

Survey Plans and the First Running of a Line

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NOTE: This paper was written in response to a situation proposed at a recent Case Law "A Practical Review" seminar. Briefly, a boundary created and described by a Reference Plan was later found to be in disagreement with the limit as fenced and occupied to by the adjoining land owners. The question to be resolved was, "what limit should be held as the true boundary"?

The most fundamental rule of surveying, in both statute and common law, is that original monuments, found in their undisturbed position, must be held when re-establishing a boundary.

Statute Law

The *Surveys Act* states that:

*"Every line, boundary and corner established by original survey and shown on the original plan thereof is a **true and unalterable** line, boundary or corner and shall be deemed to be defined by the original posts ... whether or not the actual measurements between the original posts are the same as shown on the plan."*

see Section 9, R.S.O. 1980

The *Surveys Act* further lists the following true and unalterable lines.

- Original Crown surveys, Section 8;
- Lines on a plan of subdivision, Section 54;
- Surveys under the Public Transportation and Highway Improvement Act, Section 58;
- Lines run under Municipal or Crown Resurvey, Section 48.

The *Land Titles Act* states that new boundaries created on a reference plan are true and unalterable and are **to be defined by the monuments**, Section 149(4), R.S.O. 1980.

Monumented lines on plans approved under the *Boundaries Act* are also true and unalterable, Section 15, R.S.O. 1980.

Common Law

A surveyor in re-establishing a boundary must resort to the **best evidence** as to the original position of the boundary. The priority of evidence to be used is reflected in the AOLS standards. There is no better evidence of the true position of a line than find-

ing the original undisturbed monuments.

The AOLS Standards for Surveys lists a hierarchy of evidence to be used when re-establishing a boundary. Priority should be given to:

1. Natural Boundaries
2. Original Monumentation
3. Fences or possession reasonably dating back to the creation of the boundary.
4. Other limits as called for in the deed
5. Measurements on plan or deed

The priority assigned evidence is not arbitrary but is firmly rooted in Common Law.

"The rule is well established, that it is the work on the ground that governs, and it is only where the site of a monument on the ground is incapable of ascertainment, that a surveyor is authorized to proportion quantities between known boundaries. Where a surveyor locates the angle of a certain lot by finding the original monument his survey will be accepted for the proper determination of the boundary and subsequent surveys made in total disregard of the monuments will be rejected".

see Artley v. Curry, (1881) 29 Gr. 243.

see Whelpley v. Lyons, (1843),

4 N.B.R. 276 (C.A.)

"Where a dispute exists between adjoining land owners about their long standing traditional boundaries the duty of the surveyor is to determine as far as possible where the original marks are. It is only when the surveyor is unable to ascertain with reasonable certainty the position of the original monument that he is entitled to resort to actual measurement and theoretical calculations."

see Huebner v. Weibe, (1984) 1 W.W.R. 272,

25 Man. R. (2d) 80 (Q.B.)

"In the **absence of original monumentation**, resort must be had to lines made at a time when the original posts were presumably in existence and probably well known, such as long established fence lines".

see Home Bank v. Might Directories Ltd., (1914) 31 O.L.R. 340, 20 D.L.R. 977 (C.A.)

Conclusion:

Original monuments defining a new boundary as shown on a plan of survey must govern. They represent the first running of a line. In *Grassett v. Carter* we are told that:

"extrinsic evidence of monuments found on the ground, but not referred to in the deed, is inadmissible to control the deed, but, if reference is made by the deed to such monuments, they govern, although they call for courses that do not agree with the deed."

When a plan of survey is deposited and referred to in a deed both the plan, and its monumentation as found on the ground, are considered as incorporated with that deed. The plan shows the boundary defined by the monuments only. Fences and other evidence found on the ground **which appeared after the running of the surveyed line** cannot be used to control the boundary.

When faced with a situation where physical occupation does not agree with the limit of a boundary as shown on a plan of survey, a surveyor's duty is clear. He or she must do the necessary research to determine which limit was run first. Occupation occurring subsequent to the running of the surveyed limit should be noted as an encroachment over the true boundary as defined by the original survey monuments.

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** All cited cases taken from "*Boundaries*" by Lambden and de Rijcke, The Carswell Company, 1985.

