

BLAZER CRESTS AVAILABLE

A sample blazer crest was recently designed by Mr. Ken McConnell by request. This crest was submitted to and sanctioned by Council, for the purpose, provided it was understood that it did not constitute the official crest of the association, as an official crest has not yet been selected or approved by Council.

Mr. McConnell now advises that the blazer crest is available and may be ordered from the following firm:

Allison - Trophies
627 Sixth Line South
Oakville, Ontario

If anyone desires to see the sample crest, Mr. McConnell states, "I would be most happy to forward the crest to him for his inspection."

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ASSOCIATION NOTICES

EXPROPRIATION PROCEDURES ACT, R. S. O. 1962-63, ch. 43

The attention of members is drawn to the above statute which came into effect on January 1st, 1964. It contains provisions regarding the taking of land by an expropriation authority and the payment of compensation. Section 4(1) relates to vesting of title and reads:

"Notwithstanding any general or special Act, where an expropriating authority has exercised its statutory powers to expropriate land, it shall register without undue delay in the proper registry or land titles office a plan of the land signed by the expropriating authority and by an Ontario Land Surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority."

Copies of this statute are obtainable from the Queen's Printer, Parliament Buildings, Toronto, - price .25¢ each.

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SPECIAL ARTICLE

MORE ABOUT FENCES

by L.A. Doxsee

Fences, and how they affect the practice of surveying, has for quite a few years been the topic of much conversation at the annual meetings. Some of these discussions make interesting reading in the reports but it is difficult to agree with all of them. While the subject is still a current one may I be permitted to add something to it.

I feel that each fence the surveyor has to deal with must fall into one of the following three classes;

Firstly, there is the fence which so often serves as the best evidence of a line run in the original survey. For accepting this fence as the legal limit of the lot or parcel we take the rule applied in *Might Directories vs Home Bank* if it substantially satisfies the conditions present in that case, or we can cite the best evidence rule in the *Surveys Act* as our argument. But the reason for adopting this fence as the line does not rely upon its age provided that it could have been erected at a time when the original stakes were in position. It would appear that the *Might Directories* case tested the best evidence rule in so far as lines of occupation are concerned and since the judgement stood, a precedent was set enabling surveyors to adopt such lines as best evidence. It is therefore better to use the precedent rather than the Act as the authority.

Secondly, there is the fence which does not by any reasonable consideration

represent a line of survey but is unquestionably an attempt at adverse possession. Length of existence may or may not have developed into a valid claim to title depending on whether or not the fence has fulfilled the requirements of the Statute of Limitations. The surveyor is not vested with any authority to judge a fence as qualifying under such statute. It must be considered that title does not automatically pass on completion of the required length of possession. Certain legal procedures are necessary to transfer title. A person holding legal title to land often considers that he has lost claim to argue the position of a fence after a surveyor has posted it as the rightful line. We know that survey monuments have no bearing on the legality of such a fence line. They do not alter the title, and they will not impress the court in the event of litigation. It would, therefore, seem proper for the surveyor to locate these fences on his plans, post the legal boundaries, and let the lawyers worry about rights under the Statute of Limitations.

The third class of fence is that which intends to define a lot or side line not run in the original survey. In most cases this fence occupies a line conscientiously run by the settlers with a compass and it almost always fails to comply with the provisions of the Surveys Act. Such a fence, therefore, rarely happens to coincide with the lawful boundary of the lot. The main difference between this type of fence and the one just mentioned appears to be one of intent in their construction. We can reason that this fence marks the position of the original post at the front of the line but that is as far as we can judge it under the best evidence rule.

With regard to this third type of fence it has been said that the Surveys Act is not in agreement with the decisions of the courts. What decisions? In the *Might Directories* case the rule applied is quite consistent with the Surveys Act. Both the case and the Act deal with the best evidence principle in reference to a line run in the original survey. The same rule cannot be applied to a fence intending to define a line not run in the original survey. In any event, if there are any such decisions they are overruled by the Statute.

We know that the courts are reluctant about disturbing possession but we are also aware that they are powerless to override an Act of Parliament (with few exceptions). Generally speaking, if the statute can be interpreted literally the judge is bound so to rule.

In general practice we are identifying this third class of fence as the lot line which it practically is, but legally, is not. To define such a fence as a lot line in law as well as in fact, requires the development of a legal fiction. To provide the surveyor with sufficient argument to claim that these fences are the lot or side lines by legal determination founded on the premise that these lines were at one time or another run by an authorized surveyor subsequent to the original survey of the township, which is purely a fiction, cannot be considered ethical survey practice. To make a fence which can only be regarded as a line of occupation, the best evidence of a legal boundary, by legislation, is questionable.

But whatever purpose is served by adopting a fence as a survey line, it should not be for reasons of economy or expediency alone but we should feel prepared to support it by sound argument.

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An Apology

It was hoped that with this issue, the new paddle-stitched format of "The Ontario Land Surveyor" would be available. However, in deference to our advertisers, it has been postponed. Perhaps, the April issue will be it!