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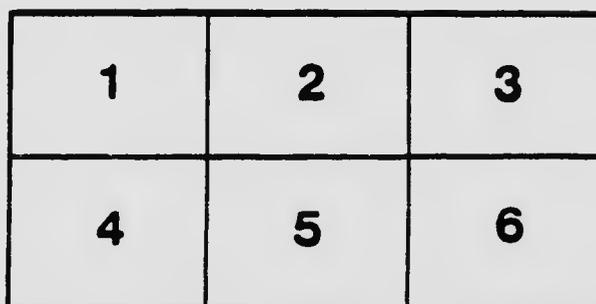
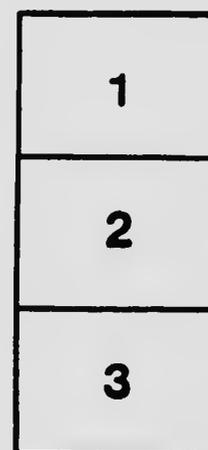
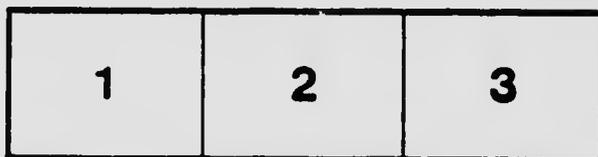
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DEPARTMENT OF THE INTERIOR
TOPOGRAPHICAL SURVEYS BRANCH

PAPERS
ON
DESCRIPTIONS FOR DEEDS

READ BEFORE

THE ASSOCIATION OF ONTARIO
LAND SURVEYORS

BY

OTTO J. KLOTZ, LL.D., M. GAVILLER, T. B. SPEIGHT
AND A. J. VAN NOSTRAND

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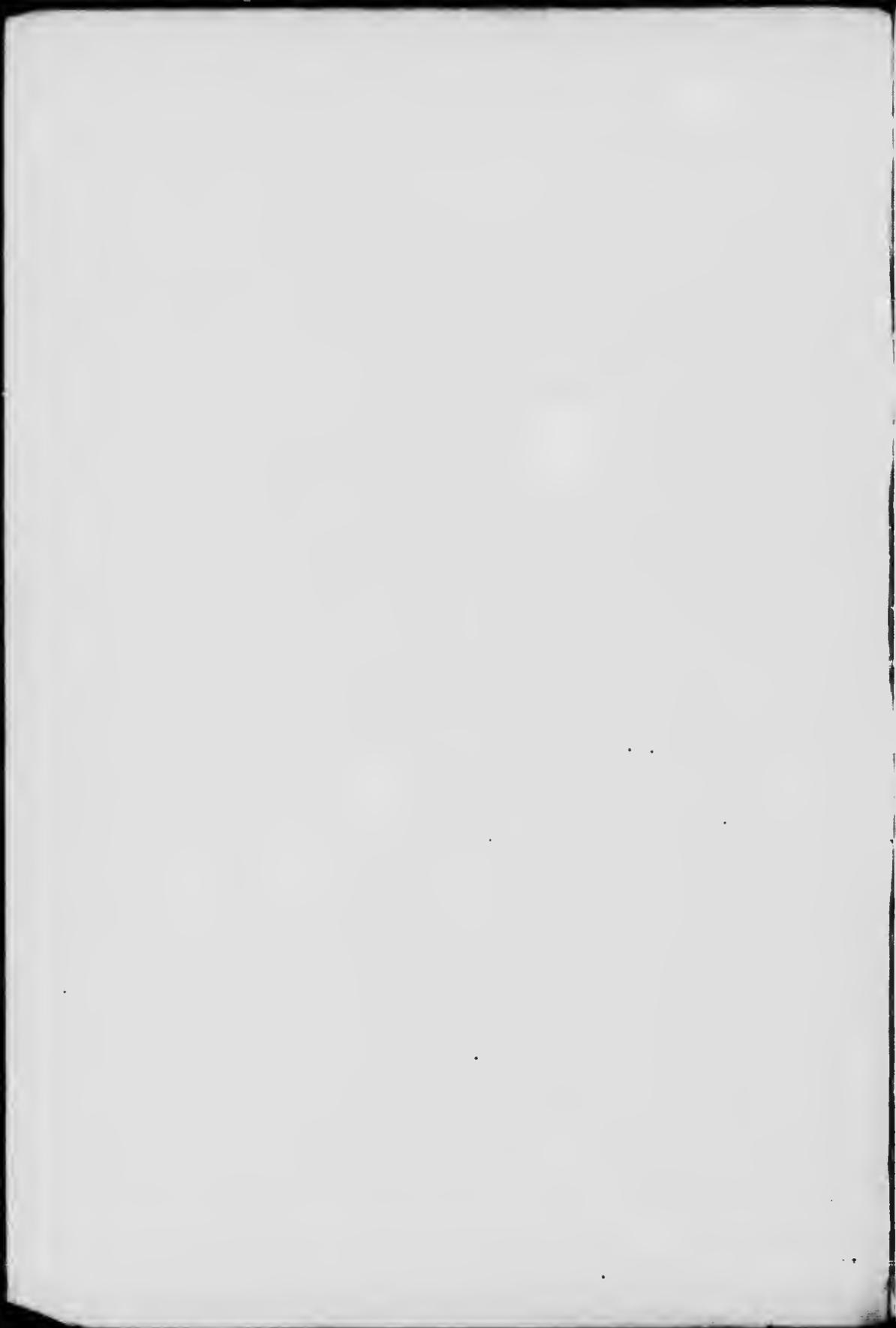
The subject of descriptions of properties for insertion in deeds has received little attention from the authors of text books on Land Surveying. As a reply to numerous enquiries, it has been deemed expedient to reproduce four of the papers read at the Association of Ontario Land Surveyors; they present the question from the point of view of Canadian surveyors.

It must be understood that in publishing these papers, the Department of the Interior does not endorse or assume responsibility for all the opinions expressed by the authors.

E. DEVILLE,

Surveyor General.

OTAWA, June, 1909.



PAPER BY OTTO J. KLOTZ, LL.D., 1889.

THE subject of descriptions is very important to the surveyor and more so to the public, and I do not think that that attention has been bestowed upon it that the subject deserves. For without proper descriptions of the land to be conveyed the refinements of survey that are now gradually aimed at will not bear their full usefulness, in fact may be totally lost by a poor or indefinite description.

To my knowledge there is no work or treatise extant from which the young aspiring surveyor can obtain any information on the subject. Frequently the master with whom he serves takes little trouble in instructing him in this or any other subject, but lets the pupil grope for himself and pick up as best he can.

The public pays dearly for the services of a surveyor who can not make proper descriptions, I may say far more so than if the surveyor had made a poor survey. A survey can be changed if improperly or carelessly performed, a description embodied in an instrument under seal and registered stands for all time.

Under improper and inaccurate descriptions I do not include gross blunders as the giving of the wrong number to the lot, etc.

When a surveyor is called upon to make a description he should, before he attempts the same, thoroughly understand the description of the land, as given in the deed of which the parcel to be conveyed forms a part, and must distinctly know what is to be conveyed—then he is prepared to put his thoughts to paper and make an intelligent and proper description.

As every province or country has its own peculiar forms and phraseology for documentary matters the surveyor should apply the same in making his descriptions so that every word that he has written may be inserted into the deed and not require remodelling by the conveyancer or lawyer.

Never put into a description any more words than necessary—overdescribing land—because you are apt to impair rather than improve it thereby.

In documentary phraseology there are not three words more abused and improperly applied than 'more or less.' My experience in extensive searches in registry offices revealed to me the fact that

this abuse is of a chronic nature and of a malignant type. It seems as if in the past surveyors and conveyancers thought it an impossibility for a person to buy a definite quantity in linear or superficial measurement; like a spectre, 'more or less' haunts every crevice and cranny in the old indentures.

The words 'more or less' are full of meaning and are very significant if properly applied, and the reverse if not so applied, and may in fact destroy the very essence of what is intended to be conveyed by deed.

This will be illustrated later on by examples.

For elucidation of various cases that come up in practice I will give the following:—

CASE I.

Mr. A. owns lot number one in the second concession of the township of Derby, in the county of Wentworth and province of Ontario, and sells to Mr. B. the easterly half of the lot.

In the patent from the Crown for this lot its area is given as 200 acres, more or less. In the Crown Lands Office the original plan shows this lot to be rectangular and eighty chains by twenty-five chains, the bearing of the former as N. 10° E. and of the latter N. 80° W.

A description of the part to be conveyed would be:

'All and singular that certain parcel or tract of land situate lying and being in the township of Derby, in the county of Wentworth and province of Ontario, containing by admeasurement one hundred acres, be the same more or less, and being composed of the easterly half of lot number one in the second concession in said township.'

In this description it is desired to draw attention to two points: Firstly; as the part sold is an aliquot part of the original lot, and all original lots have their areas 'more or less' (the boundaries thereof being a matter of evidence more than of survey) hence the aliquot part must have its area 'more or less' also. Secondly; being a recognized legal subdivision of the original lot, and the boundaries of such lot fixed either on the ground or by statute, the boundaries of such half must be fixed also without any particular description by metes and bounds being given.

No description by metes and bounds in this case would establish the boundaries any better than without such metes and bounds, in fact the probability is that they would conflict with the description—the easterly half of lot number one.

In Dominion Lands legal subdivisions of sections are specified by statute and comprise multiples of one-sixteenth of the section.

In Ontario I know of no statutory legal subdivision although halves and quarters are recognized as such.

CASE II.

Taking the same lot, A sells to B a field lying along the easterly boundary of the lot; the westerly boundary of the field to be the fence (supposed to be straight) then standing. The surveyor is called to make the survey and from it the description.

The judgment and discretion of the surveyor here come into play.

When the surveyor arrives on the field he will soon learn whether the fence is merely a side to complete an area or whether there is something particular to be included by the present position of the fence—as a valuable spring or building close to the fence—in short, something of a comparatively permanent character; I say comparatively, for alas, nothing material is permanent, only the abstract—truth.

The buyer generally pays for the land at so much per acre, and if a lump sum be paid it must for farm land be based on a certain value per acre according to the producing power of the land; hence, area is the guiding principle as frontage is in city property.

He will know that if in his description he refers to the fence, that fifty years hence it will be gone, probably replaced by another one, and then the position of that boundary (westerly one) will be a matter of evidence primarily and not of survey, and this means frequently litigation.

It will be observed that we have, in this case, the easterly, southerly and northerly boundaries of the field as original boundaries with the westerly one to be defined by description.

Let the surveyor carefully establish the above original boundaries, then measure from the southeast angle of the lot along the southerly boundary to the centre of the fence (as division fences in fields in Ontario are mostly rail fences there is an unavoidable margin of one or two or even three links in assuming the centre), do similarly along the northerly boundary from the north-east corner of the lot, besides measuring the easterly and westerly sides of the field, although these last two measurements are not absolutely necessary for the description as far as metes and bounds are concerned, but are taken for computation of area and to have uniformity in the description.

He is now prepared to make his description. Assuming the fence to be merely a side to complete an area we have for a description as follows:—All and singular that certain parcel or tract of land situate lying and being in the township of Derby, in the county of Went-

worth and province of Ontario, containing by admeasurement twenty-seven and one-half acres, be the same more or less, being composed of a part of lot number one in the second concession in said township and which parcel may be more particularly described as follows, that is to say:—Commencing at the southeast angle of said lot thence westerly along the southerly boundary of said lot ten chains and thirty-two links, thence northerly in a straight line twenty-five chains and five links more or less to the point on the northerly boundary of said lot distant eleven chains and sixty-eight links westerly from the northeast angle of said lot, thence along said northerly boundary easterly eleven chains and sixty-eight links to the northeast angle of said lot, and thence southerly along the easterly boundary of said lot twenty-five chains, more or less, to the place of beginning.

It will be seen that the lengths given for the easterly and westerly boundaries of the field are really not necessary in the description but as before stated are given for uniformity as the other two boundaries are given.

Some may ask why I do not give a bearing for the westerly boundary, the others having original bearings. This opens up the whole subject of bearings.

Nearly all the bearings in Ontario are magnetic, only of late years are the astronomic bearings being introduced, but as original boundaries and new division lines often abut, the surveyor who desires to do more accurate work and use astronomic bearings must give for an original boundary its original magnetic bearing also to preserve the identity of the line and thereby simplify searching documents for title. Some surveyors have been in the habit of using the compass and combining one line with present bearing with another possibly of ten years date, and lastly with an original boundary, whose bearing was taken seventy-five years ago. This makes a nice jumble, and it is not a rare occurrence either.

To every practitioner it is well-known that the ordinary bearings given are not nearly as reliable as the linear measurements. Astronomic bearings are definite and unalterable.

Had I given a bearing for the westerly boundary in the last description, if it meant anything at all, it meant that that line ran in one particular direction and no other, and hence must intersect the northerly boundary in some particular point, but from my hypothesis that point must be eleven chains and sixty-eight links from the north-east angle of the lot; these two conditions for one and the same point are highly improbable of being simultaneously fulfilled. Hence I have to choose between giving a bearing for the line or a definite distance along the northerly boundary. As the latter is more readily determined and tends to preserve the area (the

guiding principle here) in case of a resurvey, I chose it, and thereby avoid explaining, in case a bearing had been given, whether such bearing is astronomic, present magnetic or made to conform with the original bearing of one of the other boundaries.

Professor Johnson, in his admirable work, 'Theory and Practice of Surveying,' which should be in the library of every surveyor, discusses the relative merits of linear and angular measurements, and concludes with 'It thus appears that when the side lines of lots are located perpendicular, or at any other angle with the street upon which the lot fronts, it is susceptible of more accurate location than by two (front and rear) measurements, unless the usual limit of error can be greatly reduced.' In short he gives preference to the theodolite compared with the chain or steel tape. Theoretically, using the instruments quoted, such preference is unassailable; however, its conclusive application (angular measurements) practically is confined to triangulations in geodetic work. In practice, lots are generally laid out with an even number of feet or links, frontage and depth. This is intelligible to the public, who know nothing of bearings; and where there are gores or oblique lines, I think that, in the large majority of cases, the course is computed from the linear measurements. It would be a mere accident if such a course would end in even minutes, and a minute being the limit of refinement in ordinary surveying, it follows that the course given will not be mathematically consistent with the distance given. Hence more weight should be given to the latter than to the former.

In another place he says, 'With the transit to define directions of courses, and the chain still to measure distances, such a maximum (distances govern courses) would not have voiced the results of experience, but would have been sheer nonsense.' I am confident that at the present day, in the vast majority of cases, 'distances do govern courses.' A line can be measured independent of any other line, a course can undoubtedly also be determined independent of any other course, but, practically, is this done? No, the course is made dependent upon some other course, that on another, and so on, until we finally arrive at the basal course, possibly established by Polaris. Now I would like to ask, if not in our city surveys, the surveyor will give the preference to linear measurements in most cases as against angular measurements as deduced from the courses or angles given on the plans, for determining a point or line.

Linear measurements shown on plans have, as a rule, been actually made, whereas courses are deduced or computed and seldom astronomically observed.

The Professor puts the question, 'Shall division lines be located by an angle with the street on which the lots front or by distances from the next cross street,' and then gives an example—a rectangular block of nine lots, each fifty by one hundred and fifty feet.

Required to locate lot 9. It assumes the maximum error of chaining to be 1 in 5,000, and when chaining the front and rear of lots 1 to 8 inclusive (400 ft.) to produce opposite signs, that is the error of the division line between lots 8 and 9 to be .16 ft., equivalent for the distance of 150 ft. to $3\frac{1}{2}$ minutes of arc, a quantity undoubtedly larger than permissible in a transit, but it must be borne in mind that even when using the transit one distance (400 ft.) must be measured, involving one half of the above error, to say nothing of the error arising from imperfect setting, adjustment and pointing. Furthermore, it may be necessary to set up the instrument twice to ensure parallelism of the lot lines between lots 8 and 9 and of lot 1, and finally it may be impossible, where the actual dimensions of the block differ from the intended ones, that the transit can be used at all, but that by chaining the relative width of each lot be determined.

Let us put this example to a practical solution, under the favourable assumption that the block and its lots have actually their proper distances and bearings. Let the rectangular block of lots be on Yonge street, Toronto, where there is a steady pour of pedestrians and vehicles, or even on a less frequented street. How many surveyors would take offsets (for it is not probable that the instrument could be set on the lot line on account of fence or building) from the line of the front of the lots, set up the transit to turn off the angle for lot 9, instead of expeditiously measuring with a steel tape 400 ft. from the front and rear of lot 1?

If a surveyor could just place his transit where he chose, could keep all disturbing influences distant, could depend upon his assumed base, then he could probably more accurately define a point by angular measurement (intersection) than by linear, but at an expense of time.

The above pertains especially to city surveying, and is given under that heading in the book referred to.

If in the country, where the ground is more or less broken, it were required to run a long line parallel to and a considerable distance from another one, I would certainly prefer the transit to the chain.

Reverting now to Case II., we will see that it would have been impracticable to have given a course for the westerly boundary of the part sold. For that course is subject to the position of the fixed distances to 10.32 chains and 11.68 chains which in turn are dependant upon the position of the southeast and northeast corners respectively of the lot. The change of position of these corners (original ones), as may arise from conflicting evidence given to two surveyors, necessarily changes the position of the southwest and northwest corners of the parcel, too, without however causing a material difference in area. This difference of area dependent upon the

position of said southeast and southwest corners would be greater were we to give a definite bearing for the westerly limit of the parcel.

I am an admirer of fine instrumental work, but think that for some time to come yet in ordinary surveying 'distances will govern courses.'

The second part of Case II., of less frequent occurrence, is where the fence is to include something close to it and of a comparatively permanent character, in which case there must be no uncertainty of such being included.

Our description—the latter part thereof—would then be: 'Commencing at the southeast angle of said lot, thence westerly along the southerly boundary of said lot ten chains thirty-two links more or less to the point distant, fifty links due west from the astronomic meridian passing through the northwest corner of the limestone dwelling-house (being the only stone building on said parcel), thence north twenty degrees and seventeen minutes west (astronomic) twenty-five chains and five links more or less to the northerly boundary of said lot, thence along said northerly boundary easterly eleven chains and sixty-eight links more or less to the northwest angle of said lot, and thence along the easterly boundary thereof southerly twenty-five chains more or less to place of beginning.'

According to the above description, no future survey could deprive the purchaser of the limestone dwelling-house, although the position of the southeast and northeast corners of the lot may be subject to change, as their position is mostly a matter of evidence as to their original position as designated by posts, or as deduced from other original corners where evidence is similarly required.

A sketch showing the position and dimensions of the building, and signed by the surveyor, might advantageously be attached to the deed for future identification in case additions to the building or other changes occur.

When the words 'more or less' are used the 'stopping' point must always be, or be referred to, some fixed point, never a wooden stake. An original corner is always a 'fixed' point, although it may be shifted about by surveyors, depending upon the evidence upon which they base their work. Stone buildings, iron or other metallic bolts set in rock may also serve as points of reference. 'More or less' should hence only be used in giving the distance between two fixed points.

In the foregoing descriptions the apparent want of definiteness in not giving bearings is what really makes the description definite and without ambiguity.

thence, along said side of Chester street, southerly one hundred and fifty feet, more or less, to the place of beginning.'

Notes on the above.

As the position of the streets or lots depends primarily on evidence where the original lot posts stood, it would be imprudent to give a bearing for the frontage of the block or for any of the other sides. To say, for instance, 'thence, along Logan street, south seven;-six degrees fourteen minutes, east, etc.,' is a questionable statement, being a dual statement, for S. 76° 14' E. means a certain course, and 'along Logan street' possibly and probably another, hence I avoid giving the course. Although the southwest corner of the brick block was intended to be co-incident with the southwest corner of lot number one, and may have been found so by the surveyor, yet another surveyor might find it out one or more inches, and possibly on the street, hence it would be wrong to begin the description, 'at the southwest corner of the brick block.'

Similarly the block is intended to be on the line of the northerly side of Logan street, but for similar reasoning the frontage that A can convey does not necessarily extend to the southeast angle of the brick block, but only to the line of the easterly side of the said block. If the block is anywhere on the street, that is a matter for the municipality to deal with, but Mr. A can certainly not convey what he does not own. In this case we have two definite points defining the frontage—the southwest angle of lot number one and the intersection of the line of the easterly side of the brick block with the northerly side of Logan street, hence the distance between the points must be more or less; and likewise for the other sides of the parcel. It would be absolutely wrong to express the frontage definitely as so many feet, no matter how accurately the measurements be made and how definite and undisputed the southwest angle of lot number one may be. For there is in this world no absolute measurement, for we can only hope, by the most accurate and refined measurements, to increase the approximation to truth. Furthermore, we may put as an axiom in practical surveying, that bearings and definite linear measurements of an enclosed area are incompatibles.

CASE IV.

(Using the Diagram of Case III.)

Mr. B buys from Mr. A twenty feet frontage of lot number one, the frontage extending from Chester street along Logan street, and the parcel bought to have a uniform width to the rear thereof.

For the description no survey is necessary, but as Mr. B. desires to know the limits, especially the eastern limit of his parcel, the sur-

veyor is called upon. In this case the accuracy of the survey is of far more importance than in Case III., there is no 'more or less' about the frontage, and as Mr. B will probably want to build up to his line, no pains nor care should be spared in giving him the most accurate measurement attainable.

When Mr. A comes to sell the remainder of the lot, the description for it will start: On south limit of lot number one, at a distance of twenty feet (no 'more or less') easterly from the southwest angle of said lot number one, etc. So that if Mr. B has built one inch beyond the twenty feet he will find himself in trouble, and often very expensive trouble. In this way surveyors may be generous towards their legal brethren although detrimental to themselves. The description for the parcel will be: 'All and singular that certain parcel or tract of land situate, lying and being, in the town of Hope, in the county of Wentworth and province of Ontario, containing by admeasurement three thousand square feet, be the same more or less, being composed of a part of lot number one, on the northerly side of Logan street and on the easterly side of Chester street, and being in Block A, as shown on the plan entitled, 'Plan of subdivision of township lot number seventeen, third concession, township of Derby, county of Wentworth,' under date June 11, 1875, signed by James Dunean, P.L.S., and filed in the registry office for the county of Wentworth, and which parcel may be more particularly described as follows, that is to say:—Commencing at the southwest angle of said lot number one, being the intersection of the northerly side of Logan street with the easterly side of Chester street; thence, along said side of Logan street, easterly twenty feet; thence northerly, parallel to the westerly limit of said lot, one hundred and fifty feet, more or less, to the southerly limit of the registered lane, twenty feet wide; thence westerly, along said limit of lane, twenty feet, more or less, to the northwest angle of said lot number one; thence, along the westerly limit of said lot, southerly being along the easterly side of Chester street, one hundred and fifty feet, more or less, to place of beginning.

Notes on Above.

There is probably only one point that needs explanation in the above,—and that is why I say twenty feet more or less for the rear of the lot when I have twenty feet definite on the front.

From the hypothesis or condition of sale the east and west limits are to be parallel, that is the parcel is to have a uniform width, measured parallel to the frontage of twenty feet. As the front and rear of the lot are original boundaries, and, although they were intended to be parallel, yet may not be found so on the ground, in which latter case the definite distance of twenty feet at the rear might destroy the parallelism of the east and west limits of the parcel, hence the words 'more or less' are used.

CASE V.

It is seldom required to give a description wherein it is desired to have a definite area, that is a person buys so many square feet or acres and no 'more or less.'

If such be required, one or two lines will probably be given in position. For instance, the half of the front of the lot and the adjoining lot boundary, a further condition will likely be given that the parcel is to be a parallelogram. With these data the description can be so worded as to include a definite area although the measurement of the sides may not be definite, but in such event the one will be made dependent upon the other,—for example—so many chains more or less along the southern boundary of lot from the southeast corner thereof to the point midway between the southeast and southwest corners of said lot, thence northerly and parallel to the eastern boundary of said lot to such distance that the parallelogram contained by the two described lines and the two opposite and equal ones, each of each, shall contain ten acres, thence easterly parallel to the southern limit of said lot ——— chains more or less to the eastern boundary of said lot and thence along ——— southerly ——— chains more or less to place of beginning.

I have in some of the above cases inserted distances that are not absolutely necessary for defining the land, but have added them simply as circumstantial evidence, but without impairing the definiteness of the description itself. All such measurements are naturally 'more or less.'

It will be noticed that in none of the above descriptions save one have any definite bearings been given. One reason for such omission has already been advanced and that is, as a bearing means some definite course—a particular direction, it is thereby in practice generally incompatible with the linear measurements given.

Argument might advance the circumstantial evidence plea of 'more or less' that was granted to distances, but this is objectionable and for two reasons,—firstly, it is totally without precedent to say for example—thence north about fifteen degrees thirty-seven minutes west; secondly, and the greater reason, it is highly probable that the circumstantial evidence of bearings would differ from that of linear measurements, and instead of being corroborative in assisting towards a solution, would confuse matters.

As before stated, linear measurements are found by experience to have far more weight than angular measurements and hence should be given the preference in descriptions.

There are numerous cases, however, where both bearings and distances must be given.

CASE VI.

Mr. A sells off his township lot, an irregular parcel, probably with numerous sides.

One, generally two sides of the parcel, will be co-incident with original lot sides.

The description should begin at one of the corners of the original lot or some other established or well-defined point. The irregular sides, if I may so term them, that is those not forming part of any original lot line, should be given in bearing and distance, the former preferably astronomic, but care must be taken to have all bearings on the same basis, not give the original magnetic bearings of the lot lines for these lines, and the rest astronomic; and when making them all astronomic, the original bearings for the lot lines should be given in parenthesis for these lines and following the astronomic bearings given therefor.

In such a description at least one course must have its distance 'more or less' for 'closing.'

If there are any permanent boundaries such as a stone building marking any corner, the distance thereto must also be 'more or less' as given under Case III.

A word about descriptions in old deeds. These instruments frequently contain errors, impossibilities and nonsense. Under the last may be classed 'commencing at a stone in the corner of the field where a post has been planted'—; 'Thence N. 10° W. 12 c. 50 more or less' (to where?); 'Commencing at the southeast angle of said parcel where a post has been planted;' and so on.

Under impossibilities we may cite those cases where bearings and definite distances are given, which on computation are found to be far from possible.

Errors arise mostly through the interchange of the words—north, south, east and west; as an instance of this I will give the following I met in my own practice years ago:—

The description of the parcel was as follows: 'Commencing at the distance of thirty-seven chains eighty-two links from the south-west angle of said lot number seventy-nine in a course therefrom north twenty-five degrees thirty minutes west, thence north seventy-six degrees east eighteen chains and six links, thence north sixty-five degrees east ten chains eighty-three links, thence north twenty-five degrees thirty minutes west three chains forty-seven links, thence south sixty-five degrees west ten chains eighty-three links, thence south seventy-six degrees west eighteen chains six links more or less to the western boundary of said lot, and thence south twenty-five degrees thirty minutes east three chains fifty-four links more or less to place of beginning.'—Containing by admeasurement ten acres, be the same more or less.

The southern boundary the farmer wanted defined.

I had not run very far from the southwest angle of the parcel when he said, 'You are shooting into my neighbour's.' I continued and found when I reached the established eastern boundary my measurement fell short nearly four chains, making it apparent that something was wrong.

Obtaining the deeds of the adjoining lands, I soon discovered the error. The course of the southern boundary should have been north seventy-six degrees west instead of south seventy-six degrees west.—south had been through a slip written for north.

Even with the corrected description, the area was in error; the parcel contained according to notes and bounds 8.67 acres instead of 10. The person who made the description having evidently multiplied length by breadth without observing that the breadth at one end was not at right angles with the adjoining parallel side.

Under such circumstances, what is the surveyor to do under these circumstances, either in making a survey or descriptions of such lands.

It is certainly not the duty of the surveyor to constitute the surveyor judge in such matters. But law is intended to be the incarnation of common sense, and the strength of the law would suggest that the surveyor use common sense and make his survey and description accordingly. In this case, I certainly would have no hesitation in making a survey of the land at the rate of the southern part if sold, inserting a note in the deed that the boundary was not the one given in the deed.

It is, however, to be made too imperative that the greatest care be used in doing anything inconsistent with the original description, though the latter may be inconsistent in itself.

By the way, it is to be noted that correction errors may be eliminated, but with great difficulty, where the legal representatives may be spread over many generations, it is next thing to an impossibility, and it would cost with a great deal of expense to obtain a deed of correction.

By the way, it is to be noted that a person may claim land by adverse possession, and not legally sell such land until his claim has been ratified by the courts, a procedure that may cost more than the land is worth.

Many of the older surveyors well know that the good offices of the surveyor as mediator and peace-maker have often been exercised when neighbours were at strife about some boundary, and that through his just and good counsel harmony has been restored where litigation was brewing.

And finally look upon the making of a description as upon a problem, something definite is to be done—no ambiguity, no uncertainty. Have the proposition and data clearly in your mind—then go ahead—and there will be no difficulty in making a proper description.

A word to the younger surveyors. In making a description always express numbers in writing, the corresponding figures may be added in parenthesis. Never use abbreviations and always keep a copy of every description you make, preferably using a letter press for copying and a book specially for descriptions. A good legible hand is also imperative.

Before closing I wish to answer a question that is sometimes put by lawyers to surveyors, and generally with a patronizing air:—'Can't you measure the exact distance between two points?' 'No man can measure the absolute distance between two points' is the answer.

To begin with there is only one measure of absolute length in the Dominion of Canada, it is the 'Standard Yard' 'A,' deposited in the Department of Inland Revenue. It is intended to be of the same length as the 'Imperial Yard,' but this does not make it 'absolute'; however, by Act of Parliament, 42 Vic., Chapter 40, made 'absolute' for the Dominion. All other linear measurements, are dependent upon it.

It is impossible to make an absolute copy of that standard yard, and it is also impossible to make an absolute comparison between that yard and any other measure—say a chain—which shall be an even multiple of that yard, hence all measures (except the standard) are affected by error, although that error may approach the infinitesimal. Hence no absolute distance can be measured, as it is impossible to have an absolute measure for determining the same.

Another reason for answering the question in the negative, and independent of the first one, is that the operation or act of measurement between the two points is not perfect. It would be a mere coincidence if two or more measurements of a certain line were absolutely coincident. However, a careful surveyor will do his work in such a manner that discordances arising from re-measurement are kept within such limits as to be practically inappreciable.

We find in trigonometric surveys, where the greatest care and the highest refinements are applied, that the length of a base line on which the triangulation rests is always given with its probable error. The following example from Wright's 'Adjustment of Observations' will illustrate this latter, in fact the whole question:—'In the measurement of the Massachusetts' base line, consisting of 2,165 boxes, the probable error of a box, as derived from comparison with the standard meter, was $\pm 0^m\cdot000055$, the probable error from instability of microscopes in measuring a box was $\pm 0^m\cdot000127$, and the probable error of the base from temperature corrections was $\pm 0^m\cdot0332$. Show that the probable error of the base arising from these independent causes combined is $\pm 0^m\cdot0358$.'

In short, gentlemen, the distance between two points is always 'more or less.'

I append verbatim a description of a mining claim in British Columbia, obtained by me last spring. It is simply an ordinary specimen of that class of documents in that province.

MINING CLAIM—HAPPY FIND.

'Kootenay, near Illecillewaet, July 5th, 1886. Recorded in favour of D. W. Corbin, No. 25492, and J. P. Kennedy, No. 25493, and C. W. Wood, No. 24623, one mineral claim of 1,500 feet long, by 600 feet wide on a ledge, lode or mineral deposit. First stake commencing up the north fork of the Illecillewaet River about twelve miles from its fork on the west side of a gulch running in an easterly direction, 1,500 feet to third stake situate on the face of a bald mountain to be called the Happy Find claim, said claim has been duly staked and notices posted up according to Mineral Act, 1884, and the amendments of 1886, and recorded subject to clause 23 of Mineral Act, 1884.'

Those unfamiliar with mining claims will probably feel inclined to smile at this description, which act would certainly be pardonable. The definiteness of the description shows most decidedly that the land in question is possibly not in Africa, but in mitigation it may be stated that mining is nearly always done in a very rough, rocky and mountainous country where it is impossible to parcel out the land beforehand checker-board style.

Surveys are only necessitated through the discovery of minerals, and the above description is only intended to hold until a patent is to be issued when a surveyor is despatched to locate and define the lands.

In the above description, however, I think it would have been well if it had been stated which side of the river the gulch is on, and save trouble in finding the bald mountain. Furthermore, one would naturally infer that a gulch 'running in an easterly direction' would have one of its sides designated by north or south instead of west.

PAPER BY M. GAVILLER, P.L.S., 1891.

The importance of knowing how to correctly draw a description of 'a parcel or tract of land and premises' is made sufficiently prominent by the endless trouble to surveyors caused by the abortive attempts of the non-professional conveyancer and the large amount of litigation involved in deciphering obscure descriptions.

The description of a property should be so drawn that any qualified person could lay it out on the ground without doubt or dispute as to the position or content.

Let your description stand upon its own merits, and not be dependent upon the surrounding *private* surveys.

Have a definite point of commencement. Use no tree, building, stump or any object easily liable to destruction or removal.

Do not commence at 'A,' 'B,' or 'C's' lot, or give distances more or less up to or along the boundaries of other properties stating 'A,' 'B' or 'C' as this may entail the survey of several properties beside that of the one described.

As it is indispensable for the drawing of a proper description that the use of the different terms should be understood, I have endeavoured to arrange, under different headings, rulings by good authorities.

Marshall vs. Niles, 8 *Con.*, 369; *Ryan vs. Wilson*, 9 *Mich.*, 262.

The description of land in a deed is to be taken most strongly against the grantor, and must be construed according to the condition of things at the date of making the same.

35 *N.H.*, 121; 11 *Con.*, 335.

The certain description must prevail over the uncertain in absence of controlling circumstances. A description is to be construed so as to make it effectual rather than void.

Johnstone vs. Scott, 11 *Mich.*, 232; *Anderson vs. Baughman*, 7 *Mich.*, 79.

When one part of a description is false and impossible, but by rejecting such false and impossible part a perfect description remains, such part should be rejected and the deed held good.

Fahey vs. Marsh, 40 *Mich.*, 239; *Cronin vs. Gore*, 38 *Mich.*, 386.

Where description calls for land owned and occupied, the *actual* line of occupation is a material call to be considered in locating the lines of the land bounded therein.

When a distance is given to a post, if the point can be found it governs; if not, then in the absence of other controlling words, the distance governs.

Flagg vs. Thurston, 13 *Pick, N.Y.*, 135; *Howell vs. Merrill*, 30 *Mich.*, 282.

When land is described as running a certain distance by measure, to a known line, that line will control the measure and determine the extent of the grant. Not so if the line is obscure and not definitely fixed, and therefore likely to be looked upon by the parties as less certain than the measurement given.

Cleveland vs. Flagg, 4 *Cushing (Mass.)*, 76.

Where land is conveyed as beginning at and bounding land of 'B,' the point of beginning is the *true* line of 'B's' land, and not the line of occupation as shown by a fence set up and maintained by 'B' before and after the conveyance, with the consent of the owner of the lot conveyed, under the mistaken belief that such was the true line.

MORE OR LESS.

Dominion Land Surveyors, 1889.

In case of description of survey under Dominion Lands Act, and where the monuments planted in such survey become 'the original true and unalterable ones,' it has been held under good authority that the distance between these monuments should be given in such description as more or less, and more or less *not* to be used for measurements defining position of point of commencement in regard to formerly *established* point.

When in a description, not giving the length of any side, a definite quantity of land is conveyed, on the corner of an original lot, if the sides of such original lot are or are not at right angles, the sides of the described portion should be considered equal.

AREA.

Butler vs. Widger, 7 *Con., N.Y.*, 723.

A conveyance by metes and bounds will carry all the land included within them, although it be more or less than is stated in the deed.

Remember that in township lots that are described in Crown patent as half lots, that the north half of the west half, or south half of the east half, may contain a different acreage to the northwest quarter or southeast quarter.

Sections 36 and 43 of Ontario 'Surveyors' Act' give directions how descriptions in Crown patents are to be construed, viz., that actual survey courses and lengths hold against courses and lengths given in any letters patent, grant or other instrument, and actual area ascertained by survey holds against quantities given in patent or grant purporting to be for any aliquot part of former survey.

Where boundaries are doubtful then quantity often becomes a controlling condition.

COURSES.

Baker vs. Talbott, 6 *Mont., Ky.*, 182.

Linear measurement should be given the preference over angular measurement deduced from courses.

Jackson vs. Reeves, 3 *Canis, N.Y.*, 293.

A course from corner to corner means *prima facie* a right line, but this may be explained by other matters in the case, to be a crooked or curved line; as following a ditch, hedge or stream.

Brant vs. Ogden, 1 *Johns, N.Y.*, 156.

Northward or northerly means due north; when nothing is mentioned to show deflection of the course to east or west.

It is best to say northerly, southerly, easterly and westerly *along* the boundaries of township lots having original magnetic bearings, and not give those magnetic bearings.

In drawing descriptions of lands bordering on water, it is necessary to inquire into the local law of the province or state in which the premises are situated.

HIGH AND LOW WATER MARK.

United States vs. Pacheco, 2 *Wallace, U.S.*, 587.

Where a sea or bay is named as boundary high water mark is always the line where common law prevails.

High water mark as to river with changeable river bed is held to be determined by river bed, and that only is river bed which the river occupied long enough to wrest it from vegetation.

Lamb vs. Ricketts, 11 *Ohio*, 311.

In computing the number of acres in a survey, 'from,' 'to' and with the bank of a stream mean to low water mark.

Brester vs. Pitts, 59 *Mich.*, 348.

A boundary given in a description as a certain distance above the border of a river at high water mark is not ambiguous, and if disputed is to be fixed like any other fact by testimony and examination of the ground.

BANK AND SHORE.

McCullough vs. Wainwright, 14 *Pen St.*, 59.

A bank is the continuous margin where vegetation ceases.

The shore is the sandy space between the bank and low water mark.

A boundary on the bank of a river, referring to fixed monuments on the bank, limits the grant to the bank and excludes the flats.

Thomas vs. Hatch, 3 Sumner, U.S., 587.

A boundary on a stream and by or to a stream includes flats, at least to low water mark, and in many cases to the middle thread of the river.

Stevens vs. King, 76 Main, 197.

A boundary, by the shore of a mill pond, takes to low water mark.

When a post is planted at shore it is best to use the term adjoining, not at.

AREA.

A sale was made of the north half of a lot, which is bounded by a river; the river was not straight at this point and the north line of the lot is longer than the south line. Held, that the north half must mean the north half in quantity divided from the remainder by an east and west line.

In compiling the above I am much indebted, amongst other authorities, to the rulings in the United States courts, compiled in the new 'Manual of Surveying' and our exchange reports from State associations.

PAPER BY T. B. SPEIGHT, O.L.S., 1894.

Two papers on descriptions have already been read before this association since its formation, and the subject has been so ably presented to you by the authors, Messrs. Klotz and Gaviller, that it may seem to some of our members an unnecessary task to reopen the topic.

It is, nevertheless, a fact that defective descriptions of recent dates are frequently to be met with, and the writer is of opinion that an interchange of ideas during discussion may be of benefit to all; and the purpose of this paper is to promote such discussion.

The object of a description would seem to be twofold, firstly: that the parcel in question may be located and its position defined on the ground by a surveyor, for the benefit of the owner in the enjoyment of his property; and secondly: that the position of the property so described and located may be easily determined with relation to surrounding properties by the person who is searching the title.

Surveyors in and about Toronto who have been called upon to describe properties held, or to be placed under the 'Land Titles,' have had a special incentive given them to devote more time and thought to what is necessary in a description to fulfil the above conditions from the fact that the Master of Titles insists upon these conditions being fulfilled. Having from the responsible nature of his position, made a special study of this subject, the Master of Titles has long been recognized as a high authority, and his necessary criticism of descriptions which have come before him has resulted in much improvement in this important branch of a surveyor's practice.

The subject of bearings deserves more attention than it has hitherto received. The use of bearings without any statement of the line with regard to which the courses are run is a great source of trouble. As a *matter of law* every bearing is astronomical unless it can be gathered from the description, or possibly from all the surrounding facts, that something else is intended. See *Thibaudeau vs. Skead*, 39 Upper Canada Reports, page 387. This being the case, it is obviously the duty of every surveyor drawing out a description with bearings to state whether astronomical courses are intended, or whether, as is usually the case, the bearings are calculated from some line or street which is taken at a generally recognized course. Every description which contains a bearing should therefore include a statement that such a line is taken as the governing line, on such and such a course, or that the bearings are astronomical.

The same description applies to plans. It is obviously convenient in practice, and is a great saving of expense, that in most cases an astronomical bearing should not be taken, but that a street or some other known line should be accepted as the governing line on its recognized course, and the various bearings marked on the plan calculated from this street or line, but it certainly should not be left to be surmised from what the bearings are computed. The fact should be distinctly stated on the face of the plan.

The placing of courses in inverted commas, to show that they are taken from some further plan, survey or deed, is entirely illusive. It is not likely that once in twenty times are inverted commas in a description carried into the deed for which the description is prepared, and even in the exceptional cases these quotation marks are valueless, as they do not indicate the source from which the quoted bearings are taken. Indeed, all that they in fact indicate is that the person who drew the description does not pretend to say whether the course is correctly or incorrectly given, but that it is taken from some unstated source, that he does not guarantee. It is only necessary to put this in words to see how absurd such marks really are when inserted in a surveyor's description.

Where descriptions are prepared for the office of land titles for subdivisions, it is obviously necessary that the surveyor should be furnished with a copy of the description of the whole parcel as registered in that office, as the description of the subdivision must be drawn with reference to that in the register which governs the title.

It is of course granted that astronomical bearings are much to be preferred to any other, but, unfortunately, this fact is not recognized by the public, and therefore a surveyor who may be so desirous of obtaining perfection in his plan and descriptions as to take an astronomical observation may with certainty calculate on that observation being taken at his own expense. The only hope we have of astronomical bearings being introduced into practice for this kind of work is in the possible event of an *Act* to make astronomical bearings on registered plans compulsory; then the public would not question the expense, and the sooner that the public know that surveying is something more than merely measuring a hlock of land with a chain or steel tape the better both for the public and the profession.

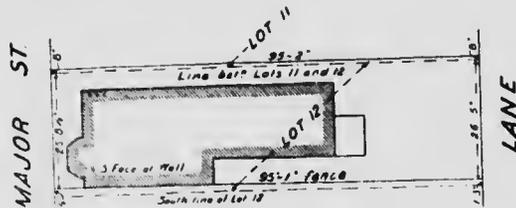
As the methods employed in making surveys in cities and towns differ materially from those required in running lines in rural districts, so also the description of a parcel of land occupied by a building and surrounded by other buildings has features unlike those contained in a description of vacant or farm land.

A surveyor in the constant practice of his profession is liable to fall into a fixed groove, and errors of phraseology in his descriptions

may pass unnoticed by himself while patent to others. With the request that you will bear this fact in mind, I beg leave to submit the following examples of descriptions taken from our description books as exemplifying three cases frequently met with in a city practice:

EXAMPLE I.

'All and singular that certain parcel or tract of land and premises situate, lying and being in the city of Toronto, in the county of York and province of Ontario, being composed of the southerly 8 inches of lot number 11 and of part of lot number 12, as shown on a plan filed in the western division of the registry office for the said city of Toronto, as number 'D195'; and which said parcel is more particularly described as follows:—

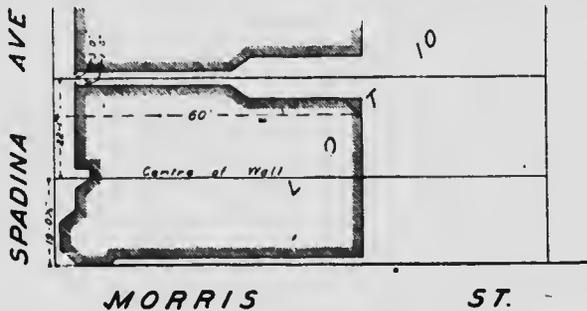


Commencing at a point in the easterly limit of Major street, distant 1 foot 11½ inches, measured northerly along the same from the southerly limit of the said lot 12, said point being in the westerly production of the southerly face of the southerly wall of the dwelling now known as No. 3, Major street; thence, easterly, in a straight line to and along the said face of wall and along the existing fence forming the southerly boundary of the rear premises of the said dwelling, No. 3 Major street, in all a distance of 95 feet 1 inch, to a point in the westerly limit of a lane shown on said plan, and which point is distant 1 foot 3 inches northerly from the south easterly angle of said lot 12; thence, northerly, along said limit of lane 26 feet 5 inches, more or less, to a point 8 inches northerly of the north-easterly angle of said lot 12; thence, westerly, parallel to the line between said lots 11 and 12 and distant 8 inches northerly therefrom, 95 feet 2 inches to the easterly limit of Major street aforesaid; thence, southerly, along the last mentioned limit 25 feet 8½ inches, more or less, to the place of beginning.'

It will be observed that no bearings are given. The reason for their omission is that they are not necessary to the proper identification of the parcel, and if calculated bearings had been given they would probably have differed from the patent bearing, N. 16° W. or No. 74° E., as shown on the original plan and thus had confused the future searcher.

EXAMPLE II.

'All and singular that certain parcel or tract of land and premises situate, lying and being in the city of Toronto, in the county of York, and province of Ontario, being composed of parts of lots numbers 10 and 11, as shown on a plan filed in the western division of the registry office for the said city of Toronto, as number 'D 254,' and which said parcel is more particularly described as follows:—



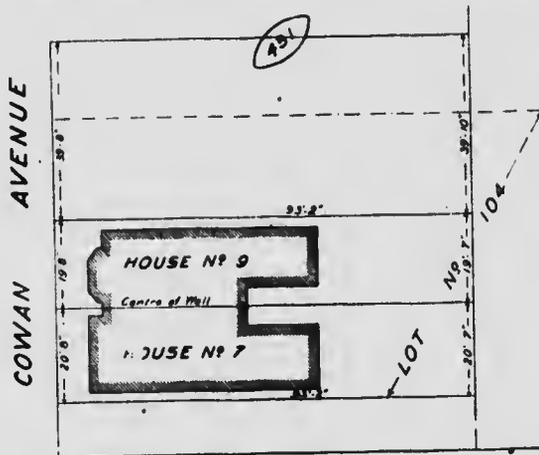
Commencing at a point in the easterly limit of Spadina avenue (formerly called Brock street), distant 19 feet and one-half inch, measured northerly along said limit from the southwesterly angle of said lot 10, the said point being opposite the centre line of partition wall between the two brick dwellings now standing on said lot 10 and the southerly portion of said lot 11; thence, north $73^{\circ} 56'$ east, to and along the said centre line of wall and along the easterly production thereof, in all a distance of 110 feet; thence northerly, parallel to said limit of Spadina avenue 21 feet $\frac{7}{8}$ inches, to intersect the easterly production of a line drawn through the centre of the passage between the most northerly one of the hereinbefore mentioned dwellings and the next dwelling to the north thereof; thence, south $74^{\circ} 10'$ west, to and along the said centre line of passage and along the westerly production thereof, in all a distance of 110 feet, to the said easterly limit of Spadina avenue; thence southerly along the last mentioned limit, 22 feet 1 inch, more or less, to the place of beginning.

Together with a right of way at all times, in common with others entitled thereto, over a strip of land 1 foot 6 inches in width, immediately adjoining the northerly limit of the hereinbefore described parcel and extending easterly from Spadina avenue to a depth of 60 feet, and reserving a right of way at all times over and along the northerly one foot 6 inches of the westerly 60 feet of the said hereinbefore described parcel.'

Note.—The bearings herein are calculated with reference to the line between lots 10 and 11, it being assumed N. 74° E.

EXAMPLE III.

'All and singular that certain parcel or tract of land and premises situate, lying and being in the city of Toronto, in the county of York and province of Ontario, being composed of part of the westerly portion of lot number 104, as shown on a plan filed in the registry office for the said county as number 431, but now in the western division of the registry office for the said city of Toronto, and which said parcel is more particularly described as follows:—



SPRINGHURST (formerly called Huxley) AVE.

Commencing at a point in the easterly limit of Cowan avenue, as widened by by-law, distant 20 feet 8 inches, measured northerly along the same from the southerly limit of said lot 104, said point being in the westerly production of the centre line of partition wall between the two semi-detached brick dwellings now standing on the southerly portion of the westerly part of said lot 104; thence, north $74^{\circ} 3'$ east, to and along said centre line and the easterly production of the same in all a distance of 93 feet 2 inches; thence northerly parallel to said limit of Cowan avenue, 19 feet 7 inches, more or less, to a point in the easterly production of a line drawn parallel to the northerly face of the most northerly wall of said dwellings and distant 1 foot and 6 inches northerly therefrom; thence south $74^{\circ} 6'$ west, along the line drawn as aforesaid, 93 feet 2 inches, to the easterly limit of Cowan avenue aforesaid; thence southerly along the last mentioned limit 19 feet 7 inches, more or less, to the place of beginning.'

Note.—The bearings herein are calculated with reference to the north limit of said lot 104, it being assumed N. 74° E.

The party wall is an important feature in each of Examples II. and III., and is probably one of the most delicate boundaries met with in a city practice. It may, therefore, not be out of place to devote some space to this subject, giving some court decisions in regard to it, although not coming entirely within the title of this paper.

Watson vs. Gray, 14 Ch. D., 192 (1880).

The following clause appeared in the conveyance:—

‘It is hereby agreed and declared by and between the said parties hereto that the north and south gables and walls of the said messuage or dwelling house and hereditaments hereby conveyed shall be and remain party walls, and that the eastern and western walls and the pallsades in front of the said messuage or dwelling house shall belong exclusively to the said Jane Lyons, her heirs and assigns.’

Mr. Justice Fry, after stating this proviso, said:—‘What is the meaning of the term “party wall” as there used? The words appear to me to express a meaning rather popular than legal, and they may I think be used in four different senses.

‘1. They may mean first a wall of which the two adjoining owners are tenants in common, as in *Wiltshire vs. Sidford* and *Cubitt vs. Porter*. I think that the judgments in those cases show that that is the most common and primary meaning of the term.

‘2. In the next place, the term may be used to signify a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners, as in *Matts vs. Hawkins*.

‘3. Then thirdly, the term may mean a wall which belongs entirely to one of the adjoining owners but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements.

‘4. Lastly, the term may designate a wall divided longitudinally into two moieties, each moiety being subject to a cross easement in favour of the owner of the other moiety.’

As it is not the business of a surveyor to say what constitutes a party wall, or what sort of party wall it is, he may write after the words ‘party wall’ in his sketch or plan, a reference to the instrument creating it. A surveyor should be careful before he writes the words ‘party wall’ on a line in his sketch or plan to ascertain whether it is a party wall all the way up from the ground or only for a portion of the distance; and if it is only a party wall for a certain distance, write ‘party wall for thirty feet from ground’ (or as the case may be). This is suggested from the following passage: *Lloyd’s Law of Building and Buildings*, at page 342—‘Buildings upon a party wall. Either of the owners of a party wall has the right to increase its height, provided such increase can be made without detriment to the strength of the said wall, or to the property

of the adjoining owner, but he makes such addition at his peril. The exercise of the privilege brings about the peculiar circumstance that a wall may be a party wall to a certain height and subject to the sole ownership of one of the adjacent proprietors above said height. In such a case the court will hold that so far as the wall between the buildings is concerned it is a party wall, while it may grant an injunction prohibiting the removal of the other portion. 'We have known in this court,' says James I. J., in *Weston vs. Arnold*, 'cases in which property in London is intermixed in such a way that one man's basement and cellar extend under another man's shop; and again, the first floor of one house is over the shop of the next house. In such a case there would be a party wall between the two buildings below, while above would be only a private partition between two rooms in the same house. There is nothing in fact or in law to make it impossible or improbable that a wall should be a party wall up to a certain height, and above that height be separate property of one of the owners. But the owner of one half of a party wall has no right to extend it to the line of the street, thereby occupying a portion of his neighbour's land not built upon.'

Must be no window in party wall.

Sproule vs. Stratford, I.O.R., 325 (1882).

The defendant raised the party wall beyond the building of the plaintiff (the adjoining owners). This he did with the plaintiff's consent. But when he opened a window through the raised part of the wall, the plaintiff applied for an injunction. Chancellor Boyd decided: 'My conclusion is, that the making of the window in the wall was an unauthorized user of it by the defendant, and that the plaintiff has the right to enjoin him against its further continuance, and to a declaration that the extension in height of the wall in question, is a continuation of the party wall between the adjoining properties of the plaintiff and defendant.'

Brooke vs. McLean, 5 O.R., 209 (1884).

Case of one owner building a high building and using a wall (on adjoining property) as a party wall, thereby weakening same. Damages given.

The suggestions thrown out here are by way of warning surveyors against making plans and sketches that might mislead. While surveyors are not responsible for their advice in the same way as solicitors, yet they have a certain status as advisers. Thus in *Haber-dashers Co. vs. Isaac*, 3 Jur., N.S., 611 (1857), Wood, V. C., said:—

'The defendant says that Mr. C., the agent whom he employed in 1853-4, was not a sufficient protection to him. It is true he was not a solicitor, but he was a surveyor, and surveyors and builders have generally very good notions of the legal effect and consequences of the stipulations in leases, and are perfectly competent advisers.'

PAPER BY A. J. VAN NOSTRAND, O.L.S., 1907.

This subject has been from time to time written up and discussed by members of this association during the past twenty years and yet the interest holds. Conditions are changing and new views arising to such an extent that we may regard 'Descriptions' as a perpetual theme for study and thought for ourselves and our successors yet unborn. We may also put it down as a certainty that those successors, when attempting to follow out descriptions, prepared by us under the impression that they describe precisely the lands intended to be conveyed, will find quite as many faults, real or imaginary, as do we when endeavouring to locate the limits of parcels intended to be described in the instruments of a century ago.

The foregoing assumption notwithstanding, it remains the duty of every member of this association who is engaged in land surveying to prove himself in this department to the best of his ability and opportunity and thus support the claim, made long ago by ourselves, that the land surveyor is, or should be, the highest authority on descriptions.

To accomplish this it is not merely necessary for him to have command of language sufficient for the expression of his ideas upon the matter in hand, but to see to it that the ideas include a knowledge of the legal weight and interpretation of the expressions made use of in descriptions.

With regard to the use of language it is gratifying to know that steps have been taken to ensure that every aspirant upon approaching the portals of our profession shall demonstrate to the Board of Examiners that he has been well grounded in the knowledge of his mother tongue, a precaution quite ignored when we of the older generation were admitted.

Against the claim referred to, it is frequently urged, and we fear with substantial grounds, that land surveyors are, in many instances, less careful of the accuracy of descriptions prepared by them than of the precision of the field work which gives them the data from which are drawn the enduring lines which when incorporated in a conveyance either make or mar the title to the land involved. Now, while surveys should, of course, be performed with all possible skill and accuracy, it is often possible to so construct a description as to secure the interested parties against inaccuracies which may have occurred in the work on the ground.

A comparison of the more ancient forms of phraseology with those now generally in use shows us that there have been many changes, nearly all of which are in the direction of reducing the length of a description by the omission of synonymous terms and

expressions and the lopping off of phrases, the purpose of which is, like that of the veriform appendix in the human anatomy, undiscovered. There still remain, however, certain expressions the import of which the writer is free to confess he finds difficult in explaining to pupils who desire to know all that can be learned of descriptions before placing themselves in the hands of the Board of Examiners. The standard answer to enquiries under this head has, so far, been that the expressions are 'common to all normal descriptions and their omission might lead to trouble.' Some of these queries are as follows: What does 'All and singular' mean? 'Parcel or tract.' Is every piece of land so indefinite as to be equally liable to be one or the other and thus render necessary the use of both terms? 'Land and premises.' Is the word premises always necessary? 'Situate, lying and being.' Isn't that tautology? 'Containing by admeasurement.' Are not many parcels bought, sold, described and conveyed without any 'admeasuring' process when breaking bulk? 'That is to say.' Why not amputate that appendix? To be brief, while one does not like to pose as an iconoclast, does it not seem reasonable that, in view of the fact that descriptions are usually paid for by the parcel and that the age is constantly growing more strenuous, a special committee on phraseology would have it in their power to advance the interests of our members and confer a marked benefit upon the laity.

Be that as it may, we are constrained to deal with existing conditions and derive what profit we may from an interchange of ideas on the various kinds of descriptions which come into the field of the average practitioner.

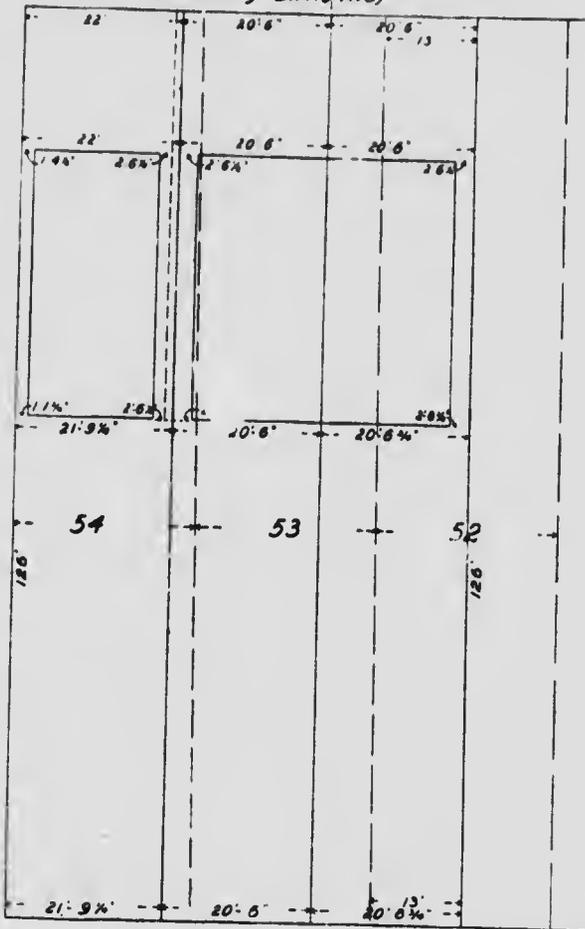
Amongst the many distinct classes of descriptions met with we select a few varieties and leave the remainder for those more familiar with them.

CITY PROPERTIES.

Under this head an experience of more than twenty years has taught the writer that when, at the end of the first two years, he thought he had learned it all, he was, as a matter of fact, just getting nicely into the kindergarten and each succeeding year serves only to place perfection about a decade more remote.

References to the letter book copies of a few years ago show failures which should not have occurred and no doubt the copies of work done at the present moment will some day disclose other deficiencies, but a few specimens are here presented for the purpose of honest criticism. It is, however, stipulated, that allowance be made for the fact that the dimensions of the cloth have a bearing upon the cutting of the coat, and many descriptions are made technically incorrect for the purpose of conforming to (a) the available data and (b) the necessity to interfere as little as possible with the previous chain of title.

ABBOTT AVE
(formerly Birnie Ave)



Sketch showing lots 53 and 54 and the westerly 13 ft. of lot 52.
Reg. Plan 1158, Toronto.

CASE I.

A semi-detached dwelling house and premises having a joint right of way for side entrance.

ABBOTT AVENUE.

(West House of Pair.)

ALL AND SINGULAR, that certain parcel or tract of land and premises situate, lying and being in the city of Toronto, in the county of York, and province of Ontario, being composed of parts of lots numbers 53 and 54, according to a plan filed as number 1156, in the registry office for the western division of said city, and which said parcel is more particularly described as follows:—

COMMENCING at a point in the southerly limit of Abbott (formerly called Birtle) avenue, distant forty-two feet six inches (42' 6") measured easterly thereon from the westerly limit of said lot 54, the said point being in a line drawn parallel to the limit between the said lots from the northern extremity of the center line of partition wall between the semi-detached dwelling houses composing the pair standing in 1906 upon said lot 53 and the adjacent parts of lots number 52 and 54 according to the said plan; thence southerly to and along the said centre line of wall and continuing thence southerly parallel to the limit between said lots 52 and 53, in all, a distance of one hundred and twenty-six feet (126') to a point in the southerly limit of said lot 53, which point is distant forty-two feet and three and one-quarter inches (42' 3¼") measured easterly from the south-westerly angle of said lot number 54. Thence westerly along the southerly limits of said lots 53 and 54 twenty feet and six inches (20' 6"). Thence northerly, to and along the centre line of the space between the more westerly one of the said dwelling houses and the next dwelling house to the west thereof, and continuing thence northerly, parallel to the limit between said lots 52 and 53, in all, a distance of one hundred and twenty-six feet, to the southerly limit of Abbott avenue aforesaid; thence easterly, along the last mentioned limit, twenty feet and six inches (20' 6"), more or less, to the place of beginning.

Together with a right of way, at all times, in common with others entitled thereto, over, along and upon a strip of land one foot six inches (1' 6") in width immediately adjoining the westerly limit of the hereinbefore described parcel and extending southerly from the said limit of Abbott avenue to the depth of fifty-seven feet (57').

AND RESERVING a right of way, at all times, for all persons entitled thereto, over, along and upon the westerly one foot and six inches (1' 6") of the northerly fifty-seven feet (57') of the said hereinbefore described parcel.

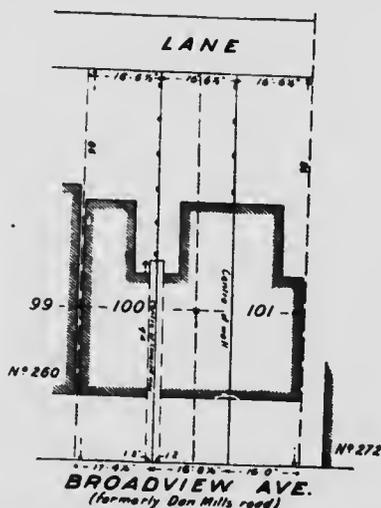
CASE .II.

BROADVIEW AVENUE.

(Centre House).

ALL AND SINGULAR, that certain parcel or tract of land and premises, situate, lying and being in the city of Toronto, in the county of York, and province of Ontario, being composed of parts of lots numbers 100 and 101 according to a plan filed as number 188 in the registry office for the said county, and now in the registry office for the eastern division of the city of Toronto aforesaid; and, which said parcel is more particularly described as follows:—

COMMENCING at a point in the westerly limit of Broadview avenue (formerly called Don Mills road) distant seventeen feet and four and one-quarter inches ($17'4\frac{1}{4}''$) measured northerly thereon from the southerly limit of said lot number 100, the said point being in the easterly production of the centre line of the covered passage way between the dwelling houses standing in 1906, upon said lot number 100 and the adjacent part of lot 101; thence westerly, to and along the said centre line of passage way being immediately under the centre line of partition wall between the upper stories of the said dwelling houses, and continuing to and along the line of fence



Sketch showing lots 100 and 101, Reg. Plan 188, Toronto.

dividing the rear premises of the aforesaid dwelling houses, in all, a distance of eighty-six feet (86') more or less, to the easterly limit

of a lane in rear of the said lots. Thence northerly along the said limit of lane sixteen feet and six and a half inches (16' 6½") to the line of a fence dividing the rear premises of the more northerly one of the said dwelling houses and the next dwelling house to the north thereof; thence easterly along the last mentioned line of fence, to and along the said line of partition wall between the dwelling houses last mentioned and along the easterly production of the same, in all, a distance of eighty-six feet (86') to the westerly limit of Broadview avenue aforesaid. Thence southerly, along the last mentioned limit sixteen feet and eight and one quarter inches (16' 8¼") more or less, to the place of beginning.

TOGETHER WITH a right of way, at all times, in common with others entitled thereto, over, along and upon a strip of land one foot and two inches (1' 2") in width, immediately adjoining the southerly limit of the hereinbefore described parcel and extending westerly from the said limit of Broadview avenue to a depth of forty-four feet (44').

AND RESERVING a right of way at all times, for all persons entitled thereto, over, along and upon the easterly forty-four feet (44') of the southerly one foot and two inches (1' 2") of the said hereinbefore described parcel.

Such rights of way being limited to a height of nine feet (9') from the surface of the ground.

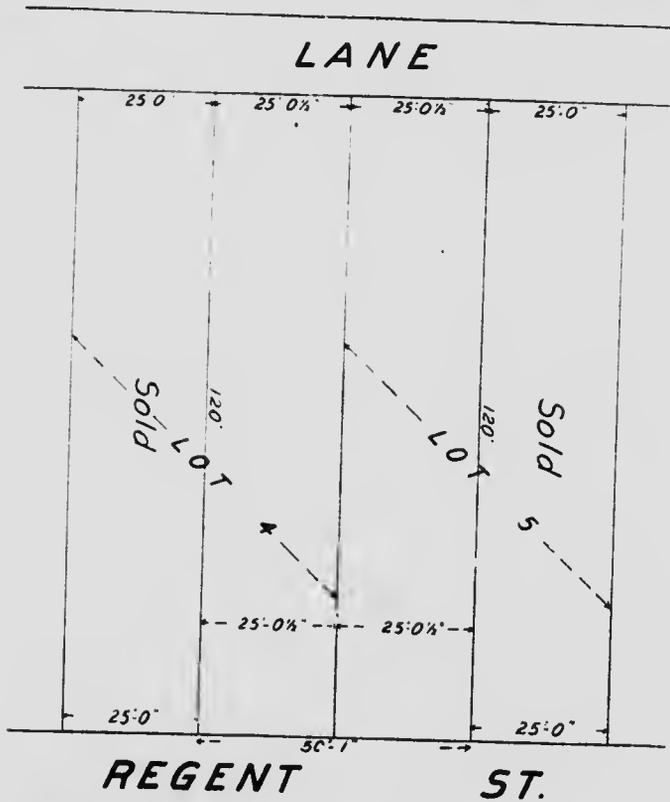
CASE III.

(Regent Street).

ALL AND SINGULAR, that certain parcel or tract of land and premises situate, lying and being in the city of Toronto, in the county of York, and province of Ontario, being composed of parts of lots numbers 4 and 5, according to a plan filed in the registry office for the said city as number 22K, and which said parcel is more particularly described as follows;—

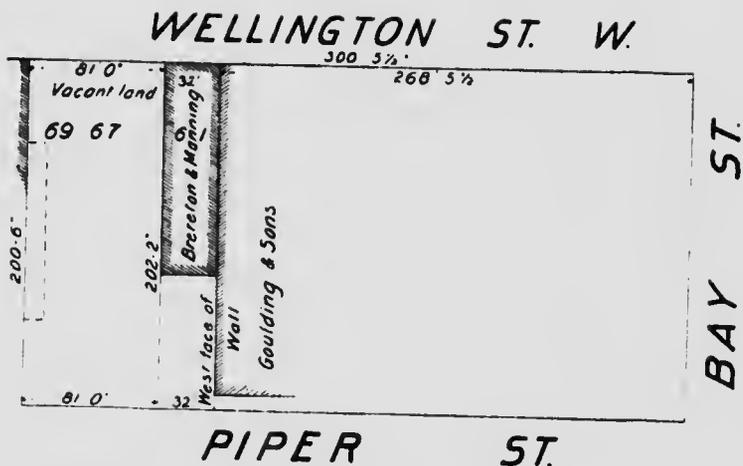
COMMENCING at a point in the westerly limit of Regent street distant twenty-five feet (25') measured northerly thereon from the southerly limit of said lot number 4; thence westerly and parallel to the said southerly limit one hundred and twenty feet (120') to the easterly limit of a lane in rear of the said lots; thence northerly, along the said limit of lane fifty feet and one inch (50' 1"), more or less, to the southerly limit of the northerly twenty-five feet of said lot number 5. Thence easterly, along the last mentioned limit one hundred and twenty feet (120') to the westerly limit of Regent

street aforesaid; then southerly along the said limit of Regent street, fifty feet and one inch (50' 1"), more or less, to the place of beginning.



Sketch showing parts of lots 4 and 5, Reg. Plan K., Toronto.

This is a very simple form of description, and one which if not used advisedly leads to trouble, as the average conveyancer pins his faith to the registered plan and neglects to provide for coincidence with the limits of lands adjoining.



Sketch showing part of town lot No. 6, S. side of Wellington street W., Toronto.

CASE IV.

(Wellington Street West).

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the city of Toronto, in the county of York, and province of Ontario, being composed of part of town lot number 6 on the south side of Wellington street west (formerly called Market street), and which said parcel is more particularly described as follows:—

COMMENCING at a point in the southerly limit of Wellington street aforesaid, distant three hundred feet and five and a half inches (300' 5½"), more or less, measured westerly thereon from the westerly limit of Bay street, the said point being distant also thirty-two feet (32') westerly from the westerly face of the westerly brick and concrete wall of the building owned and occupied in 1906 by Goulding & Sons; thence southerly and parallel to the said westerly face of wall two hundred and two feet and two inches (202' 2") to the northerly limit of Piper street, as established by city by-law number 3925; thence westerly, along the said northerly limit eighty-one feet (81'); thence northerly and parallel to the said westerly face of wall two hundred feet and six inches (200' 6") to the southerly limit of Wellington street aforesaid; thence easterly along the last mentioned limit eighty-one feet (81') to the place of beginning.

SUBJECT to the right of the owners and occupiers, from time to time, of the lands lying immediately to the west of the hereinbefore described parcel, to have and maintain, free from obstructions and open for the purpose of a light well, all that part of the westerly ten feet (10') of the said hereinbefore described parcel lying south of the line drawn parallel to the said limit of Wellington street and distant fifty feet (50') southerly therefrom and lying also north of a line drawn parallel to the said limit of Piper street and distant fifty feet (50') northerly therefrom.

CASE V.

(55 Emmett Avenue).

Reservation for Eave Projection.

'RESERVING THEREFROM the right to the owner or owners from time to time, of the dwelling house on the land adjoining the easterly limit of the said parcel, to maintain in its present position being 1st June, 1906, the westerly eaves of the said dwelling house, the said eaves having a breadth of one foot and six inches (1' 6") more or less, by a length of thirty-six feet and four inches, beginning at the distance of thirteen feet (13') southerly from the said limit of Emmett avenue, and running thence southerly.'

As previously intimated, it is not claimed that any of these descriptions are faultless or even approach perfection, and the writer will feel grateful for criticism leading to improvement, but a few words on construction may not be out of place. Many surveyors reverse the order of course and distance, thus; 'thence one hundred and twenty feet (120') on a course north seventy-four degrees (74°) east.' While not material, it seems reasonable to state the direction one intends to go before specifying the distance gone. As to courses, some authorities recommend their avoidance wherever possible. This does not seem to be necessary, as courses when not astronomical, should at least indicate the relation of all lines within the description one to another, and if the surveyor has carefully measured an angle, why not give his client the benefit of the information as to what that angle is?

At the suggestion of the Master of Titles, surveyors in Toronto and vicinity when making use of bearings usually indicate the governing lines for the same, as that makes it clear that, while these bearings are not necessarily astronomical, they do indicate the relation of the courses of the several lines mentioned.

Years ago the repeated calculation of courses as used in my office a feeling that these repetitions could be avoided, and a table was compiled which gives the inclination of lines to each other for

every inch of perpendicular from 1 to 24, and for a length of from 50' to 200'. A copy of this table is submitted, and a little practice will enable anyone to use it without risk, not only for the territory covered by the table itself, but for parts or multiples of the same.

We believe that technical accuracy may sometimes be disregarded in the interests of practical advantage, and the principle is sometimes applied in describing properties where existing boundaries are intended to govern, no matter how irregular. Take, for instance, the division line between two parties owning a pair of semi-detached dwelling houses. It frequently happens that the party wall is not parallel to the other side boundary, nor does the fence line between the rear premises run on a course similar to either of the other courses. At the same time, the purchaser and vendor expect the bent line to become the boundary. Should a fire occur and the existing boundaries be entirely swept away, it is usually in the interest of the owners of both parts that the line for the new building should be a straight one, and therefore we believe that in some cases a description following along the centre line of partition wall and along the existing fence between the rear premises without indicating courses, is admissible so long as the front and rear extremities of the division line are carefully located with regard to lot lines. This view would doubtless be considered rank heresy by theorists, but the practical surveyor and practical owner usually agree that it is better for all concerned to provide for contingencies in that way.

The question as to party walls has been so thoroughly dealt with in previous papers before this association that slight reference only will serve at this time. A very usual form of description follows the centre line of partition wall and thus conveys the fee up to that fixed line, but in only rare instances is any provision made that the owner of each of the adjoining houses is entitled to the undisturbed use of that part of the partition wall not included within his property.

'More or less' is a much discussed expression and the average conveyancer abuses it, while even careful surveyors are sometimes guilty of sins of omission and commission in respect of it. The courts have settled that distances to fixed visible boundaries or limits that can with accuracy be determined become 'more or less' even without the use of the actual words. This being the case, the writer frequently omits the words when he is satisfied as to the actual distance, as a description presents to the layman a much more definite appearance and is not weakened by such omission.

DECLINATION TABLE

Inches in Bar	ft. 50	ft. 60	ft. 70	ft. 80	ft. 90	ft. 100	ft. 110	ft. 120	ft. 130	ft. 140	ft. 150	ft. 160	ft. 170	ft. 180	ft. 190	ft. 200
1'	6	5	4	4	3	3	3	2	2	2	2	2	2	2	1	1
2'	11	10	8	7	6	6	5	5	4	4	4	4	3	3	3	3
3'	17	14	12	11	10	9	8	7	7	6	6	5	5	5	5	5
4'	23	19	16	14	13	12	10	9	9	8	8	7	7	6	6	6
5'	29	24	20	18	16	14	13	12	11	10	10	9	8	8	7	7
6'	34	29	25	21	19	17	16	14	13	12	12	11	10	9	9	9
7'	40	33	29	25	22	20	18	17	15	14	13	13	12	11	11	10
8'	46	38	33	29	25	23	21	19	18	16	15	14	14	13	12	11
9'	52	43	37	32	29	26	23	21	20	18	17	16	15	14	14	13
10'	57	48	41	36	32	29	26	24	22	20	19	18	17	16	15	14
11'	1'3	52	45	39	35	31	28	26	24	23	21	20	19	17	17	16
12'	1'9	57	49	43	38	34	31	29	26	25	23	21	20	19	18	17
13'	1'14	1'2	53	46	41	37	34	31	28	27	25	23	22	21	20	19
14'	1'20	1'7	57	50	45	40	36	33	31	29	27	25	24	22	21	20
15'	1'26	1'12	1'1	54	48	43	39	35	33	31	29	27	25	24	22	21
16'	1'32	1'16	1'5	57	51	46	42	38	35	33	31	29	27	25	24	23
17'	1'37	1'21	1'10	1'1	54	49	44	40	37	35	32	30	29	27	26	24
18'	1'43	1'26	1'14	1'5	57	52	47	43	40	37	34	32	30	29	27	26
19'	1'49	1'31	1'18	1'8	1'0	54	49	45	42	39	36	34	32	30	29	27
20'	1'55	1'35	1'22	1'12	1'4	57	52	48	44	41	38	36	34	32	30	29
21'	2'0	1'40	1'26	1'15	1'7	1'0	55	50	46	43	40	38	35	34	32	30
22'	2'6	1'45	1'30	1'19	1'10	1'03	57	53	48	45	42	39	37	35	33	32
23'	2'12	1'50	1'34	1'22	1'13	1'6	1'0	55	51	47	44	41	39	37	35	33
24'	2'18	1'54	1'38	1'26	1'16	1'9	1'2	57	53	49	46	43	40	38	36	34
	ft. 50	ft. 60	ft. 70	ft. 80	ft. 90	ft. 100	ft. 110	ft. 120	ft. 130	ft. 140	ft. 150	ft. 160	ft. 170	ft. 180	ft. 190	ft. 200

