

Survey, Public Lands. Public Lands, Survey Of. Monuments, of Survey. Field Notes and Plats, of Public Survey.

In ascertaining the lines of subdivisions of land the surveyor is to be governed by monuments placed in the field by the United States surveyor provided the original location of such monuments can be established by clear proof. In case such monuments cannot be located resort may be had to the field notes and plats.

In the event the surveyor is unable to locate the quarter section monument in a given section of land he shall ascertain the location of such monument by referring to the field notes. The center of a section is the point at which straight lines drawn from the quarter section monuments as established on the boundaries of the section would intersect.

May 17, 1912.

Hon. A. W. Mahon,
State Engineer,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of April 15th, wherein you request my official opinion as to the method to be pursued by you in determining area of sections of land in which the State is interested, that is to say, whether the section corners and quarter section corners as established by the government surveyor are to control or whether the field notes and plats of such sections would prevail in the event of a discrepancy between the monuments of the surveyor as found and the location of the monuments as disclosed by the plats and field notes, and you call attention to the fact that in several townships in Cascade County in this State in which the State is interested there is a serious discrepancy and variation between the corners as actually established by the United States Surveyor in the field and those disclosed by the plats and field notes prepared and filed by the surveyor.

On April 9, 1912, in reply to an inquiry from the Register of State Lands as to what constituted the center of a section, in other words, how the center of a section of land was to be determined, we gave our opinion that,

“To ascertain the center of a given section it is necessary to locate the same equidistant from the four corners of the section as established by the United States Surveyor and that a quarter section line is a straight line from a point equidistant from the section corners on a given side of the section to a similar point on the opposite side of said section.”

This opinion and conclusion was reached in contemplation of a section where the survey or monuments established in the field by the United States surveyor, were only township and section corners and the sections were not subdivided into quarter sections by the surveyor in the field. In other words, the quarter section corners were not established by the surveyor but were to be found from the section corners as established and from the field notes and plats filed.

In reaching a solution of the question that you now propound we have experienced no little difficulty.

The undoubted weight of authority is to the effect that the location of a township upon the public domain is where the government surveyor has actually lined it out and is to be determined by the monuments actually placed by him in the field and the true corner of a government subdivision is where the United States Surveyor has established it, whether this location is right or wrong.

Harrington v. Boehmer, 66 Pac. (Calif.) 214, 489.

Clan v. Brandt, 47 N. W. (Minn.) 461.

Nessleroad v. Parrish, 13 N. W. (Iowa) 746.

Beardsley v. Crane, 54 N. W. (Minn.) 740.

Yolo v. Nolan, 77 Pac. (Calif.) 1007.

The Federal Statutes relative to the survey of public lands are

general in their terms and many things are left to the direction of the surveyor general and to the land department.

Goltermann v. Schiermeyer, 111 Mo. 404.

And the power to make and correct surveys of the public lands belongs to the political department of the government (the land department) and the decisions of that Bureau are unassailable by the Courts, except in a direct proceeding. This principal has been held to be elementary.

Craigin v. Powell, 128 U. S. 691, 699.

Keriwan v. Murphy, 189 U. S. 35.

The Federal statutes relative to the survey of the public domain are found in Sections 2395 to 2397 of the Federal Statutes. Sec. 2395 provides that the public lands shall be divided by north and south lines run according to true Meridian and by others crossing them at right angles so as to form townships; and makes provision for the marking of the corners of townships and for the placing of corners at a distance of one mile each from the other. This section further provides that the townships thus marked shall be subdivided into sections containing as nearly as may be 640 acres and provides that a corner shall be established at the end of every mile. This section further provides that the surveyor shall cause to be marked, if possible, on trees near each corner established the number of the section. Sec. 2396 contemplates the establishment of the boundaries of sections, half sections, and quarter sections. Sec. 2396 reads as follows:

"The boundaries and contents of the several sections, half-sections, and quarter sections of the public lands shall be ascertained in conformity with the following principles: First, All the corners marked in the surveys, returned by the surveyor-general, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from two corners which stand on the same line.

Second: The boundary-lines, actually run and marked in the surveys returned by the surveyor general, shall be established as the proper boundary-lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian Boundary-line, or other external boundary of such fractional township.

Third: Each section or subdivision of section, the contents

whereof have been returned by the surveyor general, shall be held and considered as containing the exact quantity expressed in such return; and the half-sections and quarter-sections, the contents whereof shall have not been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part.

This section then is clear as to the establishment of the boundaries and contents of a given section, half section, or quarter section. From the authorities that I have examined, it seems to have been uniformly held that where the monuments actually established by the United States surveyor in the field can be located and there is no question as to the correctness of such location, that is, no question as to the fact that the monuments are now in the position in which they were placed by the government surveyor that such monuments will control in the location and establishment of a boundary line between given sections or fractions of a given section.

"The monuments set by the * * * * * United States Surveyor * * * * * must control as to the proper location for those corners." The question where they were located, if directed, is one of fact and not of law, for the jury to determine under all the evidence."

Goltermann v. Schiermeyer, 111 Mo. 404, 416.

"The grant of all lands presupposes the actual survey of them and the patent must be considered as conveying the land as actually surveyed. Therefore, when it can be shown that a line was actually run, or division made, by the surveyor in surveying the land, and that such line or division was marked by corners or natural objects, and such survey is established, the grantee in patent will take according to such actual survey notwithstanding any mistaken description as to courses and distances contained therein or the quantity of land stated to be conveyed. It is a familiar rule that courses and distances must give way to natural as well as artificial objects when they are inconsistent * * * * * where there are no natural or artificial objects given * * * * * and no evidences of the actual survey as made on the ground * * * * * resort may be had to courses and distances."

Stonewall vs. Peyton, 39 Fla. 726, 730.

"It is a general rule that courses and distances and descriptions must yield to actually existing monuments or to the site of their former location if clearly established."

Beitz v. Mathiowitz, 79 N. W. (Minn.) 699.

Tolleston v. State, 141 Ind, 197, 216.

The weight of authority seems to hold that whenever it can be proved that there was a line actually run by the surveyor general, that the same was marked and a corner made and established, the party claiming shall hold according to such survey, notwithstanding a mistaken description of the land in a grant or deed, but where there are no marked trees or corners to be found nor the places where they

once stood ascertained and identified by evidence, or where no lines or corners of an adjacent tract are called for in a description, in all such cases courses of necessity are confined to the courses and distances prescribed in the grant or deed, for however falacious such guide may be there are none other left for the location.

Riley v. Griffin, 60 Am. Dec. (Ga.) 726.

Artificial and natural boundaries prevail over courses and distances.

Newman v. Foster, 34 Am. Dec. (N. Y.) 98.

Tiedman on Real Property, Sec. 832.

"The monuments erected upon the land are facts; the field notes and plats returned by the surveyor indicating the courses, distances and quantity are but descriptions which serve to assist in ascertaining those facts."

McClintock v. Rogers, 11 Ills. 279.

This last cited case is in point with the condition of affairs outlined in your enquiry. The field notes and plats showed the line to be in its natural position with reference to the remainder of the survey, but the monuments, as actually established in the field by the surveyor, differed and the supreme court of Illinois held that where the monuments, as actually established, could be located and proven by evidence they would supersede either the field notes or the plat, and it is only in cases where the monuments cannot be located where originally placed that resort is to be had to the field notes or plats.

"The field notes and plats are presumed to be correct unless the contrary is shown. They are important in ascertaining where the monuments are located; but if the location of the monument is clearly shown by other evidence to be at a distance different from that given in the field notes and plat, then the plat and field notes must give way to the monument."

Ogilvie v. Copelena, 145 Ills. 98.

You further state that you desire a rule to be followed by you in the survey of state lands as to the manner in which the center of a section is to be determined. This in the case of the survey of a section in the field and the establishment of section and quarter section monuments on the outer boundaries of the section. From the authorities it is my opinion that the center of the section would be the point at which straight lines drawn from the quarter section monuments as established on the respective outer boundaries of the section would intersect.

If, then, in the survey of state lands, you are able to locate the original monument placed by the United States Surveyor as indicating the township, section, or quarter section corner, and there is no question that the monument found is the original monument placed, and it is in the same position in which it was originally placed, you are to be governed by such monument, but if you are unable to find the monument as placed, then resort should be had to the field notes and plat, and the monument should be by you placed where the field notes indicate that it should be. However, in the event of a discrepancy

between plats and field notes, the weight of authority is to the effect that the field notes must prevail.

Very truly yours,

ALBERT J. GALEN,

Attorney General.