

A.O.L.S. Bulletin

1981-005



Question: Can an OLS simply survey the lands contained in a deed, if so instructed by his client, without researching adjoining properties, etc.?

Answer: No. This item was dealt with by W.M. Magwood, Q.C., in his paper "The Law and the Surveyor" a portion of which is reprinted below.

Duties of Surveyor to Client

Following one of the important principles laid down by Justice Cooley, a surveyor should, in redefining boundaries, conduct his search for evidence and assess it in the same manner as it might be assessed in court.

Clearly, therefore, one of the important duties of a surveyor is to search for evidence, and that means all the evidence available of the particular boundaries or limits he may be called upon to redefine.

Whereas the majority of surveyors appear to understand very well that all the evidence of a client's property may not be contained in his deed alone, there are a great many surveyors who feel, if a client or his lawyer hands them a deed with the simple instruction to "survey it and report any encroachments", their duty to the client is satisfied if they adhere strictly to, and monument, the limits therein described, showing the various encroachments. I do not know how or where this misconception came into being, but I can speak with considerable authority on the deplorable results of such practice.

Each and every property line, limit, boundary, etc., separating one ownership from another is or should be a matter of interest to both owners. In effect, all properties have adjoining owners and the lines separating properties are not the exclusive responsibility of any one owner. Theoretically, therefore, all deeds should reflect this condition of contiguity and if this were so there would be no overlap of paper title.

In fact of course contiguity of title is not as common as it might be, owing to faulty descriptions, physical loss of evidence, erroneous surveys and poor conveyancing practice. In surveying land described in a particular deed it must be realized that a lead to the existence of further evidence may be found in adjoining deeds.

The duty of the surveyor therefore is not merely to lay out his client's land, but lies more in the direction of determining from all the evidence available that land to which his client is entitled, no more and no less, and in so doing the surveyor is bound to consider the rights of adjoining owners.

The necessity then for searching adjoining titles devolves upon someone. The question is upon whom. The surveyor with his training in the science of measurement of distance and bearings, his familiarity with the survey statutes, etc., is in a far better position to deal with the various governing factors in descriptions. His interest is very specialized and therefore different from those of a lawyer.

With this in mind, and in view of the fact that the surveyor signs the plan, a good case is made for the surveyor to do his own searching.

For further discussion regarding best available evidence, please read the next bulletin.