

# BACKSIGHTS & FORESIGHTS



Volume #25 Number 1

February 2015

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## 2015 Scholarship Recipients

Southeast Technical Institute students rook home all of the awards this year.  
(left to right) Caleb Cohrs, Nathan Dawson, Brandon Redenius & Hunter Smith



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## PUBLICATION DEADLINES

Material Cutoff	Publication
January 15	February 1
April 15	May 1
July 15	August 1
October 15	November 1

### Backsights and Foresights

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Articles and columns appearing in the publication do not necessarily reflect the viewpoint of SDSPLS but are published as a service to its members, the general public and for the betterment of the surveying profession. No responsibility is assumed for errors, misquotes or deletions.

## FROM THE PRESIDENT:

Another successful convention has come and gone. It is hard to believe that this was our 32<sup>nd</sup> annual conference. Harder yet to believe that what started with a handful of concerned and interested professionals has grown into an active organization of over 300 members with average convention attendance of nearly 200. It is exciting to think how far we have come in such a short time and where we will be in the next few years.

One of the items of discussion at the Annual Meeting was the success of our Scholarship/Education Fund which stands at over \$130,000 (not including what we raised this year). Thanks to your contributions we have been able to make a real difference for so many. Who would have thought 30 years ago that we would be funding not only scholarships, but helping whole classes of students gain hands-on field experience, bring new technology (data collectors) to students, assist with exam preparation, and reach hundreds of high school students through Trig Star.

With such a strong foundation available to fund our scholarships, tuition reimbursement, and grants, the Board of Directors has been considering how we might turn at least a portion of our efforts and resources to other areas. The possibilities are varied – funding for future lobbying efforts, public information projects such as the recent Texas Public Service Announcements,

helping to fund a Governor's statue for Carl Gunderson in Pierre, creating our own repository for Corner Record Forms, establishing additional CORS Stations ... and the list goes on. The only certainty at this point is that if we don't decide to commit to funding for other possibilities most of these thoughts and the ideas yet to come will never be realized. There was the beginning of good discussions last month and Diane found volunteers to serve on an Ad-Hoc committee to investigate and make recommendations to the membership at the next Annual Meeting. Collectively we have the imagination, drive and resources to make improvements and contributions (both great and small) to our Society and our profession. I hope that we can look forward to the possibilities of what we can accomplish together in the next 30 years.

It is also hard to believe that we are already in the middle of February. How time flies when you have a relatively open winter weather-wise (particularly for those of us out west) and the contractors figure out that it might stay that way for a few weeks! The economy keeps chugging along, and plans for the next construction season keep our minds pouring over various scenarios of when, where and how much manpower we will need to meet the coming workload. It's good to be busy and here's hoping that this newsletter finds you happy, healthy, and prosperous in the coming year.

2015 SDSPLS President - M. Ben Lamke

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## SDSPLS – Board of Directors Meeting

Thursday, January 8, 2015

Glass Meeting Room – Cedar Shores – Chamberlain, SD

(This report subject to Board approval)

Participants: President Diane Aas, Past-President Eric Meyer, President Elect Ben Lamke, Secretary Eric Howard, Treasurer Steve Thingelstad, NSPS Governor Tom Berkland, Big Sioux Chapter President Wade Lunders, Missouri River Chapter President Fred Leetch, West River Chapter President Chad Dodds, Legislative Committee Chair Gary Andersh, Education Committee Chair Kristi Goehring, Membership Committee Chair Ron Fisk, Standards Committee Chair Dean Scott, Public Information Committee Chair Mark Lippincott, Executive Director Janelle Finck, NDSPLS Vice President, Aaron Hummert, Don Simons, and Louis O'Donnell.

1. Call to order at 9:00 (central) by President Aas.
2. Acceptance of Agenda: Add Don Simons Trophy as Item C under New Business. Move Item 8a) discussion after Treasurers Report. ++Motion by Fisk to approve Agenda as amended, 2<sup>nd</sup> by Berkland. Motion approved.
3. Secretary's Report – Eric Howard: Approval of minutes for the Friday, November 14, 2014 BOD Conference Call. ++Motion by Berkland to approve minutes, 2<sup>nd</sup> by Thingelstad. Motion approved.
4. Treasurer's Report Steve Thingelstad: Written report submitted for review. ++Motion by Berkland to approve the report, 2<sup>nd</sup> by Lamke. Motion approved.
8. Old Business
  - a) 2015 Convention Recap –Finck gives introductions of members at the meeting.  
Discussion: -The ice fishing package for the raffle was donated by the Big Sioux and Missouri River Chapters.  
-Registration is up to 200+, the OPUS course filled, and the LSIT course also has good numbers.  
-Discussion on the operation Budget. We are moving to having the newsletter on the website. Discussion on how to notify the membership once placed.  
- There is a healthy scholarship fund.
5. President's Report – Diane Aas: Written report. Diane stresses the importance of volunteering, and to start talking to younger people about our profession.
6. Committee Reports:
  - a) Education Committee – Kristi Goehring: Written report.
  - b) Legislative Committee Gary Andersh: Written report.
  - c) DPC Report -- Don Jacobson: No report.
  - d) Standards Committee - Dean Scott: Written report.
  - e) Public Information Committee - Mark Lippincott: No report.
  - f) Membership Committee Ron Fisk: Written report of membership summary. Ron states actual numbers attenuates in the middle of the year.
  - g) NSPS - Tom Berkland: Written report. Berkland also reports, there will be a spring meeting in the Washington D.C. area and they will hopefully have more access to Senators and Representatives. Berkland

invites anyone to Lobby Day and states we have had success with lobbying.

Surveyors have been placed under laborers with the Davis Bacon Act.

Finck asks about the smoothness of operations since the merging with NSPS. Berkland states it's in transition, the representation of states that have not joined, currently 4 states, may keep the area director for representation. Under the new system, there are no longer area directors.

NSPS is financially doing better and is looking into adding a Certified Geodetic Surveyor program. The federal government is behind this.

h) Trig Star –Dan Britton: Written report.

### 7. Chapter Reports

- a) West River Chapter – Chad Dodds: Written report.
- b) Big Sioux Chapter – Wade Lunders – Written report. Lunders also reports they are up to 45 members and donated the auger for the raffle.
- c) Missouri River Chapter -- Fred Leetch. Written report. Finck submits email report from Robert Thielen regarding the Pierre governor's statues.

### 8. Old Business

b) Recommended Guidelines – Dean Scott: Scott reports he has done as much as he could to this point. The document is ever changing and will never be complete. These recommendations are wide open for suggestions and discussion. He would like the membership's approval to as the second edition and also approval to continue.

Discussion: Aas states this should be circulated to membership prior to bringing to the annual meeting.

-Scott would like next year to add a person with more energy in the continuation of the recommendations. Lamke asks that Scott not to be discouraged. "Your efforts have brought this forward leaps and bounds."

- Fisk suggests circulating this as a draft and submitting to the general membership.

-Lippincott suggests submitting a clean copy as well as the strike out draft and inviting comments with final comments due by July 1, 2015. Meyer supports.

++Motion by Berkland to close comments on the 2<sup>nd</sup> Edition on July 1, 2015 in order to prepare the draft for vote at the 2016 Annual Convention., 2<sup>nd</sup> by Meyer. Motion approved. Hummert makes note that NDSPLS is in the same boat in regards to "Recommended Guidelines."

### c) 2014 Election of Officers

- |                    |                   |
|--------------------|-------------------|
| 1) President-Elect | Louis O'Donnell   |
| 2) Treasurer       | Steve Thingelstad |
| 3) NSPS Governor   | Tom Berkland      |

### 9. New Business

a) 2015 Proposed Operating Budget: Discussion:

- Budget line item for contract expensed to add "contract laborer" to assist Finck if needed.

++Motion by Berkland to change the general office expense to \$2,000 and to add contract laborer as needed for assistance. 2<sup>nd</sup> by Dodds. Motion approved.



+ Motion by Berkland to increase Executive Director Compensation to \$17,000. 2<sup>nd</sup> Leetch. Motion approved.

++Motion by Thinglestad to approve operating budget as amended. 2<sup>nd</sup> by Dodds. Motion approved.

- b) Fundraising Allocations - Creation of a Development Fund. Discussion: This fund could be used for uses such as the creation of networks, special project fund, state depository etc. Funds from the auction could be used to support. Scott would like a breakdown of the percentage of and how funds are allocated.

-At this time the board is looking at setting up another fund and considering using a portion of the auction funds for special projects. Will discuss at the annual meeting.

- c) Don Simons Trophy – Don Simons:

Simons would like this to be a perpetual trophy with the auction winner keeping it for one year. At the return on the item the following year the past winner will be presented with a picture of the trophy to keep. Their survey caps could be placed on the base as recognition of possessing the trophy.

++Motion by Meyer that 1) President Lamke and Executive Director Finck prepare a resolution expressing our gratitude to Donald Simons for his many years of effort and support on behalf of the SDSPLS Education Committee, the SDSPLS Scholarship Fund and Auction. His vision regarding the “traveling trophy” and most recently, his generous donation of the “Warren-Knight Mountain Transit Trophy” and 2) Executive Director Finck contract with a profession photographer to produce a studio quality photograph of the Warren-Knight Mountain Transit Trophy with future reproduction rights to be used as gifts from SDSPLS to commemorate trophy winners at the completion of their year of honor. 2<sup>nd</sup> by Berkland. Motion approved.

10. Next Meeting – To be announced.

11. Meeting adjourned at 10:45am. (central)

Respectfully Submitted

Eric Howard  
SDSPLS Secretary

## **DATES TO REMEMBER**

### **2016 SDSPLS Annual Convention**

January 7, 8 & 9, 2016

Cedar Shore Resort – Chamberlain, SD

For reservations call: 1-888-697-6363

This report is subject to BOD approval.

1. Call to order at 4:21 (CST) by President Aas.
2. Acceptance of Agenda: ++Motion by Bill Philips to approve the agenda, 2<sup>nd</sup> by Kent Thoreson. Motion approved.
3. Secretary’s Report Eric Howard. Approval of minutes for the 2014 meetings submitted- pages 3-8. ++Motion by Dean Scott to approve minutes, 2<sup>nd</sup> by Mark Lippincott. Motion approved.
4. Treasurer’s Report – Steve Thingelstad. Written report submitted for review page 9 of the Annual Report. ++Motion by Dan Bjerke to approve the report, 2<sup>nd</sup> by Larry Holton. Motion approved.
5. President’s Report – Diane: As submitted on pages 10 in the Annual Report.
6. Committee Reports:
  - a) Education Committee – Kristi Gochring: Written report located on page 11 of the Annual Report.
  - b) Legislative Committee – Gary Andersh: Written report located on page 12 of the Annual Report
  - c) DPC Report – Don Jacobson: Legislation starts next week.
  - d) Standards Committee – Dean Scott: The Recommended Guideline booklet will be put online with the cleaned up version as well as the strike through version. Scott is accepting input until July 1, 2015 and state this will be called the 2<sup>nd</sup> Edition. Scott still welcomes comments. The guidelines are to become more of goal oriented instead of directions.  
- Kim McLaury suggests discussing with the DOT to obtain a password in order to submit comments online.
  - e) Public Information Committee – Mark Lippincott: No report.
  - f) Membership Committee –Ron Fisk: Membership Summary located on page 13 of the Annual Report.
  - g) NSPS - Tom Berkland: Written report located on page 14 of the Annual Report.
  - h) West River Chapter – Chad Dodds: There has been one meeting this year, and is arranging a trip to the Black Hills initial point.
  - i) Big Sioux Chapter – Wade Lunders: Written report located on page 15 of the Annual Report.
  - j) Missouri River Chapter – Fred Leetch. Written report located on page 16 of the Annual Report.
  - k) Trig Star Dan Britton. Written report located on page 17 of the Annual Report.
7. Old Business – None.
8. New Business
  - a) 2015 Proposed Operating Budget – Submitted for review on pages 18-19 of the Annual Report. ++Motion by Larry Holton to approve the 2015 Operating Budget, 2<sup>nd</sup> by Don Simons. Motion approved.

*Continued on Page 17*



# “The Initial Point to the 5th Principal Meridian”

Dr. Richard L. Elgin, PS, PE  
Archer Elgin Surveying and Engineering, Inc.  
Rolla, MO

November 10, 2015 is an important date to nearly every American who owns land in the states of Arkansas, Missouri, Iowa, North Dakota and in parts of Minnesota and South Dakota. Every surveyor in those states should stop for a moment, and with head bowed, remember every GLO Deputy Surveyor who surveyed on the U.S. Public Land Survey System (USPLSS). Why November 10, 2015? Because that will be 200 years to the day, the Bicentennial, of the establishment of the Initial Point for the 5<sup>th</sup> Principal Meridian. That initial point is “zero, zero,” the point to which practically all titles to the lands listed in the states above are referenced. More land in the United States is referenced to this point, in a swamp in eastern Arkansas, than any other Initial Point. From that point the township and range numbering systems begins for those states. It ends at the northwest corner of North Dakota, in Township 164 North, Range 103 West. See Figure 1.



FIGURE 1  
Lands Referenced to the Initial Point of the 5th Principal Meridian  
Taken from “Initial Points of the Rectangular Survey System”  
by Albert White (1996)

## 1785-1815

The genesis of our USPLSS can be traced back to the Land Ordinance of May 20, 1785. The system's first experiment was in the Seven Ranges of southeastern Ohio, then spread westerly being modified and improved into the Northwest Territories and beyond. Under the system, each large segment of land requires a North-South Principal Meridian and an East-West Base Line, the intersection of these lines being the Initial Point. These Initial Points are the “zero, zero” for the USPLSS, from which township and range numbering begins. Yes, there are exceptions, but this is the general plan. As the USPLSS expanded westward, the location of meridians were decided, as were their Initial Points. Some were numbered, others were named.

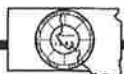
With the 1803 Louisiana Purchase America acquired some 830,000 square miles of public land, doubling the size of our country. (The boundaries ill-defined and not surveyed of course. Sound familiar?) With the War of 1812 (June, 1812 until February, 1815) war veterans were pressuring the government to provide the promised land grants in payment for their service. The government (which was broke, sound familiar?) looked to the public lands as a means of providing military bounties, but the lands had to be surveyed and platted and title to the Native Americans extinguished before it could be granted. The Act of May 6, 1812, 2 Stat. 728, addressed this problem and states:

*That the President of the United States be, and he is hereby authorized to cause to be surveyed a quantity of the public lands of the United States, fit for cultivation, not otherwise appropriated, and to which Indian title is extinguished, not to exceed six millions of acres, two millions to be surveyed in the territory of Michigan, two millions in the Illinois territory, north of the Illinois River, and two millions in the territory of Louisiana, between the River St. Francis and the River Arkansas; the said lands to be divided into townships, and subdivided into sections and quarter sections....*

The wording in this act calling for the St. Francis and Arkansas Rivers no doubt influenced the locations of the Fifth Principal Meridian (5th P.M.) and the corresponding base line, the surveys for which commenced in late 1815.

### Establishing the Initial Point

On July 26, 1815, GLO Surveyor General Edward Tiffin wrote William Rector, the Principal Deputy Surveyor (in St. Louis), directing him to survey two million acres of land between the St. Francis and Arkansas Rivers:



...let a standard line [Principal Meridian] be accurately run from the confluence of the Arkansas with the Mississippi due north according to the true meridian so far, that a base line run due west from the mouth of the River St. Francis to the Mississippi will intersect it....

Thus the instructions were issued for the establishment of the location of the Initial Point for the 5th Principal Meridian. Little did Surveyor General Edward Tiffin know this arbitrary instruction of establishing one of the most important points of the nation's entire USPLSS would land in a swamp in eastern Arkansas.

On October 9, 1815, Principal Deputy Surveyor William Rector contracted with Prospect K. Robbins, as a deputy surveyor, to survey the 5th P.M. and with Joseph C. Brown, as a deputy surveyor, to survey the base line. Both Robbins and Brown were from the St. Louis area. In October, 1815 Robbins and Brown likely came by boat down the Mississippi River. Per their notes, on October 27, Brown commenced surveying the base line west from the mouth of the St. Francis River. On the same day, Robbins commenced surveying the 5th P.M. north from the mouth of the Arkansas River. Since the Initial Point was yet to be established at the intersection of these two lines, and since all townships were to be referenced to this point, both surveyors set temporary mile posts on their lines. These lines would later have to be resurveyed, south for the 5th P.M. and east for the base line, setting section and quarter corners, all referenced to the Initial Point, back to the rivers' mouths. Not knowing where the Initial Point was to be located, but assuming (correctly as it turned out) that the base line distance to this intersection would be less than the principal meridian distance, Brown reached the yet to be located point on November 2 and continued some 13 miles to the west. Robbins intersected Brown's base line survey on November 10 at a distance of 57 miles 60.50 chains north from the mouth of the Arkansas River and 26 miles 30 chains west from the mouth of the St. Francis River. His notes state that he set the following:

...a Post corner of Sects 1, 6, 31 & 36 & Townships 1 & 1 N of Ranges 1 E & 1 W from which a Gum 18 in dia bears N61E dist 44 lks & a do 18 in dia brs S70W dist 10 L.

This location, the Initial Point for the 5th P.M. was in the middle of a cypress swamp. What a historic event and place! All land parcels in Arkansas, Missouri, Iowa, North Dakota, and parts of South Dakota and Minnesota are referenced by township and range to this point. It references more land area than any other Initial Point in the USPLSS.

According to the notes, a few days later Brown returned to the now-monumented Initial Point and probably met

with Robbins. On November 16 (some accounts incorrectly give December 6), Robbins continued surveying the 5th P.M. north setting posts and calling for two bearing trees at the standard section and standard quarter section corners. He continued the meridian north into what is today Missouri, and on until he reached the Missouri River on December 28 (west of St. Louis and just downstream from the present day town of Washington, Missouri). Robbins had surveyed 317 miles 35 chains from the mouth of the Arkansas River in 63 days. Counting from the Initial Point, he had surveyed 259 miles at the rate of about 6.2 miles per day. (The 5<sup>th</sup> P.M. has its errors, but let's leave that discussion to another article.)

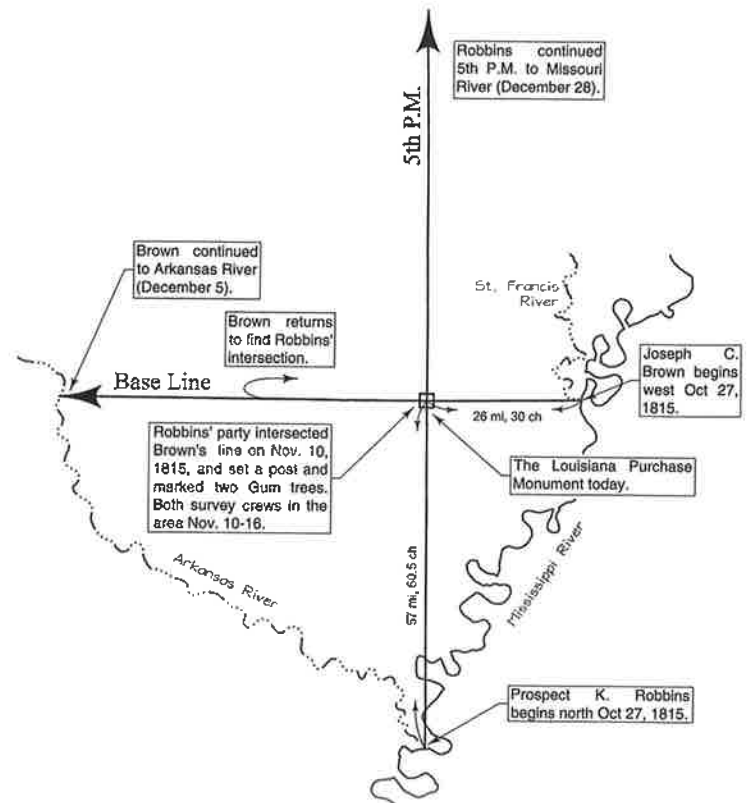


FIGURE 2  
Establishment of the Initial Point  
of the 5th Principal Meridian  
November 10, 1815

On November 25 Brown surveyed from the Initial Point west on the base line setting posts and calling for two bearing trees at the standard section and standard quarter section corners until he reached the Arkansas River on December 5 (near present day Little Rock). Other than setting temporary mile posts from the St. Francis to the Initial Point, this is the only portion of the base line surveyed by Brown. On November 26, Charles Lockhart, who had come down from St. Louis, surveyed the base line back east from the Initial Point reaching the

Continued on Page 8

## *Initial Point to the 5<sup>th</sup> PM - continued from page 7*

St. Francis on December 4. On December 2, another deputy surveyor, Thomas Cox, began his survey from the Initial Point south, back down the 5th P.M. to the mouth of Arkansas River, setting a monument every 40 chains. Thus began the first surveys of the USPLSS west of the Mississippi River. See Figure 2.

### Since 1815

The Initial Point lay somewhat dormant and forgotten until 1921 when two surveyors, Tom Jacks and Eldridge Douglas from nearby Helena, Arkansas were hired to locate the point (which is the corner point to three counties). They claim to have found the original bearing trees (two Tupelo Gum trees) standing in a swamp and marked by Robbins some 106 years earlier. This created interest in the historical point that had been unoccupied for over 100 years, and the L'Aguille Chapter of the Daughters of the American Revolution placed a granite monument at what they termed "The Louisiana Purchase Monument." See Figure 3. It was dedicated October 27, 1926. On the face of the monument is inscribed:

**THIS STONE MARKS THE BASE ESTABLISHED NOV. 10, 1815 FROM WHICH THE LANDS OF THE LOUISIANA PURCHASE WERE SURVEYED BY UNITED STATES ENGINEERS, THE FIRST SURVEY FROM THIS POINT WAS MADE TO SATISFY THE CLAIMS OF SOLDIERS OF THE WAR OF 1812 WITH LAND BOUNTIES. ERECTED BY THE DAUGHTERS OF THE AMERICAN REVOLUTION SPONSORED BY THE L'ANGUILLE CHAPTER**

It is somewhat disappointing that the term "engineers" was used rather than "surveyors;" however, surveyors owe this organization a debt of gratitude for preserving such an important survey point.

In October, 1945 the General Land Office had surveyors Oscar Walsh and Hugh Crawford determine, by traversing from established control, the geographic location of the monument. They determined the coordinates to be: Latitude 34° 38' 44.728" N and Longitude 91° 03' 06.847" W. The modern GPS-derived position (NGS, 1999) for the Initial Point is Latitude 34° 38' 44.455" N and Longitude 91° 03' 07.337" W.

Neglected for many years, in the early 1970's the monument and the area around it was again remembered and efforts were made to preserve the site as a park. According to a 1980 account of the June 25, 1972 rededication of the monument by the dean of Arkansas boundary surveying, the late Larry Young (who was there), speakers at the ceremony included Governor

Dale Bumpers; Clark Gumm, Chief of Cadastral Surveys, BLM; representatives of France, Spain and Great Britain, being Benoit d'Abbeville, Juan Cabrero and Archie Rendall, respectively. Dr. Lily Peter, Arkansas Poet Laureate recited a poem and singer-songwriter Jimmy Driftwood sang "*Liquidambar Styraciflus, Sweet Gum Tree.*" (At the November 10, 2015 bicentennial ceremony, the organizers will have to "pull out all the stops" to beat that lineup! Perhaps someone will sing Driftwood's "*Liquidambar Styraciflus,*" I'd like to hear it.)

Today the location is in the Louisiana Purchase State Park and has a boardwalk through the swamp so visitors can view this historic location. The Initial Point monument was designated a National Historic Landmark in 1993.

### The Surveyors

#### **The Base Line, Deputy Surveyor Joseph C. Brown (1784 - 1849)**

Joseph Cromwell Brown enjoyed a full and notable career as a surveyor. Born January 29, 1784 in Prince Edward County, Virginia, he arrived in St. Louis sometime during the War of 1812. His first notable survey was as deputy surveyor, surveying the 5th P.M.'s base line in late 1815. In late 1816 Brown surveyed the west line of the "Treaty of Fr. Clark," in the 1820's he was in St. Louis surveying tracts and, in 1823, he surveyed the west and south lines of the new State of Missouri. In 1825-1826 he surveyed the Santa Fe Trail "preferred to all his competitors...best qualified in all respects." When the Missouri/Iowa boundary became disputed, in 1837 Brown was called upon to resurvey the line. In 1849 the U.S. Supreme Court rejected Brown's line (and others) and decreed "Sullivan's Line" of 1816 to be the state boundary. Brown then was appointed one of the surveyors to resurvey Sullivan's Line. On February 21, 1949 Joseph C. Brown died before the resurvey could begin. He is buried in Bellefontaine Cemetery in St. Louis.

#### **The Principal Meridian, Deputy Surveyor Prospect K. Robbins (1788 - 1847)**

Prospect K. Robbins was born in Pittsfield, Massachusetts in 1788 and migrated to Monroe, Lincoln County, Missouri in 1810. He would live in the Lincoln County and St. Charles area for the next two decades. An educated man, he assumed roles in government and commerce. During the War of 1812 he served as an officer under Captain Nathan Boone (Daniel Boone's son) and Captain James Callaway. During the War, the future Surveyor General for the Missouri Territory, William Rector was a Brigadier General, serving in Illinois. No doubt Robbins and Rector knew each other through their military service during the War. In late





1815 he surveyed the 5th Principal Meridian with brothers John and Alexander Baldrige and Hiram Scott. The four had served together in the St. Charles district militias during the war. As a Deputy Surveyor, Robbins surveyed portions of Standard Lines in Missouri and had contracts to subdivide townships. He taught school, served in various public roles, was a county surveyor and served as Brigadier General in the state militia. In about the mid-1830's he moved to Ste. Genevieve, Missouri. According to the burial records of the Memorial Cemetery in Ste. Genevieve, Prospect K. Robbins was buried in the cemetery in June, 1847. In an inventory of his estate, no surveying equipment is listed. Although members of the Missouri Association of County Surveyors have made a search of Memorial Cemetery, no headstone for Robbins has been located.

### November 15, 2015

Tuesday, November 10, 2015 will be 200 years to the day of the establishment of the Initial Point. Both the Arkansas Society of Professional Surveyors (ASPS) and the Missouri Society of Professional Surveyors (MSPS) are planning events to commemorate both the Initial Point and the 5<sup>th</sup> P.M. Watch their websites for announcements and information.

Dick Elgin is a surveyor, author and educator. He wrote the book *"The U.S. Public Land Survey System for Missouri."* With David Knowles, they wrote the "companion book" for Arkansas, and *"Legal Principles for Boundary Location for Arkansas."* Dick is a past president of MSPS and a past member of the Missouri Registration Board. If you would like to meet him, be at the 5<sup>th</sup> PM Initial Point on November 10, 2015. Dick says he'll buy anyone a beer who will sing Driftwood's *"Liquidambar Styraciflus"* at the I.P. that day.

*Reprinted with the permission of the author*



FIGURE 3  
Monument marking the Initial Point of the 5th Principal Meridian  
(Photo provided by the Arkansas Society of Professional Surveyors)

# Surveying with Admiral Byrd

Mary M. Root

*Until recently it frequently happened that the accurate geographic exploration of unknown lands necessitated more than a single view of the situation, as it were. The pioneer would see the new lands and in his wake came the more cumbersome equipment with the surveyor to make the permanent record. It is one thing to see new regions of the earth – it is another to bring back a map of them. You, Commander Byrd, can do both in a manner which has not heretofore been undertaken in the polar regions. From my standpoint as geographer, the airplane appeals to me as being just as essentially, just as truly an instrument for geographic research as the theodolite. – Letter from L.M. Gould to Richard E. Byrd, Oct. 4, 1929.*

In 1928, a group of scientists, surveyors, and other daring men led by Admiral Richard E. Byrd set forth to explore Antarctica. If all went well, the first-ever flight over the South Pole would be attempted. It was a journey of vast distances: 3,000 miles by ship from New York to their New Zealand reconnaissance point; 2,300 miles by ship through the Southern Ocean to the Bay of Whales; then many 16-mile round trips up and down the Ross Ice Shelf by dogsled, ferrying supplies to establish their base camp. From their camp "Little America," the South Pole was another 1,600 miles across the most forbidding landscape with the most extreme weather conditions on earth.

The expedition's leader, Richard Evelyn Byrd, was a meticulous strategist as well as a loyalty-inspiring leader. Byrd planned the privately-funded expedition for three years, exciting wealthy donors (Ford, Rockefeller), media contracts (New York Times, Paramount Pictures), and corporate contributors (everything from airplane parts to paper cups). In raising over one million dollars Byrd outfitted "the best equipped polar expedition to ever set out for one of the uttermost ends of the earth," opined a 1928 newspaper piece. The expedition had two ships, 3 airplanes, 69 men, 85 dogs and 140 tons of food, accompanied by generators, fuel, equipment and supplies numbering in the hundreds of tons.

Upon arriving at the site of Little America, they had one month of daylight to erect three steel radio towers and build their base compound. Then the Antarctic winter darkness would close in, with temperatures falling to 60 degrees below zero amid howling blizzards. In order to utilize the insulating properties of snow, Little America was buried beneath the surface, and its buildings were connected by a series of tunnels. Through the long polar night, forty-two men overwintered in cramped quarters, yet spirits were high as all performed tasks to prepare for the explorations ahead.

Mention must be made of the wireless communications. Byrd's expedition was unequalled in this regard, with a total of 24 transmitters and 31 receivers maintaining

contact between the base and expedition members on the ground and in the air, as well as with the outside world. The Associated Press and the New York Times issued regular updates concerning the expedition to a keen public. Expedition Geographer Larry Gould observed, "Had the radio served no other purpose than enabling us to keep accurate time it would have justified the extra trouble it necessitated to carry it along. The difficulty of keeping accurate time was probably the most prolific source of incorrectly charted positions by the earlier explorers."

## The Aerial Surveys

Byrd's flight to the South Pole was more than a bid for fame. "The mapping of the corridor between Little America and the South Pole was one of the major objectives of the expedition," he wrote in his chronicle. Indeed it was a major scientific achievement for its time, one that was carried out by Ashley C. McKinley, who left his fledgling aerial surveying company to join Byrd's expedition. McKinley employed a camera especially devised for aerial mapping purposes, the Fairchild K-3, which shot "a series of photographs every two minutes during the South Pole flight. Two types of aerial surveying were done. The first of these is the vertical, which is taken with the lens of the camera pointed down through the floor of the airplane. The oblique is obtained by pointing the camera at a known angle through an aperture in the side of the plane. The result was a mosaic of hundreds of overlapping images of the surface below." McKinley also developed and printed ground and aerial photographs in the Little America darkroom, assisted by Joseph T. Rucker and Willard Van der Weer from Paramount Pictures (there to document the expedition). On more than one occasion, pictures from the Little America darkroom aided the geological and surveying teams afield, who benefited from air-dropped aerial views of their surroundings. This type of support for a dog-sledding exploration many miles from base had never occurred before.

In April 1930 the Washington Post newspaper reported "Capt. McKinley brought back thousands of pictures, most of them taken from the air during the principal flights by the expedition for mapping purposes. [George A. "Mike"] Thorne brought the data from his surveys, which were made on the ground with the aid of dog teams. The two will return to New York and reduce surveys and camera films to a series of Antarctic maps which will tell the world's geographers more about the country of the South Pole region than they ever have known." Sheldon Bart of the Wilderness Foundation explains further the accuracy involved in the aerial photograph interpretation: "Byrd's friend and fellow naval officer, Commander Harold Saunders, who was a mathematical genius, was furnished with the flight log of the polar hop (containing altitude and airspeed computations), the navigation record, and concomitant weather observations at Little America. Using this data, he devised a series of scales which he plotted on celluloid templates. One scale



measured elevation, another measured distance, etc. Superimposing the templates on McKinley's photos, he was able to ascertain the relative size and positions of the surface features depicted. The result was the first detailed map of a section of Antarctica. The McKinley-Saunders map was published by the National Geographic Society in 1932."

### The Meteorological Surveys

Before the Byrd expedition there were no sustained scientific records made for Antarctic weather. William C. Haines and Henry T. Harrison, both on loan from the U.S. Weather Bureau, were required to maintain meteorological observations at Little America regardless of weather conditions. They built two small observatories, one a shelter which housed barometers, maximum and minimum thermometers, and continuous recording thermometers and hygrometers. In order to obtain wind velocity and direction, Haines and Harrison built the second observatory with an open skylight where a theodolite tracked daily weather balloon ascensions. Expedition member Paul Siple explained, "They attached little paper lanterns containing short pieces of lighted candle to their balloons and thus could keep track of them for nearly twenty minutes as they rose. But what a cold twenty minutes it was, standing at their instruments! Sometimes the vapor from their breath would frost the lens of the theodolite so that they would lose track and have to start over again."

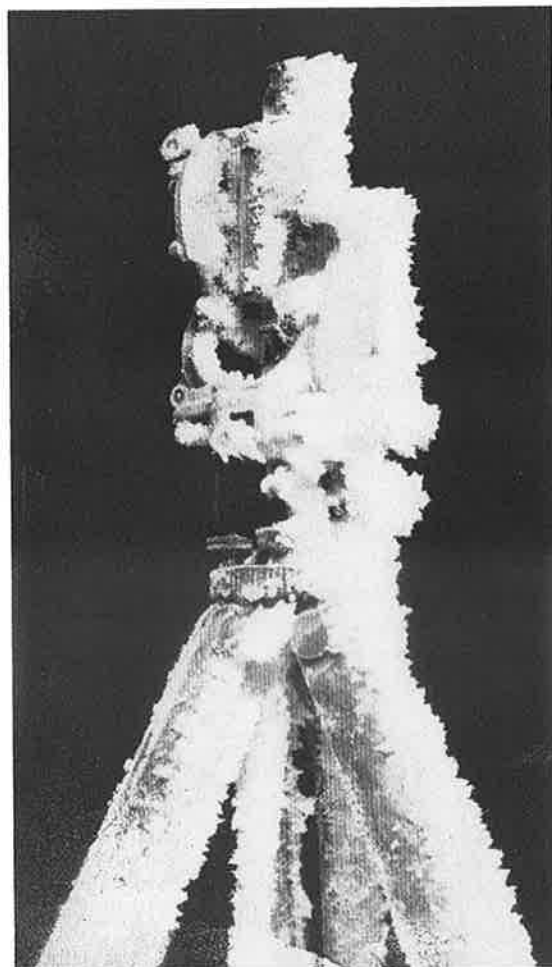
In more favorable conditions, Siple wrote, "these two fellows took to flying kites, and when they had as many as four large box-kites up on two or three miles of fine steel wire they would have to call out the whole camp to aid them in pulling them down. Sometimes the wire would break or the kites would all come down so that the meteorologists would have to walk miles to find them and their valuable instruments." The compiled weather data and weather predictions made by Haines and Harrison greatly ensured the safety of the flight explorations. In a 1930 radio message sent to the National Geographic Society in Washington, D.C., Admiral Byrd credited the two, saying "It is clear that the contribution of the meteorological section to the success of our flights of exploration has been great indeed. Haines and Harrison have also made valuable scientific records over a period of thirteen months. I am glad to be able to report to you the splendid work done by your representatives."

Down a long tunnel well-separated from the rest of the camp, physicist Frank T. "Taffy" Davies investigated magnetic phenomena using sensitive instruments provided by the Carnegie Institute. In order for the instruments to be accurate, they had to be in a "non-magnetic house," which amounted to monitoring Antarctic variations in an igloo. Expedition Geographer Larry Gould admired Davies' dedication to his research, declaring "He carried out his observations throughout the winter, under the most adverse conditions imaginable," with which Paul Siple agreed, writing, "Arnold Clark gave Frank a hand.

Many days when they were taking absolute readings with their delicate instruments they would come in so cold that the tears would fill their eyes as the warmth slowly came back to their icy hands." Yet, here again science triumphed over discomfort: Davies' polar vigil yielded data which would shape future research in terrestrial magnetism, aurora borealis and upper atmospheric studies.

### The Ground Surveys

Because a flight to the geographic South Pole had never been attempted, Byrd devised a two-phased safety plan. First a marked trail between Little America southerly towards the Queen Maud Mountains would be established and supplies cached every fifty miles by an advance dog sledding team. Caches 5 through 8 were made by the Geological Party on their way to conducting land surveys and primary geological research. If misfortune befell the polar flight, the Geological Party was ready to become a rescue team. Meanwhile, there was surveying to be done.



*Larry Gould's theodolite covered with hoarfrost*

*Continued on Page 18*



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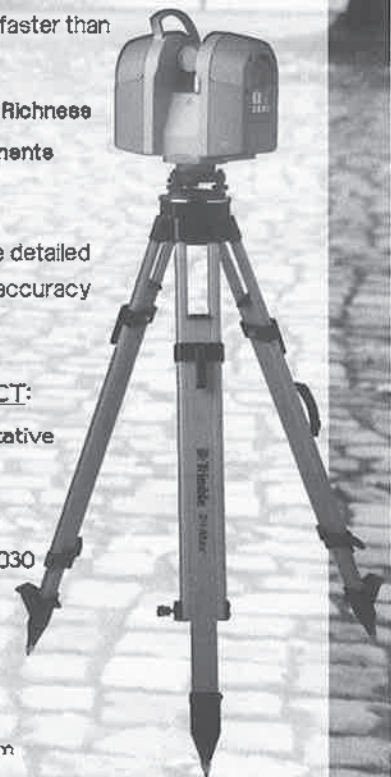
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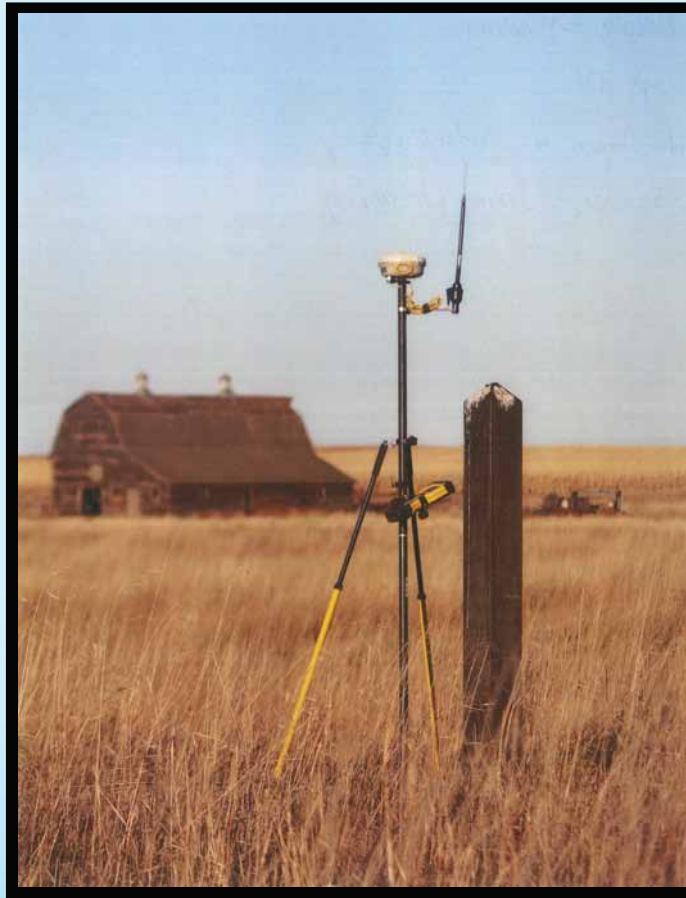
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## PHOTO CONTEST WINNERS



**FIRST PLACE:**  
Jeremy Lichtenberg & John Gale  
Northeast Corner of Charles Mix County



**SECOND PLACE:**  
Mark Lippincott  
Mount Rushmore through the lens



**THIRD PLACE:**  
Chad Dodds  
Bighorn Sheep (interested observers)  
Cleghorn Canyon west of Rapid City



## CONVENTION HIGHLIGHTS



**2015 SDSPLS Board of Directors**

**(front row - left to right) Fred Leetch - Missouri River Chapter President; Diane Aas - Past President; M. Ben Lamke - President; Louis O'Donnell - President Elect**

**(back row - left to right) Wade Lunders - Big Sioux Chapter President; Eric Howard - Secretary; Tom Berkland - NSPS Governor; Steve Thinglestad - Treasurer & Chad Dodds - West River Chapter President**

February 12, 2015

South Dakota Society of Professional Land Surveyors  
PO Box 8154  
Rapid City, SD 57709

SDSPLS,

I would like to express my sincere gratitude to you for making the SDSPLS scholarship possible. I was thrilled to learn of my selection for this honor and I am deeply appreciative of your support.

I will be majoring in Civil Engineering Technology and Land Surveying Science Technology with hopes of working in either one of these fields. The financial assistance you provided will be of great help to me in paying my educational expenses. It will allow me to concentrate more of my time for studying and not have to worry about the financial burden of attending school.

Thank you again for your generosity and support. I promise I will work very hard and strive to accomplish my goals in my future endeavors.

Sincerely,

Brandon Redenius



**Gordy Pratt entertained at the banquet and brought something for everyone with a mix of musical comedy and classical guitar.**



**We were fortunate to have guests from adjoining states this year: (left to right) Diane Aas - 2014 SDSPLS President; Connie Villari - MSPS President-Elect; Aaron Hummert - NDSPLS Vice-President; & Joel Romey - SLSI Director**





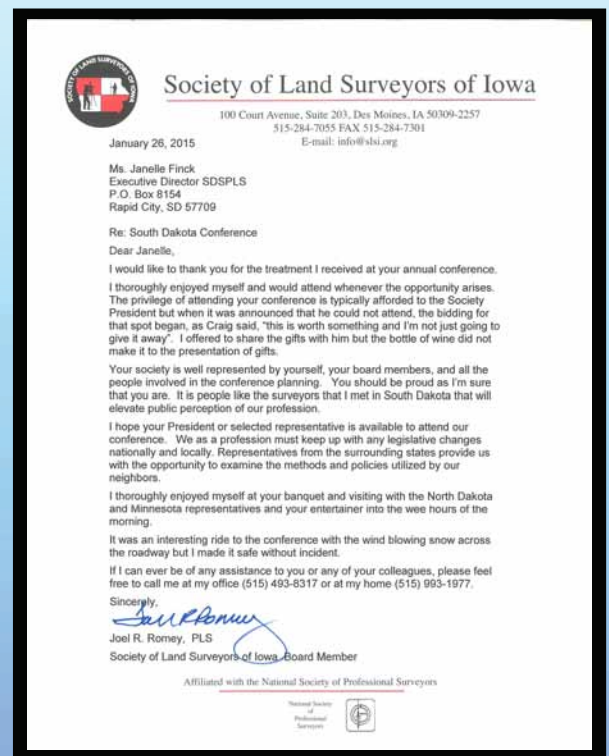
**Kent Thoreson is the lucky winner of this year's deluxe ice fishing raffle package. Thanks to the Missouri River and Big Sioux Chapters for the thoughtful and seasonally appropriate package!**



**Larry Holton (left) outbids the competition and takes home the new traveling "Warren-Knight Mountain Transit Trophy" created by Don Simons (right). Larry and Don are both long standing supporters and contributors to the SDSPLS Scholarship Fund.**



**2014 SDSPLS President Diane Aas passes the gavel to incoming 2015 President M. Ben Lamke**





## MORE PHOTO CONTEST ENTRIES



**Winter near Spearfish Canyon  
Brandon Huppler**



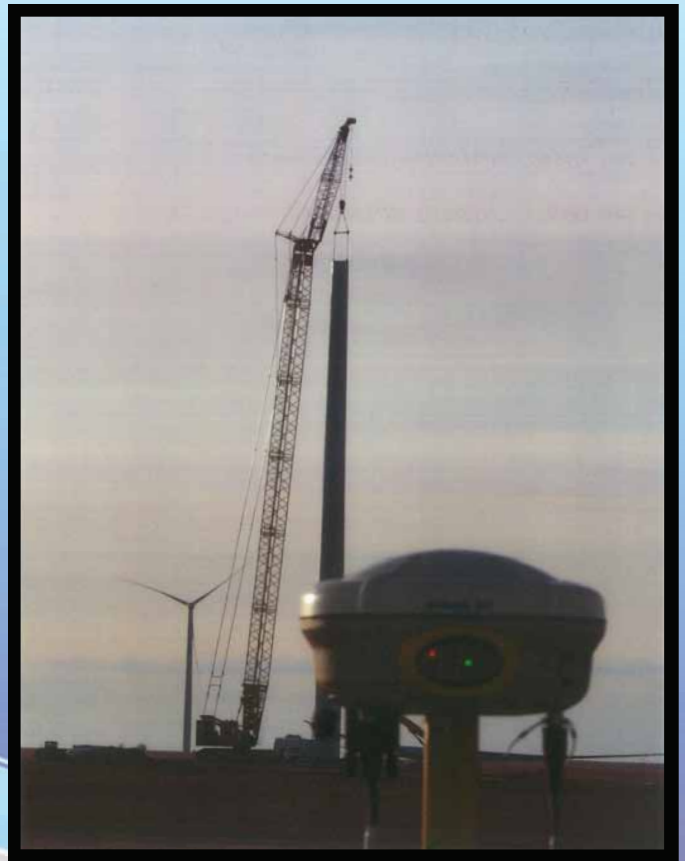
**The new back nine holes for Boulder Canyon Country Club  
Brad Limbo**



**Water point  
Dana Salonen**



**Turbine wind farm  
John Gale & Jeremy Lichtenberg**



The following information is taken from the meeting minutes of the **South Dakota Board of Technical Professions**

complete meeting minutes can be found at: <http://dlr.sd.gov/btp>

**July 11, 2014**

Approve the following examinee who passed the FS (Fundamentals of Surveying) Exam:

Lundee Michael Stadtler (Certificate # S-11727)

Approve the following examinee who passed the PS (Principles of Surveying) Exam:

Wesley William Tschetter (LS #11331)

Approve the following examinees to take the FS (Fundamentals of Surveying) Exam:

Jon Caspar Collins  
Jacob Sander Under Baggage

Approve the following examinees to take the PS (Principles of Surveying) Exam:

Andrew Christen Nielson  
Michael J. Noonan

Approve the following Land Surveyor (LS) Comity Applications:

Carey Paul Lege (LS #12156) TX  
John Michael Russell (LS #12157) TX

**November 21, 2014**

Approval of the following examinee to take the FS (Fundamentals of Surveying) Exam:

Patrick Ryan Stetson

Approval of the following Land Surveying (LS) Comity Applications:

Daryn Michael Bernard (LS # 12275) Bethalto, IL  
Robert Kohler (LS # 12276) Bismarck, ND  
Joshua Ray Lamb (LS # 12277) Tulsa, OK

Denial of the following Land Surveyor (LS) Comity Applications:

Jesus Audel Delamora – Henderson, NV  
Timothy Hagedorn - Dickinson, ND

b) Allocation of Fundraising Proceeds. Discussion: Diane Aas states that the board is looking into creating a “Special Project Fund” to be used to assist and advance the surveying profession. This funds could be used for items and programs such as door knockers, electronic record keeping, and survey networks.

- Don Jacobson asks if the monies can be used for thing other than survey promotion, such as and independent consultant to review the “Recommend Guidelines?” Aas states yes.

-Steve Peters asks if the new fund would be depleted by the Board of Directors, or by the full membership. Aas states a committee would be formed and the approval would be with the Board of Directors.

-Aas states the Scholarship Fund is self sustaining at this time.

-Dean Scott states we would continue with scholarships and grants.

-Tom Berkland states it is too early to make a final decision now. We are creating discussion at this time.

++Motion by Steve Peters for the Board of Directors to form an exploration committee with recommendations to the Board of Directors and the membership for a new fund. 2<sup>nd</sup> by Chuck Tiltrum. Discussion:

-Dan Eisenbraun states if we wait it will take another year. We could set an amount for scholarship and used all the proceeds after to the fund.

-Steve Peters states movement in new future fund is a good idea but the Board has not put it together and suggests a committee to do so.

-Don Jacobson, Call the Question. Vote, Call the Question approved.

-Vote on previous motion 36 yes, 15 no. Motion approved.

c) Election of Officers – The Board of Directors has nominated the following members for the listed offices:

1) President-Elect Louis O'Donnell

2) NSPS Governor Tom Berkland

++Motion by Don Jacobson to approve nomination of the President Elect. 2<sup>nd</sup> by Tom Berkland. Motion approved. ++Motion by Chuck Tiltrum to approve nomination of NSPS Governor. 2<sup>nd</sup> by Kristi Goehring

9. Next Meeting: Annual Meeting, January 8, 2016 at Cedar Shores Resort – Chamberlain.

10. Adjourn at 5:05 pm. (CST)

Respectfully Submitted

Eric Howard,  
SDSPLS Secretary

## Surveying with Admiral Byrd – continued from Page 11

Dr. Larry Gould wrote of the party's equipment, "I took both a theodolite and a sextant and 4 watches with stop watch, for making astronomical observations. After trying a number of compasses we found that a small boat compass was about the only type that would remain anywhere near steady when mounted on a sledge. When one is traveling on a meridian, that is north or south, he can keep an accurate check on his course during clear weather with a sun compass, but going east or west, crossing meridians, the sun compass becomes impracticable. Though we steered always with the magnetic boat compass we checked it at frequent intervals with the sun compass. This was important as the magnetic lines were so weak and not only did the compass dial wobble a great deal but the variation was found to actually change in one place as much as two degrees within a single day. Because it is short and was accurate within my needs, I used Weems' Tables for Line of Position throughout the sledge journey. For our further projected work we carried 4 aneroid barometers including a very accurate surveying type which was to be used as a standard, 1 prismatic compass for each man, 1 large Geographer's compass for use on Jacob staff, 1 pocket compass and transit, 3 carefully tested thermometers, binoculars, notebooks, charts, tables, and the necessary scales, etc."

John O'Brien observed, "The rate on all watches was taken all winter by Larry because we must have the correct time when making solar observations. Larry's office used to resemble a pawn shop with all those watches hanging around, on which he was keeping a record."

Gould and surveyors Mike Thorne and Jack O'Brien first established a two-mile baseline "in front of the [Liv] glacier mouth," and built a large snow beacon at its midpoint. The "Ipswich Beacon" served as an "essential control point" for triangulating positions in the Queen Maud range. O'Brien wrote, "Mike and I shot angles from either end [of the baseline] and from these determined the glacier to be about eight and a half miles wide." After triangulating through other key points in the vicinity, the party made its way toward the Axel Heiberg Glacier and Mt. Nansen. Although difficult travel ensued, O'Brien wrote "On December 20<sup>th</sup> came a red-letter day, for we crossed the 150<sup>th</sup> meridian of longitude and entered Marie Byrd Land, first men ever to set foot on that part of the barrier." As they neared Mt. Betty, they were thrilled to find Amundsen's rock cairn left 18 years before, and they created another cairn nearby.

Finally their main work was done. "A hundred and seventy-miles along the northern edge of the Queen Maud Range had been mapped and some knowledge gained of the geology of the region," wrote O'Brien. After 76 days in the field, the Geological & Surveying Party arrived back at Little America.

Today the Byrd Antarctic Expedition of 1928 -1930 is best remembered for the historic flight over the South Pole. But Richard Evelyn Byrd saw it differently. He wrote, "The flight to the eastward was more successful than I had dared to hope.

From a geographical point of view it was eminently satisfactory. It proved the existence of land in that area an immense landfall.

It extended the outline of the coast and lifted a great section of it from the realm of fiction. McKinley has now surveyed and mapped a 400 mile stretch of the Barrier line and coast line.

It provided the new land first discovered on the flight of February 18<sup>th</sup> with a coastal access.

The survey photographs which McKinley made will be interesting and important to glaciologists fifty and one hundred years from now. For they are a permanent record of ice conditions in 1929, and the extent of the changes which will undoubtedly occur during the intervening years can be clearly drawn. Here, again, is an example of the new precision in modern exploration.

The Geological Party, striking brilliantly along the foot of the Queen Maud Range, penetrated the eastern margin of Marie Byrd Land, claimed it for the United States, thereby becoming the first Americans to set foot upon a land discovered and claimed by Americans in the South Polar regions. On January 18<sup>th</sup>, after a journey of 1,500 miles, they finally returned to Little America. We were all proud of what they had done." ■

### Further Reading:

Bart, S. "Byrd, Antarctica and the Private Funding Model" Wilderness Research Foundation, 2010.

[http://wildernessresearch.org/?page\\_id=149](http://wildernessresearch.org/?page_id=149)

Byrd, R.E. *Exploring with Byrd*. New York: G. P. Putnam's Sons, 1937.

Gould, L.M. *Cold*. New York: Brewer, Warren & Putnam, 1931.

O'Brien, J.S. *By Dog Sled for Byrd*. Chicago: Follett Publishing, 1931.

Siple, P. *A Boy Scout with Byrd*. New York: G. P. Putnam's Sons, 1931.

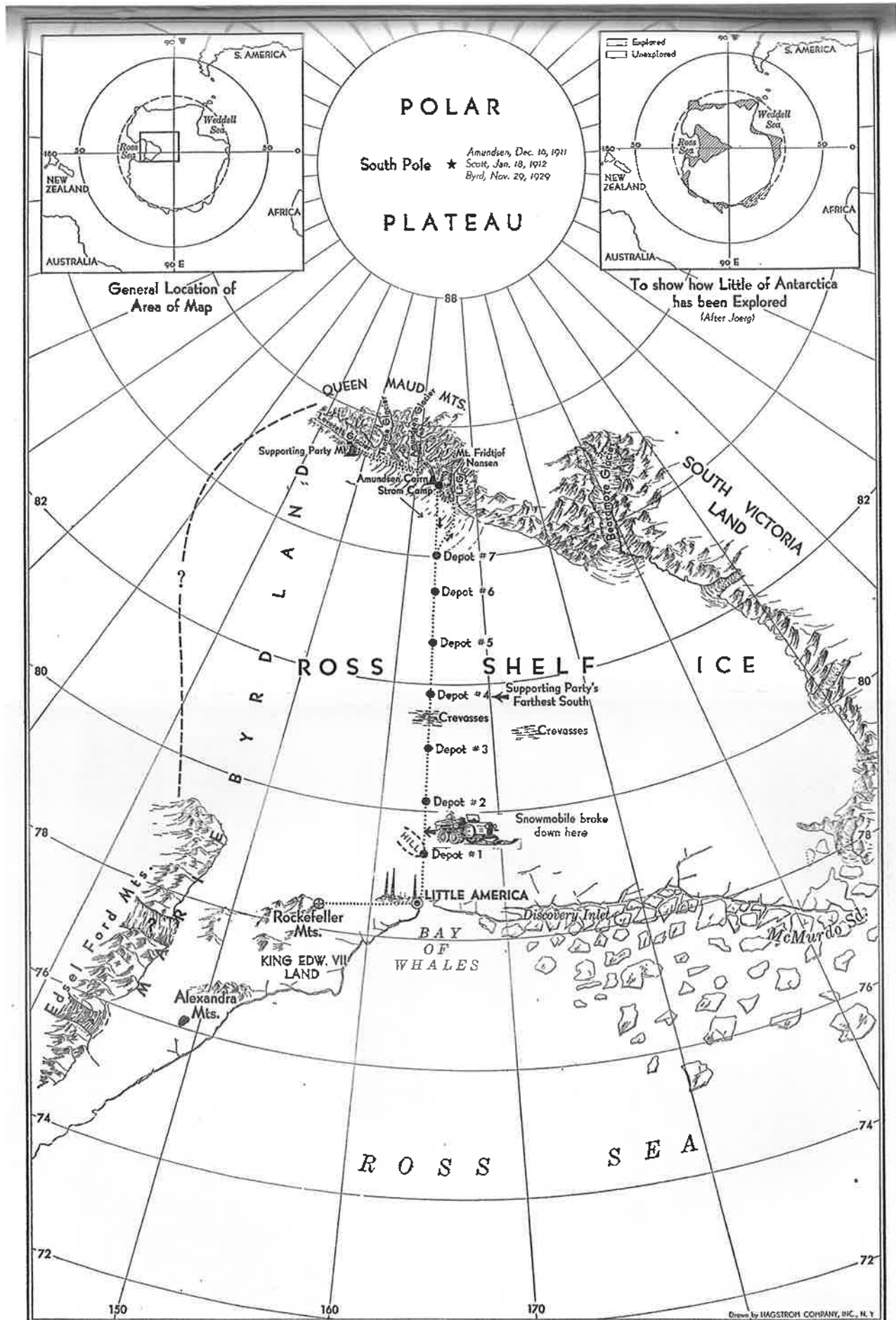
Numerous contemporary reports appeared in The Washington Post and the New York Times, the most informative of which were written by John L. Cooley, Associated Press Science Writer.

The Ohio State University Archives houses a huge Polar collection curated by Laura Kissel. Their holdings may be seen online at <http://library.osu.edu/finding-aids/byrd-polar/bser.php>. The letter from L.M. Gould to Richard E. Byrd, Oct. 4, 1929, is from the Archives' Papers of Admiral Richard E. Byrd, folder number 4833. The photographs accompanying this article are from the Byrd Antarctic Expedition I, 1928-1930: Glass slide collection at OSU, [https://byrdpolarmedia.osu.edu/Byrd Antarctic Expedition I 1928 1930 Glass slide collection](https://byrdpolarmedia.osu.edu/Byrd%20Antarctic%20Expedition%20I%201928-1930%20Glass%20slide%20collection)

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GENERAL MAP TO SHOW MAIN ROUTE OF GEOLOGICAL PARTY

# The Land Surveyor's Guide to the Supreme Court of South Dakota

## Part 9 – 1907 to 1910

*This article represents the ninth in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book is available for review in PDF form on the SDSPLS website and covers 120 years of historic South Dakota cases, answering fundamental land rights questions of potential interest to land surveyors, which are being presented in chronological order here in Backsights & Foresights.*

**Does the statute of frauds ban all unwritten conveyances?**

**Stewart v Tomlinson (1907)**

Much like many of the other relatively obscure aspects of the ownership and use of land, such as adverse and prescriptive rights, after-acquired title, and dedication, the meaning and effect of the statute of frauds is sometimes misunderstood by the typical land surveyor, making it a suitable topic for review herein, since surveyors are charged with properly preparing and understanding legal descriptions, and descriptions can become an important factor in cases involving the statute of frauds. The case we are about to review reveals how the Court deals with unwritten conveyances that have been put into effect on the ground, creating rights of reliance that constitute a very powerful equitable force, effectively counteracting the strict application of statutory law. The Court had acknowledged the strong influence of equitable factors on land rights transactions, and the need to treat the statute of frauds as flexible, as early as 1886, in the case of *Fideler v Norton*. In that case, *Fideler* had a verbal agreement with the owner of a certain quarter section to acquire that tract, and he then turned the matter over to *Norton*, who was a land agent, to handle on *Fideler's* behalf. *Norton* decided that he wanted that quarter himself however, so he acquired it directly from its owner. *Fideler* filed an action to compel *Norton* to convey the quarter to him, but the trial court dismissed *Fideler's* claim, on the basis that he could show no written evidence of a conveyance agreement, so the statute of frauds negated his claim. The Court reversed the lower court ruling, stating that "Equity will never willingly permit the statute of frauds to be used as a shield in defense of fraud". Declaring that the statute of frauds was never intended to prevent any agreements from being completed and given their intended effect, and that an agreement involving land rights "cannot be avoided, in equity, on the ground that is in not in writing", the Court required *Norton* to convey the quarter at issue

to *Fideler*. In 1900, in *Lothrop v Marble*, the Court found another valid reason to set aside the statute of frauds. In that case, *Lothrop* served as a nursemaid to *Rathbone*, who was a very feeble and elderly man, for an unspecified length of time prior to his death, and out of gratitude for her service to him *Rathbone* promised to convey his lot to her. *Rathbone* died without ever deeding the lot to *Lothrop* however, and *Marble* who was the administrator of *Rathbone's* estate, declined to deed it to her, so *Lothrop* filed an action against him to compel him to convey the lot to her. The Court upheld a lower court decision in *Lothrop's* favor, requiring *Marble* to complete the intended conveyance to her, based on the fact that her service to *Rathbone* rendered it inequitable and unjust for *Marble* to refuse to honor the conveyance commitment that had been made by *Rathbone*. The basis of this ruling by the Court lies in the concept of performance, which dictates that the performance of any agreement by one of the parties to the agreement creates a right of reliance on the part of that party, compelling the other party to follow through and perform their own obligations as agreed, and as we will learn, this fundamental principle controls the decisions of the Court concerning the applicability of the statute of frauds to any given situation.

**1905** - *Stewart* and *Tomlinson* were two men who both lived in *Huron*, and they had been casually acquainted with each other for several years, but they had apparently not been mutually involved in any property transactions or any other form of business. *Stewart* lived on a lot adjoining a railroad right-of-way, and the railroad needed to expand its operations, so *Stewart* agreed to convey his lot to the railroad, which meant that he would need to move. In the deed conveying his lot to the railroad he reserved the right to remove his existing buildings from his lot, so he could move them to his new property, wherever that might turn out to be, but the railroad evidently needed immediate possession of his lot, making his need to relocate quickly quite urgent. *Tomlinson* visited *Stewart*, and upon learning of his friend's predicament, he offered to sell *Stewart* a group of 4 lots that he apparently owned, which were situated just a short distance away on *Nebraska Street*. The two men then visited the lots, and *Stewart* felt that they would suit his needs, so he returned home and told his wife about *Tomlinson's* offer. *Stewart* and his wife then visited the lots together and *Stewart's* wife was apparently satisfied with the idea of moving to that location. Later the same day, *Stewart* encountered *Tomlinson* while downtown, and informed *Tomlinson* that he would take the lots, and gave *Tomlinson* a down payment. *Tomlinson* accepted the money and stated that he was about to leave town on business, but agreed that he would provide *Stewart* with a deed to the lots upon his return. *Stewart* informed *Tomlinson* that he intended to begin moving immediately, and also indicated that he intended to have a row of shade trees planted



along one side of the property he was acquiring, and Tomlinson told Stewart that he was welcome to go ahead and do so. Over the next several days, while Tomlinson was away, Stewart moved his buildings onto the Tomlinson property, and he also had an unspecified number of shade trees planted on that property by a crew of workmen. Once Tomlinson returned, Stewart asked him for a deed, and Tomlinson told him that the deed was being prepared, but was not yet ready to be signed. A few days later, Stewart again contacted Tomlinson, asking for a deed, and he offered to pay Tomlinson the full agreed price for the lots on the spot, but this time Tomlinson indicated that his wife had refused to convey the lots, so the deal was off. Stewart then filed an action against Tomlinson, seeking to have him legally compelled to complete their transaction, by conveying the lots at issue to him.

Stewart argued that a complete conveyance agreement had been reached and entered between Tomlinson and himself, and he had done everything that he was required to do under that agreement, so Tomlinson should be legally required to provide him with a deed to the property at issue, even though Stewart could present no written evidence of the existence of the alleged agreement. Tomlinson argued that under the statute of frauds, an unwritten conveyance of any land or land rights is absolutely null and void, and cannot be enforced, so because no written evidence existed that he and Stewart ever had any conveyance agreement, he could not be legally required to deed the lots in question to Stewart, and he had the right to unilaterally terminate their verbal agreement, as he had done. The trial court found that a valid conveyance agreement had been created between the litigants, and although it was entirely oral and unwritten, their agreement constituted a valid exception to the statute of frauds, so Tomlinson was required to perform his part of that agreement, by deeding the lots in controversy to Stewart for the agreed price.

The Court very readily disposed of this controversy, in relatively brief fashion, since there was no dispute as to any of the facts involved, and both parties acknowledged that an unwritten agreement to convey real property had been entered and then revoked, the only disagreement between the litigants was over what the legal consequences of such an utterly undocumented scenario are. It was very clear that Tomlinson had taken the position that the statute of frauds enabled him to back out of his agreement with Stewart simply because he had no other alternative, had he not sought the shelter of that law, he would have been left with no other means of escaping the situation that he had created without incurring substantial liability. His claim that his wife was really to blame, because she was the one who had actually nixed the deal, was a hollow one, since at this point in time, men were still expected to always maintain full control over their wives, so even if that excuse was truthful on Tomlinson's part, rather than having been

contrived by him to hide some other reason he may have had, his wife's input could not operate to shield him from the need to honor his own personal commitment to Stewart. The 3 basic requirements of the law, necessary to minimally satisfy the statute of frauds, are simply the identity of the grantor and the grantee, a description of the land or land rights that are intended to represent the subject matter of the deal, and the price, which is often more broadly defined as consideration, since it does not always appear in the form of money. All 3 of those vital elements of a valid land transaction were obviously present in this instance, the description aspect of the equation being fully met by the fact that the lots in dispute were admitted to be simply four typical platted residential lots, capable of being fully described by mere reference to them by number, and the ownership of those lots by Tomlinson was never in question. None of these essential elements however, were ever written down by either party, even in the crudest form, much less undersigned by Tomlinson, and it was that fact which opened the door to Tomlinson's attempt to assert that the statute of frauds was applicable to the situation. The Court observed that the two litigants had long been friends, although they had never participated in any kind of business ventures together, and it was evident that this highly cordial, or even close, relationship between them was the cause of their failure to properly document their agreement, since both of them fully trusted each other, and neither of them had found it necessary to treat the other as he would have treated a stranger. Pointing out that the exception to the statute of frauds was statutory, the Court decided that the circumstances fully justified exercising that exception in this case, finding that it was necessary to do so in order to do justice, and placing great emphasis on the significant investment that had been made in the land by Stewart, when he had several mature trees replanted on the lots in controversy:

*"Though the contract was not in writing ... the facts and circumstances bring the case within the exception to the statute of frauds ... which reads ... No agreement for the sale of real property, or of an interest therein, is valid unless ... in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof ... It is quite clear that appellant was fully aware of, and did not object to, respondent's acts of ownership in the way of transplanting the large trees at considerable expense, but ... appellant refused to perform the contract ... by reason of appellant's acts, respondent was lead into such a position, with respect to the property, that a failure to perform would result in injury hard to estimate in money, and operate as a fraud upon him ... such facts and circumstances bring the case within the statutory exception."*

*Continued on Page 22*

As indicated by the Court, the agreement in question represented a contract, and recognition of this fact forms an important aspect of understanding the operation, and the limitations, of the statute of frauds. It may be mistakenly supposed that only a written instrument or document can properly be called a contract, but that is definitely an erroneous view, which is not in accord with the law. Just as a drawing created by a land surveyor, showing his work on a particular site or project, is often identified as a survey, a document expressing an agreement is often called a contract. Surveyors know however, that drawings alone are not really surveys, under the law, the only real survey is manifested by the evidence of the survey work actually done on the ground, and contracts are perfectly analogous to this, a document alone is never a contract, regardless of what it says or how it was entitled, a document is merely one form of evidence of the agreement expressed in it, the actual agreement itself is the true contract, and it can therefore exist, even in the absence of any written evidence whatsoever. The fundamental failure of those parties, such as Tomlinson, who may believe that the statute of frauds can be used as a tool to destroy an existing agreement, is that such a notion represents a distortion of the intended use of the statute, which the Court will not allow. Once he admitted that an agreement had existed, Tomlinson was bound to either fulfill his part of it, or financially relieve Stewart of his loss, the only question was whether or not he could retain ownership of the lots in dispute, and since it was clear to the Court that completion of the actual agreement was the only appropriate solution, the Court upheld the lower court ruling, requiring Tomlinson to divest himself of the lots, as he had agreed to do. Tomlinson certainly could have boldly denied that any such agreement was ever made, and simply claimed that Stewart was lying, but that would have been very unwise, since selecting that option could very well have lead to his conviction for perjury, if it had been discovered that his accusation was in fact a lie. The most critical factor in statute of frauds cases involving land rights, just as in many boundary cases, is the element of reliance, and in this instance it was plain that Tomlinson had found his friend in a difficult situation, and Stewart had innocently and justifiably relied on his friend's commitment of assistance, so Tomlinson could not equitably be allowed to ignore the injury he had done to an innocent party. Had Stewart not invested any money or labor in acting on Tomlinson's proposal, the matter would have been entirely different, because there can be no damage in the absence of reliance, and no adverse consequences would have ensued from allowing the agreement to be terminated. Since Stewart had made a major investment however, in having many trees planted, which was strong evidence of an agreement that was intended to be permanent, the Court concluded that invoking the exception was the only equitable remedy. In so ruling, the Court had made it clear that all actual agreements, once either proven or conceded to exist, can

be treated as binding, some simply require litigation, and the application of the Court's equitable power, to compel their enforcement, and since the overall goal of the statute of frauds is to substantiate existing agreements, the Court always retains the option of declining to allow the statute itself to become a tool of fraud.

It may be noted that in all of the statute of frauds cases mentioned to this point it was the grantor who unsuccessfully sought the protection of that statute and the grantee who prevailed by overcoming it's effects, but that is not always the case, a grantor can also overcome the statute of frauds. In the case of *Townsend v Kennedy* in 1894, Johnson was a land agent, who was acting on behalf of Townsend, who owned several lots in Pierre, and Kennedy agreed to purchase all of those lots, after negotiating a deal through correspondence with Johnson. A deed signed by Townsend, conveying the lots in question to Kennedy, was placed in escrow by Johnson, awaiting payment of the price for all of the lots, which had been agreed upon between Johnson and Kennedy. Kennedy advertised the lots for sale, but he apparently discovered that there was little or no interest in the land, which caused him to decide that he did not want the lots, so he informed Johnson that their deal was off. Townsend filed an action to compel Kennedy to complete the transaction as agreed by paying for the lots, but Kennedy insisted that any such agreement was null and void under the statute of frauds, because Johnson had no written authority to act on behalf of Townsend, therefore nothing that had been done by Johnson had been relevant or binding, leaving Kennedy free to pull out of the deal. In upholding a lower court decision in favor of Townsend, the Court adopted two important positions pertaining to the statute of frauds, the first being the principle of ratification. Since Townsend himself had signed the deed to Kennedy, Townsend had ratified all of the actions that had been taken by Johnson in arranging and coordinating the transaction in question with Kennedy, so the acts of Johnson, the Court observed, were equivalent to acts of Townsend himself. In addition, the Court stated that the correspondence between Johnson and Kennedy was entirely sufficient to satisfy the statute of frauds, because such evidence need not appear in a deed, nor in any single document, such evidence can consist of mere notes and memos, and it need only support a reasonable inference that a conveyance agreement existed, to meet the statutory requirements. Having thus determined that adequate written evidence of a binding conveyance agreement existed, the Court agreed that Kennedy was legally required to accept the deed and pay Townsend for the lots. The Townsend case illustrates that the Court will not allow grantees to escape their obligations by unjustifiably invoking the statute of frauds, any more than it will allow grantors to do so, and it also highlights the difference between circumstances that remove a transaction from the statute of frauds, such as those that were present in the Stewart case, and evidence that actually satisfies the statute of frauds, the presence of which enabled



Townsend to prevail.

The 1908 case of *Phelan v Neary* also provides a prime example of the importance of understanding the true nature and value of specific forms of evidence relating to land rights, in the context of a controversy over the applicability of the statute of frauds. Neary was the owner of a certain quarter section in Hyde County, and she apparently knew or met Phelan, and they had some conversation about the possibility of Neary conveying her land to Phelan. Several letters subsequently passed between Phelan and Neary, all making some type of reference to the proposed conveyance of Neary's property to Phelan, but none of them contained any details outlining the intended transaction or expressed any definite commitment on the part of either party to complete the transfer of the tract. Nevertheless, Phelan evidently got the idea that the plan to convey the land to him was definite, so when Neary eventually decided not to sell him her tract, Phelan filed an action against her to compel her to do so. Phelan or his attorney apparently believed that his oral conversation and his written correspondence with Neary, concerning the proposed sale of her property to him, were sufficient to either satisfy the requirements of the statute of frauds, or to constitute a valid exception to that statute, presumably based on the results of the cases that we have just discussed, but the trial court informed him that he was mistaken in that regard, and the Court upheld the lower court ruling against him. Phelan's principal error was his failure to distinguish evidence that negates the legal effect of the statute of frauds from evidence that indicates adequate compliance with it. Phelan was correct in recognizing that correspondence can satisfy the statute of frauds, as illustrated by the outcome of the Townsend case, but in order to do so, the written notes or letters must reveal a complete agreement, not just the hint or the suggestion of an agreement, or a mere discussion about a potential agreement, and Phelan's correspondence failed to accomplish that, so unlike Townsend, he could not prove that the written elements of a complete conveyance agreement existed. Neither could Phelan prove that a scenario representing a legitimate exception to the statute of frauds existed, as Stewart had done, eliminating the need for any written evidence, because unlike Stewart, Phelan had never taken any action or occupied the land in question, so Phelan's claim was doomed, since it failed to either satisfy or circumvent the statute of frauds. Unwritten evidence, such as that presented by Stewart, can never satisfy the statute of frauds, the Court reiterated, it can become controlling only when it serves as proof of performance, and thereby generates an exception to the intended operation of that statute. Going forward, we will look on as many other interesting conflicts over conveyance agreements unfold, and watch as the Court wisely handles them.

#### **Can a public alley be created in fragments?**

#### **City of Watertown v Troeh (1910)**

Returning to the subject of city streets and alleys, and more specifically the topic of dedication, here we examine a case that involved the use of only a small portion of one platted lot as an alley, yet was unusually complicated, due to the fact that a number of legal descriptions had been sequentially created by the owner of that lot, containing reservations that made conflicting references to the intended use of various portions of the lot, in the process of dividing it for conveyance to different parties. Fortunately, there is no indication that any surveyors were involved in the creation of these unclear descriptions, and from the nature of the language that was used, the descriptions would appear to have been created by a neophyte in the art of description composition, quite possibly the land owner himself. While the errors and problems manifested in the various descriptions do not involve the location of the area in controversy, they do have a strong bearing upon the location of the boundaries of the properties adjoining that area, since the ownership status of the alley in question is very much at the heart of this dispute, and the core issue, from the defendant's perspective, is whether or not he owns, and has the right to build upon, the portion of the alley crossing his property. As has already been noted herein, dedication can occur in a variety of ways, and the circumstances under which a dedication takes place are instrumental in determining the ownership status of the dedicated area. While a fee dedication can never occur by means of implication, through common law dedication, and even statutory dedications, made through the use of properly documented and approved language, are presumed to create an easement in favor of the public, the intent to dedicate land in fee can be either expressly stated or statutorily mandated. A private land owner cannot obstruct a right-of-way that has been dedicated for purposes of travel of course, regardless of whether it was dedicated as an easement or dedicated in fee, because even if it represents only an easement, and the underlying land therefore belongs to a private party, that party is servient to the dominant interest in the dedicated area that has been vested in the public. In order to correctly delineate the location of boundaries of fee ownership however, either on paper or on the ground, surveyors are inevitably required to utilize their professional judgment to evaluate the status of each right-of-way they encounter, and indicate whether it represents a distinct tract of land in separate ownership, or a part of the subject property being surveyed, which is merely burdened with either a public or private easement. While the conclusions of land surveyors in that regard are never legally binding on the parties, such decisions made by surveyors based on their analysis and opinion of the meaning of existing legal descriptions are often relied upon by land owners, creating potential liability for the surveyor. This makes properly understanding the legal implications of description language, and being able to distinguish ambiguous language from unambiguous language, highly relevant to the surveyor's ability to

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recognize and properly assess the value and effect of such documentary evidence on boundary locations.

**1880** - Johnson was the owner of a portion of a platted city block in Watertown. The northern part of this block was bounded by a platted public alley on the south and by platted city streets on its other 3 sides. 14 typical rectangular lots were platted in this northern part of the block, each of them being 165 feet long, running north to south, and being 25 feet wide, with Lot 1 at the east end of the block and Lot 14 at the west end of the block, so all 14 lots were bounded on the south by the platted alley. Johnson owned Lots 1 through 5, comprising the east 125 feet of this portion of the block. Whether or not the rest of this block was already occupied at this time is unknown, but Johnson's portion of the block was apparently vacant and undeveloped. Johnson evidently decided to sell off these lots, rather than making any use of them himself, and his first conveyance was to Pierce. Johnson sold Pierce the south 25 feet of Lots 1 through 5, being a strip of land lying directly along the north side of the existing platted public alley, and in this deed Johnson reserved the west 12 feet of Lot 5 "for a public alley". What specific use Pierce made of his land is unknown, but he did evidently acknowledge the west 12 feet of Lot 5 as having been intended for access purposes, since he never built anything in that area, and he never obstructed that 12 feet in any way.

**1881** - Johnson sold the remainder of his land to other parties, whose names are unknown, by making two additional conveyances. He first conveyed the north 117 feet of Lots 1 through 5, and in this deed he stated that this conveyance was "Subject to the right-of-way heretofore granted to Pierce ... over a strip 12 feet in width along the west line of said tract for a public alley", despite the fact that he had never granted any right-of-way to Pierce. The execution of this deed left Johnson with a 23 foot strip of Lots 1 through 5, lying in between the two portions of the lots that he had sold, which he then proceeded to sell "reserving, however, a right-of-way 12 feet wide across the west end of said tract" without making any reference to this last reservation as being public in nature.

**1882 to 1898** - The land in this block was developed during this period, including those portions of the block that been sold by Johnson, and all of the owners of improved land in the block used the 12 foot strip mentioned in the deeds that had been composed by Johnson as an alley. There was evidently also an unspecified amount of use made of this unplatted alley by the public, and it remained unobstructed by anyone throughout this period.

**1899** - Troeh acquired the tract that had previously

been owned by Pierce, and he built a fence around his property, enclosing the south 25 feet of the unplatted alley in so doing. For a few months, no one objected to this, and the alley remained in regular use, because everyone just drove around the west end of Troeh's fence, which they were able to do because the portion of Lot 6 lying directly west of the unplatted alley was still unimproved at this time. After a few months however, the owner of that portion of Lot 6 informed Troeh that he intended to erect a building on his land, so Troeh would have to move his fence, in order to allow the use of the unplatted alley to continue, and Troeh complied by moving the west end of his fence 12 feet to the east, thereby allowing travel along the original route of the unplatted alley, over the west 12 feet of Lot 5, to resume in its previous location.

**1900 to 1909** - Use of the unplatted alley continued without incident, until an unspecified time toward the end of this period, when Troeh began the construction of a new building, which evidently blocked the south end of the unplatted alley, either partially or totally. All of the other land owners in the block apparently recognized the unplatted alley as being public in character, and they all wanted it kept open, so none of them contested Watertown's claim that it was a public alley. Troeh nonetheless refused to cease his construction activity and allow traffic to proceed unimpeded, so Watertown filed an action against him, seeking to have the unplatted alley officially declared to be public, which would enable the city to order Troeh to remove his building from the west 12 feet of Lot 5.

Watertown argued that the three conveyances made by Johnson had adequately expressed his intention to create a public alley covering the entire west 12 feet of his land, and that the subsequent use of that 12 foot strip supported and confirmed Johnson's intentions, so the west 12 feet of Lot 5 had been legally dedicated and accepted as a public alley, which Troeh therefore had no right to block in any manner. Troeh argued that the language used by Johnson, with regard to the strip in question, when deeding away his land, was too unclear and inconsistent to legally create a public alley, and Johnson had actually intended to create only a private easement for his own use, which had never come into existence, because Johnson had later sold off all of his other land in the block, and had departed and abandoned the intended easement without ever making any use of it. Troeh also asserted that since a statutory process existed, governing the creation of public alleys, Watertown should not be allowed to claim any public alleys that had not been created through that statutory process. Therefore, Troeh maintained, no unplatted alley had ever been legally dedicated, and no easement or right-of-way existed on Lot 5, so he had acquired the entire south 25 feet of Lot 5, and he had the right to make full use of that area, just as he saw fit. The trial court



ruled that Johnson had intended to create a new public alley, and to dedicate it in fee to the public, and the actual use of the dedicated strip was legitimate evidence of the acceptance of that dedication by the public, so Watertown owned the west 12 feet of Lot 5, and Troeh had never acquired it.

Although the main focal point of this controversy was obviously the basic question of whether or not the allegedly public alley existed, the most interesting aspect of this dispute was the conflict over the true meaning of the varying language that had been used by Johnson, in composing the 3 deeds by which the unplatted alley had allegedly come into existence. Since the 3 properties traversed by the alley in question had all been created by the same grantor, one might well expect him to have used consistent language in all of his deeds, in order to make his intentions perfectly clear, but that was unfortunately not the case. Since Johnson was the undisputed owner of all of Lots 1 through 5, he possessed the legal authority to create private easements anywhere upon his land, or to dedicate any portion of his land to public use, and if he had successfully expressed his intention to execute a public dedication in a clear and unambiguous manner, no controversy such as this one would ever have arisen. The inconsistency in the descriptive language used by Johnson however, is typical of the results that are produced when an individual who lacks experience using descriptive language, and who is unfamiliar with the process of interpreting legal descriptions, attempts to prepare such a description. The Court agreed with Troeh that the language used by Johnson was ambiguous in a number of respects, in particular Johnson's inconsistent use of the terms "reserving", "right-of-way" and "subject to", all of which can carry differing legal implications, left his true meaning and intentions less than completely clear, but the Court declined to adopt the view that any such technical details should control the rights of the parties. A reservation can create either an interest in fee or an easement, depending upon the context in which it is made, and upon the circumstances relating to the conveyance, a right-of-way is typically presumed to represent an easement, but can also represent a fee interest, and the phrase "subject to" typically operates only as a form of recognition of an existing right, and is legally insufficient to create any new rights. In addition to his use of such problematic terminology, Johnson had also used conflicting language regarding exactly who was really intended to have the benefit of the 12 foot strip that he had created, since although he had indicated in the first and second deeds that the alley was to be public, he had also reserved it to himself and his successors in the first and third deeds, and he had described it as being intended for the benefit of Pierce in the second deed that he had executed. In view of the presence of all this ambiguous and even mutually contradictory language, it was little wonder that litigation and adjudication had proven to be necessary to resolve the rights at issue, and Johnson was evidently no longer available to provide any

clarification of what his real intent had been, but the Court was fully prepared to slice through this linguistic Gordian Knot, and settle the matter in accord with common sense, explaining it's view of the legal ramifications of this scenario as follows:

*" ... it appears to us that such deeds, especially when taken in consideration with the other facts shown, clearly prove an intent on the part of Johnson to dedicate such strip for public use ... Examining carefully these deeds, it is apparent that ... the reservation is to Johnson ... this is not a reservation to Johnson and his grantees ... Taking this into consideration, together with the express declaration that it is a public alley, it is hard to escape from the conclusion that it was his intention that this become a public rather than a private way ... Johnson acknowledged that he had granted to Pierce the west 12 feet ... Reference to the deed to Pierce shows the same contained no reservation whatever ... in favor of Pierce ... We must therefore conclude that Johnson ... intended to reserve this strip as a public alley and not pass it by such deed ... it will not be presumed that it was his intent to dedicate, for public use, a mere cul-de-sac ... in the last deed, Johnson reserved from the effect thereof the said 12 foot strip connecting the two strips in the other deeds ... He had already conveyed all the rest of said 5 lots, and certainly this reservation could not have been intended for his own use ... he knew he had already dedicated this land to the public ... intent to dedicate may be shown by the use of the land in question ... It is claimed by the appellant that ... it was never accepted as such by the corporate authorities ... and there could not be an acceptance through public use ... but the great weight of authority is to the contrary ... it was shown that for some 18 or 19 years this tract had been openly used by the public, that was ample to prove an acceptance prior to the time defendant received his deed ... the corporate authorities ... fully accepted this strip of land as a public alley."*

The Court thus adopted the position that the best evidence of the real intent of a grantor, given such ambiguity in the language of his conveyances, is very often the actual use that is made of the land in question, once all of the relevant conveyances have been completed, and the land has been put into use by the grantees. In effect, the Court very simply and wisely allowed the physical conditions that had developed on the ground to govern and control it's interpretation of Johnson's original intent, sweeping aside the portions of the descriptive language that he had carelessly bungled or erroneously employed. Quite logically, the Court observed that there was no evidence supporting Troeh's assertion that Johnson had not intended to create a continuous alley, running the full length of Lot 5, because even though it was created in 3 segments, it had always been used and treated as one continuous strip. This

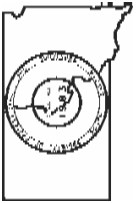
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dedication, the Court also noted, was not a common law dedication, supported only by implication of law, it was an express dedication, because its origin was found in written evidence, consisting of the 3 relevant deeds. Under the Court's interpretation of Johnson's words, he had reserved the 12 foot strip unto himself in fee, on behalf of the public, so it had never been conveyed to any of his grantees, and had passed directly to the public upon his departure, once his last conveyance was completed, fulfilling what the Court deemed to have been his original vision and intent. In taking this perspective, the Court eliminated any ambiguity that had been introduced by Johnson's use of the phrases "right-of-way" and "subject to", holding that Johnson's references to the alley as public negated Troeh's suggestion that these phrases could have been intended to indicate that the alley was merely private, or merely an easement, or merely a personal right reserved to Johnson alone, as an individual. The Court also found no reasonable basis for Troeh's claim that the existence of a statutory dedication process eliminated all other forms of dedication, rejecting that contention on his part, and upholding the right of any land owner to make an offer of dedication of any portion of their land by any means they may deem appropriate, as Johnson had done. In addition, the Court held that even very limited or minimal public use can often be sufficient to represent public acceptance of an offer of dedication, and even if the extent of the public use had not been sufficient for that purpose in this instance, Watertown's legal action itself also constituted a valid form of acceptance of the alley. Troeh's temporary blockage of the alley, for a few months in 1899, when he had mistakenly extended his fence 12 feet beyond his westerly boundary, was also dismissed by the Court, as being of no significance and providing no support for his position, given that he had full notice of the existence of the alley prior to acquiring his land, since it had already been in actual use for several years by that time, and on that basis alone he should have known that he never had any valid claim to the alley. Having concluded that the lower court was entirely correct in its assessment of the situation, the Court fully upheld the ruling against Troeh, thereby approving the concept that a portion of a platted lot can be effectively converted into a public alley, by means of a dedication for that purpose, made by a party holding the authority to make such a dedication, which can be made either in the form of an easement or in fee.

Only 3 months after deciding the case just reviewed, the Court had to deal with another controversy involving right-of-way issues, in the 1910 case of *Lowe v East Sioux Falls Quarry*. In that case, an old existing roadway was adopted by the city council of East Sioux Falls as a public right-of-way in 1899, crossing land owned by the quarry company, although this roadway was located outside a nearby portion of the section line right-of-way,

which also passed through the quarry property, but which had never been used for purposes of travel. Lowe was evidently an owner of some nearby land, who found the old roadway to be unsuitable to his needs, so he filed an action demanding that the section line right-of-way running through the quarry be improved and made available for public travel, but the quarry resisted, because it owned buildings that were occupying the section line right-of-way. The company argued that the section line right-of-way that Lowe wanted opened had been either abandoned or vacated by the failure of the public to ever utilize it for travel, in combination with the use of the old roadway for that purpose by the public, and a trial court agreed, rejecting Lowe's request. The Court reversed the lower court decision however, mandating that the county open the section line as requested by Lowe, noting that a section line right-of-way cannot be abandoned or vacated merely by non-use for any length of time, and stating that the public use of the meandering old road a few hundred feet away from the section line was completely irrelevant to the ongoing perpetual existence of the section line right-of-way, so the company was required to move its structures to some location outside the section line right-of-way. Yet another right-of-way dispute came to the Court in 1912, in the case of *Roche Realty v Highlands*, which was centered upon the status of an old roadway running north out of Aberdeen. Highlands owned a tract of land lying directly north of Aberdeen, but south of a tract owned by Roche, and an old roadway connecting the Roche property to the city had long been in use by the public. The road in question passed more or less through the center of the Highlands tract, but since that property was vacant, the route of travel had apparently meandered around over the course of many years. Roche wanted to develop its tract, so it filed an action seeking a judicial declaration that the road at issue had become a public right-of-way, either through prescription or through implied dedication, but the Court upheld a lower court ruling dismissing Roche's claim and denying that the road was public. In so doing, the Court took the important step of expressly announcing its approval of certain language that had been used in territorial statutes, concerning public travel and the acquisition of public right-of-way, which had the effect of outlawing the acquisition of any public right-of-way by prescription in South Dakota, on the grounds that it represented a taking of private land rights without compensation. The Court then went on to also determine that in this instance the old meandering road had never been dedicated by implication, since its location had remained perpetually subject to variation and had never been clearly defined by steady use of any particular path. This decision of the Court, flatly denying the validity of the concept of prescriptive public easements, provides great insight into the frequent reliance that the Court would subsequently place upon the concept of dedication, which we will see play out over the coming decades.





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