



Interpretation of Deed Words

June 1957

Curtis M. Brown of San Diego, Calif., submitted the following short paper to the Publications Committee with the suggestion that a special department be established in *Surveying and Mapping* for presenting material relating to the legal elements of boundary surveys:

The English language contains many words that have dual or multiple meanings. Does the word *red* mean a color or a communist? Deeds (here meaning an instrument to convey real property, not a good deed by fellow man) are in writing. If words can mean two things, it can be expected that differences of opinion, as to a deed's intent, will develop. Thus, what does the word *North* mean? Is it *magnetic North*, is it *astronomical North*, or is it *North* relative to a line whose bearing is defined by other words in the deed? When the word "due" is used in conjunction with "North," does *due North* mean *astronomical North*, or does it mean *North* relative to another line?

In the final analysis, the courts resolve these questions for a particular deed, and by police power, they enforce their interpretation. If surveyors are to accurately transform deed terms into monuments upon the ground, it behooves them to study the meaning of deed terms as defined by the courts and to attempt to understand the court's thinking. The words *due* and *North* have been the subject of litigation and will be used to illustrate how courts arrive at their decisions.

North, as used by surveyors, has at least three meanings and possibly more. It may mean "in the direction of the earth's North Pole as determined by a star observation."

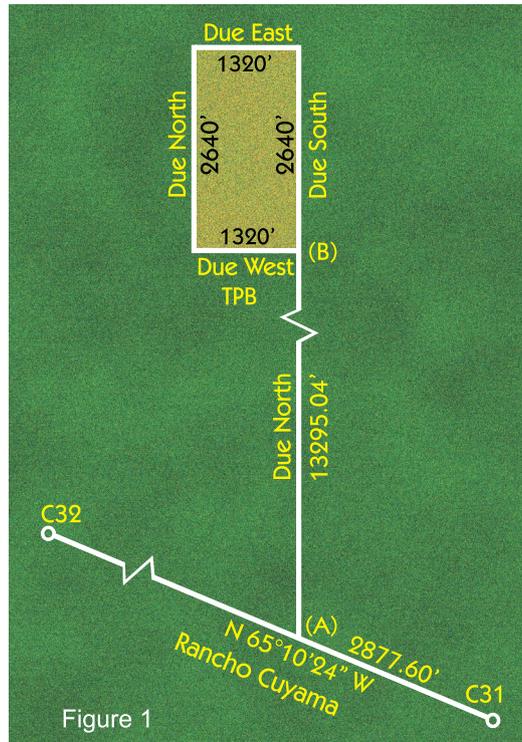


Figure 1

It may mean "in the direction of the magnetic North Pole as determined by a magnetic compass at the spot of the deed." It may mean, "In a direction that is North relative to a given bearing of a line whose direction is fixed by monuments existing on the face of the earth."

Due, as defined by Webster's Dictionary (excluding meanings not applying to surveying), is "directly; exactly; as a due-East course." As used by surveyors in the early days, especially in surveying government sectionalized land, the words *true* and *due* indicated that a magnetic-North observation, as obtained from a magnetic compass, was corrected to *astronomic North*. The purpose of the term, the differentiation between magnetic and astronomical North, is no longer needed because of

the abandonment of the magnetic compass as an instrument for determining property line directions. But title authors and surveyors have continued to use the terms *due* and *true* rather loosely, and often erroneously.

The following deed (See **Figure 1**) was the subject of a long-continued legal battle between Richfield Oil Corporation and Crawford, et al (249 P 2nd 600); "Beginning at a point on the SW line of said Rancho (Cuyama) at a 2-inch galvanized iron pipe 6-inches high in a mound of stones, with brass cap marked "Cuyama Rancho C-No 31", set by Gerald C. Fitzgerald, Registered Civil Engineer, and shown on map recorded in Book 26, Pages 138 and 139 of Records of Surveys, Records of Santa Barbara Co.; thence N 65° 10' 24" West along said SW line as established by said Gerald C. Fitzgerald and shown on said Records of Survey map,

a distance of 2,877.60 feet; thence due North 13,295.04 to the true point of beginning; thence, due West 1320 feet; thence, due North 2640 feet; thence, due East 1320 feet; thence, due South 2640 feet to the true point of beginning, and containing eighty acres, more or less." Who would think that such an innocent looking document would be the subject of expensive litigation? The trouble arose from the interpretation of the meaning of *due North*.

One surveyor surveyed the legal description of the property by running the line 2877.60 feet along the boundary of the ranch to point A (See **Figure 1**), and then turning an angle of 65° 10' 24" at point A. The other surveyor used the same method to locate point A, but from that point, he ran a line *due North* based

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upon a Polaris observation. The difference between the two methods resulted in an East-West displacement of about eleven feet at point B, and this difference of eleven feet placed the location of an oil well in jeopardy.

The practice of assuming that the bearing of a given monumented line of a deed is correct, and then surveying the remainder of the deed relative to the given line, has long been an accepted custom of surveyors. But in this case the court decreed that the word *due* changed the basis of bearings from “North relative to a given line” to “astronomical North” as determined by a star observation. Does this mean that every time the word *due* is used prior to the word *North* the meaning is “astronomical North as determined by a stellar observation?” Certainly not! Only in very similar cases would it be applicable.

To be valid, a deed must be in writing. In a court trial, evidence cannot be taken to exclude words from the written deed, nor can evidence be taken to include words that are not in the writings. It must be presumed that the document as written includes all of the words intended and does not omit words not written. But this does not exclude evidence taken for the purpose of explaining words that already exist within a deed. Thus, if the term *due North* is not clear in meaning, and exists in a deed, the court may take testimony from expert witnesses to explain the commonly understood meaning of the term. Such evidence is called extrinsic evidence and may be defined as evidence other than that contained in the writings. Extrinsic evidence is not accepted for the purpose of varying or contradicting the terms of the deed but to assist the court in understanding the words that already are a part of the deed.

In the above case, extrinsic evidence was admitted and many surveyors and engineers testified, some taking one side and others the opposite. The weight of evidence in this particular case precipitated the decision that *due North* meant *astronomical North*. After reviewing the case carefully, the following conclusion can be stated. Except where other terms of a deed or admissible extrinsic evidence indicate another intent, a *due North* call should be interpreted to mean an astronomical bearing. An understanding of the exception is more important than understanding the definition of *due North*.

Two mining men disagreed upon the meaning of a deed reading in part: “running thence North 23° 15' W,

640 feet; thence N 45° W to Devils’ Canyon (11 Cal 194).” Quoting from the case, “In an action concerning a disputed boundary between two claims, depending on an agreement between parties in which the word ‘North,’ was used, and parole [verbal] evidence was admitted to prove that it was the custom of the locality to run boundary lines by the magnetic meridian, and that was the understanding of the parties; *Held*, that such evidence was admissible not to contradict or vary the term, but to ascertain the sense in which it was used.” In a modern deed, where the compass is no longer used, the word *North* could not be *magnetic North*, but at the time of the above deed, it was proper.

The courts in each of the above cases adopted that meaning for *North* and *due North* which they believed to be the intent of the parties of the deed. No fixed rule exists that says *North* is always *astronomical North*. In older deeds in some localities, the word *North* means *magnetic North* for the simple reason that *magnetic North* was the intent at the time of the deed. In other localities, where surveys were made after the date of the abandonment of the magnetic compass, the word *North* is either *astronomical North* or “North relative to a defined line.”

Ambiguous deed terms are interpreted in the light of the intent of the original parties by investigating: (1) The surrounding conditions existing at the time the deed was written, (2) The extrinsic evidence that explains the common meaning of the terms, and (3) The meaning of the ambiguous terms relative to all the other written words in the deed.

In the construction of the instrument, the intentions of the parties are to be pursued, if possible. “The only rule of much value—one which is frequently shadowed forth, but seldom, if ever, expressly stated in books—is to place ourselves as nearly as possible in the seats which were occupied by the parties at the time the instrument was executed; then, take it by its four corners, read it.” (Walsh v. Hill, 38C 481.)

Moral: If a deed is being written and *North relative to a star observation* is desired, the deed author should state *astronomical North*. If *North relative to a given line* is intended, the usage of *due North* or *true North* should be avoided. In the future, the words *due* and *true* should be restricted to the interpretation of existing records and not used in the creation of new records. 