# Continuing Education

## RESEARCH vs. 'SURVEY THIS DEED'

IN THE discussions and presentations to the various County Law Associations, we must answer the query, "Are you stating that if I wish to direct a surveyor to simply survey what is in the deed, and I am not interested in paying for research, etc., the surveyor is unable to undertake this?". Our answer to this type of inquiry is: "Definitely, the surveyor is unable to accept such restriction on his responsibilities".

Obviously we must review with our audiences the many reasons for this. In doing so, we make use of the paper prepared by W. Marsh Magwood, Q.C. in January 1960 entitled "The Law and the Surveyor". The particular section which answers and explains the above question is the following.

**Duties of Surveyor to Client**

"Following one of the important principles laid down by Justice Cooley, a surveyor should, in re-defining boundaries, conduct his search for evidence and assess it in the same manner as it might be assessed in a court.

Clearly, therefore, one of the important duties of a surveyor is to search for evidence, and that means *all the evidence available* of the particular boundaries or limits he may be called upon to re-define.

Whereas the majority of surveyors appear to understand very well that all the evidence of a client's property may not be contained in his deed alone, there are a great many surveyors who feel, if a client or his lawyer hands them a deed with the simple instruction to "survey it and report any encroachments," their duty to the client is satisfied if they adhere strictly to, and monument, the limits therein described, showing the various encroachments.

*I do not know how or where this conception came into being, but I can speak with considerable authority on the deplorable results of such practice.*

Let us try to examine this situation in a logical manner. Each and every property line, limit, boundary, etc., separating one ownership from another is or should be a matter of interest to both owners. In effect, all properties have adjoiners and the lines separating properties are not the exclusive responsibility of any one owner. Theoretically therefore, all deeds should reflect this condition of contiguity and if this were so there would be no overlaps of paper title.

In fact of course contiguity of title is not as common as it might be, owing to faulty descriptions, physical loss of evidence, erroneous surveys and poor conveyancing practice. It is a rule of law, which I will discuss later, that the limits of land described in a deed may under certain circumstances be varied by extrinsic evidence, and in surveying land described in a particular deed it must be realized that a lead to the existence of further evidence may be found in *adjoining* deeds.

*The duty of a surveyor therefore is not merely to lay out his client's land, but lies more in the direction of determining from all the evidence available that land to which his client is entitled, no more and no less, and in so doing the surveyor is bound to consider the rights of adjoiners.*

The necessity then for searching adjoining titles devolves upon someone. The question is, upon whom? Should a boundary prove to have been erroneously redefined owing to failure to search adjoining titles, then in the lawyer's opinion the surveyor was negligent, and in the surveyor's opinion the lawyer was negligent in not providing him with searches of adjoining lands.

It seems to me that the answer must be sought in the respective training and interests of the two professions. In conveying land, a lawyer, in accordance with the best practice, is interested in giving a good paper title. He concerns himself with tracing ownership back through a 40-year period and thus establishing a good chain of title. Such things as mortgages, liens, easements and other rights and interests are exclusively in his province. He is also interested in the physical extent of ownership but in this connection he relies upon the surveyor who is trained to detect in a deed any references to natural or artificial features which will most likely still exist on the ground and which frequently are all-important in defining the limits of the property.

The surveyor with his training in the science of measurement of distance and bearings, his familiarity with the survey statutes, etc., is in a far better position to deal with the various governing factors in descriptions. His interest therefore in searching titles is very specialized and quite different from those of a lawyer.

With this in mind, and in view of the fact that the surveyor signs the plan, I think a good case is made for the surveyor to do his own searching".

Considerable discussion also takes place during these presentations on the surveyor's responsibilities of "searching" for survey evidence, in the office and in the field, on every survey, regardless of the purpose of the survey (i.e. boundary, reference plan, building location, etc.) The point is made that there is only one boundary and that the surveyor must re-establish that boundary according to proper research, survey procedures and evidence.

NOTE: The paper of W. M. Magwood, Q.C. noted above is printed in full in the booklet "Legal Principles and Practice of Land Surveying" issued by Surveys and Mapping Branch, E.M.R., Ottawa. This booklet is still available for $2.00 at outlets for federal publications, or may be ordered through the Association offices for $2.00 plus $2.00 mailing and handling. ●