

Historic Flashback

Death Penalty Faced Survey Monument Vandals

How often during our surveying career are we reminded by luncheon speakers of the provisions of Section 4 of an Act enacted by the Legislature of Upper Canada (38 Geo.III, Cap.I, passed July 5, 1798), which provided the death penalty without benefit of clergy for knowingly and wilfully pulling down, defacing, altering or removing any survey monument!

As each must have pondered at one time or another over the principles upon which this severe penalty was based, the following extract from the Russell Papers being part of Chief Justice John Elmsley's report on the Acts passed in the Session of 1798 to the Honourable Peter Russell, Administrator of the Government of Upper Canada, during the official term of Lieutenant Governor John Graves Simcoe, bears out the attitudes of that day responsible for its enactment:

FROM JOHN ELMSLEY TO PETER RUSSELL

I have the Honor to lay before you my Official Report of the Grounds & reasons of such of the several Acts passed during the late session of Provincial Parliament, as originated in the Legislative Council. In doing which I shall observe the same order as in my Report of last year.

I. An Act to ascertain and establish on a permanent footing the boundary lines of the different Townships of the Province—Mr. Duncan.—

The object of this Act, as well as the means by which it is to be attained, are sufficiently clear from the Act itself.—In old Countries disputes about boundaries are as rare, as disputes about titles are frequent. In a new Country the case is reversed, and the titles are generally as clear as the boundaries are confused. There may be some expense and trouble in carrying the Act into execution, but there is every reason to hope that its operation will eventually be extremely beneficial.

It may perhaps appear at first sight that death is too severe a punishment for the offence of knowingly and wilfully putting down, defacing, altering or removing the Boundaries which are to be erected under this Act, but in this respect also, reference must be had to the Country for which the Law is made.

Land marks in an old Country seldom do more than discriminate the property of two or three individuals, and are so well known, that the removal of them is no more than the destruction of a hedge, or the filling up of a Ditch, the loss of either would be immediately perceived and the uncertainty of limits occasioned by it as immediately remedied by recurring to other sources of Evidence. But in a Country of perpetual forest, the Boundaries or Monuments provided by this Act, will for a great many years be the only Standards to which resource can be had, and whoever will cast his eye upon the plan of any of the Townships into which this Province is divided, will see that the removal of one of them will involve confusion not only the Concession at the End of which it stands, but perhaps several other Concessions, the course of whose lines it may govern, and the Settler after many years of Labour may discover that the whole of his Industry has been laid out on lands which do not belong to him. In short the Crime appeared both in its principle and in its consequences to bear so close an Analogy to the Crime of forgery that there was but little difficulty in subjecting it to the same punishment.