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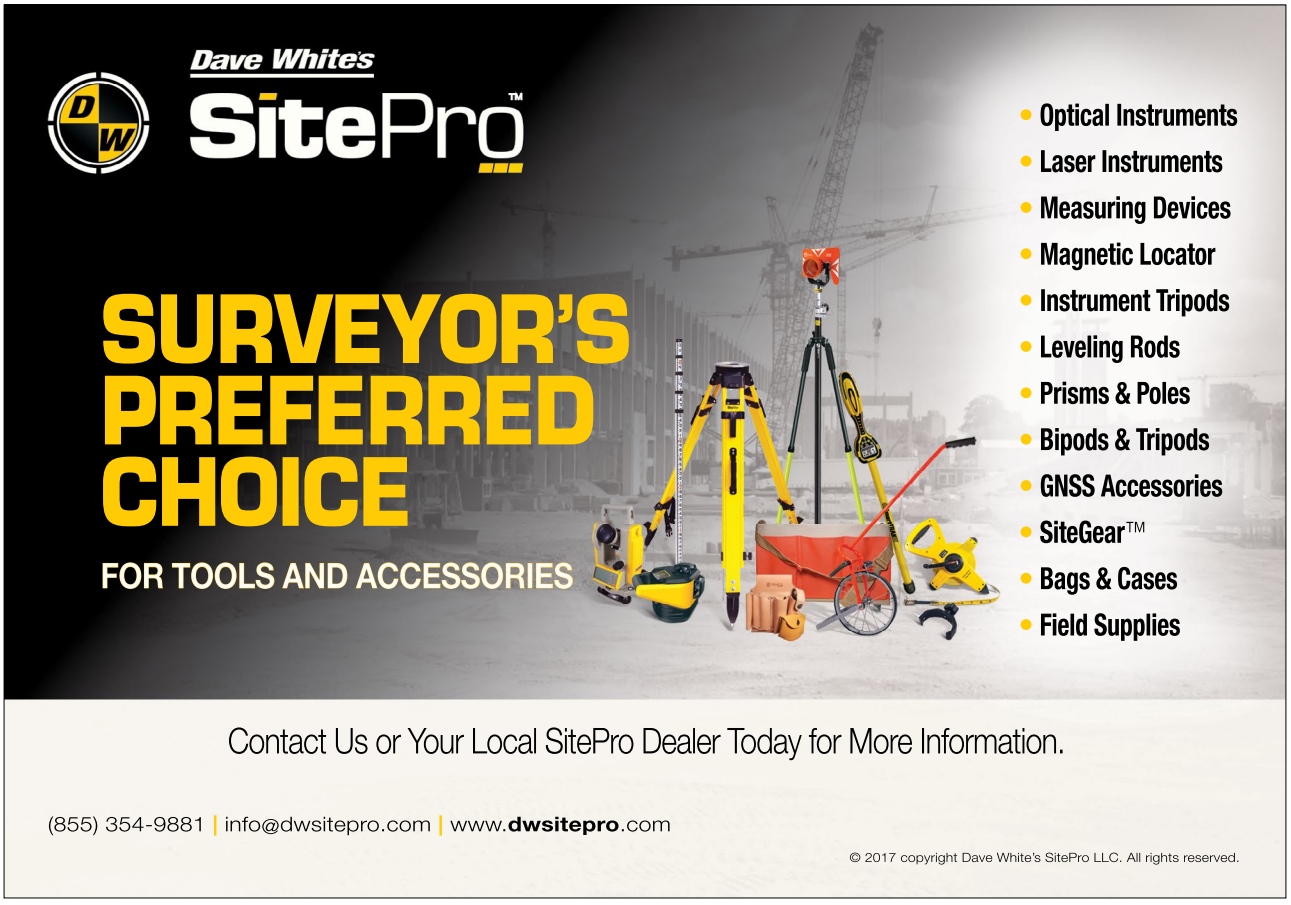
decided guidance: case examinations

Bryant v. Blevins

Epilogue—The Practical Location of Boundaries

Establishment of Boundary Lines by Practical Location was written by Joseph P. Loeb in 1916. This is a collection of common law precedents to guide attorneys and Courts through boundary resolution. This guidance neither grants nor implies any special authority of the Surveyor to adjudicate a boundary. However, an understanding of the subject matter may fortify the surveyor's attempt at gathering pertinent evidence representing the true behavior of adjoining chains of title on the ground.

At the turn of the previous century the country was developing rapidly and thus land was becoming increasingly valuable. In 1916 the motivation to define rules in determining a true boundary line was no doubt driven by the demands of this rapid land development. California had been a State for nearly fifty years when the case of Hellman v. Los Angeles was heard in 1899. The Supreme Court recognized that an old map of Ord's Survey of Los Angeles was unclear, no original monuments survived, and nobody was alive that could testify to the original work. Additionally, The Supreme Court declared *"that the inaccuracy of early surveys was a matter of which the courts have judicial knowledge."* As stated by Loeb *" For these and many other reasons the true boundary lines, as called for by deeds or other instruments, frequently cannot be located definitely and certainly. A conflict then arises between the true line and the line actually established by occupation…"*. Loeb goes on to further explain his cause in 1916. *" Our inquiry is restricted to the rules which are applicable when the division line of contiguous lands as indicated by practical location does not correspond with the true boundary, as determined accurately by a survey based upon a call of deeds, and when there is no express agreement in writing adopting one or the other as the line...Ordinarily descriptions contained in title deeds will fix*



boundaries. The exceptional state exists when instruments of such dignity are disregarded, and the haphazard location of hedges, fences, ditches, and other physical objects are taken as the standard in their place.

When the practical location does prevail, the case will fall within one of the following classes: (1) Lines established by agreement, express or tacit; (2) Lines established by estoppel; (3) Lines established through the acquisition of title by adverse possession."

Bryant v. Blevins tested the concept of lines established by agreement when a good survey of reliable records was available. So how does the surveyor know when a practical location should prevail over the record description? The simple answer is we don't. That authority lies with the Court. The best I can offer is that we clarify that uncertainty to the concerned parties then guide them to some form of resolution as co-participant's rather than judicial combatants.

Identifying a practical line that in fact harmonizes with a deed(s) or plat is the foundation of Justice Cooley's "Quasi-Judicial Functions of the Surveyor" and bolsters the preponderance of evidence. There's a difference here. Practical lines based on boundary agreements could be contrary to and abrasive with title descriptions. I suspect this is due in good part to the title description being ambiguous, unclear, or perhaps never surveyed to begin with. Intuitively I think it's safe to say that agreements may naturally manifest through poor descriptions, however Cooley's examples of acquiescence rise with bona fide acceptance of practical lines consistent with record documents. I mean consistent partially in the geometric sense but mostly with the multitude acts involved in platting and conveyance.

What does a boundary agreement look like? Well, for starters there must be uncertainty (*1). I don't think ignorance (*2) is uncertainty as a competent survey may certainly identify a true line to an unknowing owner. Loeb's examples support that notion and we saw the majority in Bryant v. Blevins overturn on that basis. In Truett v. Adams (1884, 66 Cal. 218, 222,5 Pac. 96) the Court stated "*Undoubtedly where the location of premises intended to be conveyed can be ascertained from the terms used in the instrument of conveyance, neither the acts not the declarations of the parties are admissible to show their understanding of the description contained in the conveyance.*" Additionally, an example of uncertainty was recognized by the Court in Sneed v. Osborn (1864, 25 Cal. 619, 626, 30 Pac. 433). One parcel was described as being bounded on the north by "Boggs" parcel. The Court observed that "*...no two men would take the (Boggs) deed, and going on the land separately, fix upon the same place for the initial point.*" So Boggs' description was ambiguous and the neighboring description was dependent on that same ambiguity. Clearly the intention of the bounding call is to harmonize the title line between both owners. Regardless, and as seen here a bounding call may not lend itself to actually fixing the line's location. This is an element of "uncertainty" and an invitation to identify evidence of an agreed line on the ground.

As obvious as it sounds there must be evidence of an actual agreement to support an agreed boundary line. Common elements in Loeb's various citations point to an unwritten agreement made between previous owners.

The conflicts generally fester somewhere down the line in a chain of title for obvious reasons i.e. they were not written or recorded. So an agreed boundary is going to be affirmed through testimony or inferred (*3) from behavior relative to a landmark and/or a deed call. Justice Shaw in Wheatley v. Salt Lake Railway Company (1915, 169 Cal. 505, 512, 147 Pac. 135) states *"there must be an agreement in order that a division line shall become fixed; this agreement must be express or implied (*4) from the acts of the parties and acquiesced in for a period fixed by the statute of limitations."* Loeb follows this citation with an interesting observation of *"It is submitted that acquiescence is important only where the agreement is tacit (*5), and then only as an evidentiary fact tending to prove the existence of the agreement."*

Okay. Loeb is swimming in some brackish tidewater between the concepts of acquiescence and agreement. I suspect he is just taking a scoop of Justice Cooley's definition of acquiescence to thicken up the gravy of tacit agreements. I feel like this is a source of confusion that could mislead to an argument that all acquiescence is evidence of a contractual agreement to fix an uncertain line. Justice Cooley's observations are based on the notion that folks are certain that the practical line is also the true line. Loeb's reliance on acquiescence to bolster a tacit agreement seems like it naturally needs some pre-existing written proof of ambiguity. The agreement might be tacit but the cause for agreement needs some retraceable evidence. Loeb published his paper in 1916 (see link below). Seventy years later Backman published a logical progression of principles in "The Law of Practical Location of Boundaries and the Need for an Adverse Possession Remedy…".

How does any of this affect the surveyor? True agreements are rare occasions and Loeb was very quick to make that point. My advice to the young surveyor is to stop and look around. Ask yourself "does occupation fit the record?" The term "fit" is not a mathematically precise number. The courts have judicial knowledge of that fact. Perhaps a better term is "fitness for use" (*6). Examine every conveying document in the chain of title. Read them in full! Descriptions sometimes evolve and errors are perpetuated in the record. Qualifying clauses and reservations contain evidence and are peppered throughout the document. Be certain to read every description and clause contained in a document. This can be revealing and it requires time and detail.

Tossing a few lawn darts and swiping a credit card for a few hours of labor is not retracement surveying. That is the business model of a cheap plumber. There's a reason things don't fit and that is your purpose. You old guys are either nodding or flipping me off. I'll accept either gesture as a valid response in this barbershop and thank you for paying attention. ■

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References

"Establishment of Boundary Lines by Practical Location-1916"
https://goo.gl/83sKJ1

"The Law of Practical Location of Boundaries and the Need for an Adverse Possession Remedy-1986"
https://goo.gl/r76pdM

The Barbershop Barrister

The Shop is slow today so the Barber is going to sweep the floor with contradictions, footnotes, and general ramblings and rants. Just to be clear, *Establishment of Boundary Lines by Practical Location* **is not a manual of land slicing and cardinal equivalents**. There's no dazzling third grade division problems or cosine reductions to impress your friends. Put your calculator down and spare us the tales of how you found "old so-and-so" off by seventeen hundredths. We are not talking about equipment, precision, or computational ability. The guidance we are examining in not found in engineering curricula but rather it is taught in law school.

Here is the list of contradictions and cranks:

1. Page 182 Loeb cites a basic version of agreement from Sneed *"When the owners of adjoining lands have acquiesced for a considerable time in the location of a division line between their lands, although it may not be the true line according to their deeds, they are thereafter precluded from saying it is not the true line."* Loeb's take on this, and mine for what it's worth, is *"In this form the rule is too broad. It is not limited to cases of uncertainty and would apply as well to a deliberate attempt, as in Nathan v. Dierssen, to change a definitely known boundary."* It is not hard to imagine the chaos that would ensue if everybody just felt like agreeing to a "feel good" boundary. It would be like a run on the banks.
2. Clapp v. Churchill, 164 Cal. 741 [130 P. 1061] *"…something more than the belief of all parties that uncertainty exists should be required."* However in Schwab v. Donovan ([1913], 165 Cal. 360, 132 Pac. 447) *"The court seems to have been satisfied with the fact that the parties were uncertain, even though the line itself was certain* (by survey), *and…implied an agreement resting upon mere ignorance of the true line."* I suspect that both owners willingness to represent and maintain a fence together played into this decision. Take that with a grain of salt.
3. The authority to infer apparently belongs to the court. *"The court may infer that there was an agreement between coterminous owners ensuing from uncertainty or a dispute, from the long-standing acceptance of a fence as a boundary between their lands."* (Ernie v Trinity Lutheran Church 1959 51 Cal. 2d 702, 708 [336 P. 2d 525].
4. The Court has the authority to imply. In 1986 Backman published "The Law of Practical Location of Boundaries and the Need for an Adverse Possession Remedy". Justice Mosk references this in Bryant v. Blevins particularly noting that evidence of agreements is often unavailable because folks pass away and/or forget what is customarily an oral agreement. At this time I have only looked at a small sample of Backman's 1986 work. There is a very compelling argument and comparison between agreed boundaries and boundaries by acquiescence. My wig started to smolder when Backman identified agreements as contracts subject to statutes of fraud whereas acquiescence is not. Hmmmmmm, very interesting… To read more see link in references.
5. Tacit means understood or implied without being stated and actions can speak louder than words. In Bryant v. Blevins the majority apparently did not see evidence to support a tacit agreement or evidence of express agreement. I suspect a court might favor the actions of several slightly disinterested "chainees-of-title" to reinforce a tacit agreement and shy away from a sole understanding of a single petitioner. I'll throw a frisbee here and say in our context perhaps a tacit agreement is better demonstrated by society's actions rather than individual belief. I also can't help to wonder if the tacit agreement needs tangible or written evidence of uncertainty as a cause? Perhaps we need to produce evidence of something broken?
6. "Fitness for use" according to The Black's on-line Law Dictionary at *http://thelawdictionary.org/fitness-for-use/* says this: *The effectiveness of a design plan for manufacturing a good or service. It should fit the purpose and assume certain conditions of making such a product."* I find it really easy to apply this to a plat, survey or land description.