

Disputes Between Adjoining Landowners



Wendy Lathrop, PLS, CFM
Montpelier, VT – December 2020

Title

“...the means by which the owner of lands has the most possession of his property. The union of all elements which constitute ownership...”

(Black's Law Dictionary)

1 VSA § 132.

Land; lands; real estate

- "Land," "lands" and "real estate" shall include *lands, tenements and hereditaments* and all *rights* thereto and *interests* therein, and pews or slips in places of public worship shall be treated as real estate.

Interests in land

“...a right, claim title, or legal share in something...a right to have the advantage accruing from anything; any right in the nature of property, but less than title...”

(Black's Law Dictionary)

29 VSA § 701. Definitions

(6) "***Real property***" means land, structures, franchises and interests in land, waters, land under water, riparian rights and air rights and any and all things and rights included within said terms. It includes ***not only fees simple absolute but any and all lesser interests*** including but not limited to easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

Same or different?

- Deed line
- Ownership line
- Occupation line
- Property line
- Boundary line

Administrative Rules of the Board of Vermont Land Surveyors

04-030-130 Vt. Code R. § 5-5.3 - Definitions

(a) “Boundary” means: A line of demarcation between adjoining properties and indicating the furthest extent of property.

10 VSA § 6001. Definitions

- (23) "***Adjoining property owner***" means a person who owns land in ***fee simple***, if that land:
- (A) ***shares a property boundary*** with a tract of land where a proposed or actual development or subdivision is located; or
 - (B) ***is adjacent to*** a tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream, or public highway.

Why do people argue over property boundaries?



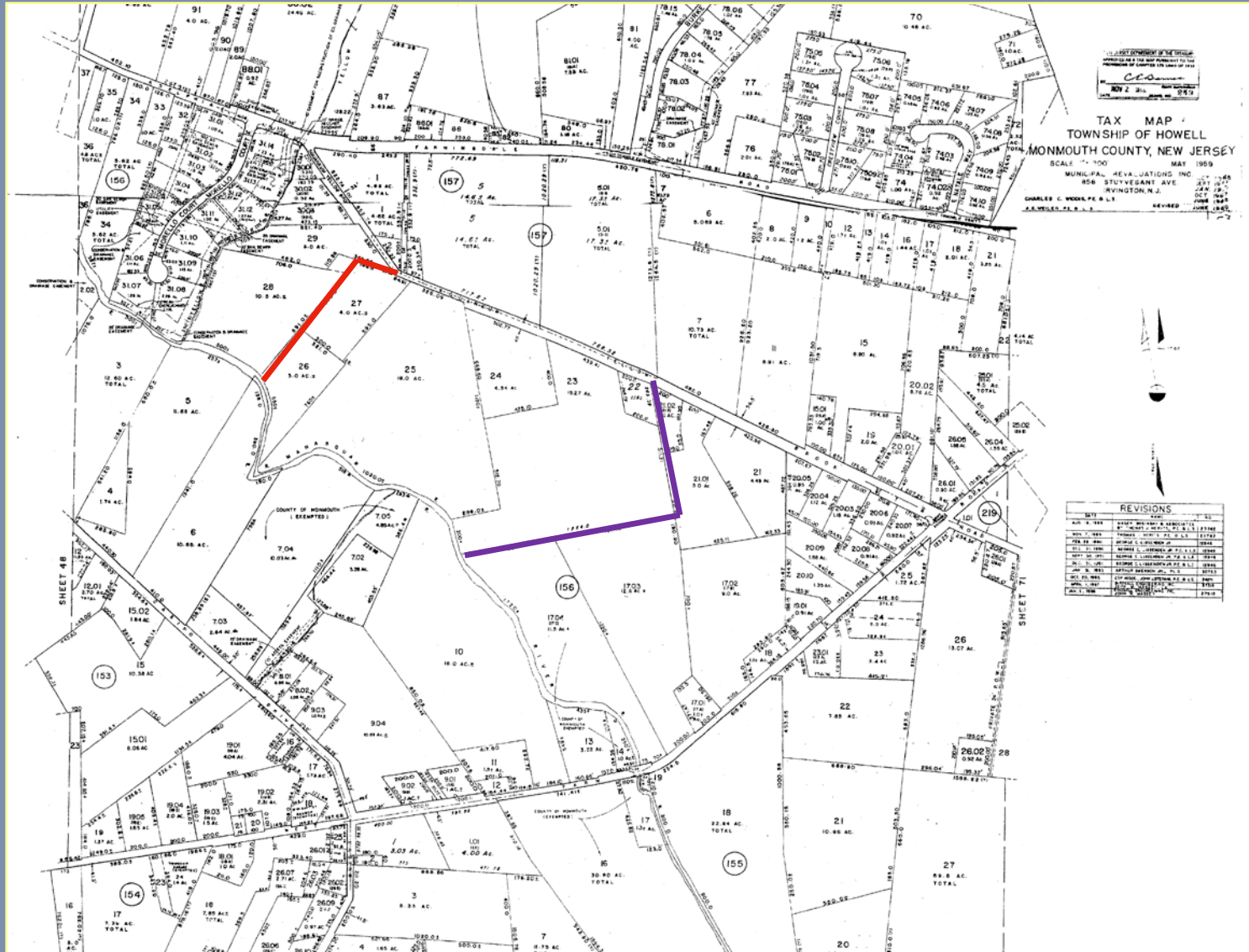
How language stirs the pot

...who by great labors and pains and many years of study and knowledge that he has
sealed and Delivered the within deed for the uses and purposes therein. His
[Received and Recorded 4th Dec^r 1697 Compared Jth Phillips] James Skinner

Peter Cook & Wife Deed Bth. - This Indenture Made This Twentieth day
To Joseph Goodenough. - November in The Year of our Lord one Thousand Eight hundred
Seventeen Between Peter Cook wood-chopper and Catharine his wife
The Township of Herwell in The County of Monmouth and State of
Jersey of the one part and Joseph Goodenough of the Same Township County and Sta-
foresaid of The other part Witnesseth that the said Peter Cook and Catharine his wife
and in The Consideration of the Sum of one hundred dollars good and Lawfull money
then In hand well and Truly paid or Secured to be paid By the said Joseph
-nough at and Before the Sealing and delivery hereof the Accept Whereof is hereby
-knowned and the said Peter Cook and Catharine his wife therewith fully Satisfi-
tented and paid have granted Bargained and Sold unto the said Joseph Goodenough
by These presents doth fully freely clearly and absolutely grant Bargain and Sell unto the
Joseph Goodenough and his heirs and Assigns For ever all the Following Tract of Land
-at a place Called Yellow Brook in the Township County and State offoresaid
part of a Return to William Morris deceased The Beginning of said Survey begin-
mouth of Yellow Brook Where said Brook Emities Into the River Known by the name
Manasquan River Beginning at a Large Black oak tree (1) North twenty two degrees
Thirty minutes East ten chains on a Straight Line up the Brook (2) South
four degrees East ten chains and Seventy links to a stump (3) South forty one deg-
and Thirty minutes West thirteen chains and fifty links to a Spanish oak tree

REVISIONS			
DATE	NAME	NO.	
MAY 2, 1988	WATSON, W. M. & ASSOCIATES	1	278-08
MAY 11, 1988	WATSON, W. M. & ASSOCIATES	2	278-08
MAY 18, 1988	WATSON, W. M. & ASSOCIATES	3	278-08
MAY 25, 1988	WATSON, W. M. & ASSOCIATES	4	278-08
JUN 1, 1988	WATSON, W. M. & ASSOCIATES	5	278-08
JUN 8, 1988	WATSON, W. M. & ASSOCIATES	6	278-08
JUN 15, 1988	WATSON, W. M. & ASSOCIATES	7	278-08
JUN 22, 1988	WATSON, W. M. & ASSOCIATES	8	278-08
JUN 29, 1988	WATSON, W. M. & ASSOCIATES	9	278-08
JUL 6, 1988	WATSON, W. M. & ASSOCIATES	10	278-08
JUL 13, 1988	WATSON, W. M. & ASSOCIATES	11	278-08
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AUG 17, 1988	WATSON, W. M. & ASSOCIATES	16	278-08
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OCT 12, 1988	WATSON, W. M. & ASSOCIATES	24	278-08
OCT 19, 1988	WATSON, W. M. & ASSOCIATES	25	278-08
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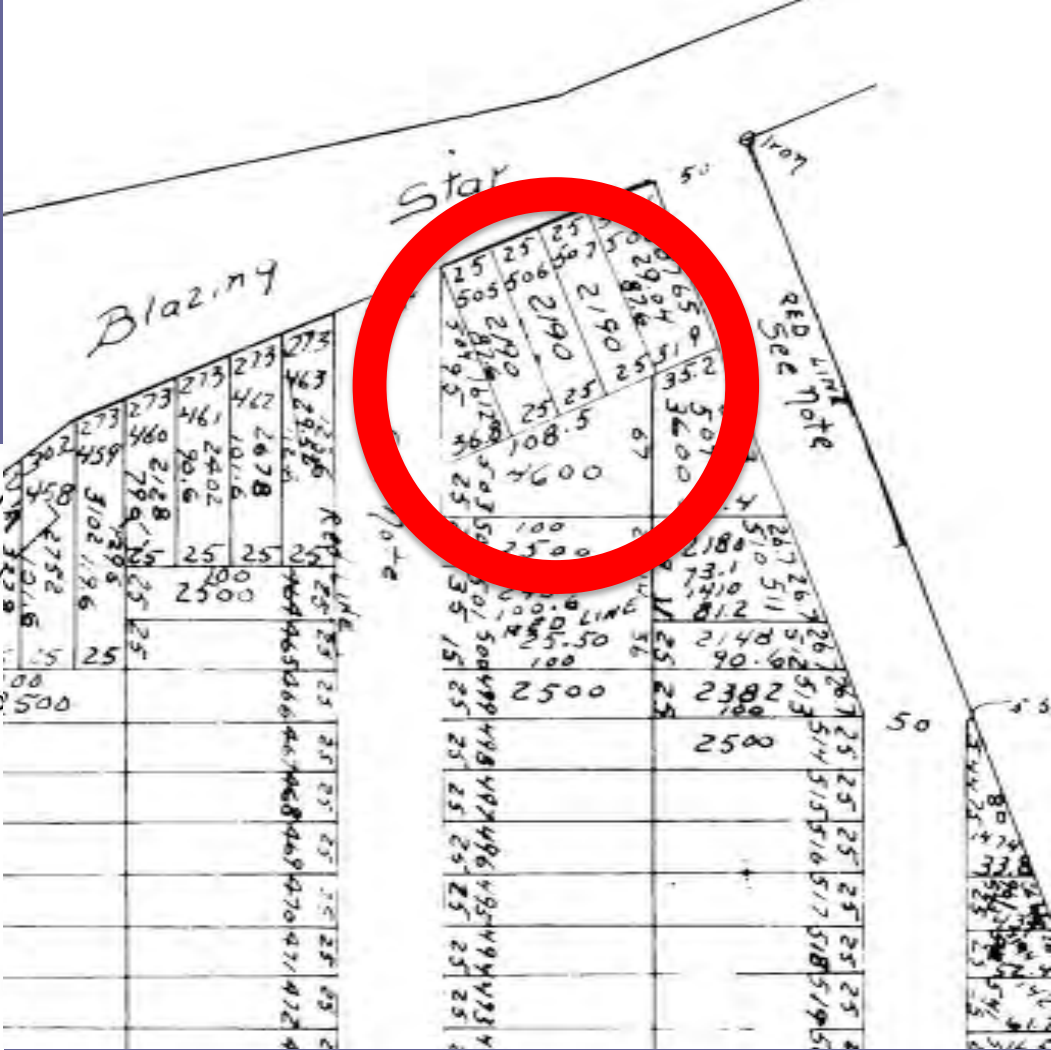
The potential claim



Problems on paper

11. Subject to possible gore and/or overlap with Lot 503 (Deed Book 6719 page 31 attached for information).

Tax Map



1912 Filed Map of “Home Gardens”

Adjoining Tax Lot 503

Property. The Property consists of the land and all the buildings and structures on the land in the Township of Woodbridge, County of Middlesex and State of New Jersey, The legal description is:

Beginning at a point in the easterly line of Bamford Avenue, said point being distant 120 feet from the intersection of said Bamford Avenue and Road from Woodbridge to Blazing Star and said point being the boundary between lots Nos. 503 and 502 on said plan; thence northerly along said easterly line of Bamford Avenue, 32 feet; thence easterly 34.69 feet, more or less, to the southeasterly corner of lot 504; thence northeasterly along the southerly lines of lot 505, 506 and 507, 71.66 feet, more or less to the southeasterly corner of lot 507; thence southerly along the westerly line of lot 509, 67 feet to a point at the northeasterly corner of lot 502, 100 feet to the place of beginning.

PQ - Formerly Tax
Lots 504, 505, &
506; now mapped
as Tax Lot 504,
but assessed as
Lot 505

ALL that certain lot, parcel or tract of land, situate and lying in the TOWNSHIP of WOODBRIDGE, COUNTY of MIDDLESEX and STATE of NEW JERSEY being more particularly described as follows:

BEING known and designated as Lots 504, 505, and 506 on a certain map entitled "Map of Home Gardens, Woodbridge Township," filed in the Middlesex County Clerks Office on October 11, 1912 as Map #694 File #409.

THE above premises being further described in accordance with a survey made by Paul Berg, Jr. dated January 29, 2003 as follows:

BEGINNING at the intersection of the Southerly line of Port Reading Avenue and the Easterly line of Bamford Avenue and from said beginning point running thence

- (1) Along the Southerly line of Port Reading Avenue South 86 degrees 10 minutes East 50.00 feet to a point thence
- (2) South 03 degrees 50 minutes West 87.60 feet to a point thence
- (3) North 86 degrees 10 minutes West 86.60 feet to a point in the Easterly line of Bamford Avenue, thence
- (4) Along the Easterly line of Bamford Avenue North 26 degrees 37 minutes 30 seconds East 95.00 feet to the point and place of BEGINNING.

BEING known as Lot 504, 505, and 506 in Block 563-C on the Woodbridge Township Tax Map (for information only).

What is evidence?

- **EVIDENCE** - “Writings, testimony, or material objects legally presentable at a trial, as a means to prove the existence or non-existence of a fact.”
- **PROOF** - “The effect of evidence, a mental conviction as to the truth or falsity of a proposition; the creation of a belief.”
- *(Black’s Law Dictionary)*

The Hierarchy of Evidence

- Senior rights
- Written intent of the parties

Elements of the boundaries

- Call for survey, map, deed on which the conveyance is based
- Natural monuments
- Artificial monuments
- Directions and distances
- Area
- Coordinates

The Hierarchy of Evidence

Summarized elsewhere as:

- Natural boundaries
- Original monuments
- Evidence regarding original position of monuments or evidence of original running of the line
- Measurements

Application of Surveying Methods

- Find the lines actually run, and corners and monuments actually established by the original surveyor
- Run lines from known, established, or recognized corners and monuments of the original survey
- Run lines according to courses and distances marked on the plat or called for in the deed

Monuments protected

13 VSA § 3834.

Removal of surveying monuments

A person who knowingly removes or alters monuments marking the boundary of lands or knowingly defaces, alters, or removes marks upon any tree, post, or stake that is a monument designating a point, course, or line in the boundary of a parcel of land shall be fined \$100.00 and shall be civilly liable for the replacement cost and any consequential damages...

“Legal” = “Sufficient”

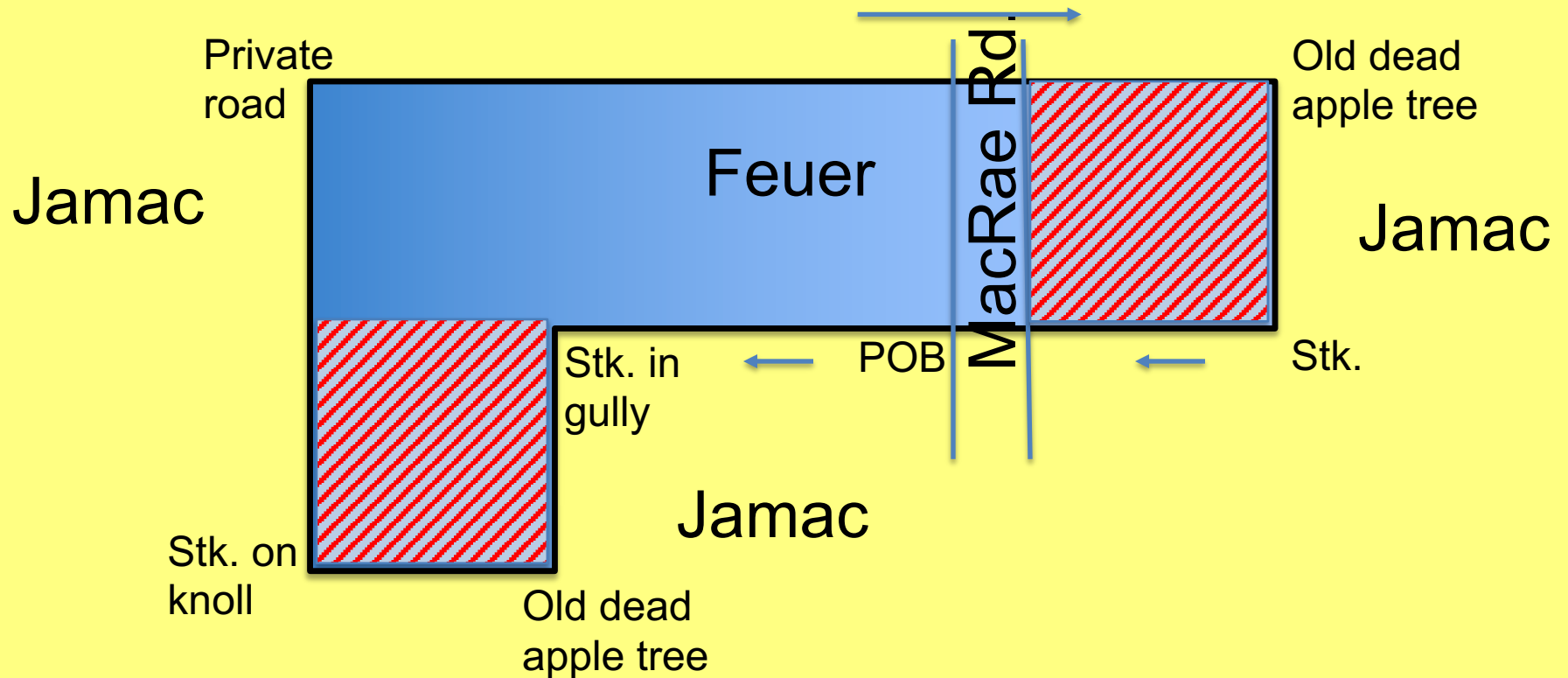
A property description is considered legally sufficient if a competent surveyor can locate it on the ground.

Vague, or legally sufficient?

751 259
SECOND TRACT beginning at a stake in a heap of stones on the
southeasterly side of a steep rock ledge, being the point of intersection of the 4th course of a 28.34 acre tract of land described in a deed of conveyance dated October 23, 1849 from Mary E. Fowler to Samuel Beardslee and recorded in the Clerk's Office of the County of Sussex, State of New Jersey, in Book I-4 of Deeds, pages 611 etc., with the 9th course of a tract of land containing 100 acres more or less and described as being the second tract in a deed of conveyance from Richard Davis to Samuel Fowler and John Odal Ford dated May 14, 1810 and recorded in the Sussex County Clerk's Office in Book 8 of Deeds for said County at pages 136 etc., said point of beginning is distant 363.8 feet on a course of N. 67° 14' E. from the beginning corner of the 100 acre tract of which the hereinafter described parcel of land is a part. Thence from said beginning point running 13 courses and distances to the place of beginning; containing 29.936 acres of land, more or less.

State Highway Board v. Jamac Corp.

310 A.2d 120, Supreme CT of VT, 1973



- An argument over evidence to determine who gets compensation for the road taking.



POSSESSION

Bare or Naked

Actual

Constructive

Peaceable

Adverse

Defining Trespass

Trespass: “An unlawful interference with one’s person, property or rights.”

Trespass to land: “... every unauthorized and direct breach of the boundaries of another’s land...”

Trespasser: “A person who enters on the property of another without any right, lawful authority, or an express or implied invitation or license.”

- *Black’s Law Dictionary*

Ripchick v. Pearsons

109 A.2d 347, Supreme Ct. of VT, 1954

- Only a single line between two parts of a farm is in question, but it is enough to cause a dispute resulting in treble damages due to trespass while cutting trees.
- Can recitation of area help set the angle of this line?



Statute of Frauds in VT:

7 VSA § 181

An *action at law shall not be brought* in the following cases unless the promise, contract or agreement upon which such action is brought or some memorandum or note thereof is *in writing, signed* by the party to be charged therewith or by some person thereunto by him lawfully authorized:

(5) A contract for the *sale of lands, tenements or hereditaments*, or of *an interest* in or concerning them....

Statute of Frauds in VT:

Conveyance of Real Estate

27 VSA § 302. Effect of oral conveyance

- [estate at will only]

27 VSA § 341. Requirements generally; recording

- [providing notice, contractual contents of deeds]
- [referenced surveys after 7/1/88 to be attached or cited]

TITLE 24A (Title 24 Appendix)

Municipal Charters

PART III Villages

CHAPTER 235. VILLAGE OF LUDLOW

Subchapter I. Village Boundaries

24A Appendix § 235-1. Boundaries

- “All that part of the town of Ludlow in the county of Windsor, bounded and described as follows:
...shall hereafter be known by the name of the village of Ludlow...”

Other Written Transfers

- Wills
- Dedications
 - Offer and acceptance
- Eminent domain
 - Government power
 - Entities other than governmental
 - Condemnation proceedings

Other real property transfers in VT

- 14 VSA § 3. After acquired real estate may pass by will
- 14 VSA § 4. Whole interest to pass; exception
- 14 VSA § 461. Interest of widow in real estate

“A widow shall be entitled in fee to one-third in value of all the real estate of which her husband died seised...”
- 14 VSA § 469. Estate to be sold if indivisible
- 14 VSA § 474. Husband's interest in lieu of curtesy

“A widower shall be entitled in fee to one-third in value of all the real estate of which his wife died seised...”

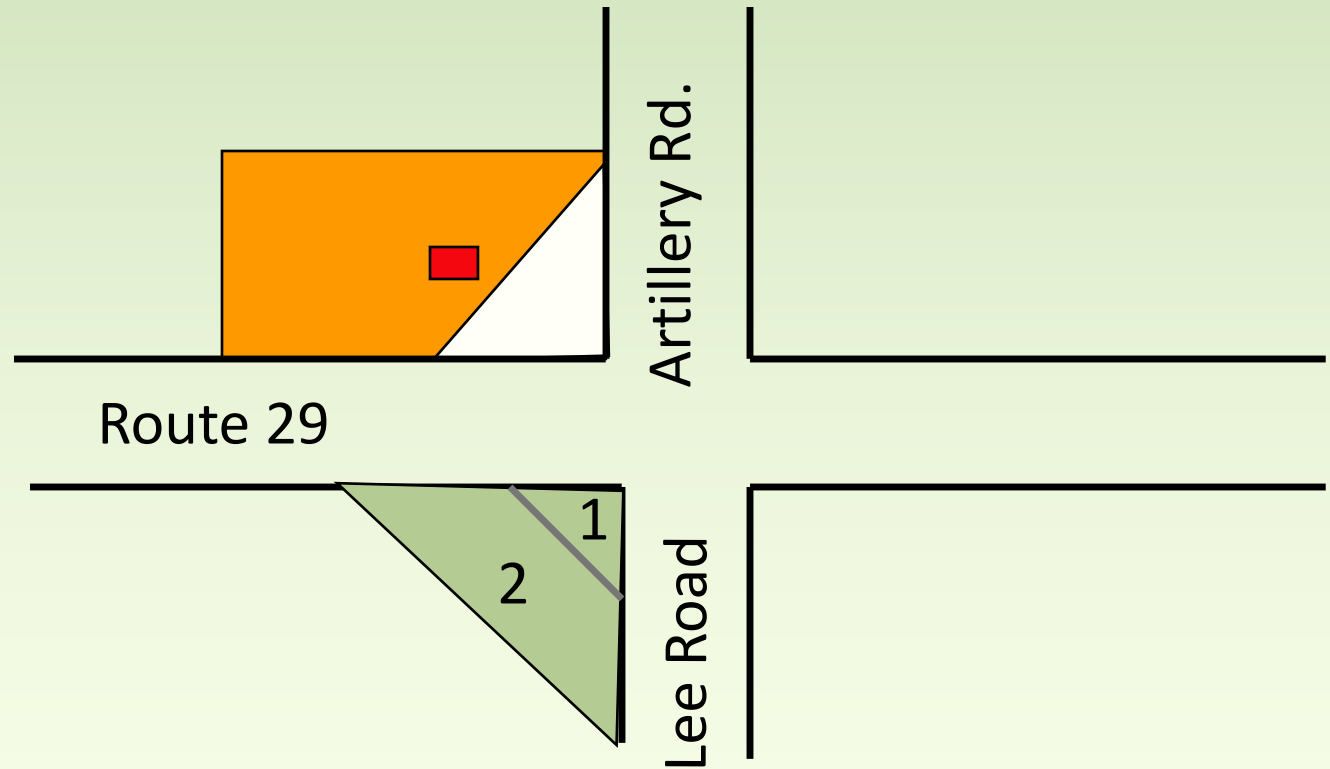
VT Rule 803: Hearsay Exceptions

Availability of declarant immaterial

- (8) Public records and reports.
- (10) Absence of public record or entry
- (14) Records of documents affecting an interest in property
- (15) Statements in documents affecting an interest in property
- (16) Statements in ancient documents
- (20) Reputation concerning boundaries or general history
- (23) Judgment as to ... general history or boundaries

Scurry v. Edwards

100 SE 2d 812, Supreme Ct. of SC, 1957



- History and practice of equity relating to the statute of frauds relating to oral agreements

Hadlock v. Poutre

414 A 2d 173, Supreme Ct. of VT, 1980



OLD KINGS HIGHWAY

MackKay to Emery 1969

Emery to
Poutre
1970

MackKay to
Thompson
1966

Thompson
to Hadlock

- Acquiescence, estoppel, and the Statute of Frauds

Color of Title

“...a written instrument or other evidence that appears to give title, but does not do so.”

[Black's Law Dictionary]

Color of Title in VT:

Conveyance of Real Estate

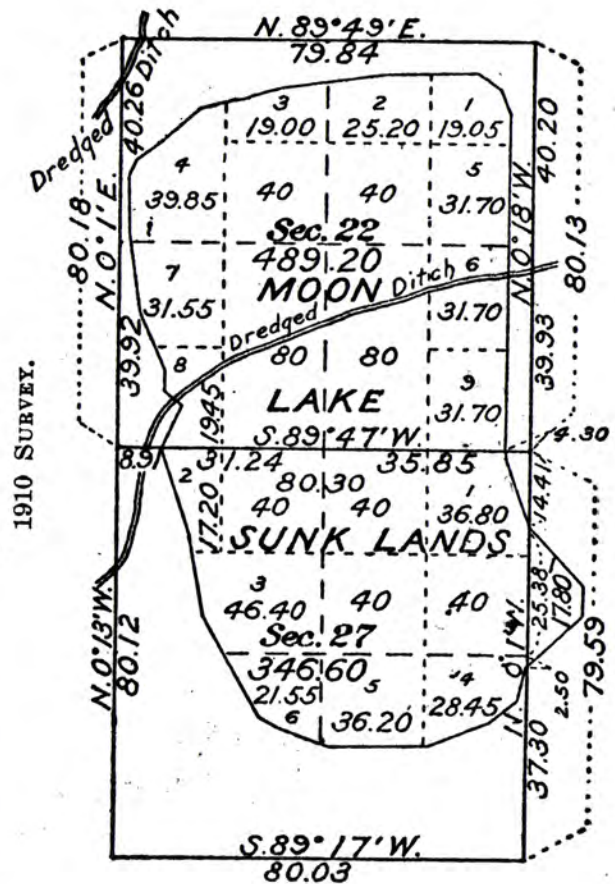
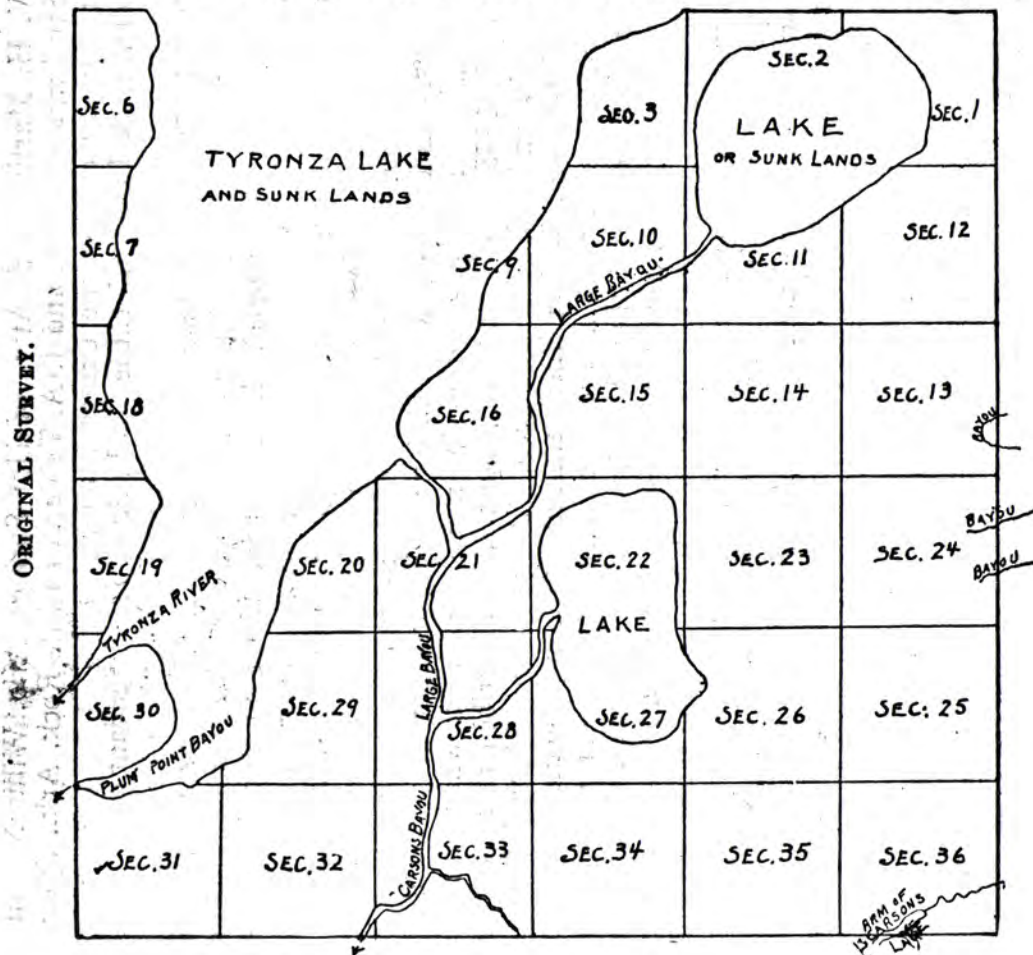
- **27 VSA § 348.** Instruments concerning real property lacking statement of consideration, or witnesses or acknowledgments, validated

27 VSA § 371. Proving execution when grantor dies or leaves state

US v. Lee Wilson & Co.

Lee Wilson & Co. v. US

TOWNSHIP 12 NORTH OF THE BASELINE RANGE 9 EAST OF THE 5TH PRM. MON.



Unlawful transactions in VT

27 VSA § 542 – Fraudulent deeds

Fraudulent and deceitful deeds, conveyances, and alienations of lands, or of an estate or interest therein, and charges upon lands or upon the rents and profits thereof, procured, made or suffered with intent to avoid a right, debt or duty of a person, shall be void as against the person, his or her heirs or assigns, whose right, debt, or duty is so intended to be avoided.

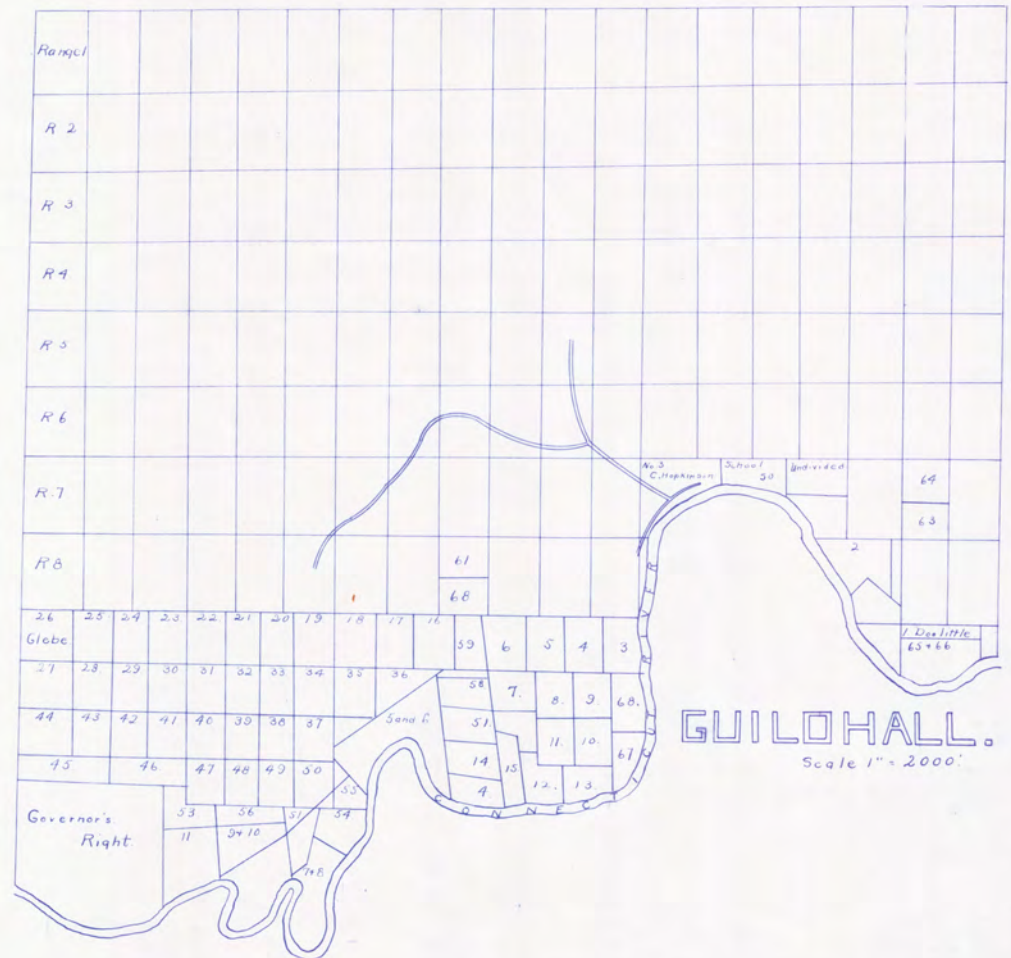
IS IT ACQUIESCENCE...

OR IS IT AGREEMENT?

Amey v. Hall

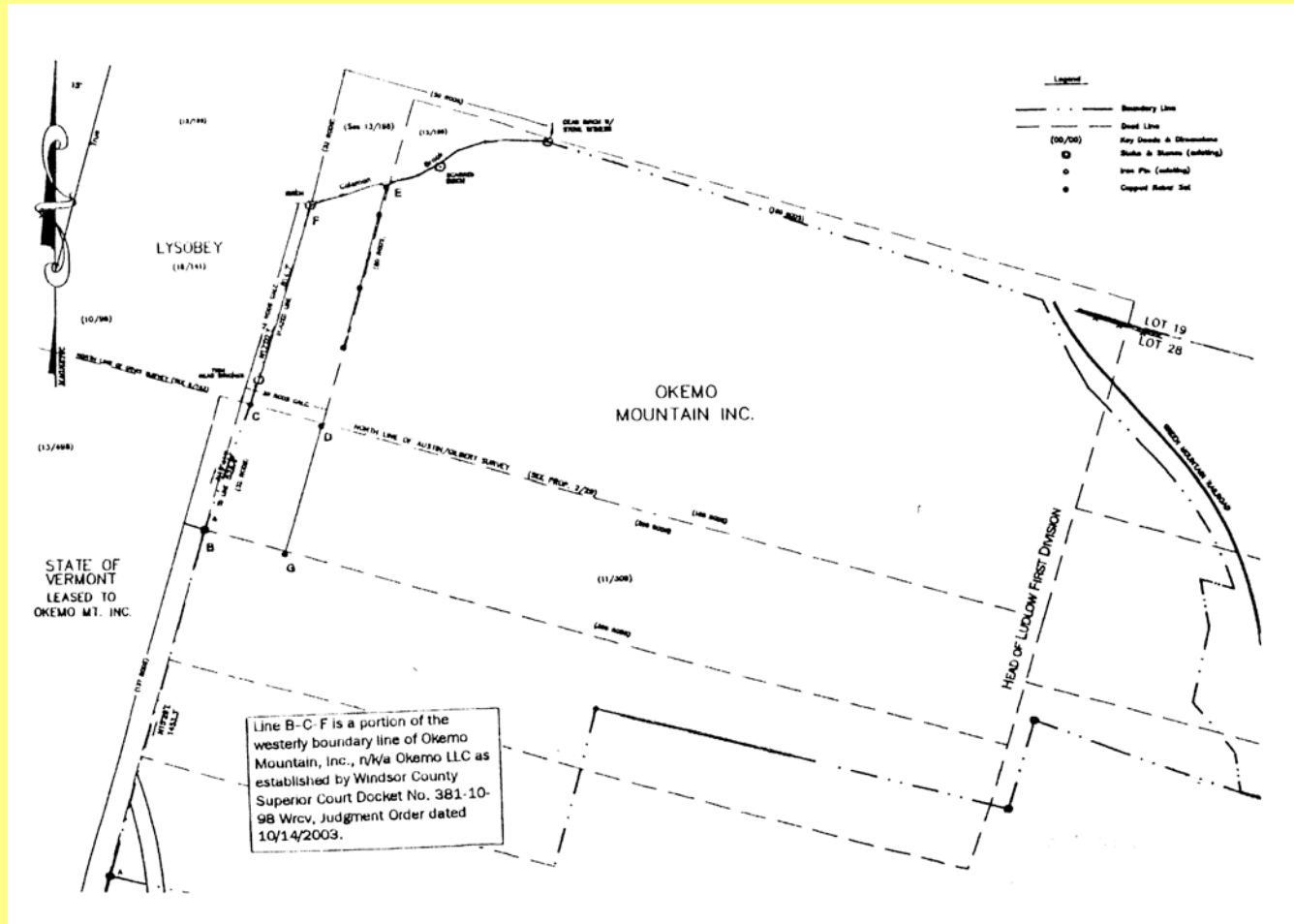
181 A.2d 69, Supreme Ct. of VT, 1962

- Acquiescence, tacking, and timbering



Okemo Mountain Inc. v. Lysobey

883 A 2d 757, Supreme Ct. of VT, 2005

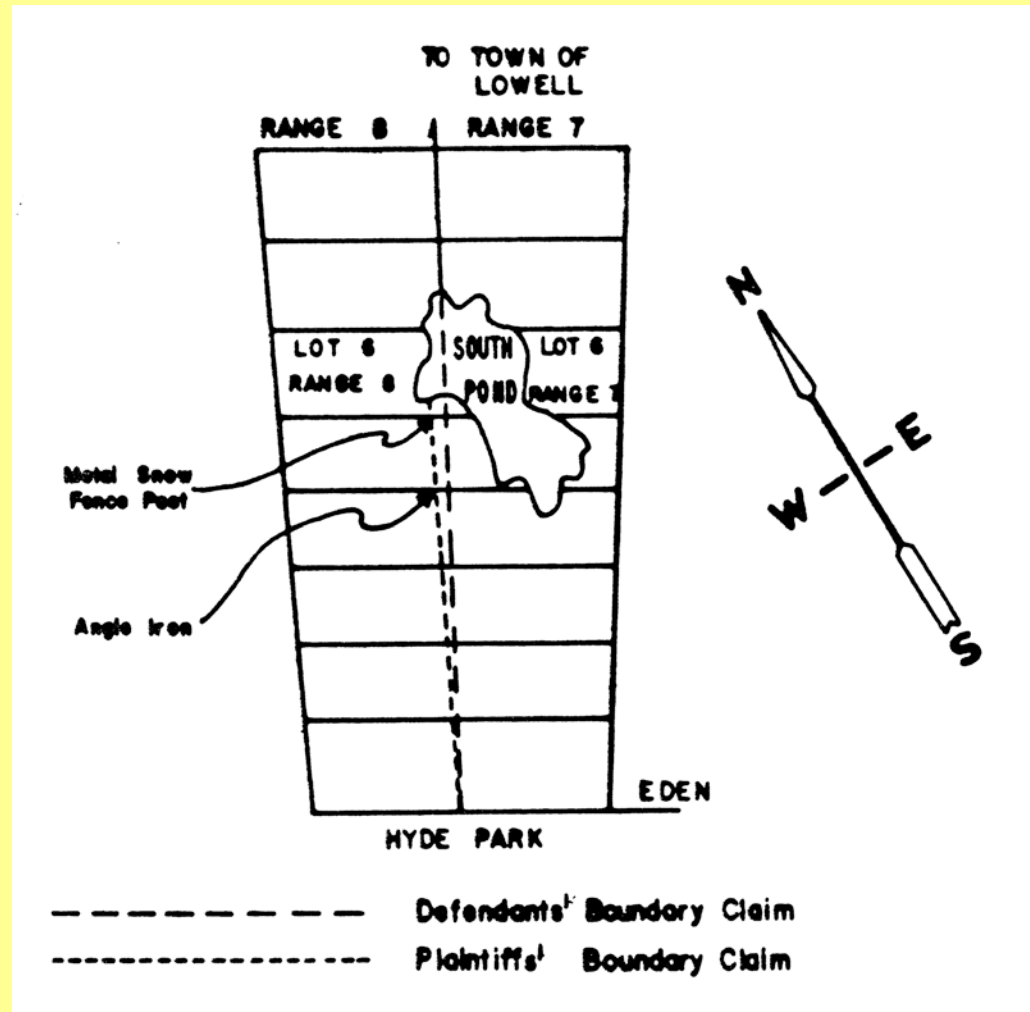


A 200 rod dispute over the boundary location

Heath v. Dudley

530 A 2d 151, Supreme Ct. of VT, 1987

- If no one cares about a boundary, have adjoining acquiesced to its location?
- What weight do monuments have?



Shared interests, possible disputes (Vermont & elsewhere)

- Party walls
- Lateral support
- Condominiums (27A VSA § 101 et seq.)
- Horizontal Regime properties
- Fences (24 VSA 3801 et seq., including for spite)
- Surface rights versus subsurface rights

Intent

“Design, resolve, or determination with which a person acts.”

(and relating to torts:)

“...the actor desires to cause certain consequences of his act, or ... believes that the [anticipated] consequences are substantially certain to result from it.”

Black's Law Dictionary

Considerations for “Intent”

- The subject matter
- The situation of the parties
- The surrounding circumstances

Rambeau v. Barrows

255 A.2d 175, Supreme Ct. of VT, 1969

- Sometimes a fence is just a fence –
except when it is something more



“Rules of Construction”

- The order of precedence to be given to determine the intention and to locate the lines as originally and actually run
- It is the unambiguous expressed intention, not what grantors meant to say but did not, that must be applied.

Basso v. Veysey

110 A.2d 706, Supreme Ct. of VT, 1954

- There is a discrepancy of 41 acres that the Bassos claim their deed from the Veyseys conveyed to them.
- The court discusses Rules of Construction, addressing intrinsic evidence, particular versus general descriptions, and, way at the bottom of the evidence heap, area.



The “Four Corners” Rule

“...intention of parties, especially that of grantor, is to be gathered from instrument as a whole, and not from isolated parts thereof.”

(Black’s Law Dictionary, citing *Davis v. Andrews*, 361 SW 2d 419, Court of Civil Appeals of Texas, Dallas, 1962)

Notice

“Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge. Intelligence by whatever means communicated.”

(Black's Law Dictionary)

Forms of Notice

- **Statutory** (by legislative enactment)
- **Actual** (“which brings a fact directly home to the party”)
 - Express (imposes a duty to inquire further)
 - Implied (provides the means of knowledge)
- **Constructive**
 - Information that inquiry would have elicited (“implied actual” notice)
 - “Designed abstinence from inquiry” to escape notice

“Notice” in VT

3 VSA §103. Documents required to be filed

- (a)[any interests in land conveyed to VT]
- (b)[any interest in land conveyed by VT]

3 V.S.A. § 110. Surveyor general's papers

- [books, papers and records of the surveyor general that are in VT's possession to be kept by the secretary of state]

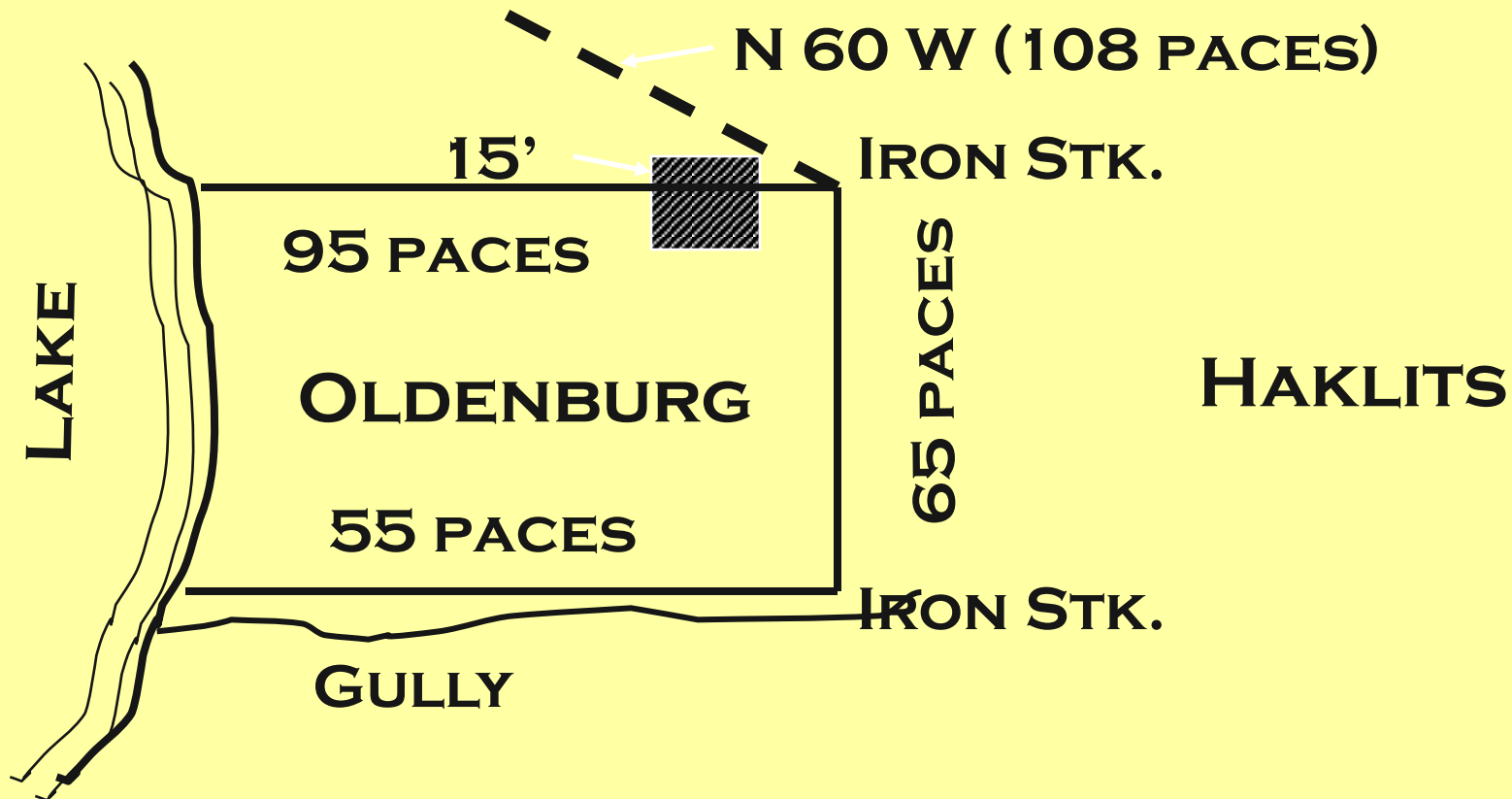
“Notice” in VT

24 VSA §1161. General index

“(a) A town clerk shall keep a general index of *transactions affecting the title to real estate* [that shall include] the name of the grantor ... [and] the name of the grantee ..., of every deed, conveyance, mortgage, lease or other instrument affecting the title to real estate, and each writ of attachment, notice of lien or other instrument *evidencing or giving notice* of an encumbrance on real estate which is filed or recorded in the town clerk's office...”

Haklits v. Oldenburg

201 A 2d 690, Supreme Ct. of VT, 1964



- Deed construction, extrinsic evidence , and monuments



Call

“A visible natural object or landmark designated in a patent, entry, grant, or other conveyance of lands, as a limit or boundary to the land described, with which the points of surveying must correspond.”

Black's Law Dictionary

Looking for Calls in VT

04-030-130 Vt. Code R. § 5-5.4

[When performing a survey of property], the surveyor shall, at a minimum, perform the following:

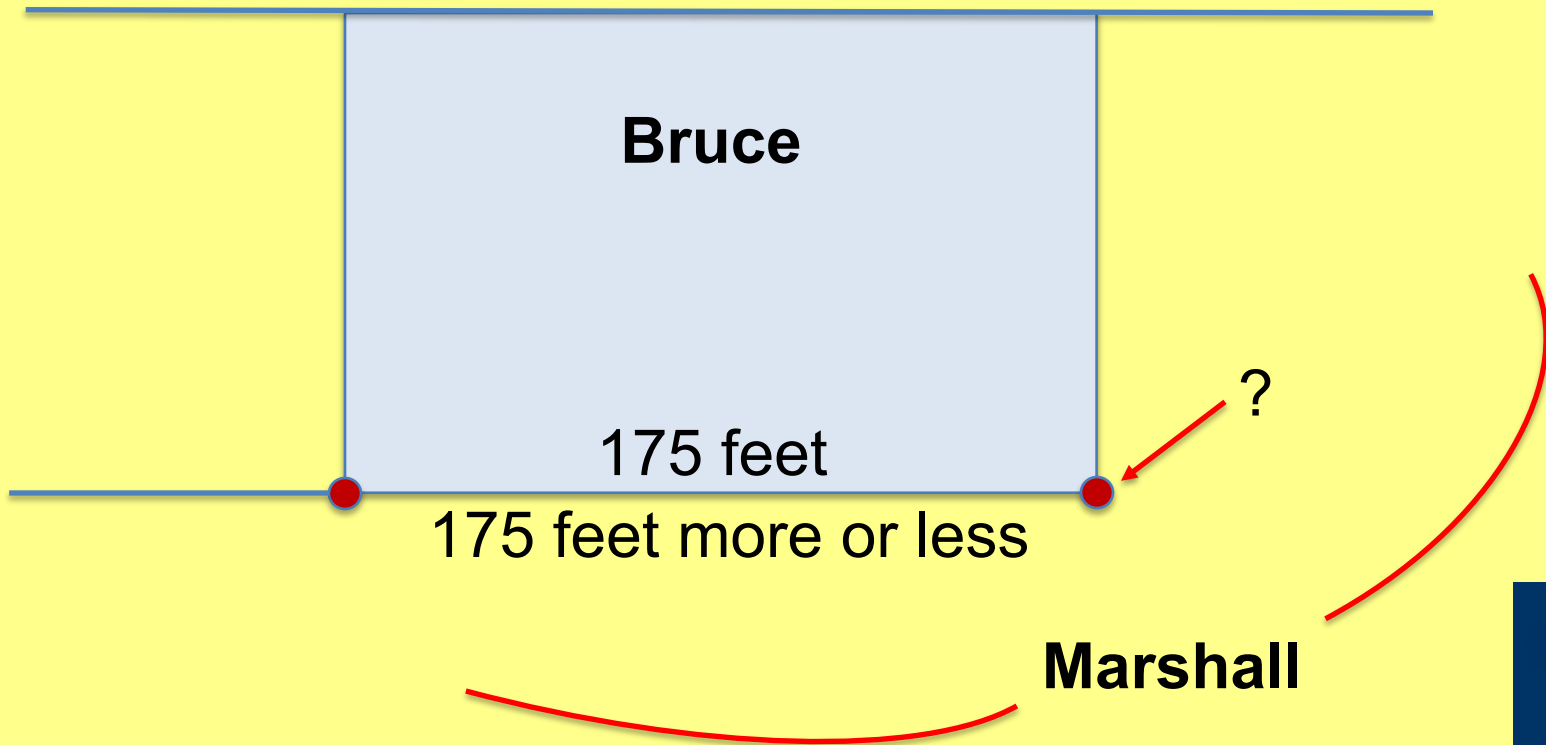
(a) Research and Field Investigation:

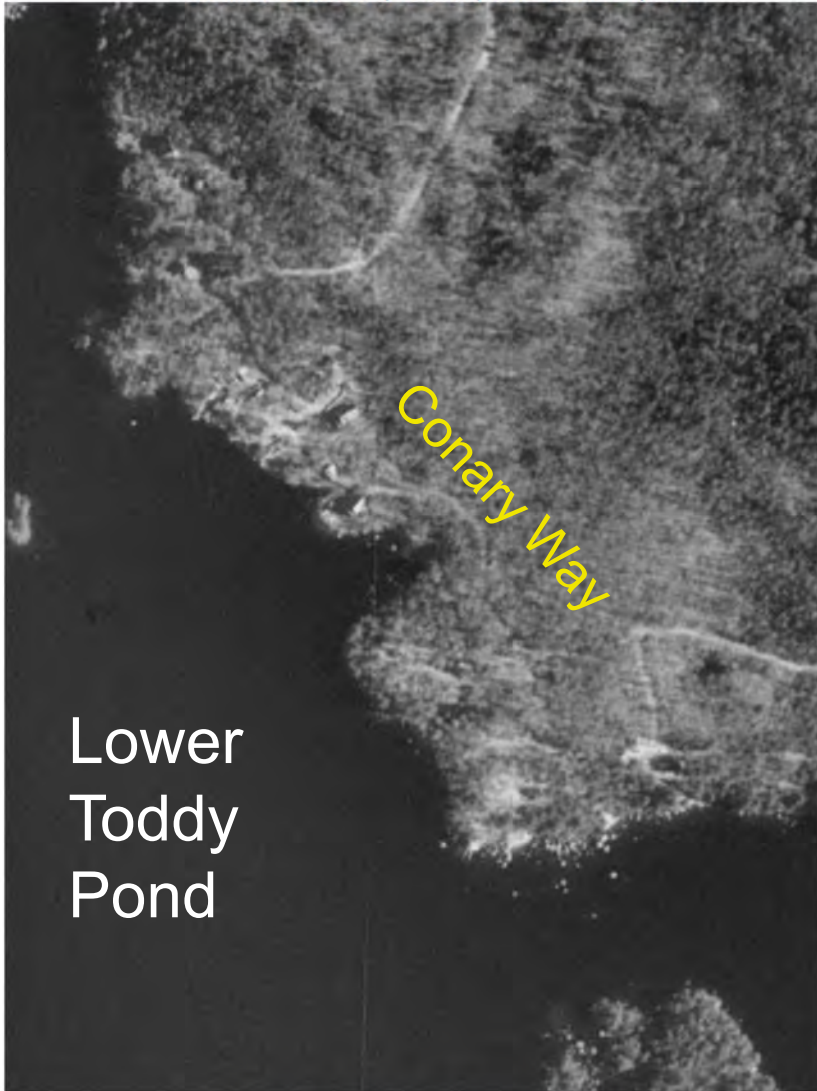
- (1) Prepare a survey abstract.
- (2) Examine, analyze and test consistency of the record evidence. Investigate and document inconsistencies and form preliminary conclusions as to the completeness of the record evidence.
- (3) [obtain oral evidence]

Marshall v. Bruce

543 A.2d 263, Supreme Ct. of VT, 1988

- Does holding an artificial monument to settle a boundary have the effect of reforming the deed?





Lower
Toddy
Pond

0 100M

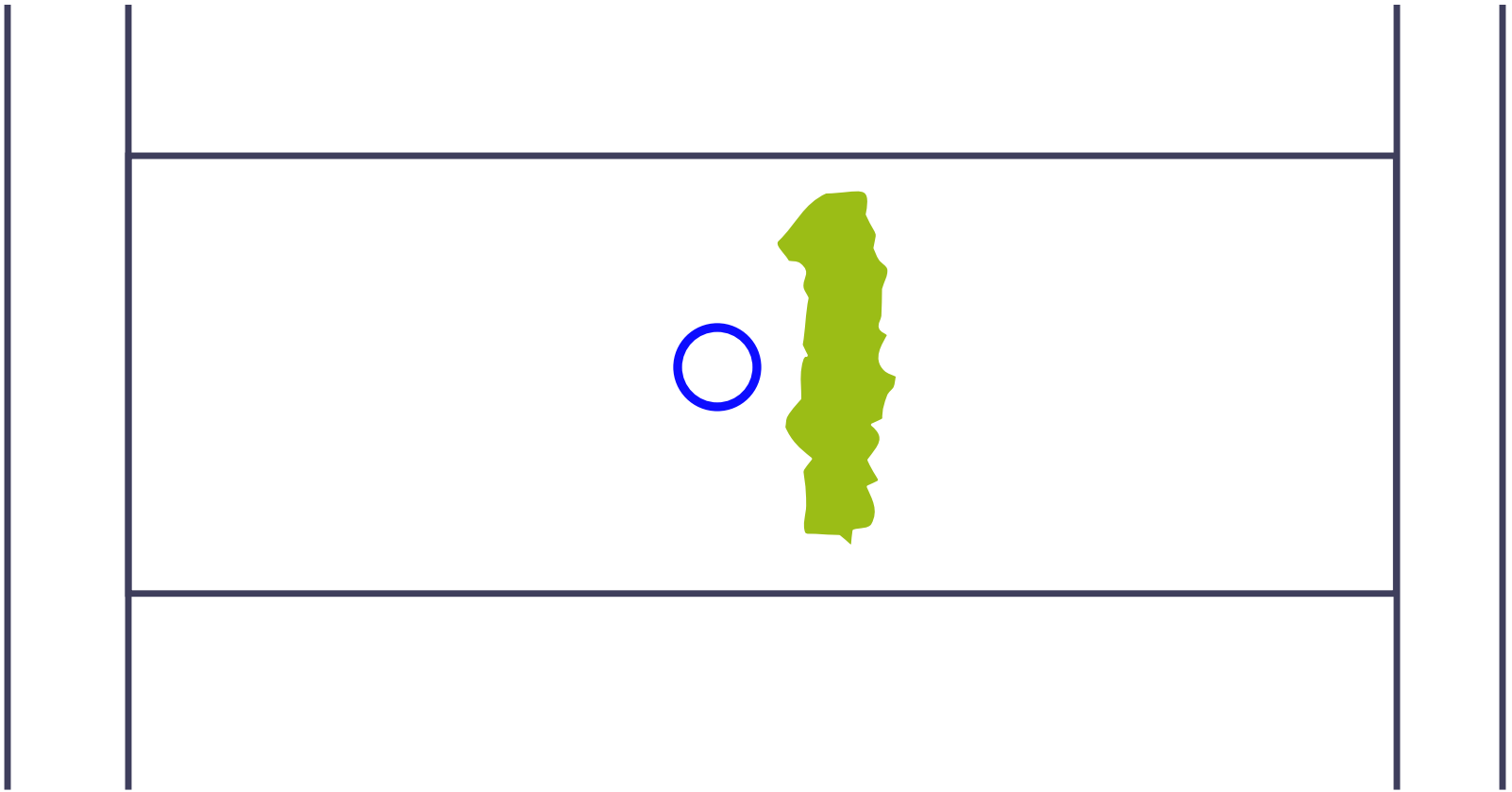
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Image courtesy of the U.S. Geological Survey

Conary v. Perkins
295 A.2d 644 (1972)

Perkins V. Conary
464 A.2d 972 (1983)

How should we
reconcile
conflicting deed
elements?



Estoppel

Equity

Equity in Vermont

4 VSA § 112. Composition of court

(g) Jury trial. In order to preserve the right to trial by jury, when the claims of one party sound in *equity* and the claims of the opposing party sound in *law*, the latter party may demand that the claims be tried separately...

Tyree v. Gosa

119 P. 2d 926, Supreme Ct. of WA, 1941

After Tyree's new neighbors built a home that encroached on his lot, he sued for its removal.

Did estoppel apply, and did the lower court have the right to force him to sell his land to the encroaching parties?

Dundalk Holding Co. v. Easter

73 A. 2d 877, Ct. of Appeals of MD, 1950

86 A. 2d 404, Ct. of Appeals of MD, 1952

86 A. 2d 477, Ct. of Appeals of MD, 1952

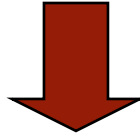
137 A. 2d 667, Ct. of Appeals of MD, 1958

79 S. Ct. 34, Supreme Ct. of the US, 1958

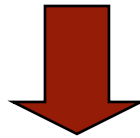
195 A. 2d 682, Ct. of Appeals of MD, 1963

A series of hostilities running from 1949 through 1963, over a strip of land 132' long by 0.36' to 0.95' wide: Does equity apply?

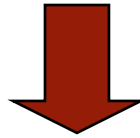
COURT



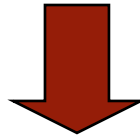
COMMISSION



REPORT



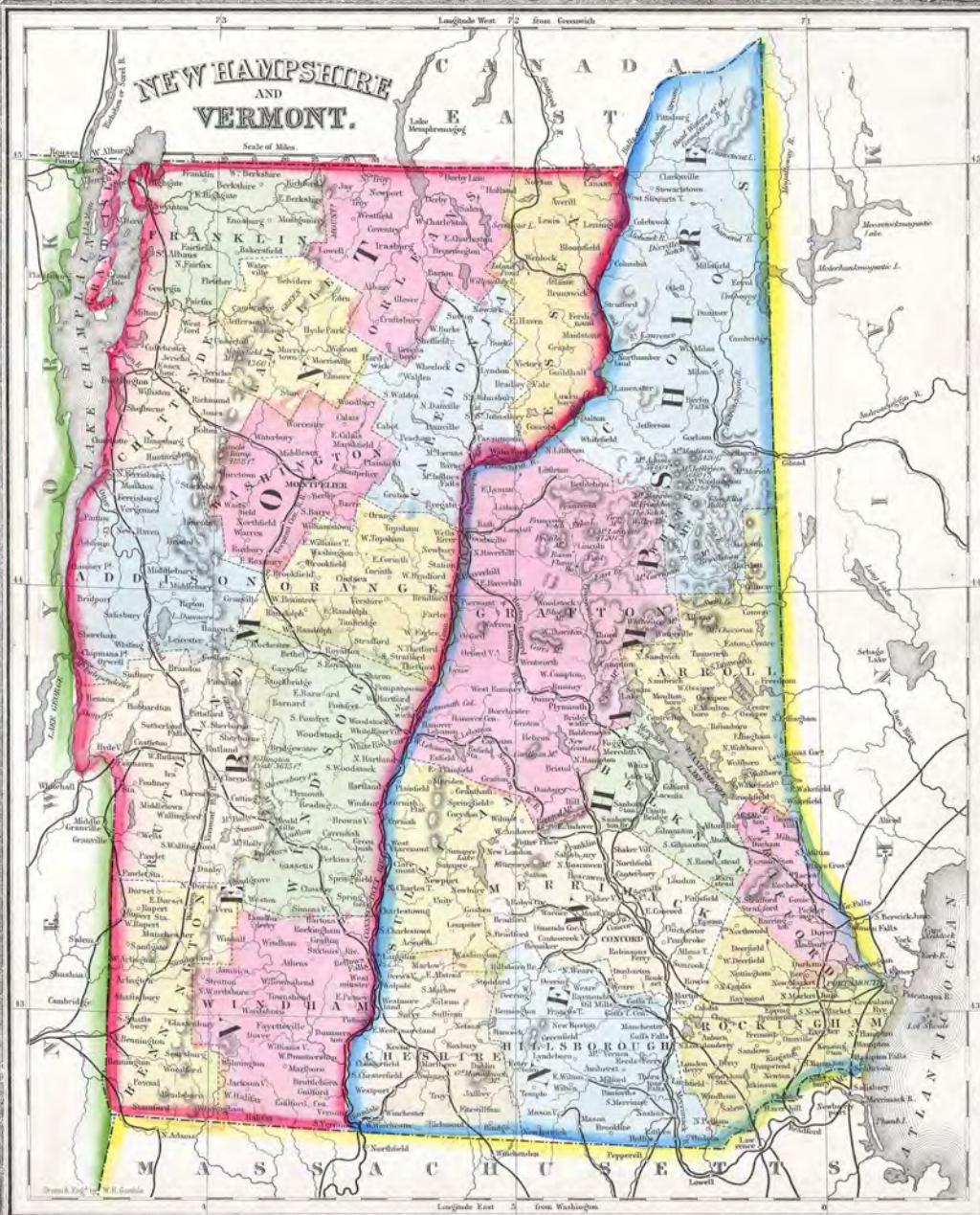
AGREEMENT



QUIET TITLE

Vermont v. New Hampshire

289 U.S. 593
US Supreme Ct.
1933



The NH-VT Boundary

- 1 VSA §611 – Perambulation, renewal
 - 1 VSA §612 - Return
 - 1 VSA §613 – Notice
 - 1 VSA §614 – Expenses of perambulation
-
- NH RS §1.1 – Perambulation of the NH line with the adjoining states of ME, MA, and VT
 - NH RS §1.2 – Notice
 - NH RS §1.3 – Return
 - NH RS §1.4 – Expense
 - NH RS §1.7 – Perambulation of the NH- VT State Line

Boundary line commission 1784 report

Report of
commission-
ers extend-
ing Mason's
and Dixon's
line, and fix-
ing the south
west corner
of Pennsyl-
vania.



Report of commissioners, extending Mason's and Dixon's line, and fix- ing the south-west corner of Penn- sylvania.

[This is an important paper, as it is the only one which ascertains the southern boundary of Pennsylvania, and fixes the south-west corner, in conformity with the agreement of the commissioners of the states of Pennsylvania and Virginia, of the 31st of August, 1779. (See vol. 10, pa. 533.) The report of the commissioners, of the 23d August, 1785, published in the Revised Code of 1819, vol. 1, pa. 52, merely relates to the running of a line "from the south-west corner of Pennsylvania," northward to the Ohio, for the western boundary; but how the commissioners got to the south-west corner, no where appears, without reference to this document. For a connected series of the most important papers on this subject, see 1 Rev. Code of 1819, ch. 16, pa. 51—Hening's Stat. at Large, vol. 10, pa. 520 to 533, this paper, and 1 vol. Rev. Code of 1819, ch. 17, pa. 52.]

Letter from James Madison and Robert Andrews, accompanying their Report respecting the boundary line of Pennsylvania, addressed to the governor of Virginia.

SIR—In consequence of the commission received from the hon. the executive for the purpose of establishing the boundary in dispute between Virginia and Pennsylvania, we have the honour to report, that the five degrees of longitude claimed by the state of Pennsylvania, have been determined with great astronomical precision; that Mason's and Dixon's line has been continued to the limit of those five degrees, and consequently, that the south west corner of Pennsylvania is finally settled; but, that the running of the meridian line, on account of the severity of the season, was postponed until a more convenient opportunity.

We are, sir, your most ob't serv'ts,

J. MADISON.

ROBERT ANDREWS.

December 16th, 1784.

His excellency the Governour.

Partition

- Division of real property to result in individual ownership of the interests each co-owner holds
- Can be voluntary or compulsory (judicial)

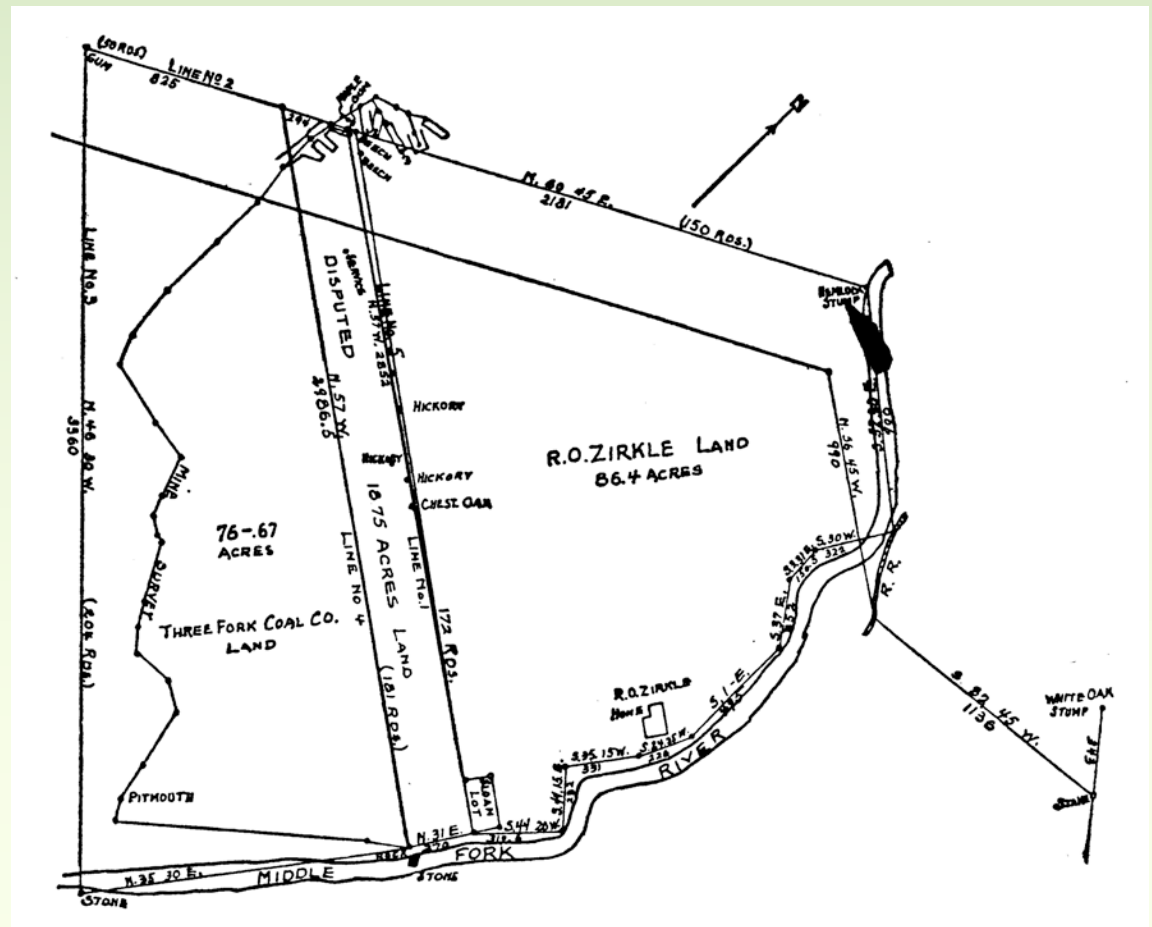
Partition in Vermont

- **12 VSA §5161.** Who may have partition
“A person having or holding real estate with others, as joint tenants, tenants in common or coparceners, may have partition thereof.”
- **12 VSA §5162.** Partition of a spring
- **12 VSA § 5169.** Judgment for plaintiff; commissioners [3 disinterested residents of the county]
- **12 VSA §5187.** Commissioner disqualified, others may act

Zirkle v. Three Forks Coal Co.

138 SE 371, Supreme Ct. of Appeals
of WV, Charleston, 1927

Was the
court
appointed
surveyor's
work done
properly?



Two less litigious approaches



Practical location

- Ambiguity about original division line location
- Actions of the parties (actual occupation)
- Not a parol conveyance
- Location set in one of three ways:
 - Acquiescence
 - Agreement
 - Estoppel

Boundary line agreement

- NOT a boundary line adjustment
- Written agreement between the parties
- Binding on the parties and their successors, heirs, and assigns

Duff v. Seubert

719 P.2d 1125, Supreme Ct. of ID, 1986

- Can an oral agreement overcome a subsequent written description meant to memorialize that agreement?

Split estates

- Do we own to the zenith of the heavens and to the center of the earth without any restrictions?

Administrative Rules of the Board of Vermont Land Surveyors

04-030-130 Vt. Code R. § 5-5.3 - Definitions

(k) “Property”: Property includes land, water, land under water, space, improvements and rights, and easements and servitudes attached thereto.

Who has rights to the water?

General provisions relating to rivers and streams

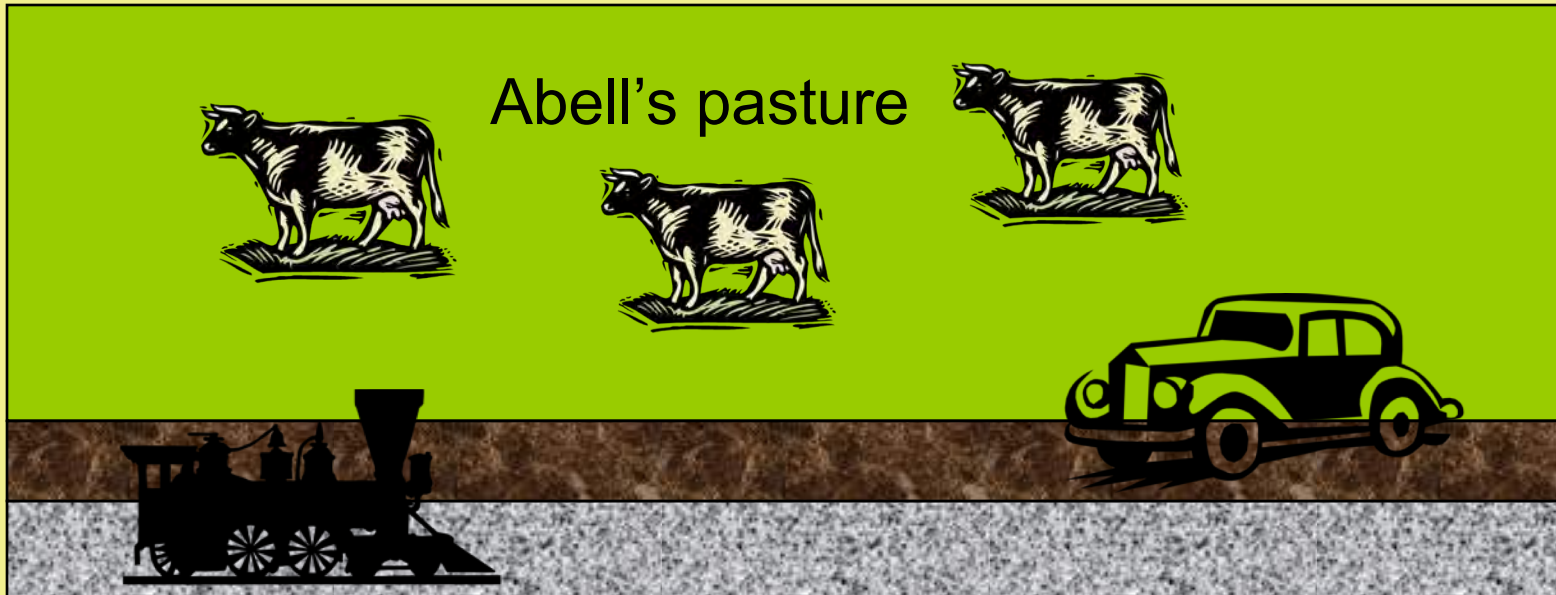
- **25 VSA § 141** - . Public easement

Regarding Lake Champlain:

- **27 VSA § 1002** - Control of wharves
- **27 VSA § 1003** - Title to railroad property confirmed

Abell v. Central VT Railway, Inc.

(102 A 2d 847, Supreme Ct. of VT, 1954)



- Who owns the land beneath the road bed?



Split estates



Split estates in VT

27 VSA § 308 Mines and quarries

- The grantee of a mine, quarry, or of the right of mining and quarrying, ***in severance from the ownership of the soil***, within 30 days after its execution, shall cause [the documents] to be recorded ... A grantee failing to comply with the foregoing provision shall forfeit to the town, or in case such a mine, quarry, or right of mining or quarrying is situated in an unorganized town or gore, to the county, \$50.00, to be recovered in an action on this statute.

Mineral estates in VT

29 VSA § 535 State reservation of oil, gas, and minerals

Each agricultural, timber, or other lease of any surface interest in state lands, and each mineral lease not for oil and gas purposes, shall ***reserve to the State*** all oil, gas, and other minerals not intended to be leased, and the right to drill and operate oil and gas wells on the premises and the easement, use, and right of way to enter upon and fully enjoy the rights reserved in this section.

Statute of Frauds & VT minerals

29 VSA § 545 Conveyance and acquisition of oil and gas interests

(a) An oil and gas interest shall ...mean the interest that is ***created by an instrument*** transferring, either by grant, reservation, assignment, or otherwise, an interest of any kind in oil and gas, and other minerals if included in an interest in oil and gas.

[Also see 9A VSA § 2-107: Goods to be severed from realty; recording]

Jones v. Vt. Asbestos Corp.

182 A. 291, Supreme Ct. of VT, 1936

- *Cujus est solum, ejus estusque ad coelum*
- but with legislated qualifications



Another split estate



Keeping cool when the situation gets hot...



(with thanks to Charles Schulz)