



The problem of poor description

I offer as the definition of a good description the following:-

"A description of something which, if reproduced, made, laid out or reconstructed, using only the information contained in the description, would result in a product which would be exactly similar or indistinguishable from the original article from which the description was prepared."

A description of a parcel of land may, like any other description, be a good one or a poor one. This applies equally whether the description is a metes and bounds (verbal) description or a graphic (plan) description. The description may, like a landscape painting or a portrait, be a poor imitation and bear little likeness to the thing being described or painted. It should be noted though, that whether the portrait be good or poor in no way affects the appearance of the model and is only a reflection of the skill of the artist. It is well, here, to recall the legend of the elephant and the blind men who described the elephant variously as "like a rope", "like a tree", "like a wall", etc. and to note that the elephant was in no way affected by this disparity in description. We shouldn't be too upset when the description is a poor one and bears little resemblance to the original article from which the description was prepared. This applies equally when the "original article" is the parcel of land as it was staked on the ground.

Severance of land and subsequent conveyance, in the vast majority of cases, results from survey and monumentation. The survey may often consist of a pacing of the boundaries by the vendor and purchaser (neither of whom need be a surveyor), the original monumentation consisting of stakes driven in at the property corners during the pacing of the boundaries. The vendor and purchaser then make up a verbal description in layman terms which might be something along the lines of:-

B. E. Lynch
Supervisor,
Technical Services
Section.

I had visions of him, in the twilight of his career snug beside the fire, with rum tot at hand, on a long cold, winter's night, a malevolent grin on his face, as he thought over his long years in surveying, chuckling gleefully, thinking of perplexed young surveyors retracing his work, eager solicitors preparing statutory declarations, quit claims or correcting deeds and mystified, angry land owners.

"300 paces west from the 3rd line side road, then 150 paces along the concession road between the 2nd and 3rd." This would probably be accompanied by a rough diagram.

(See Diagram 1)

This rough diagram and the layman's description would then be given to a conveyancer for the preparation of the documents necessary for the transfer of title.

The revised and polished description (perhaps with a "sketch to illustrate description" supplied by an O.L.S.) which enters the Land Registry Office, could look like the following:-

"All and singular, that certain parcel or tract of land and premises, situate, lying and being in the Township of O'Brien in the District of Cochrane, being part of Lot 16 Concession 3, more particularly described as follows:

Premising that the south limit of said Lot 16 has a bearing of east and relating all bearings herein thereto

Commencing at a point in the south limit of said Lot 16 distant 900' measured west thereon from the SE angle of said lot

Thence continuing west along the said south limit 450'

Thence north 450'

Thence east 450'

Thence south 450' to the point of commencement all as shown outlined in red on the attached sketch".

(See Diagram 2)

Ten years later along comes our brave young hero (read, this surveyor) the tyro O.L.S. He checks the records of the local O.L.S. whose field notes covering many years are in brown books filed in shoe boxes to the tune of several hundred piled six feet deep in the back of a leaky frame garage. The aged local surveyor says no, he doesn't seem to have any record of having done a survey for the subject property. The young surveyor then decides before having been on the ground, that not much weight should be placed on fences, since obviously any in existence are merely fences of convenience and not evidence of survey, since no survey was ever done. Out he goes to the field and the following is what he finds —

(See Diagram 3)

"Ho Ho" cries he, "adverse occupation, his title doesn't match his occupation, big problem". Ultimately a solicitor is consulted who rises with the conditioned reflex response "Ha Ha — quit claims, correcting deeds or some such". A three PART Reference Plan is prepared.

(See Diagram 4)

PART 1 is conveyed from the small property owner "B" to owner "A" of the larger farm and "A" conveys PART 3 to "B". Thus the "title problems" are cleared up to the satisfaction of the surveyor and solicitor, at considerable cost to the mystified owners "A" and "B" who end up being told that they now own what they always thought they owned.

This is a case of improper diagnosis and when the wrong problem is identified, then the solution arrived at is not likely to be appropriate. The problem here was not of title or ownership or even of extent. The problem, is one of misdescription. Owner "B" originally bought and has since owned that portion of land originally surveyed and staked which is evidenced now by the fence in place on the ground and the peaceful acceptance of this by both owners. The survey and plan should be something along the lines of

(See Diagram 5)

I have seen two farmers measuring down a road by turning end over end, a wooden stick (cut to $16\frac{1}{2}' = 1$ rod, thus 4 stick lengths = 1 chain or 66' and 320 stick lengths = 80 chains or one mile). I was surprised to find later that their location of the blind line between concessions in a sectional township was within a few feet of the proportional division by The Surveys Act. I once saw a whole subdivision being laid out and staked without benefit of transit by two fellows (not surveyors) using only an old Gunter's chain. Under these circumstances it is not surprising that many descriptions resulting from the survey and staking do not closely resemble the parcel of land as staked on the ground.

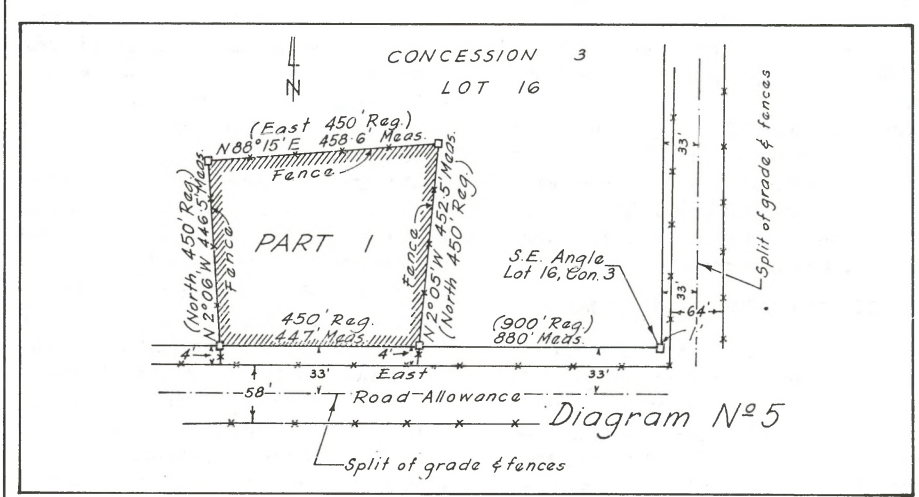
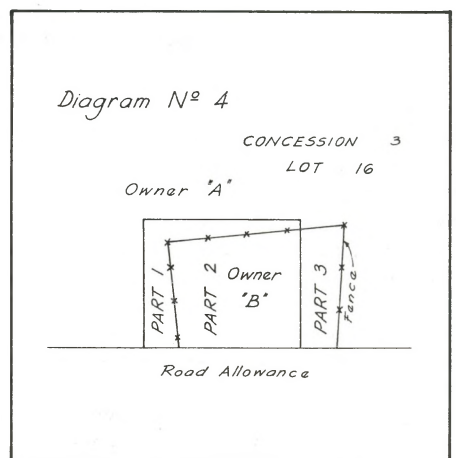
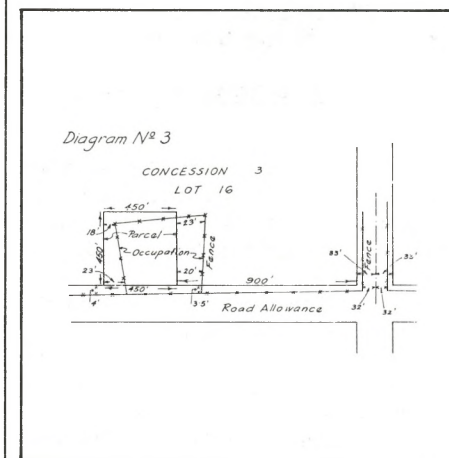
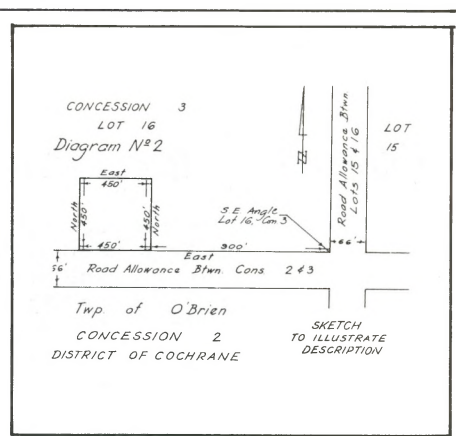
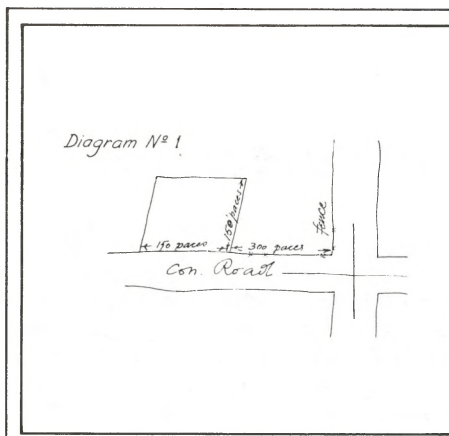
It would seem that this sort of "problem", imaginary or real, would disappear if all severances were by survey carried out by an Ontario Land Surveyor. Not so, say I. I have retraced much of the work of one particular O.L.S. whose work was so dissimilar to description (i.e. what was set on the ground was so dissimilar to what was shown on the plan) that I thought he must have employed a blind transitman and a pair of drunken chainmen.

I remember thinking "It's impossible for anyone to make so many blunders in error, he is guilty I fear, of malicious intent". It was not unusual for angles to be out several degrees and for 200' distances to be out 5 or 10 feet when finding all four original monuments in an odd shaped rhomboid figure for what was shown on the plan to be a rectangle.

I had visions of him, in the twilight of his career snug beside the fire, with rum tot at hand, on a long cold, winter's night, a malevolent grin on his face, as he thought over his long years in surveying, chuckling gleefully, thinking of perplexed young surveyors retracing his work, eager solicitors preparing statutory declarations, quit claims or correcting deeds and mystified, angry land owners.

The only way to retrace his work was to ask the owners, where their corners were. To attempt to lay off angle and distance was good exercise (in futile digging) also an exercise in frustration. Certainly, without knowledge of the surveyor, if no monumination was found (if owners were not spoken to), from the configuration and dimensions of the fencing, many would make the assumption that occupation and title were wildly at variance.

In the Art Gallery as a world famous portrait, treasured by the Curator (a former solicitor) and the Assistant Curator (a former surveyor). The Gallery was by chance, visited one day by the man who had been the model for the treasured portrait. The Asst. Curator



noted with horror, that the model had —
 (a) the wrong nose, or
 (b) his nose in the wrong place.

He seized the model and sent word for the local plastic surgeon to come forthwith to correct this obvious case of adverse possession. The Curator, an older, wiser man, more cautious than his Assistant, decided the model could keep his nose, provided he sign and register a Statutory Declaration, that the nose was his own, had always been his and was in the same location as at the time of the painting of the portrait.

Which brings me to Rule No. 1 (and the only rule, which should make it easier to remember):-

When "occupation" and "paper title" seem not to coincide my conditioned reflex, my automatic reaction should be, not "Adverse Occupation" or "Title Problems", but in fireworks and large flashing neon lights, "MISDESCRIPTION!!".

This really is not a new concept (see Justice Cooley of the Michigan Supreme Court) and we can accept as axiomatic that "the burden of proof lies upon him who attempts to disprove or upset lines of settled and accepted occupation" and it should be added that the words of a description or the lines and dimensions of a plan most certainly do not, of themselves, constitute such proof. ●