

MASSACHUSETTS LAWYERS WEEKLY

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VERDICTS & SETTLEMENTS

County Took Parcel In Nantucket, Paid \$1 In Damages

Plaintiff: Commissioners Made No Effort To Locate Rightful Heirs

\$3 Million Settlement

The plaintiff administrator succeeded in obtaining compensation for the heirs of the decedent, his great-great-grandfather who died in 1848, after the Nantucket County Commissioners took the 33-acre parcel in 1997 and awarded only \$1 in damages. Two of the decedent's seven children had been appointed co-administrators, but there was no evidence that anyone had ever conveyed or otherwise disposed of the property between 1844, when the decedent obtained it, and 1997.

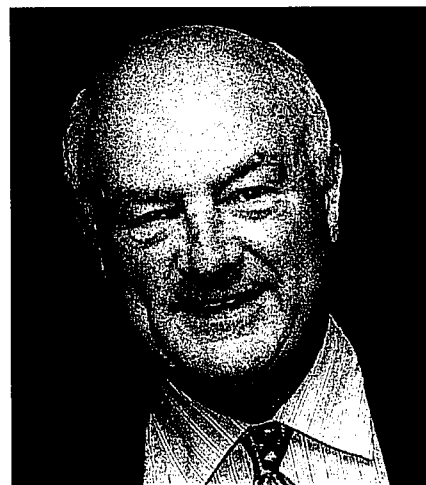
Although town and county officials appraised the undeveloped parcel at approximately \$1.45 million, the plaintiff demonstrated that the property was worth significantly more. In the end, the parties reached an agreement and the settlement funds were appropriated by Town Meeting in April 2004.

The decedent obtained the property, which then and now abuts Polpis Road, in 1844 by a set-off made by court-appointed commissioners. The set-off, a partition to reflect his ownership shares in the sheep commons, was duly recorded in the Registry of Deeds and was the last title document appearing in the registry at the time of the taking. At the time, much of the land on Nantucket was

held in common for pasturing and cultivation, as it had been since the first Colonial land grants in the 17th century. By the early 19th century, ownership in the common and undivided lands had spread among thousands of descendants of the original inhabitants.

In *Mitchell v. Starbuck*, 10 Mass. 5 (1813), the Supreme Judicial Court permitted the partition of ownership shares into individual fee simple interests. The decedent apparently obtained his land by partition and title to the parcel was determined and fixed as of 1844. Although the county commissioners allegedly recognized the decedent's heirs as "supposed" owners and knew the names of the decedent's seven children from records available to them, they made no effort to locate the rightful heirs, paid no award on behalf of "unknown owners" and made no pro tanto offer.

The plaintiff petitioned the Probate & Family Court to be appointed administrator de bonis non of his great-great-grandfather's estate to administer the remaining parcel. Counsel was able to demonstrate both the genealogy establishing the rightful heirs and the estate's title to the property at the time of the taking. Although the administrator filed suit, there was no extensive discovery before the parties were able to reach a settlement.



TODD

Type of action: Real Property
Injuries alleged: Taking of land without compensation

Name of case: McConnell, Administrator of the Estate of Seth Clisby v. County and Town of Nantucket

Court/case #: Nantucket Superior Court, No. 03-10

Tried before judge or jury: N/A (settled)

Amount of settlement: \$3 million

Date: July 8, 2004

Attorneys: J. Owen Todd and Philip H. Graeter, Boston; David L. Arons and Bruce A. Issidore, Norwell (for the plaintiff)