will be dismissed.