Kentucky Law Journal

Volume 12 | Issue 3 Article 4

1924

Boundaries

J. W. Gillon Jr.
University of Kentucky

NOTES

BOUNDARIES.

In determining the nature and location of a boundary the intention of the parties originally making the line will control.[1] To truly determine this intent it is necessary to obtain the same knowledge of the subject matter of the deed as was in the possession of the parties thereto at the time of its execution.[2]

This makes the introduction of extrinsic evidence necessary, not to vary the terms of the deed, but to arrive at the true meaning, as in a case where the description of the boundaries is general, or ambiguous.[3] But where the intention can be arrived at, without the introduction of extrinsic evidence, by application of legal rules and logic it need not be considered. For instance, if a call is inconsistent with the rest of the deed, and its rejection would reconcile all the other calls, the court will assume that it was inadvertently inserted, and will reject it.[4]

In analyzing a deed it is often found that there is a conflict in every call between certain elements of the call. In such a situation the Kentucky court has laid down the rule that distances yield to courses, and both courses and distances yield to natural objects, and in this connection, a boundary line of a named adjoining owner is a fixed natural object.[5] South Carolina has stated the rule somewhat differently by saying that in locating lands the following rules are resorted to, and generally in the order stated: (1) Natural boundaries; (2) Artificial marks; (3) Adjacent boundaries; (4) Course and distance. Neither rule, however, occupies an inflexible position; for, when it is plain that there is a mistake, an inferior means of location

---

[1] *Sullivan* v. *Hill*, 33 R. I. 962; *McKinney* v. *McKinney*, 8 Ohio St. 423; *Cooperative Building Bank* v. *Hawkins*, 30 R. I. 171; *Thatcher* v. *Howland*, 2 Metc. (Mass.) 41.

[2] *Murley* v. *McDermott* (1838), 8 Ad. & El. 138; *Van Dieman's Land Co.* v. *Table Cape Marine Board* (1906), A. C. 92, P. C. at p. 98.

[3] *Lister* v. *Pickford* (1865), 34 Beav. 576.

[4] *Morse* v. *Rogers*, 118 Mass. 572; *McDowell* v. *Carothers*, 75 Or. 126, 131; *Sellman* v. *Sellman* (Tex.), 73 S. W. 48; *Newbold* v. *Condon*, 104 Md. 100; *Thatcher* v. *Howland*, *supra*; *Robinson* v. *Kime*, 70 N. Y. 147; *Waterman* v. *Andrews*, 14 R. I. 584; *White* v. *Luning*, 93 U. S. 514.

[5] *Fidelity Realty Co.* v. *Flahaven Land Co.*, 23 S. W. 260, 193 Ky. 355.

may control a higher.[6] Maps, ancient surveys and reputation may also be considered.[7]

It sometimes happens that it is uncertain which of two monuments is intended. In that case course and distance will control, or where a monument is lacking, and the course is uncertain that course may be adopted which most nearly yields the desired quantity.[8]

Where the call is from one known and ascertained point to another, without naming any intervening points or corners, a straight line is presumed,[9] but this presumption may be rebutted by accompanying language, such as, "along the old line," or "as the line runs," in which case the word line has been interpreted to mean all the twists and turns of the old line between the points, which is, in effect, saying that the word line may mean a a number of corners and lines. This is in accord with common usage.[10]

Where the plots, concerning which there is a boundary dispute, were originally held by one party, who divided them, the deed of the plot which was first granted will fix the line, in case that deed can be interpreted with reasonable certainty.[11]

In accord with these rules three cases were recently decided in Kentucky.

I. *Petrey* v. *Adkins,* 200 Ky. 463. Both parties claimed thru grants from A. The tenth call read, "Thence crossing the road east with the old line to the corner in the gap of the ridge between Mud and Cain Creeks." The eleventh call ran: "Thence north to A's old corner, a white oak." There were two gaps. To arrive at the second gap several lines would have to be included. To comply with the eleventh call the second gap would have to be accepted, which would be in accord with the original

[6] *Fulwood* v. *Graham* (S. C. 1845), I Rich. Law 491; *Allen* v. *Kersey,* 104 Ind. 1, 3 N. E. 557.

[7] *Penny Pot Landing* v. *Philadelphia,* 16 Pa. St. 79.

[8] *Allen* v. *Kersey, supra.*

[9] *Lyon* v. *Ross* (Ky.), 1 Bibb. 466.

[10] *Bell* v. *Powers* (Ky.) 121 S. W. 991, 993; *Cubberly* v. *Cubberly,* 12 N. J. L. (7 Haist.) 308, 314; *Tallahassee Power Co.* v. *Savage* (N. C.) 87 S. E. 629.

[11] *Collins v. Clough,* 71 Atl. 1077, 222 Pa. 472; *Bryant* v. *Terry,* 189 Ky. 489; *Bell v. Powers* (Ky.), 121 S. W. 991.

grant of the parcel. The defendant contended for the second gap, and was sustained by the court.

II. *Johnson* v. *Thornberry*, 200 Ky. 665. One call read: "Beginning at the splash dam, and running up the left point to the top of the ridge, James King's line; thence south with the top of the ridge to a spur, to the forks of Ellis Lick." There were two spurs. The grantors of both parties derived title from the original divider of the tracts. The defendant's deed was the oldest, and was followed by the court in stopping the line at the first spur, and in inserting "thence" in the deed between "a spur" and "to the forks."

III. *Green* v. *Witten*, 200 Ky. 725. There was a variance between the calls for monuments, and the calls for courses and distances, and there was also a dispute as to the location of "Dogwood Gap." The defendants contended that the line should be run from monument to monument. The plaintiffs wished the courses to be followed. The testimony of neighbors was introduced to give the exact location of "Dogwood Gap." The monuments controlled.[12]

[12] *Elliott* v. *Jefferson*, 133 N. Ca. 207, 64 L. R. A. 135; *Logan* v. *Ward*, 58 W. Va. 366.

Another rule was laid down in this case which has not been discussed. It was said that the burden of proof as to boundaries is on the party suing to quiet title, and where the proof is doubtful it must be determined in favor of the defendant.

J. W. GILLON, JR.