



## The Surveyor and the Law

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At the last annual convention of the Massachusetts Association of Land Surveyors and Civil Engineers,\* in a discussion with W. F. Roberts, Director of Surveys, Province of New Brunswick, Canada, a comment was made that United States books pertaining to the legal elements of property surveys were recommended reading for those preparing for the New Brunswick land surveyors examination. After reading a

- **Senior rights**—The true line must be determined by the terms of the earlier grant, regard being first had to the natural boundaries stated in the grant, and, in subordination thereto, to the specified courses and distances, giving preference to the one or the other according to circumstances. (Brevier v Govang, 4 All. 144)
- **Identification by reference**—Where lands are described by a reference, either expressly or by implication, to a plan, the plan is considered as incorporated with the deed, and the

intentions of parties to a deed, artificial monuments are regarded by the law as evidence of the intentions of the parties, second only in controlling force to that of natural monuments. (Shute v Adney (No. 2) 39 NBR 93)

- **Control of course and distance**—Where no monuments are called for by the deed, then the courses and distances must prevail. It is a well-established principle that extrinsic evidence of monuments found upon the ground, but not referred to in a deed, is not admissible to control the deed. (Landry v Landry, 48 NBR 47, and Montreal Trust v Corey, 18 MPR 427)
- **Control of artificial stakes on the bank of a river**—If a boundary is described as running to a monument standing on the bank, and thence running by the river or along the river, it does not restrict the grant to the bank of the stream; for the monument in such a case is only referred to as giving the direction of the line to the river, and not as restricting the boundary on the river. (Robinson v White, 42 Main 218)

“*Control Monuments*—It is clearly established that in questions of boundary, fixed and ascertained objects or monuments or boundary control courses and distances.”

few New Brunswick cases, the reason became quite apparent. The laws of both New Brunswick and the United States stem from English common law, and both are identical in many ways. A few examples are given below.

- **Construed against grantor, except the sovereign**—A grant from the Crown to the subject shall be taken most beneficially for the King and against the party, whereas the grant of the subject is construed most strongly against the grantor. (Wilson v Codyre. 27 NBR 320)

contents and boundaries of the land conveyed, as defined by the plan, are to be taken as part of the description, just as though an extended description to that effect was in words contained in the body of the deed itself. (Grassett v Carter, 10 SCR 105)

- **Control Monuments**—It is clearly established that in questions of boundary fixed and ascertained objects or monuments or boundary control courses and distances. (Whelply v Lyons 2 Kerr 276)
- **Control of natural and artificial monuments**—In attempting to ascertain

All of these are, of course, the common law of most States. Those reading United States books on the legal elements of boundary location law will get some ideas on what may happen in situations not yet tried in New Brunswick. ■

\*See *Surveying and Mapping*, December 1963, Vol. XXIII, No. 4, p. 638.

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