THE IMPORTANCE OF GENERAL RECOGNIZITION, OCCUPATION, AND LIMITATION IN FIXING LAND BOUNDARIES

BY

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74032

A SHIFT OF THE ORIGINAL BOUNDARIES

The boundaries of a tract of land are not always the same as those called for in the patent or in the deed. They may be shifted by the adjoining owners either by (1) an oral agreement; or (2) recognition and acquiescence; or (3) estoppel. Consequently, when a survey on the ground discloses that the lines of occupation do not coincide with the boundaries called for in the deed or the patent, the inquiry is whether the adjoining owners by their acts and conduct have shifted the boundaries to the lines of occupation.

There are well established rules of law which must be followed in determining where the boundaries called for in a deed or patent are located on the ground, and there are equally well established rules which must be applied in ascertaining whether adjoining owners by their acts and conduct have shifted their boundaries.

The rules to be followed in locating the boundaries called for in a deed or patent were discussed by me in a paper read to the Fifth Texas Surveyors Short Course in Austin on February 7, 1952 entitled "Vanishing Footsteps of the Original Surveyor."

Tonight we are not as much concerned with where the original boundaries called for in the instrument are located, as we are with whether the adjoining owners have established other and different boundaries which are binding on them and their assigns.

At the outset, I wish to point out that the rules which I am about to discuss do not apply against the State of Texas in the same way that they apply to individuals. Where the State owns a vacant strip of land between two surveys not included in the patent of either, it cannot be divested of title to the strip by a boundary agreement between the adjoining owners which includes the strip in one or both of the surveys. Neither can the State be divested, where the original monuments are found or their location re-established, of its title by the owners' recognition over a long period of years that the strip is a part of one or both surveys.[1]

1. Oral Agreement

Adjoining owners by an oral agreement may change the location of the boundaries between their lands, provided at the time of the agreement the location of the common line called for in their deeds or patents is uncertain or unknown. The agreement when made is valid and will constitute the boundaries between the adjoining tracts as fully as if the deeds had called for the line. The agreement is one of the few agreements affecting land which will be enforced by the courts even though it is not in writing. The law favors such agreements when fairly made because they prevent spiteful and vexatious litigation.[2]

However, in the absence of a dispute, an oral boundary agreement will not be enforced if the parties know, or even one of them knows where the true line is located. To be enforceable, uncertainty must exist as to the location of the line, or the parties must have no knowledge of its location.[3] If one of the parties knew where the true line was located and concealed such fact, he would be guilty of fraud in inducing the adjoining owner to agree upon another and different line, and the agreement would be voidable.[4] If doubt or uncertainty exists, the agreement will be enforced, even though there is no dispute as to where the line is located.[5]

Moreover, doubt or uncertainty as to the location of the true line does not mean that its location is absolutely unascertainable. It matters not whether the true line is easy or difficult to ascertain. The oral agreement will be enforced if there is doubt or uncertainty, or if neither of the parties knows where the line is located; and this is true even though it is afterwards ascertained that the true line is located differently from the agreed line. A boundary agreement once made cannot be invalidated merely because it was based upon or induced by a mutual mistake of the parties in respect to the location of the true line.[6]

The agreement will not be enforced in the absence of estoppel, if the location of the true line is capable of ascertainment, and the parties in an effort to reproduce the true line, and not as a compromise, have agreed upon a line under the mistaken belief that it is the true line.[7]

74033

Oral boundary agreements are quite frequently made where the field notes were prepared from an office survey. The location of the lines of an office survey is generally uncertain, and where the lines have not been definitely established on the ground the adjoining owners may enter into a binding oral agreement fixing the lines. [8]

The parol agreement to be effective must be followed by the erection of monuments on the agreed line or by otherwise marking the line, or by actual possession and use up to the line, or by improvements or development of the property by reference to the line. [9]

Only owners of adjoining lands can enter into oral agreements establishing the boundary between their lands. [10] A tenant has no authority by reason of his tenancy to bind his landlord by agreement as to the boundaries of his land. [11] Oil and gas lessees may enter into an oral boundary agreement fixing the common line between their leases, without the joinder of the royalty owners, but when they do the agreement is not binding on the royalty owners. In such case there may be two common lines between the tracts-one applicable to the oil and gas leasehold estates and the other applicable to the royalty estates. [12]

An oral agreement when made is binding on the adjoining owners and their successors in title if the adjoining owners have taken possession up to the agreed line, but if they have not, the subsequent owners would have no knowledge of the oral agreement and could not be bound by it. [13]

In litigation involving a question of whether an oral agreement has been made, the proof must clearly establish the making of the agreement, but a boundary agreement, like any other agreement, may be implied or inferred from the conduct of the parties. Where the location of the common line is uncertain, or in dispute, evidence of assent by the adjoining owners to the running of a dividing line is sufficient to prove an oral boundary agreement. [14] Likewise, the joint employment of a surveyor to run a line and approval of his work, [15] or the joint construction of a fence on a line marked by him [16] is sufficient.

The agreements may be established by circumstantial evidence. Acquiescence in the use of a common line over a long period of years is a circumstance from which it may be inferred in the absence of countervailing evidence that the parties agreed to the line, but such acquiescence is not conclusive. [17]

2, Recognition and Acquiescence

There are two legal consequences flowing from acquiescing in and recognizing a line for a long period of time. First--Long use of a line is some evidence of the location of the true line where time has obliterated all of the monuments called for in the field notes. [18] In Blaffer v. State [19] it was said:

> "The public policy of this state, as announced in repeated decisions, demands the security of land titles emanating from the state, and, where ancient boundary lines have been recognized for long periods of years, they will not be lightly disturbed, to the detriment of those who have dealt upon the faith of them. *** Property rights, extending into millions of dollars, are based upon that location and its recognition. Public policy and every consideration of right, justice, and fair dealing demand that this location should not now be destroyed except upon the most cogent and compelling evidence."

Use of a line and acquiescence in that use by adjoining owners is the best evidence of where the line is truly located when the original monuments have disappeared. Even where there is uncertainty as to location of the monuments, or as to their identification, great weight will be given to the line used and occupied for a long period of time. [20] The rule applies equally to the state if it is impossible to locate the original monuments or the places where they once stood - not because the state is bound by an acquies-

74034

ced line in the same way that individuals are, but because the acquiesced line, under such circumstances, is the best evidence of the location of the true line.[21]

Second--Long use of a line is some evidence from which it may be inferred that the adjoining owners have made a boundary agreement, either expressly or impliedly.[22] Where adjoining owners occupy their respective tracts up to a certain line which they mutually recognize and acquiesce in for a sufficiently long period of time, they are precluded from claiming that the boundary thus recognized and acquiesced in is not the true one.[23] In Texas it has been held that acquiescence in a line for 10 years is a sufficient period of time to create a conclusive presumption that the line acquiesced in is the true boundary.[24]

Like all limitation statutes the rule of acquiescence and recognition is one of repose for the purpose of quieting titles and discouraging confusing and vexatious litigation. If the parties have not acquiesced in the line for the limitation period, and have made no boundary agreement, either may revert to the true line once it is found, in the absence of estoppel.[25]

Like all rules, the rule of acquiescence is not without and exception. Acquiescence in a line other than the true line may be explained, and if the evidence shows that the use of the line resulted not from an agreement, but from a mistaken belief of the parties that they had reproduced the true line, the acquiesced line will give way to the true line in the absence of estoppel or limitation.[26]

Like an oral boundary agreement, acquiescence in a line is binding on the parties and those claiming under them if the land has been possessed up to the line.[27] The failure to enforce an acquiesced line would result in injury to subsequent purchasers who bought relying upon acts open to their observation which indicated that the true boundary was the line recognized by those from whom they had purchased and by the contiguous owners.[28]

3. Estoppel

Boundaries may be established by estoppel to prevent an injustice to an adjoining owner or subsequent purchasers. The doctrine of estoppel is based upon the equitable principle that one who by his speech or conduct has induced another to act in a particular manner ought not to be permitted to adopt an inconsistent position, attitude, or course of conduct and thereby cause loss or injury to such other.[29] Estoppel may be by deed, by word, or by conduct of the parties sought to be estopped. The elements of estoppel are acts or declarations by one party, and reliance by the other party on such acts or declarations, by reason of which he is led to change his position for the worse, or is injured while the other party is benefited.[30]

A person will be estopped from disputing the correctness of a line which he has pointed out as the true line to a prospective purchaser if the purchaser relies upon the representation, and the rule applies whether the sale is made by him, or by one owning the adjoining land. Thus, where an adjoining owner told a prospective purchaser that a fence was on the line and that he would join him in repairing the fence if he bought the contiguous tract, he is estopped to claim that the fence is not on the true line.[31]

An owner may also be estopped to dispute the correctness of a line by his silence and inaction. If he knows the location of the true line and without any protest allows the adjoining owner to construct valuable improvements beyond the true line, he will be estopped to claim the true line as the boundary.[32] However, if he does not know the location of the true line he will not be estopped. Knowledge on the part of one and lack of knowledge on the part of the other are essential elements of estoppel, and there can be no estoppel without the concurrence of both elements.[33]

A lessee of an oil and gas lease will be estopped to contend for the true line if he knows where it is located, but he uses, and permits the adjoining lease owner to use another line for the purpose of locating their oil wells.[34] When one knows where the true line is located he should not remain silent while an adjoining owner is constructing improvements based upon another line, if the improvements will be situated upon the lands of the person having knowledge of the location of the true line.

74035

When one established and marks a boundary to his land without the exercise of proper care in determining the location of the true line, his negligence will estop him from contending for the true line where an adjoining owner has constructed improvements based upon the marked line which otherwise will be situated on the land of the other if the true line is accepted. [35]

1 In Weatherly v. Jackson (Tex. Com.) 71 SW 2d 259, 264, 265, the court said: "Similarly, long recognition by owners of adjacent surveys of certain lines as fixing the boundaries of the surveys cannot in any way affect public domain or appropriate any portion of it."
2 Levy v. Maddox, 81 Tex. 210, 16 SW 877; McArthur v. Henry, 35 Tex. 801; Gulf Oil corp. v. Marathon Oil Co., 137 Tex. 59, 152 SW 2d 711
3 Lacy v. Bartlett, 78 SW 2d 219 (writ dis.); Harn v. Smith, 79 Tex 310, 15 SW 240
4 Denton v. English, 157 SW 264
5 Gulf Oil Corp. v. Marathon, 137 Tex. 59, 152 SW 2d 711; Sammann v. Deitrich, 39 SW 2d 647
6 Gulf Oil Corp. v. Marathon Oil Co., 137 Tex. 59, 152 SW 2d 711; Shelor v. Humble Oil & Ref. Co., 103 SW 2d 207 (writ dis.)
7 Cummings v. Williams, 269 SW 845 (writ dis.); Murphy v. Benson, 245 SW 249 (writ ref.)
8 Gulf Oil Corp. v. Marathon Oil Co., supra; Sammann v. Deitrich, supra
9 Gulf Oil Corp. v. Marathon Oil Co., 137 Tex. 59, 152 SW 2d 711
10 Stier v. Latreyte, 50 SW 589
11 Hunter v. Malone, 108 SW 709 (writ dis.)
12 Gulf Oil Corp. v. Marathon Oil Co., supra
13 Gulf Prod. Co. v. Baton, 108 SW 2d 960 (writ ref.)
14 George v. Thomas, 16 Tex. 74
15 Lecomte v. Toudouze, 82 Tex. 208, 17 SW 1047
16 Eddie v. Tinnin, 26 SW 732; Atlantic Prod. Co. v. Hughey, 107 SW 2d 613, 109 SW 2d 1041; Tide Water Oil Co. v. Hale, 92 SW 2d 1102 (writ dis.); Alexander v. Schleicher Co. (Tex. Com.) 3 SW 2d 75
17 Gulf Oil Corp. v. Marathon Oil Co., 137 Tex. 59, 152 SW 2d 711; Davidson v. Pickard, 37 SW 374; Gulf Oil Corp. v. Amazon Pet. Corp. 152 SW 2d 902 (writ ref.)
18 Dunn v. Land, 193 SW 698
19 31 SW 2d 172, 191, (writ ref.)
20 Lagow v. Glover, 77 Tex. 448, 14 SW 141
21 Blaffer v. State, 31 SW 2d 172, 191 (writ ref.)
22 Great Plains Oil & Gas Co. v. Foundation Oil Co., 137 Tex. 324, 153 SW 2d 452; Gulf Oil Corp. v. Marathon Oil Co., 137 Tex. 59, 152 SW 2d 711
23 Gulf Oil Corp. v. Marathon Oil Co., supra; Anderson v. Atlantic Oil Prod. Co., 83 SW 2d 418 (writ ref.); Walters Pet. Corp. v. Maxwell, 150 SW 2d 189
24 Anderson v. Atlantic Oil Prod. Co., 83 SW 2d 418 (writ ref.)
25 Hunter v. Malone, 108 SW 709 (writ dis.)
26 Great Plains Oil & Gas Co. v. Foundation Oil Co., 137 Tex. 324, 153 SW 2d 452; Gulf Oil Corp. v. Marathon Oil Co., 137 Tex. 59, 152 SW 2d 711
27 Humble Oil & Ref. Co. v. Davis, 287 SW 104
28 Hefner v. Downing, 57 Tex. 576
29 Brown v. Federal Land Bank, 180 SW 2d 647 (writ ref.)
30 Decker v. Rucker, 202 SW 1001 (writ dis.); Caswell v. Faulk, 97 SW 2d 341 (writ ref.); Glasscock v. Bradley, 152 SW 2d 439 (writ ref.)
31 Hankins v. Dilley, 206 SW 549; Zander v. Schultze, 146 SW 222
32 Garza v. Brown, 11 SW 920
33 Decker v. Rucker, 202 SW 1001 (writ dis.)
34 Atlantic Prod. Co. v. Hughey, 107 SW 2d 613, 109 SW 2d 1041
35 Hefner v. Downing, 57 Tex. 576

74036

52

CURRENT MISCELLANEOUS INFORMATION

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74037