

SURVEYING

by Calvin W. Rice

*Editor's Note: An article by Mr. Rice, Civil Engineer, Surveyor and Planner, of Milledgeville, Georgia, U.S.A. which appeared in several issues of Volume VI of "Field Notes" published by the Georgia Association of Land Surveyors, has been referred to us as a matter of interest for Ontario Land Surveyors. The following are excerpts from Mr. Rice's article:*

Under our free way of life the law gives to property owners the right to establish their own boundary lines. This is the only way lines may be established except by Court judgment or decrees after due process of law. Neither surveyors, lawyers or government officials of any kind have the power to tell a land owner where his boundaries are located. The location of property lines is a highly complex and technical matter and therefore there arises the need for a qualified technical profession to provide a service of assistance to the property owner in boundary matters. This is the function of the Land Surveyor.

In an exactly parallel manner the lawyer provides assistance to the public in matters concerning its legal rights; the physician in matters concerning its health; the minister in spiritual matters; and so on, through the professions. Now all of these matters concern the welfare of individuals and therefore are interlocking and overlapping. No sharp lines can be drawn between the professions but instead there must be recognized areas of gradual shading from one to another. Probably the most important characteristic of the true professional practitioner is the ethical judgment by which he will voluntarily limit his services to matters in which he is competent. Furthermore even in the central region of high specialization within a profession, the knowledge and skills rest on broad fundamental principles which underly also other professions and indeed a specialty may be largely made up of facts and techniques borrowed from other fields. It is the particular assemblage and organization of the knowledge and skills which identifies that profession.

So it is that Land Surveying, in its role of assistance to property owners in determining the extent of their holding, is compounded of scientific, engineering and legal principles. Some modern surveying involves the application of the constant of the velocity of light, long regarded as lying at the very core of physics, yet the surveyor makes no pretense of being a professional physicist. Astronomy is used in every day surveying practice but the surveyor is not an astronomer. Similarly legal principles, interpretations of the court decisions, and rules of evidence are used in arriving at solutions of boundary problems without the surveyor being or needing to be a lawyer.

The key point to remember in considering Land Surveying Practice, is that the surveyor is not trying to usurp the authority of the courts or to plagiarize the lawyer's work but only to perform his natural function of assisting the owners to determine their property lines in a just, peaceful and economical manner.

To whom else can the property owner turn for assistance? The Civil Engineer can transpose a mathematical description from the record to the ground. The lawyer can advise him as to his rights and as to the state of his title, but, the lawyer cannot determine the extent of his title holdings on the ground and the Civil Engineer cannot determine the relation between his physical layout and the extent of the title holdings on the record. The complicated interwoven fabric of title and physical facts can only be unraveled by a specialist and that specialist is the true

Professional Land Surveyor. In every day practice the surveyor does express opinions on the location of property lines and he does offer advice on procedure to establish them. These opinions and advices are sought and usually accepted and acted upon by his clients and adjacent interested parties, and THEIR ACCEPTANCE MAKES THE RESULTS OF HIS WORK AS LEGAL AS A COURT DECREE.

Such practice is customary, logical, fills a genuine need of a civilized community and generally promotes the welfare of the people. Nearly everybody agrees that court litigation to establish a land line is as undesirable as disease in the medical field, for instance. It breeds ill feelings, economic loss and generally increases the friction impeding a community's progress and development. Any professional service which operates to reduce this friction should be welcomed and encouraged by all.

The Lawyers, Engineers, Courts and General Public should direct their efforts toward ensuring that only men of high character and competent preparation practice in so important a field rather than join the senseless assault which at present seems to be in full swing from all directions to circumscribe, undermine and downgrade the ancient and honorable profession of Land Surveying.

Lest the ideas expressed here be lightly considered as merely the opinions of one uneducated country surveyor, I offer the following quotations from sources of high qualifications: From "Technical Standards for Property Surveys" as adopted by the American Congress on Surveying and Mapping on June 28th 1946.

"Every parcel of land whose boundaries are surveyed by a licensed surveyor should be made conformable with the record title boundaries of such land. The surveyor, prior to making such a survey, shall acquire all necessary data, including deeds, maps, certificates of title, centerline, and other county line locations in the vicinity. He shall compare and analyze all the data obtained, and make the most nearly correct legal determination possible of the position of the boundaries of such parcel. He shall make a field survey, traversing and connecting all available monuments appropriate or necessary for the location, and co-ordinate the facts of such survey with the predetermined analysis. Not until then shall the monuments marking the corners of such parcel be set and such monuments shall be set in accordance with the full and most satisfactory analysis obtainable."

From comments on the "Standards" by Mr. Wattles:

"Real Land Survey practice must go beyond the mere mechanics of its physical placements, and determine the legal and title facts of boundaries and ownerships and their relations with each other, ---. The business of the surveyor is not that of measuring lines as given to him by word of mouth, sketch, or description without considering the source, value, or relationship of such lines to others of associated boundaries or ownerships. He must of necessity correlate all facts concerning the property in question in order that his placement of monuments will be correct not only in mechanical measurement but likewise from a legal and title point of view."

From "Clark on Surveying and Boundaries", by Frank Emerson Clark (both a Lawyer and Surveyor); quoting from the introduction by M.E. Chamberlin: "Land Surveying is a learned profession. It requires precision, technical knowledge, discrimination, logical thinking, and judicious judgment. Rarely is the surveyor now called to make a wholly original survey. A resurvey usually constitutes part of, or more often, the entire problem and legal questions are usually involved. Although without final authority, the Surveyor when employed, on a resurvey must act as judge and jury, collecting the evidence, hearing the testimony, interpreting the law and then

making a decision consistent therewith. Questions relative to faulty surveys, obliterated monuments, contradictory testimony, disputed boundaries, riparian rights, inconsistent deed descriptions, erroneous plats, and legal decisions may be involved. Hence Land Surveying is no longer merely the precise application of mathematics."

From Section 84 of the same book, by Clark himself:

"(The Surveyor) should be as free from prejudice or influence favorable to one or the other party, as a judge on the bench or a juror in the box. His skill, judgment and advice should always be for the right. He should establish corners and run lines according to the data or according to extrinsic evidence gathered by him. His inquiry should be: What is the right of the matters under all of the circumstances? Practically he is an arbiter between the parties. He should not destroy any evidence of the location of corners or lines, or cover up anything which may lead to a correct survey of the line in question. When he so acts, his services will be sought for and he will be honored greatly in the localities where he may have been engaged."

"Finally a quotation from a plat made by George Washington in April 1799, the last line of which might well be carefully considered in these uncertain times by all men: "So far as the black lines of the above plat extend from "A" to "B" and from "C" to "D" from the Run, there can be no difficulty nor dispute ---. Nor can there be any else - where if ancient corners, or marked lines are to be found, because these must govern and decide, but if these are wanting some difficulty may occur - but even in this case with reasonable men difficulties may be easily overcome."