ACCESSION TO LAND—LAW OF ACCRETIONS EFFECT OF OFFICIAL SURVEYS ACT (B.C.) APPLICABILITY OF DECISION TO ALBERTA SURVEYS ACT

A recent British Columbia decision on accession to land might seem to be of little but academic interest to practitioners in Alberta, in that the accretion in question was formed by tidal waters where the considerations are quite different from those applicable to accretions formed by non-tidal waters. It is true that the greater part of the illuminating and scholarly judgment of Wilson J. in *In re Quieting Titles Act and Neilson*[1] is devoted to the ascertainment of the criteria applicable to accretions formed by tidal waters. However, the concluding part of the judgment (not referred to in the headnote to the case) is certainly of practical interest in Alberta.

The petitioner in this case was asking, under the Quieting Titles Act[2] for a declaration that he was entitled to be registered as owner of some land which, he said, was a natural accretion to land of which he was the registered owner. The application was resisted by the Attorney-General of B.C. on the ground, *inter alia*, that sec. 2 of the Official Surveys Act[3] which makes surveyed boundary lines "true and unalterable boundaries", meant that the Legislature had legislated in such a manner as to prevent the operation of the common-law rule of accretions.

Wilson J. rejected this contention with convincing brevity. After applying the well-known presumption in the rules of statutory interpretation against a substantial alteration in the law except where there are express terms or a clear implication to that effect,[4] the learned judge proceeded to hold that the Official Surveys Act deals with official surveys and not with any general alterations in the system of land tenure.

> In order, presumably, to avoid confusion and uncertainty as to land titles, it [sec. 2] says that the boundaries fixed by a survey made under the authority of the government of the province shall be "the true and unalterable boundaries" despite any inexactitude in measurement of area or dimensions. Now surly, considring the object and scope of the Act, all that is meant to be said to the land owner is this: "This is your boundary, you cannot hereafter come into court and say it is, through a surveyor's error, a wrong boundary." But to go further and say that a provision clearly intended to guard against litigation arising from surveyors' mistakes has the effect of displacing the rules as to accretions is to pervert and distort the purpose and effect of the legislation.[5]

Wilson J., not having before him a clear demonstration of legislative intent, refused to find that this legislation, passed for one purpose, effected another and, in so doing, abrogated "an ancient and honoured rule of the law."[6]

The long-established practice of the Government of Alberta (as also its predecessor in this matter, the Dominion Government) has been to deal with accreted land as belonging to the Crown[7] and this practice has not been challenged directly in the courts since its inception some time in the 1920s. As the common law rule as to accretions has been held applicable in Alberta,[8] the only possible justification in law for this practice is that the common law rule

has been abrogated by some provincial statute. The Government has advanced as one such abrogation sec. 6 (1) and (2) of The Public Lands Act,[9] which lays down that the ownership of the bed or shore of any body of water shall not pass to the grantee with a Crown grant. This contention has been argued against by the writer elsewhere[10] on the basis that the right to an accretion does not depend on the ownership of the bed or shore. Another possible abrogation has existed in sec. 27 of the Alberta Surveys Act,[11] along the same line of reasoning as that used by the Attorney-General of B.C. with respect to the Official Surveys Act.

The operative wording of sec. 2 of the B.C. Act is:

> All boundary lines . . . shall be the true and unalterable boundaries . . . whether the same upon admeasurement are or are not found to contain the exact area or dimensions mentioned . . . in any . . . grant. . . .

Sec. 27 of the Alberta Statute reads:

> All boundary lines . .. shall . . . be the true boundaries . . . whether the same ,upon admeasurement, are or are not found to contain the exact area or dimensions mentioned or expressed in any . . . grant. . . .

If anything, the wording of the B.C. Statute, "true and unalterable", as opposed to merely "true" in the Alberta Statute, presents a stronger argument in favour of the abrogation of the common law rule. Nevertheless it did not suffice for Wilson J. Otherwise, the wording is practically identical and, it is submitted, the object and scope of the Alberta Surveys Act in this respect is the same as that of the Official Surveys Act. Therefore, the reasoning of Wilson J. is as applicable to an argument based on the former statute as it was to the latter, and, if the present Government practice be challenged in the courts of this province, the decision in *In re Quieting Titles Act and Neilson* should have a strong persuasive effect in rejecting the Alberta Surveys Act as a source of statutory justification for the practice.

C. A. G. PALMER, M.A. (Oxon.).

[1](1954), 13 W.W.R. (N.S.) 241.
[2]R.S.B.C., 1942, Ch. 282.
[3]R.S.B.C., 1948, Ch. 321.
[4]at p. 251.
[5]at pp. 251, 252.
[6]at p. 252.
[7]See Palmer, Correspondence (1953, 31 Can. Bar Rev. 713 at 714.
[8]*Clarke v. City of Edmonton*, [1930] S.C.R. 137, [1929], 4 D.L.R. 1010, revg. [1928] 1 W.W.R. 553, 23 Alta. L.R. 233.
[9]1949 (Alta.) c. 81.
[10]*Supra*, footnote 7.
[11]R.S.A., 1942, c. 75.