

This chapter will provide no discussion on any particular topic. It is a compilation of quotes from court cases and/or encyclopedias that did not fit within the context of the other chapters in this book. The tidbits listed were discovered during the research of the rest of the chapters and could easily be taken out of context. It is recommended that each of the cases be examined in full should further consideration be needed for boundary analysis.

Areas- as stated in deed- order of importance of control

"The land being described in the deed to the church by metes and bounds, such description controls, and the church acquired title to the tract embraced in the specific boundaries, though the deed stated a less number of acres were conveyed." Pohlman v. Lohmeyer, 83 N.W. 201.

Common Report

"Existing monuments relied on by surveyors in determining adjoining landowners' boundaries is presumably correct." Mary Jane Stevens Co. v. First Nat. Bldg. Co., 57 P.2d. 1099.

Evidence- field notes- order of importance of control

"Monuments erected by the government surveyor to mark the section corners according to his survey will control, although in conflict with his field notes. If the monuments have been obliterated, but their location can be ascertained from a consideration of the testimony of witnesses who know and testify to the fact, the site thus established will control. If the monuments have been destroyed and their original location cannot be established by other proof, recourse may be had to the field notes of the original survey." State v. Ball, 133 N.W. 412.

Evidence- improvements as best evidence of obliterated original lines

"Monuments set by the original survey in the ground, and named or referred to in the plat, are the highest and best evidence. If there are none such, then the stakes set by the surveyor to indicate corners of lots or blocks, or the lines of streets at the time, or soon thereafter, are the next best evidence. The building of a fence or building according to such stakes, while they were present, become monuments after such stakes have been removed or disappeared, and the next best evidence of the true line." City of Racine v. Emerson, 55 N.W. 177 (underlines added for emphasis).

"In cases of obliterated corners in a long settled community, it, of course, usually becomes impossible to produce testimony of witnesses who have seen the original monuments and can testify of their own knowledge as to their location; and in such cases it becomes necessary to accept evidence of ancient fences and other improvements as evidence of the original boundaries, though in its nature hearsay, upon the theory that the persons originally constructing the improvements would naturally have located them with reference to existing monuments." Case v. Ericson, 258 P.536.

"Where the evidence shows without conflict that all government and plat monuments within the business district of the City of O. have been lost or destroyed and none of them can be found, that the curbstones along the streets, having been established by legal authority, are the only safe monuments by which engineers and surveyors can be guided, and that the custom of using them as such monuments, as the only available ones, has been adopted in such city, good faith measurements from them by disinterested engineers and surveyors will not be held invalid." Jacobs v. Goodrich, 134 N.W. 171.

Evidence- plat of survey as evidence

"The map made by the surveyor was admissible in evidence as indicating the location of the survey." Danforth v. Bangor, 85 Me. 423, 27 A. 268.

Evidence- parol evidence

"While latent ambiguities may be explained by parol or extrinsic evidence, such evidence is inadmissible, in the absence of surprise, mistake, or fraud to vary or contradict in any way a boundary description of land which is complete and clear." 12 Am.Jur.2d., Boundaries, section 103, page 637. (Reprinted with permission from the Lawyers Co-operative Publishing Co., Rochester, N.Y.).

Common law

"The common law only so far as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people thereof, and not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, or established customs of the people of this state, is adopted and shall be the rule of decision in all courts of this state." Arizona Revised Statute 1-201.

Easements- width of

"Warranty deed that granted the church an easement for ingress and egress 40 feet in width unambiguously created an easement across the entire 40 feet width." Squaw Peak Community Covenant Church v. Anozira Development, Inc., 149 Ariz. 409, 719 P.2d. 295. *Note: No original monuments were set for this easement.

Liability- third party reliance

"There is no requirement of privity in this state to maintain action in tort...that the seller of a product is liable to a user or consumer although "the user or consumer has not bought the product from or entered into any contractual relation with the seller." Donnelly Construction Company v. Oberg/Hunt/Gilleland, 139 Ariz. 184, 677 P.2d. 1292.

Monuments- where to take measurements to

"The rule is general that where a natural object having extension is named as a boundary, the lines run to the middle of the object...The rule has also been extended to artificial objects." Cordova v. Town of Atriso, 201 P.2d. 996.

Monuments- authority of "the point of beginning"

"The beginning corner in a survey is of no higher dignity or importance than any other corner of the survey. If there are well known and undisputed original corners established upon the ground around the survey, they would control the other calls of the survey which are conflicting and contradictory if there are any such calls." Lockett v. Scruggs, 11 S.W. 592.

Monuments- characteristics of

"When relating to land, a monument is some tangible landmark established to indicate a boundary. Objects, to be ranked as monuments, have been required to have certain physical properties such as visibility, permanence, and stability, and definite location, independent of measurements." 11 C.J.S., Boundaries, section 5, page 545.

Accuracy- as related to a 1953 survey in timberland

"The fact that the surveyor made solar observations to establish the true bearings of the lines for future reference, or that he used stadia for the measurement of distances, instead of a chain, did not invalidate the survey." Boyd v. Durnett, 62 So.2d. 319.

Procedures- deed only provides a procedure for locating land

"While the deeds furnished the means of locating the boundaries, their actual locations was an independent inquiry." Middlebrooks v. Sanders, 180 Ala. 407, 61 So. 898.