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Overlaps 101

We turn now to the theory of retracement. The doctrines anchoring this part of our practice distinguish us from all other technical professions and, in fact, from other types of surveyors. Some consider it the apex of our craft, and they may be correct. But despite this interest there is widespread confusion, apparently, over some of the foundations underpinning the work, and we will devote some effort here to clearing that up.

Retracement is thought of as an exercise in walking where our predecessors walked. In the vast majority of cases, however, correct execution requires identifying *which* of our predecessors is entitled to be followed and for how far. Herein lies the first and most basic consideration. Although it has not been emphasized in the literature of boundary surveying, the recognition of which prior surveys are entitled to deference and which are not is indispensable to accurate retracement. This problem manifests itself where there is more than one survey describing (and monumenting) the same line, a frequent occurrence in older areas.

Title Theory

Logic dictates that the survey creating the line in question be controlling as to the location of that line. Were it not so, the entire theory of private property ownership would be shaken. That theory begins with a legitimate owner conveying rights to others, who in turn convey those rights to still others, and so on. The process depends, however, on the legitimate ability to convey—or, put another way, the *inability* to convey anything other than what is actually owned. Obviously, one should not be able to convey part of his neighbor's land, and so one cannot: the theory prohibits it. The result of this rigid doctrine is the genealogy of land titles now in existence; the ancestors of each of the millions of parcels in the country can be ascertained, their birth order determined and their relative priority established. These principles have given rise to an entire class of property rights, all based on the premise that land once transferred, *stays* transferred.

Therefore, focusing on the original separation of those interests (controlling grants), and thus the controlling surveys referenced by them, is Job One during retracement. All subsequent acts on either side of that line must respect the true (original) location of it.

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Alas, the fly in this otherwise magnificent ointment is that the surveys creating those original division lines were flawed in some way, perhaps in many ways. We know this, of course, because there is no such thing as a perfect measurement—then or now. (Hopefully our recent measurements reduce the error to a triviality, but no matter: the theory still stands.) If that were not enough, ancient grants suffer from loss of on-the-ground original evidence, creating a Catch-22-like dilemma: suspicious measurements between long-gone monuments. Such is our lot.

Overlaps Trumped

It should be obvious that retracing the wrong line will likely result in the wrong location. Yet many surveyors do just that—probably because it's cheaper to adopt an apparent solution than to search for obscure answers. To be sure, it is possible to blunder into the right

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location without knowing why, but can we agree that our clients deserve better? I hope so. Our professional standing deserves better too.

Aside from arriving at the wrong location (as if that were not enough), ignoring the sequence of conveyances has other negative consequences for the retracing surveyor. Most prominent is that he or she is robbed of any ability to solve apparent overlaps in title. Considering the theory expressed above, there can be no such thing as an *actual* overlap, because either one side or the other is truly entitled to the land, and the other merely has an incorrect description in its title history giving rise to the question. Although many entities may enjoy simultaneous interests in a particular tract, independent grantors cannot convey the same interest in the same parcel of land. One (or more) of those grantors had no actual title to the land in the first place, and thus could not (did not) convey it. Without examining both chains of title back to the source of the division line, however, the surveyor has no means to determine which one has the valid claim. At best, the surveyor would be forced to note the overlap in his or her writings and leave it at that. For reasons to be explained next time, this does a disservice to everyone relying on that survey. At worst, the benighted surveyor is himself unaware of the issue, not having done enough research even to get invited to the indeterminate party.

The resolution of overlaps is conceptually no different than the decision whether to hold a particular monument or not. Both are driven by the facts at hand, including the title history, and interpreted in light of relevant law. Most surveyors have no hesitation in deciding whether to honor a particular monument, and do not feel compelled to offer both choices (held or not held) to the client and suggest that the resolution is beyond a surveyor's ken. Why, then, for overlaps?

I once had a conversation with a surveyor who neglected to investigate what was an obvious discrepancy between adjoining descriptions. He opined that his duty was not to solve such puzzles, but merely to alert his clients to their existence. There is enough response appropriate to that remark to fill an entire essay. And so I shall – next time.