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Consentable Lines in Pennsylvania

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CONSENTABLE LINES IN PENNSYLVANIA

Boundary disputes have long been settled in Pennsylvania by the establishment of consentable lines. The first case dealing with consentable lines in this state was that of *Perkins v. Gay*.[1] In the course of the opinion Justice Gibson said that consentable lines had long been recognized in this Commonwealth; however, there was no indication in the opinion of the origin of the term.

Consentable Line—Definition

None of the cases give a concise definition of a consentable line. Webster's *New International Dictionary* (2nd Ed. 1943) defines "consentable" as "assent to or express agreement upon a boundary," and mentions collaterally that it is a word used in *law in Pennsylvania.* The word "line" is defined by the same authority as "a division between estates". Joining the two, the definition of a consentable line is a boundary or division between estates assented to or expressly agreed upon by the parties owning the separate estates.

Almost all of the other jurisdictions in the United States recognize such division lines but in no other jurisdiction is there any mention of the term "consentable line".

Requisites of a Consentable Line

The case of *Newton v. Smith*[2] held that there were three requisites for the establishment of a binding consentable line: *first,* there must be a dispute; *second,* the establishment of a line settling the dispute; and *third,* the consent of both the parties to that line and the giving up of respective claims which are inconsistent therewith. The *Perkins* case adds that there must be full disclosure and good faith and that there must be occupation in conformity with the line so established. All of the Pennsylvania cases which have held that the parties are bound by a consentable line agree that these elements must be present.[3]

The cases are rigid in requiring that there be an existing dispute before the agreement is binding. In discussing the necessity of an existing dispute, the court stated in the *Perkins* case that the agreement is a compromise in which each party supposes that he gives up something to which he is strictly entitled for the sake of peace.

In the matter of establishing the line settling the dispute, the cases are not quite so pointed. None of the cases set forth the formalities to be followed in the establishment of the line. It appears from the facts in most of the cases that the usual formalities observed in establishing the line are: *first,* the going out upon

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1 Perkins v. Gay, 3 S. & R. 327 (Pa. 1817).

2 Newton v. Smith, 40 Pa. Super. 615 (1909).

3 Perkins v. Gay, supra; Caputo v. Mariatti, 113 Pa. Super. 314, 173 A. 770 (1934); Beals v. Allison, 161 Pa. Super. 125, 54 A.2d 84 (1947); Adamson v. Potts, 4 Pa. 234 (1846); McCoy v. Hutchison, 8 W. & S. 66 (Pa. 1844); H. E. Davis v. J. B. Russell, 142 Pa. 426, 21 A. 870 (1891); 69 A. L. R. 1478n.

the land by the parties; *second,* the agreement by them as to where the line should be on the land itself, *e.g.,* so many feet from a fence or in line with trees or the like; and *third,* the occupation of the land by the parties in accordance therewith. The agreement is usually parol; the parties seldom intend that it should be reduced to writing.

It is apparent that the consent of the parties to be bound by the agreement and, consequently, to give up their respective claims which are inconsistent therewith, is a necessary requirement for the establishment of a consentable line, since there can be no binding agreement without a meeting of the minds.

The courts do not discuss the requirement of full disclosure and good faith but it seems that both would be required because of the nature of the agreement; that is, since the line is a matter of compromise and the parties are giving up what may be a valuable claim for the sake of peace, they should be protected from the schemes of their neighbors. Another reason for the requirement of good faith is to encourage the settling of disputes in this manner since it effects a speedy settlement of the matter and reduces the burden on the courts.

Although the cases do not give a reason for requiring occupation in conformity with the new line, it would seem that this is the best evidence of the parties' consent to the new line and of their relinquishment of any inconsistent claims. This is sufficient reason for the requirement.

The Intention Required of the Parties

The most concise statement of the requisite intent of the parties can be found in the case of *Beals v. Allison.*[4] The court there stated that in order to establish a binding consentable line the parties must intend to create a new line and not merely to locate a pre-existing one. This statement is in accord with the *Perkins* case and with the *H. E. Davis v. J. B. Russell* case.[5] The latter held that if the parties establish a line as their boundary not to settle a dispute but merely in an attempt to locate their already existing boundary, and the line so established is not in fact their boundary, such line will not be binding on the parties since there is no agreement and no consent thereto.

Consideration for the Agreement—Why Required

McCoy v. Hutchison[6] and *Hagey v. Detweiler*[7] hold that the consideration for the agreement is the compromise of the doubtful right and the giving up by the parties of their respective claims. The holding of the *Perkins* case is that the peace resulting from the establishment of the compromise line is sufficient consideration.

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[4] Supra, note 3.
[5] Supra, note 3.
[6] Supra, note 3.
[7] Hagey v. Detweiler, 35 Pa. 409 (1860).

The courts look for consideration since they seemingly base their decision that the parties are bound by the agreement on some contractual ground. Many of the cases do not explain the theory on which their decision is based but the cases of *Syphus v. Meighen*[8] and *Newton v. Smith*[9] rely on estoppel by agreement.

Effect of the Statute of Frauds

Although the effect of the Statute of Frauds[10] on the establishment of consentable lines by parol is not discussed in most of the opinions, this question was raised in the case of *Hagey v. Detweiler.*[11] There the court said:

> "The statute (Statute of Frauds) is a rule of conveyance; it requires a writing to *create* an estate or interest in lands that shall have more force or effect than a lease or estate at will only. But adjoining owners who adjust their division line by parol, do not create or convey any estate whatever between themselves; no such thought or intention influences their conduct; after their boundary is fixed by consent they hold up to it by virtue of their title deeds, and not by virtue of parol transfer."[12]

Although this specific question was not before the court in *Beals v. Allison,*[13] it is therein stated that it has long been established in Pennsylvania that a consentable line which has been established by parol will be binding on the parties.

The conclusion to be drawn from these cases is that the establishment of a consentable line is not within the Statute of Frauds because it is not a conveyance of land but rather a determination of the geographical extent of the estates of the adjoining land owners, as described by their respective deeds.

Who Is Bound By a Consentable Line

That a consentable line is binding as between the original parties is not in doubt; all of the Pennsylvania cases hold this as of course. Once the courts find that a valid consentable line has been established they hold, without looking to anything else, that the parties to the agreement are bound thereby.

The problem as to the effect of consentable lines arises when dealing with the grantees of the parties to the agreement. In this situation two questions present themselves; *first,* the necessity of notice on the part of the grantees; and *second,* if notice is required, whether it need be actual or whether it may be implied from the conditions as they exist at the time of the sale of the land.

In many cases the question of whether or not the grantees of the original parties to the agreement are bound by the agreement is not discussed. It seems to be assumed that if there is a valid consentable line binding the original parties, it

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8 Syphus v. Meighen, 22 Pa. 125 (1853).
9 Supra, note 2.
10 Act of March 21, 1772, 1 Sm. L. 389, 33 PS 1.
11 Supra, note 7.
12 Parenthesis supplied.
13 Beals v. Allison, 161 Pa. Super. 125, 54 A.2d 84 (1947).

will also be binding on the grantees. A review of the cases will show the various views which the Pennsylvania courts have taken on the question.

In the *Perkins* case, one of the parties to the action was a grantee of an original party to the agreement. No mention was made of the question and the grantee was treated as though he had been a party to the agreement. Again, in *McCoy v. Hutchinson,*[14] the grantees were held to be bound by the agreement. *Grogan v. Leike*[15] was another case in which the parties were grantees and again there was no mention of the problem of notice and the parties were held to be bound by the line. In *Hagey v. Detweiler*[16] it was stated that the purchaser from one who had agreed to a consentable line took in accordance with such line if he took *with notice,* and in this case the court found that the purchaser had taken with notice since a wall was built on the agreed line.

In *Morrison v. Howell*[17] there had been a dispute between *M* and *B* as to the location of their boundary line; a consentable line was established and later affirmed in the presence of H, who subsequently bought from B, and H made improvements. Later, *M* sold part of the land which had been in dispute. *M's* vendee brought ejectment against *H*. The court held that since *M* could not have claimed the land prior to this conveyance, his vendee could not claim it. The court went on to say that since *H* had been in possession at the time of the conveyance by *M,* and since he had made improvements on the land, *M's* vendee should have made inquiry; since he did not, he was held estopped to make any contrary claim. The case seems to leave the question of necessity of notice unanswered, for it holds that the vendee is bound by the line because *M* was so bound; further, that *M's* vendee had notice from the improvements on the land, indicating that if notice were required, constructive notice from the physical appearance of the land and its occupancy would satisfy the requirement.

In the later case of *Dawson v. Coulter*[18] the court said:

> "The general rule is that one who claims title to property through another, regardless of the nature of the transfer whether by the act of the parties or the act of law, is bound by earlier act or declarations of his predecessor and takes title *cum onere*: *Gibblehouse v. Strong,* 3 Rawle 437; *Floyd v. Kulp Lumber Co.,* 222 Pa. 257. Under this rule all acts and declarations of the owner of land made during the continuance of his interest tending to show the character or extent of his possession or interest, or the location of boundaries, are competent evidence not only against himself but also against those who claim through or under him: *Heister v. Laird,* 1 W. & S. 245; *Gibblehouse v. Stong,* 3 Rawle 437; *Gratz v. Beats,* 45 Pa. 495; Henry's TRIAL EVIDENCE § 88, 91."

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14 McCoy v. Hutchison, 8 W. & S. 66 (Pa. 1844).
15 Grogan v. Leike, 22 Pa. Super. 59 (1902).
16 Supra, note 7.
17 Morrison v. Howell, 37 Pa. 58 (1860).
18 Dawson v. Coulter, 262 Pa. 566, 106 A. 187 (1918).

The footnote to the case of *Tripp v. Bagley*, 74 Utah 57, 276 P. 912 (1928) at 69 A.L.R. 1478 states:

> "It may be stated as a general rule, where a disputed, uncertain, or unascertained boundary is settled by parol agreement, and such agreement is followed by occupation in accordance therewith, it is binding not only on the immediate parties to the agreement, but also on those claiming under them."

As authority for this statement the following Pennsylvania cases were cited: *Brown v. Caldwell*[19] and *Morrison v. Howell.*[20]

Tiffany on Real Property § 653 (3rd Ed. 1939) states that the grantee of the original party to the agreement will be bound, citing cases confirming this statement. He goes on to say that notice to the grantees is required; however he cites no cases to support this last statement.

Thus it may be seen that the cases do not specifically hold that notice to the grantees is required in order to bind them by the agreement; nor are writers on the subject in accord as to the necessity of this element.

The few cases which do mention notice are those in which notice was obvious and the courts found constructive notice from the appearance of the land. It may be that notice was used only as an additional reason for binding the grantees. None of the cases which discussed the matter held that the grantees were not bound simply because they had no notice. Therefore, it cannot be said with certainty what the result would have been had this element not been present.

The majority of the cases do not discuss notice; nor did it appear from the facts that notice was present. This seems to indicate that the court will not look for notice and consequently will not require it.

Dawson v. Coulter[21] decided later that any of the cases which mentioned notice, indicates that notice to the grantees would not be required since the parties take their title *cum onere* and therefore the extent of the grantee's interest is limited to that of the grantor.

If notice was required some anomolous situations could result; a party to the agreement could sell his land and thereby render the agreement a nullity by the simple expedient of not notifying the vendee of the agreement; also, if both parties should convey, a situation could arise in which one grantee would be bound by the agreement and the other not bound. If these results were permitted, the consideration for the agreement would fail because the dispute would never be permanently settled. Therefore, it seems logical that the vendee should be bound by the agreement regardless of notice.

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19 Brown v. Caldwell, 10 S. & R. 114 (Pa. 1823).
20 Supra, note 17.
21 Supra, note 18.

Because of the reasons mentioned above and the indications of the majority and later cases, it is submitted that the courts should hold a grantee of an original party to the agreement bound by the boundary established regardless of whether or not the grantee had notice. However, the question is still an open one.

Summary

Summarizing the foregoing material, it appears that the essential requirements for the establishment of a binding consentable line are:

1. There must be an existing dispute as to the location of the boundary.
2. The line must be established to settle the dispute; this is the consideration for the agreement.
3. Both parties must consent to the line and must give up claims which are inconsistent therewith. This must be evidenced by occupation of the land in accordance with the line thus established.
4. There must be full disclosure on both sides and the parties must act in good faith.
5. The intention of the parties must be to establish a new boundary and not to locate an already existing one.

Several of the cases have discussed the necessity of notice to a grantee before the grantee becomes bound by the agreement. However, the majority of the cases do not mention notice in this respect. Writers on the subject are also in conflict on this point. Although it is still an open question as to whether or not a grantee must have notice of the agreement to be bound thereby, it is believed that such notice will not be required.

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