tree is in fact a witness tree to an obliterated corner and

Collins v. Hall – Colt Island, Juneau

1. US Survey No. 1755 – Island with only one monument to control location of boundary and a second to control bearings
2. Subdivision of USS 1755 – Island resides outside of Juneau Borough and so not subject to local government platting jurisdiction. Also, subdivision was prepared prior to DNR becoming platting jurisdiction in the unorganized borough.
3. Subdivision was a "paper plat". No apparent survey was performed and no original monuments set.
4. Deed makes reference to the (un-monumented) subdivision plat but does not call for any monuments set by survey related to conveyance.
5. No subdivision plat note that monuments were to be set at a later date, no evidence that monuments were set prior to or soon after subdivision plat was prepared.
6. Subdivision surveyor also set monuments more than a decade after platting but these cannot now be considered "original interior subdivision monuments."
7. Is there any evidence of "reliance" or "acceptance" of later set monuments?
8. If conflicting monuments were set in 2009, there would be no basis for reliance upon Konrad v. Lee.
9. Was surveyor who set monuments required to document them with a ROS or MR?

Sec. 09.45.010. Action to quiet title.

A person in possession of real property, or a tenant of that person, may bring an action against another who claims an adverse estate or interest in the property for the purpose of determining the claim.

Sec. 09.45.020. Action to establish boundaries.

When a dispute exists between two or more owners of adjacent or contiguous lands concerning the boundary lines of their lands, an owner may bring an action for the purpose of having the dispute determined and the boundary lines ascertained and marked.

Sec. 09.45.030. Appointment of referees to establish and mark boundaries.

In an action to establish boundaries, the court shall appoint three disinterested referees, one of whom is a surveyor, to establish and mark the boundary lines as ascertained and determined by the court.

Sec. 09.45.040. Oaths and report of referees.

Before entering upon the discharge of their duties, the referees shall file a written oath to faithfully and impartially perform their duties. After designating the boundary lines by proper marks, they shall file with the court a report describing the location of the marks.

Sec. 09.45.050. Court action on the referees' report.

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The report may be confirmed unless a party excepts to the report. Upon the hearing, the court may confirm, modify, or set aside the report, and, in the latter case, may appoint new referees or refer the matter to the same referees with appropriate instructions.

Alaska Rules of Evidence

Rule 803. Hearsay Exceptions-- Availability of Declarant Immaterial. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

For surveying & boundary issues a Learned Treatise would include:

Brown's Boundary Control and Legal Principles, 7th Ed., Robillard & Wilson, 2014

Evidence and Procedures for Boundary Location, 6th Ed., Robillard, Wilson & Brown, 2011

Estate of Smith v. Spinelli
Supreme Court of Alaska
September 18, 2009 - 216 P.3d 524

Footnote 12: "See 26A C.J.S. Deeds § 226 (2001) ("A map, plat, plan, or survey, by virtue of apt reference thereto in a deed, may be treated as part of, and may be construed with, the deed in determining the property conveyed.").

Arizona Surveying & Boundary Law: Chapter 12 (1989 Ron Platt, RLS)

"It is important to note is that the "monuments" and "other particulars" shown on the plat are incorporated within the deed, just as if they were specifically called for in the deed. The reference of the map in the deed operates to include all of the information on that map."

Article 05. GENERAL PROVISIONS Sec. 40.15.900. Definitions. In this chapter,

(1) "commissioner" means the commissioner of natural resources;
(2) "monument" means a fixed physical object marking a point on the surface of the earth

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used to commence or control a survey or to establish a lot corner;

(3) "plat" means a map or delineated representation of a tract or parcel of land showing the subdivision of land into lots, blocks, streets, or other divisions;

(4) "street" means an access way in common use including all of the land lying within a dedicated right-of-way as delineated on a plat showing streets, whether improved or unimproved;

(5) "subdivision"

(A) means the division of a tract or parcel of land into two or more lots by the landowner or by the creation of public access, excluding common carrier and public utility access;

(B) does not include cadastral plats or cadastral control plats created by or on behalf of the United States Department of the Interior, Bureau of Land Management, regardless of whether these plats include easements or other public dedications;

(6) "surveyor" means an individual licensed to practice land surveying in the state under AS 08.48.

Shilts v. Young
Supreme Court of Alaska
July 22, 1977 - 567 P.2d 769

A valid deed must designate the land intended to be conveyed with reasonable certainty. However, " . . . (t)he purpose of a deed description is not to identify the land, but to furnish the means of identification."13 Thus, a description is sufficient if it contains information permitting identification of the property to the exclusion of all others. 14

Older cases suggest that where the terms of the grant or deed leave the identity of the real property completely uncertain, the deed is void. 15 The general rule, however, is that where possible, deeds will be made operative and the intentions of the parties given effect. A deed is not void for uncertainty of description if the quantity, identity or boundaries of the property can be determined by reference to extrinsic evidence. 16 Such evidence may include parole and subsequent conduct of the parties as well as other documents. 17 There appear to be few restrictions on the use of extrinsic evidence in ambiguous or uncertain deed cases, although at least one court has cautioned that "there must be sufficient information in the property description to base title substantially on written evidence and not principally on parol evidence."18

13 Matney v. Cedar Land Farms, Inc., 216 Va. 932, 224 S.E.2d 162, 165 (1976).

14 6 Thompson on Real Property s 3021 pp. 441, 444 (1962 Replacement).

15 See Carpentier v. Montgomery, 80 U.S. (13 Wall.) 480, 20 L.Ed. 698, 701 (1872).

16 According to Thompson:

tree is in fact a witness tree to an obliterated corner and

A deed will not be declared void for uncertainty if it is possible, by any reasonable rules of construction, to ascertain from the description, aided by extrinsic evidence, what property it was intended to convey. The description need not be by government survey, lots and blocks, or metes and bounds if it still is sufficient to permit the property to be located definitely. It may be general and need not be by boundaries, corners, distances, or monuments if only, with the aid of parol evidence, the location of the land is possible. "The law will not declare the instrument void for uncertainty until it has been examined with all the light which contemporaneous facts may furnish. If these render the intention clear and the words of the instrument are, by fair rendering, susceptible of a construction to uphold such intention, then they will be so construed and the instrument enforced." It is only when it remains a matter of conjecture what property was intended to be conveyed, after resorting to such extrinsic evidence as is admissible, that the deed will be held void for uncertainty in the description of the parcels. (footnotes omitted)
6 Thompson on Real Property, s 3021 pp. 444-45 (1962 Replacement). Accord, Valdez Bank v. Von Gunther, 3 Alaska 657, 660 (1909); Garcia v. Garcia, 86 N.M. 503, 525 P.2d 863, 865 (1974) (identity and quantity); Birmingham v. McCoy, 358 P.2d 824, 828 (Okl.1960) (quantity); City and County of Honolulu v. Bennett, 552 P.2d 1380, 1387 (Hawaii 1976) (quantity); Bishop Homes, Inc. v. Devall, 336 So.2d 313, 318-19 (La.App.1976); Hamburg Realty Co. v. Woods, 327 S.W.2d 138 (Mo.1959); Tomity Corp. v. Sovkueff, 244 Cal.App.2d 685, 53 Cal.Rptr. 328 (1966).

17 See, e. g., Valdez Bank, supra (subsequent acts); Tomity Corp., supra (subsequent conduct in boundary dispute); Garcia, supra (pointing out boundaries to surveyor who subsequently prepared plat relied on by parties); Bishop Homes, Inc., supra (plat).

18 Tinney v. Lauve, 280 So.2d 588, 591 (La.App.1973).

Kennedy v. Bodi
Supreme Court of Alaska
July 17, 1991 - Not Reported in P.2d

Moreover, we find the plain meaning of the language in Plat 85-40 unambiguous, and we will examine extrinsic evidence only where an ambiguity exists in the recorded instrument. *See, e.g.,* Shilts v. Young, 567 P.2d 769, 773-74 (Alaska 1977); *Dimond v. Kelly,* 629 P.2d. 533, 540 (Alaska 1981).

Norken Corp. v. McGahan
Supreme Court of Alaska
November 15, 1991 - 823 P.2d 622

Both parties open their arguments by directing our attention to various "rules of construction," the proper use of which ineluctably leads to a conclusion in favor of the rules' proponent. This

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initial reliance on rules of construction is misplaced. We have long held that the touchstone of deed interpretation is the intent of the parties. Hendrickson v. Freericks, 620 P.2d 205, 209 (Alaska 1980); Shilts v. Young, 567 P.2d 769, 773 (Alaska 1977); Rizo v. MacBeth, 398 P.2d 209, 211 (Alaska 1965). The purpose of rules of construction, by contrast, "is not to ascertain the intent of the parties to the transaction. Rather, it is to resolve a dispute when it is otherwise impossible to ascertain the parties' intent." 6A R. Powell & P. Rohan, Powell on Real Property ¶ 899[3] at 81A–108 (1991); see also Russell v. Geyser–Marion Gold Mining Co., 18 Utah 2d 363, 423 P.2d 487, 490 (1967) ("rule of construction [favoring grantees] should be subordinate and yield to the paramount rule that the intent of the parties is to be given effect if it can be ascertained").

The proper first step in deed construction is to look to the four corners of the document to see if it unambiguously presents the parties' intent, without resort to "rules of construction." E.g., Spurlock v. Santa Fe Pac. R.R., 143 Ariz. 469, 694 P.2d 299, 304 (App.1984) ("[a]ll jurisdictions agree"), cert. denied, 472 U.S. 1032, 105 S.Ct. 3513, 87 L.Ed.2d 642 (1985); Knadler v. Adams, 661 P.2d 1052, 1053 (Wyo.1983). If the words of the deed taken as a whole are capable of but one reasonable interpretation, a court need go no further. Whether a deed is ambiguous is a question of law. Knadler, 661 P.2d at 1053. Thus, in reviewing the first step of deed interpretation, this court is not bound by the determination of the lower court. Walsh v. Emerick, 611 P.2d 28, 30 (Alaska 1980).

If the deed is ambiguous, the next step in determining the parties' intent is a consideration of the facts and circumstances surrounding the conveyance. E.g., Wirostek v. Johnson, 266 Or. 72, 511 P.2d 373, 374–75 (1973); Russell, 423 P.2d at 490; cf.Rizo, 398 P.2d at 211–12 (to determine whether instrument is deed or security in absence of writing, look to "all of the facts and circumstances of the transaction in which the deed was executed, in connection with the conduct of the parties after its execution"). Conclusions about the parties' intent drawn by the trial court after sifting and weighing such extrinsic evidence are conclusions of fact. Rizo, 398 P.2d at 212. This court will not disturb those findings on review unless they are clearly erroneous—that is, unless a review of the entire record engenders "a firm and definite conviction ... that a mistake has been made." Martens v. Metzgar, 591 P.2d 541, 544 (Alaska 1979); Alaska R.Civ.P. 52(a).

Only if these two steps do not resolve the controversy should the court resort to rules of construction: "[I]t is essential that a court first attempt to determine and interpret the intention of the parties from the documents and the surrounding circumstances before applying any of the canons of construction. The intent of the parties is the polestar for interpreting a deed...." 6A R. Powell & P. Rohan, Powell on Real Property ¶ 899[3] at 81A–108 (1991).

Dias v. State, Dept. of Transp. and Public Facilities
Supreme Court of Alaska
September 17, 2010 - 240 P.3d 272

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Black's Law Dictionary also defines “right of way” as a right of passage. 13

13 BLACK'S LAW DICTIONARY 1440 (9th ed.2009) provides the following applicable definitions for right of way: “1. The right to pass through property owned by another.... 2. The right to build and operate a railway line or a highway on land belonging to another, or the land so used.... 4. The strip of land subject to a non-owner's right to pass through.”

HP Ltd. Partnership v. Kenai River Airpark, LLC
Supreme Court of Alaska
January 13, 2012 - 270 P.3d 719

Whether a deed is ambiguous is a question of law. 9 “The touchstone of deed interpretation is the intent of the parties and where possible the intentions of the parties will be given effect.” 10 We have announced a three-step approach to deed interpretation, and an easement depicted on the face of a plat is interpreted using this same approach. 11 First, the court must look at the four corners of the document “to see if it unambiguously presents the parties' intent.” 12 “If a deed when ‘taken as a whole’ is open to only one reasonable interpretation, the interpreting court ‘need go no further.’ ”13 But if the document is ambiguous, the court considers extrinsic evidence of the surrounding facts and circumstances. 14 “[T]his inquiry can be broad, looking at ‘all of the facts and circumstances of the transaction in which the deed was executed, in connection with the conduct of the parties after its execution.’ ”15

10 Estate of Smith v. Spinelli, 216 P.3d 524, 529 (Alaska 2009).

11 See id. (interpreting a plat); see also Kennedy v. Bodi, Mem. Op. & J. No. 564, 1991 WL 11657237, at *1–2 (Alaska July 17, 1991) (refusing to examine extrinsic evidence because plat was unambiguous regarding scope of easement).

12 Spinelli, 216 P.3d at 529.

13 Id. (quoting Previous TermNorken Corp. v. McGahanNext Term, 823 P.2d 622, 626 (Alaska 1991)).

14 Id. (quoting Norken Corp., 823 P.2d at 626).

15 Id.

Jeffrey N. Lucas, PLS, Esq. – October 28, 2015 – POB Magazine

Common Grantor Doctrine/Doctrine of Monuments

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In my mind, these two doctrines are almost indistinguishable. Perhaps the lone distinguishing characteristic is that the doctrine of monuments will survive the passing of the common grantor. They both say that, when the monuments are in the ground the time of the conveyance, the monuments will control location regardless of what the deed seems to indicate. This doctrine was codified in the Act of 1805 with reference to the PLSS and the monuments set in the original surveys. It has also been referred to as the "survey method" 3; the land is pre-surveyed and subsequent title documents that conflict must conform to what was done on the ground.

3. See, for example, Tyson v. Edwards, 433 So.2d 549 (Fla.App.l983).

Original Surveyor/Following Surveyor

These are the two fundamental principles of surveying that rest on the foundation of the Common Grantor Doctrine and the Doctrine of Monuments; therefore, they are in play. An original surveyor is one who sets out monuments for the very first time for a common grantor. Once set, these monuments settle the location question. A following surveyor's only duty is to fmd where the original surveyor set those monuments in the first instances, not to correct them. An original survey is a measurement task, whereas a retracement survey is an evidentiary exercise.

ORIGINAL CORNERS CONTROL BLM Legal Reference Library - 5/8/98

OC01 Vaught v. McClymond, 155 P.2d 612, 619-0 (1945)

> Original corners, as established by the government surveyors, if they can be found, or the places where they were originally established, if they can be correctly or not, and must remain the true corners or monuments by which to determine the boundaries. Errors of location cannot be corrected by the courts, or by a surveyor government survey will set awry the shapes of the sections thereby does not affect the conclusiveness of the survey. (11 C.J.S., Boundaries, § 11, p. 552)
>
> The government surveys are, as a matter of law, the best evidence; and, if the boundaries of land are clearly established thereby, other evidence is superfluous and may be excluded; the best evidence is the corners actually fixed upon the ground by the government surveyor, in default of which the field notes and plats come next.

OC02 Verdi Development Co. v. Dono - Hon Mining Co., 296 P.2d.

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429
(1956)

The original government surveys, whether they are mathematically correct or grossly erroneous, control the location and length of boundaries of sections and parts thereof and the shape and size of tracts granted to patentees.

The location of the monuments placed in connection with the original survey is of primary importance; monuments control over courses, distances, lines and angles.

If monuments themselves are lost or undiscoverable, corners at which they were originally established should be re- established in accordance with the natural objects described in the field notes and found to exist upon the ground, and which are least incorrect with the distance mentioned in said notes and plats of government survey.

Quantity is the least reliable of all descriptions of land and resort to proportional methods of location lost corners must not be resorted to unless all other prescribed methods fail.

OC03 Harrington v. Boehmer, 134 Cal. 196, 66 P. 214 (1901)

The question in all cases similar to this is, where were the lines run in the field by the government surveyor? A government township lies just where the government surveyor lines it out on the face of the earth. These lines are to be determined by the monuments in the field.

OC04 Kaiser v. Dalto, 140 Cal. 172, 73 P. 830

The lines as originally located must govern.... The survey as made in the field, and the lines as actually run on the surface of the earth at the time the blocks were surveyed and the plats filed, must control.

OC05 Washington Rock Co. v. Young, 80 P. 382 (1905)

In this case the court held that where an original government survey of land was made before the township line

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was established, the fact that a retracement of that original survey placed a corner of the section in question east of the township line (RANGE LINE?) as subsequently established, and in another township, could not injuriously affect the rights of a party holding under a government patent based on the original survey, and that the original survey is controlling.

The court saying, at 386:

> Original corners, as established by the government surveyors, if they can be found, or the places where they were originally established, if they can be definitely determined, are conclusive, without regard to whether they were located correctly or not.

OC06 Everett v. Lantz, 252 P.2d 103, 108 (1953)

> The undisputed testimony of qualified engineers established the boundary lines here questioned by a location of the original monuments erected in making the 1881 survey, and, as we have said, the fact that this was done in making a dependent resurvey is wholly immaterial. The monuments of the original survey control.

OC07) Elmer A. Swan, 77 IBLA 99 (1983), Elmer Swan v. BLM (Upon Hearing), IBLA 82-1212 (1985)

> The first principle of law in the field of surveys and resurveys is that the original survey controls the boundaries of land patented under it. The original corners and lines may not be changed even though they are incorrect. United States v. Doyle, 468 F.2d 633 (10th Cir. 1972); Manual, Sec. 6-15.
>
> Second, a dependent resurvey is defined as "a retracement and reestablishment of the lines of the original survey in their true original positions according to the best available evidence of the positions of the original corners" (Manual of Instructions, 6-4). Thus, a dependent resurvey produces nothing new. The lines and corners established by the resurvey are deemed, in law and in fact, to be identical to the lines and corners of the original survey. (Mr. and Mrs. John Koopmans, 70 IBLA 75 (1983); Manual of Instructions, 6-4).

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OC08 United States v. Doyle, 468 F.2d 633, 636 (10th Cir. 1972)

> The original survey as it was actually run on the ground controls. It does not matter that the boundary was incorrect as originally established. A precisely accurate resurvey cannot defeat ownership rights flowing from the original grant and the boundaries originally marked off. The conclusiveness of an inaccurate original survey is not affected by the fact that it will set awry the shapes of the sections and subdivisions. (Citations omitted)

> Information from owners and former residents of property in the area is an important source of collateral evidence to be used in trying to ascertain the location of the lost monuments.

OC09 United States v. Heyser, 75 ID 14, 17 (1968)

> When locations of corners established by an official Government survey are identified, they are conclusive, and the corner of a Government subdivision is where the United States surveyors in fact established it, whether such location is right or wrong. O.O. Cooper, 59 ID 254,257 (1946), and cases cited; Texaco, Inc., A-30290 (April 29, 1965); Rubicon Properties, Inc., A-30748 (May 6, 1968) and, as was aptly pointed out by Frank Emerson Clark, of the Minnesota Bar, in Clark on Surveying and Boundaries, (4th edition), at § 144:
>
> > This is as it should be; otherwise, a survey would be without meaning.

OC10 United States v. Aikins, 84 F.Supp. 260, 263, 265 (1949)

> The [original] survey, even though declared "fraudulent" and "worthless" as a basis for disposal of the lands in the township, was sufficient to pass title to those depending on it. Cragin v. Powell, 128 US 691, 9 S.Ct. 203, 32 L.Ed. 566; United States v. State Investment Company, 264 US 206, 44 S.Ct. 289, 68 L.Ed. 639, and cases there cited.

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The Government recognizes that intervening rights vest under erroneous or invalid surveys, and that changed or corrected surveys cannot affect such rights.

OC11 United States v. Reimann, 504 F.2d 135 (10th Cir. 1974)

If survey is fatally defective, government may order a resurvey for its own information but does not have authority to disregard or nullify such "fatally defective" survey to the detriment [or, impliedly, the benefit] of intervening patentees.

> Prior to title passing from the United States, it is undisputed that the Government has the power to survey and resurvey, establish and re-establish boundaries on its own lands. But once the patent has issued, the rights of patentees are fixed and the governmenthas no power to interfere with these rights, as by a corrective resurvey... The government has no powerto control `previously disposed of lands'.

The government retains no power to nullify a patent, nor the survey upon which it is based, once patent has issued.

> The fact that [the original surveyor] was mistaken in his location of the boundary taken herein in disputeis likewise immaterial in relation to the instant controversy. Being the controlling survey, its location of the boundary between the northern and southern `halves' of the Township

takes precedence, even if erroneous (or `largely fictitious' and `fatally defective' as found by the Trial Court), insofar as the rights of patentee whose patent was issued thereunder are concerned.... Furthermore, as concerns the Trial Court's acceptance of the Miller resurvey, it would be inequitable to permit the government to direct the taking of, and to accept a survey (i.e., the Hanson survey), recording it with knowledge that it would be relied upon by patentees, and then grant the government the right to latter correct its error, ex parte, to the detriment of those who did in fact, and in good faith, rely upon it. (citations omitted)

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It would appear to be the rule that where monuments cannot be located they may be re-established from the survey field notes, and if they can be so re-established they will not be considered "lost" monuments.

OC12 U.S. v. Sidney M. and Esther M. Heyser, 75 ID 14 (1968)

A patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground, or the patent description may be in error as to course or distance or the quantity of land stated to be conveyed. Ingrid T. Allen, A-28638 (May 24, 1962)

OC13 Myrick v. Peet, 180 P. 574 (1919)

Where there is a conflict between monuments and the courses and distances, the latter must yield to the former.

Monuments are facts; the field notes and plates indicating the courses, distances, and quantities are but descriptions which serve to assist in ascertaining those facts.

Marks on the ground constitute the survey; courses and distances are only evidence of the survey. 9 Corpus Juris, §210; Hunt v. Barker, 27 Cal. App. 776, 151 Pac. 165; Woods v. Johnson, 264 Mo. 289, 174 S.W. 375

With ocular and tangible proof of authentic boundaries at hand, it would be illogical to resort to courses and distances.

The question is not whether the monuments were correctly placed, but whether they were placed by authority. It was held by the Supreme Court of Washington (Greer v. Squire, 9 Wash. 359, 37 Pac. 545), in a somewhat similar case, that the true corner of a government quarter section of land is where the United States government surveyor established it, notwithstanding its location may not be such as is designated in the plat or field notes.

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OC14 Lindsey v. Haws, 67 US [2 Black] 554, 560 (1862)

> We are not prepared to admit, that if the second survey be the correct and proper subdivision of that section into quarters and fraction of quarters, and that by this survey, (though otherwise by the former) the house of Lindsey was found not to be in the fraction pre-empted by him, the Commissioner could, for this reason alone, set aside, in this summary manner, the sale of the land made by the Government to Lindsey. It is to be remembered that the original survey of Bennett, was the survey of the Government; that it was made in 1833; that the maps, plats, certificates, and field notes were all filed in the proper office; the survey approved, and that for eleven years, the Government had acted upon and recognized it as valid and correct, and above all had sold the land to Lindsey by this its own survey, received the purchase money, and given him a patent certificate, five years before any suggestion was made of this error. - We are of the opinion, under these circumstances, that so far as the location of the lines of that quarter section, affect the question of the precise locality of Lindsey's residence, as bearing on his right to enter that fraction as a pre-emption, the Government was bound by the original survey of Bennett.
>
> **NOT E:**
> The government is bound by the original survey the same as is any private citizen. It cannot correct its own errors once private rights are established on the basis of those mistakes.

OC15 Moore v. Robbins, 96 US 530 (1877)

> With the title passes away all authority or control of the Executive Department over the land, and over the title which it has conveyed. It would be as reasonable to hold that any private owner of land who has conveyed it to another can, of his own volition, recall, cancel, or annul the instrument which he has made and delivered. If fraud, mistake, error, or wrong has been done, the courts of justice present the only remedy. These courts are as open to the United States to sue for the cancellation of the deed or reconveyance of the land as to individuals; and if the government is the party injured, this is the proper course.

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> If this were not so, the titles derived from the United States, instead of being the safe and assured evidence of ownership which they are generally supposed to be, would be
>
> always subject to the fluctuating, and in many cases unreliable, action of the land-office. No man could buy of the grantee with safety, because he could only convey subject to the right of the officers of the government to annul his title.

OC16 Haydel v. Dufresne, 17 How 23, 30 (1854)

> This construction of the law is altogether necessary, as great confusion and litigation would ensue if the judicial tribunals, state and federal, were permitted to interfere and overthrow the public surveys on no other ground than an opinion that they could have the work in the field better done, and divisions more equitably made, than the department of the public lands could do.

OC17 Phelps v. P.G. & E., 84 Cal.App.2d 243, 190 P.2d 209, 212 (1948)

> A patentee takes only such land as is included within the survey of the plot conveyed and he cannot later question
> the survey as erroneous, although in fact the line in
> question should have been placed elsewhere. Bates v.
> Illinois Central R.R. Co., 1 Black 204, 66 US 204, 17 L.Ed.
> 158; Gardner v. Bonestell, 180 US 362, 21 S.Ct. 399, 45
> L.Ed. 574; Horne v. Smith, 159 US 40, 15 S.Ct. 988, 40
> L.Ed. 68; Gleason v. White, 199 US 54, 25 S.Ct. 782, 50
> L.Ed.
> 87.

OC18 Spawr v. Johnson, 31 P. 664 (1892)

> After the government parted with its title, and it had been vested in the settlers, no officer of the land department had the right to order or approve a resurvey that changed the boundaries of the specific parcels of

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land to which the various settlers had title, in the absence of any claim or showing that fraud had been practiced by them or someone in their interest.

OC19 Johnson v. Siebert, C3 - 242A (1966)

No one may remove or destroy a witness or bearing tree, including the owner of the real property upon which the tree is located.

The interest of the public and of those property owners whose legal descriptions are referenced to a government survey corner and the bearing or witness trees to such corners are paramount to one owner's right not to have tree injured, if such injury is necessary to establish that the
to allow the reestablishment of such corner.

OC20 Palmer v. Montgomery, 26 N.W. 535 (1886)

Section corners on a range line, as determined by the original survey, may not be changed in any subsequent survey for the purpose of dividing up the sections.

OC21 Hess v. Meyer, 41 N.W. 422 (1889)

If the stakes or monuments placed by the government in making the survey to indicate the section corners and quarter posts can be found, or the place where they were originally placed can be identified, they are to control in all cases. If they are lost, obliterated or unable to be found, they must be restored on the best evidence obtainable which tends to prove where they originally were.

OC22 Beltz v. Mathiowitz, 75 N.W. 699 (1898)

The true corner of a government subdivision is where the U.S. surveyor established it, whether this location is right or wrong.

If a government section or quarter-section post has disappeared, the site of its location may be established by clear and satisfactory evidence; if so established, it will control and govern as fully as if the original post remained.

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Fixing of quarter-section or section posts in accordance with the field notes only applies to cases where the original location could not be determined by other competent evidence.

OC23 State v. Ball, 133 N.W. 412 (1911)

Monuments erected by government surveyor to mark section corners of survey will control, although in conflict with the field notes of the survey.

OC24 Halley v. Harriman, 183 N.W. 665 (1921)

Where a township corner has been definitely located by government surveyors, and the field notes show the location of a quarter corner in a straight line at the proper distance, a change of the location of the township corner by state, county or other surveyors, accepted by the owners of contiguous
the absence of evidence that such quarter corner was actually established at some other point by the government surveyor.

OC25 Puget Mill Co. v. North Seattle Improvement Co., 206 P. 954 (1922)

True corner is where government survey located it, and when known, controls courses, distances, blazes and the calls of the official field notes.

Error in the location of the corner, however plainly shown, is not subject to correction in the courts.

OC26 Scott K. Snively, 49 L.D. 583 (1923)

Official surveys and the corners marked therein are to govern, and where the evidence of a Government survey are sufficient for identification of the boundaries of a tract, alleged differences in the measurements and areas of public lands from those shown in the returns of the official survey will not afford a basis for resurvey.

OC27 O.R. Williams, 60 L.D. 301 (1949)

tree is in fact a witness tree to an obliterated corner and

Where the reestablishment of a township corner on a second survey is supported by substantial evidence, a protest accompanied by affidavits of conflicting evidence does not necessarily warrant a further survey or investigation of the township corner.