

59 BOUNDARIES (207)

Jurisdiction: Colorado State

59 BOUNDARIES 207

59I Description 62

59🔑1 General rules of construction. 2

1. [Salazar v. Terry](#)

Supreme Court of Colorado, En Banc. | February 12, 1996 | 911 P.2d 1086

Headnote: Boundaries separate parcels of land.

Document Summary: REAL ESTATE - Property. Fifteen-day common ownership of two tracts of land extinguished any acquiescence in fence as boundary by prior owners of tracts.

2. [Jackson v. Woods](#)

Colorado Court of Appeals, Div. II. | May 19, 1994 | 876 P.2d 116

Headnote: In case of repugnant or contradictory descriptive calls in a deed, court may reject or disregard the one which is false or mistaken.

Document Summary: Boundary. Trial court correctly applied rules of construction to irreconcilable calls.

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59I Description 62

59🔑3 Relative Importance of Conflicting Elements 28

59🔑3(1) In general. 3

3. [Wallace v. Hirsch](#)

Supreme Court of Colorado, In Department. | March 28, 1960 | 142 Colo. 264

Headnote: Generally in case of repugnant calls in a deed, courses and distances are the least reliable of all calls, and a call which designates a point capable of precise and exact location takes precedence over a call for a course and distance, if there is repugnancy between the two.

[2 Cases that cite this legal issue](#)

Document Summary: Action was brought to determine common boundary line between realty of plaintiff and realty of defendants. The District Court of Delta County, Charles E. Blaine, J., entered judgment in favor of the plaintiff, and the defendants brought error. The Supreme Court held that evidence sustained finding of District Court that boundary line was located as contended by plaintiff. Judgment affirmed.

4. [Cullacott v. Cash Gold & Silver Mining Co.](#)

Supreme Court of Colorado | March 6, 1885 | 8 Colo. 179

Headnote: Course and distances, under the authorities, are assigned the lowest place in the scale of evidence, as being the least reliable.

[1 Case that cites this legal issue](#)

Document Summary: Appeal from district court of Boulder county.

5. Cullacott v. Cash Gold & Silver Mining Co.

Supreme Court of Colorado | March 6, 1885 | 8 Colo. 179

Headnote: It is not so much the character of the monuments, as satisfactory proof of their location, that is to fix the locus in quo.

Document Summary: Appeal from district court of Boulder county.

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59🔑3 Relative Importance of Conflicting Elements 28

59🔑3(2) Control of elements consistent with intention. 1

6. Murray v. Hobson

Supreme Court of Colorado. | May 18, 1887 | 10 Colo. 66

Headnote: Where the description in a deed contains a call for a certain block, such call may be properly rejected, where it appears from the whole description that a certain other block was without doubt intended; and because of such obvious error the deed is not inadmissible in evidence in an action involving the title to the land conveyed thereby.

Document Summary: Appeal from district court, Pueblo county.

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59🔑3 Relative Importance of Conflicting Elements 28

59🔑3(3) Control of natural objects and monuments over other elements in general. 17

7. Morales v. CAMB

Colorado Court of Appeals, Div. II. | March 22, 2007 | 160 P.3d 373

Headnote: Monuments control courses and distances, which are considered the least reliable of all calls.

Document Summary: REAL PROPERTY - Boundaries. Monuments located on lots controlled the location of boundary line.

8. Morales v. CAMB

Colorado Court of Appeals, Div. II. | March 22, 2007 | 160 P.3d 373

Headnote: The courses and distances in a deed always give way to the boundaries found upon the ground, or supplied by the proof of their former existence, where the marks or monuments are gone.

Document Summary: REAL PROPERTY - Boundaries. Monuments located on lots controlled the location of boundary line.

9. Morales v. CAMB

Colorado Court of Appeals, Div. II. | March 22, 2007 | 160 P.3d 373

Headnote: Monuments located on lots determined the location of boundary line between lots and superseded any inconsistent distance call or boundary line referred to in the subdivision plat, even if the monuments were misplaced.

Document Summary: REAL PROPERTY - Boundaries. Monuments located on lots controlled the location of boundary line.

10. Jackson v. Woods

Colorado Court of Appeals, Div. II. | May 19, 1994 | 876 P.2d 116

Headnote: In resolving inconsistency in deed, court should look first to natural monuments, next to artificial monuments, then to courses and distances.**Document Summary:** Boundary. Trial court correctly applied rules of construction to irreconcilable calls.**11. Jackson v. Woods**

Colorado Court of Appeals, Div. II. | May 19, 1994 | 876 P.2d 116

Headnote: Monuments control courses and distances, which are considered the least reliable of all calls.[1 Case that cites this legal issue](#)**Document Summary:** Boundary. Trial court correctly applied rules of construction to irreconcilable calls.**12. Board of Com'rs of Grand County v. Baumberger**

Colorado Court of Appeals, Div. II. | August 21, 1973 | 513 P.2d 1075

Headnote: Although natural and artificial monuments as well as adjacent boundaries control over course and distance calls where there are repugnant calls in deed, calls may not be disregarded if they can be applied and harmonized in reasonable manner.[1 Case that cites this legal issue](#)**Document Summary:** A board of county commissioners brought an action against grantors of a deed transferring a right-of-way to the county for a road, praying that the deed be reformed and that defendants be enjoined from interfering with the county's or the public's use and possession of the property described in the reformed deed. The District Court, Grand County, Don Lorenz, J., entered judgment for the county commissioners, and the grantors appealed. The Court of Appeals, Enoch, J., held that the route for the road in question which was contended for by the county commissioners not only conformed to the courses and distances recited in the deed but also allowed harmonization in a reasonable manner of the monument or boundary calls that, on a finding of mutual mistake, reformation was a proper remedy, that parol evidence was admissible for the purpose of construing the deed, and that evidence of nonpayment of consideration for the deed was not admissible to avoid the deed or vary its...**13. Whiteman v. Mattson**

Supreme Court of Colorado, In Department. | November 4, 1968 | 167 Colo. 183

Headnote: Where deed contained inconsistent distance call, which set eastern boundary of lot 20 feet east of western boundary of adjoining lot, and monument call, which set western boundary of the adjacent lot as eastern boundary of the lot, monument call took precedence over distance call and boundary of lot was western boundary of adjoining lot.[2 Cases that cite this legal issue](#)**Document Summary:** Property owner brought action against adjoining owner for damages resulting from alleged encroachment by construction of apartment building. The District Court, Pueblo County, Edward M. Yaklich, J., entered judgment for plaintiff owner, and adjoining owner brought error. The Supreme Court, McWilliams, J., held that where survey accepted by trial court as accurate clearly established that there was no strip of land 20 feet wide and 120 feet long adjoining lots of plaintiff and defendant, legal description in property owner's deed was inaccurate and property owner, whose deed contained monument call which set western boundary of adjacent lot as eastern boundary of the lot, was not record owner of any part of adjacent lot and construction of apartment building on adjoining property did not encroach on her property. Reversed and remanded with direction.

14. [Whiteman v. Mattson](#)

Supreme Court of Colorado, In Department. | November 4, 1968 | 167 Colo. 183

Headnote: Where survey accepted by trial court as accurate clearly established that there was no strip of land 20 feet wide and 120 feet long adjoining lots of plaintiff and defendant, legal description in property owner's deed was inaccurate and property owner, whose deed contained monument call which set western boundary of adjacent lot as eastern boundary of the lot, was not record owner of any part of adjacent lot and construction of apartment building on adjoining property did not encroach on her property.

[2 Cases that cite this legal issue](#)

Document Summary: Property owner brought action against adjoining owner for damages resulting from alleged encroachment by construction of apartment building. The District Court, Pueblo County, Edward M. Yaklich, J., entered judgment for plaintiff owner, and adjoining owner brought error. The Supreme Court, McWilliams, J., held that where survey accepted by trial court as accurate clearly established that there was no strip of land 20 feet wide and 120 feet long adjoining lots of plaintiff and defendant, legal description in property owner's deed was inaccurate and property owner, whose deed contained monument call which set western boundary of adjacent lot as eastern boundary of the lot, was not record owner of any part of adjacent lot and construction of apartment building on adjoining property did not encroach on her property. Reversed and remanded with direction.

15. [Lugon v. Crosier](#)

Supreme Court of Colorado. | September 14, 1925 | 78 Colo. 141

Headnote: True monument controls course in later reestablishing of corner.

Document Summary: En Banc. Error to District Court, Routt County; Charles E. Herrick, Judge. Action by Emile Gay Crosier and others against Fidel Lugon and others. Decree adopting report of commissioner was entered, and defendants bring error. Affirmed.

16. [Davies v. Craig](#)

Supreme Court of Colorado. | July 3, 1921 | 70 Colo. 296

Headnote: Courses, distances, and quantities yield to monuments set in the original survey, which, when they are found, establish the boundaries of survey, being better evidence of what the surveyor did than plats or field notes.

[1 Case that cites this legal issue](#)

Document Summary: En Banc. Error to District Court, Grand County; Harry S. Class, Judge. Action by William Bayard Craig and another against J. W. Davies and others. Judgment for plaintiffs, and defendant named brings error. Reversed and remanded with directions. See, also, *Wescott v. Craig*, 60 Colo. 42, 151 Pac. 934.

17. [Morse v. Breen](#)

Supreme Court of Colorado. | July 7, 1919 | 66 Colo. 398

Headnote: In view of Rev.St.U.S. §2396, subd. 2 ([43 U.S.C.A. §752](#)), courses, distances, and quantities yield to monuments set in the original survey, and when such monuments are found they establish the boundaries of the survey, being better evidence of what the surveyor did than plats or field notes.

[1 Case that cites this legal issue](#)

Document Summary: Department 1. Error to District Court, Rio Grande County; A. Watson McHendrie, Judge. Suit by Thomas Breen against William W. Morse and another. Judgment for plaintiff, and defendants bring error. Affirmed.

18. [Morse v. Breen](#)

Supreme Court of Colorado. | July 7, 1919 | 66 Colo. 398

Headnote: The rule that courses, distances, and quantities yield to monuments set in the original survey applies only in the location of lines run and marked, and affords no aid in determining what section is included in such boundaries.

[1 Case that cites this legal issue](#)

Document Summary: Department 1. Error to District Court, Rio Grande County; A. Watson McHendrie, Judge. Suit by Thomas Breen against William W. Morse and another. Judgment for plaintiff, and defendants bring error. Affirmed.

19. [Duncan v. Eagle Rock Gold Min. & Reduction Co.](#)

Supreme Court of Colorado. | April 4, 1910 | 48 Colo. 569

Headnote: The rule that monuments control courses and distances is recognized only where the monuments are clearly ascertained, and where there is a doubt as to the monuments, as well as to the course and distance there is no reason for declaring that the monuments shall prevail.

Document Summary: Appeal from District Court, Boulder County; James E. Garrigues, Judge. Action by the Eagle Rock Gold Mining & Reduction Company against John T. Duncan. From a judgment for plaintiff, defendant appeals. Reversed.

20. [Link v. Jones](#)

Court of Appeals of Colorado | June 11, 1900 | 15 Colo.App. 281

Headnote: In the location of boundary lines, calls for natural objects and artificial monuments will always control courses and distances.

[1 Case that cites this legal issue](#)

Document Summary: Error to district court, Park county. Action by William L. Link, as county treasurer of Park county, against Robert E. Jones, as county treasurer of Jefferson county. From a judgment for defendant, plaintiff brings error. Affirmed.

21. [Cullacott v. Cash Gold & Silver Mining Co.](#)

Supreme Court of Colorado | March 6, 1885 | 8 Colo. 179

Headnote: Monuments, to control course and distances in the description of real estate, need not be unquestionable.

Document Summary: Appeal from district court of Boulder county.

22. [Cullacott v. Cash Gold & Silver Mining Co.](#)

Supreme Court of Colorado | March 6, 1885 | 8 Colo. 179

Headnote: The boundaries of land, as marked out by definite monuments, will control courses and distances called for.

[1 Case that cites this legal issue](#)

Document Summary: Appeal from district court of Boulder county.

23. [Pollard v. Shively](#)

Supreme Court of Colorado | December 1, 1880 | 5 Colo. 309

Headnote: In determining boundaries, natural and permanent objects control courses and distances.

[1 Case that cites this legal issue](#)

Document Summary: This was an action brought by the appellees, Peter and David Shively, against the appellant, Pollard, in the District Court of Clear Creek County, to recover possession of a certain portion of the

Glendower Lode, claimed by the appellant as a part of the Hardin Lode, and embraced by him in his application for a patent therefor. The Hardin Lode was discovered in June, 1875, and in the November following was surveyed and staked, and a certificate of location filed in the office of the register of deeds for Clear Creek county by the discoverers, Packard and Krise, remote grantors of appellant. The Glendower Lode was discovered the 6th December, 1878, was surveyed and staked the 20th February, 1879, and a certificate of location filed the 21st February, 1879. On the 26th of August, 1879, Pollard, who had become the owner by purchase of the Hardin Lode, filed a certificate of relocation thereof, for the purpose, in the words of the certificate, 'of more definitely defining the...

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59I Description 62

59🔑3 Relative Importance of Conflicting Elements 28

59🔑3(4) Control of water courses, highways, and fences over other elements. 2

24. Jackson v. Woods

Colorado Court of Appeals, Div. II. | May 19, 1994 | 876 P.2d 116

Headnote: Where there was evidence that distance call from point of beginning to road was erroneous, and no evidence of intent of parties to original conveyances, trial court was justified in applying rules of construction to find that call to center of road prevailed over distance call.

1 Case that cites this legal issue

Document Summary: Boundary. Trial court correctly applied rules of construction to irreconcilable calls.

25. Morse v. Breen

Supreme Court of Colorado. | July 7, 1919 | 66 Colo. 398

Headnote: Stones, being liable to removal, are not as good evidence of the lines run as are physical objects used as monuments or located on plats, such as streams, etc., which are permanent in their nature.

1 Case that cites this legal issue

Document Summary: Department 1. Error to District Court, Rio Grande County; A. Watson McHendrie, Judge. Suit by Thomas Breen against William W. Morse and another. Judgment for plaintiff, and defendants bring error. Affirmed.

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59I Description 62

59🔑3 Relative Importance of Conflicting Elements 28

59🔑3(5) Control of metes and bounds or courses and distances over other elements. 3

26. Jackson v. Woods

Colorado Court of Appeals, Div. II. | May 19, 1994 | 876 P.2d 116

Headnote: In resolving inconsistency in deed, court should look first to natural monuments, next to artificial monuments, then to courses and distances.

Document Summary: Boundary. Trial court correctly applied rules of construction to irreconcilable calls.

27. Board of Com'rs of Grand County v. Baumberger

Colorado Court of Appeals, Div. II. | August 21, 1973 | 513 P.2d 1075

Headnote: In suit by county commissioners for reformation of deed granting county right-of-way for road, route for road contended for by commissioners would be adopted where it not only conformed to courses and distances recited in deed but also rendered monument or boundary calls effective.

[1 Case that cites this legal issue](#)

Document Summary: A board of county commissioners brought an action against grantors of a deed transferring a right-of-way to the county for a road, praying that the deed be reformed and that defendants be enjoined from interfering with the county's or the public's use and possession of the property described in the reformed deed. The District Court, Grand County, Don Lorenz, J., entered judgment for the county commissioners, and the grantors appealed. The Court of Appeals, Enoch, J., held that the route for the road in question which was contended for by the county commissioners not only conformed to the courses and distances recited in the deed but also allowed harmonization in a reasonable manner of the monument or boundary calls that, on a finding of mutual mistake, reformation was a proper remedy, that parol evidence was admissible for the purpose of construing the deed, and that evidence of nonpayment of consideration for the deed was not admissible to avoid the deed or vary its...

28. [Cochrane v. Justice Min. Co.](#)

Court of Appeals of Colorado | January 22, 1894 | 4 Colo.App. 234

Headnote: When a discrepancy exists between a statement of the quantity of a tract of land and its monuments, courses and distances, the latter control.

Document Summary: Error to district court, Lake county.

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[59I Description](#) 62

[59🔑3 Relative Importance of Conflicting Elements](#) 28

[59🔑3\(8\) Control of maps, plats, and field notes over other elements.](#) 2

29. [Beaver Brook Resort Co. v. Stevens](#)

Supreme Court of Colorado. | July 7, 1924 | 76 Colo. 131

Headnote: Quarter corner, marked by stone, not shown to have been in place, held not controlling as against reference in field notes to certain brook.

Document Summary: Department 3. Error to District Court, Clear Creek County; S. W. Johnson, Judge. Action by Clara Stevens against the Beaver Brook Resort Company and others. Judgment for plaintiff, and defendants bring error. Reversed.

30. [Morse v. Breen](#)

Supreme Court of Colorado. | July 7, 1919 | 66 Colo. 398

Headnote: In ascertaining number of section in which land is situated, markings on corner stones are of no greater probative value than notes and plats; both being in nature of records and equally likely to mistake in the making.

Document Summary: Department 1. Error to District Court, Rio Grande County; A. Watson McHendrie, Judge. Suit by Thomas Breen against William W. Morse and another. Judgment for plaintiff, and defendants bring error. Affirmed.

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[59I Description](#) 62

59  4 Natural and permanent objects. 1

31. Beaver Brook Resort Co. v. Stevens

Supreme Court of Colorado. | July 7, 1924 | 76 Colo. 131

Headnote: Corner stones being liable to removal are not as good evidence of lines as physical objects which are permanent in their location.

Document Summary: Department 3. Error to District Court, Clear Creek County; S. W. Johnson, Judge. Action by Clara Stevens against the Beaver Brook Resort Company and others. Judgment for plaintiff, and defendants bring error. Reversed.

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59I Description 62

59  5 Artificial monuments and marks. 5

32. Morales v. CAMB

Colorado Court of Appeals, Div. II. | March 22, 2007 | 160 P.3d 373

Headnote: The monuments placed by the original surveyor are conclusive on all persons owning or claiming to hold with reference to such survey.

Document Summary: REAL PROPERTY - Boundaries. Monuments located on lots controlled the location of boundary line.

33. Salazar v. Terry

Supreme Court of Colorado, En Banc. | February 12, 1996 | 911 P.2d 1086

Headnote: As with easements, unity of ownership destroys need for boundary fences.

Document Summary: REAL ESTATE - Property. Fifteen-day common ownership of two tracts of land extinguished any acquiescence in fence as boundary by prior owners of tracts.

34. Jackson v. Woods

Colorado Court of Appeals, Div. II. | May 19, 1994 | 876 P.2d 116

Headnote: "Monument," when used in describing land, is any permanent physical object on the ground which helps to establish location of line called for, and may be either natural or artificial.

Document Summary: Boundary. Trial court correctly applied rules of construction to irreconcilable calls.

35. Jackson v. Woods

Colorado Court of Appeals, Div. II. | May 19, 1994 | 876 P.2d 116

Headnote: Road may serve as a monument.

Document Summary: Boundary. Trial court correctly applied rules of construction to irreconcilable calls.

36. Pollard v. Shively

Supreme Court of Colorado | December 1, 1880 | 5 Colo. 309

Headnote: While a stump hewed and marked might be adopted as a location post, the descriptive survey should give both its real and assigned character.

Document Summary: This was an action brought by the appellees, Peter and David Shively, against the appellant, Pollard, in the District Court of Clear Creek County, to recover possession of a certain portion of the Glendower Lode, claimed by the appellant as a part of the Hardin Lode, and embraced by him in his application for a patent therefor. The Hardin Lode was discovered in June, 1875, and in the November following was surveyed and staked, and a certificate of location filed in the office of the register of deeds for Clear Creek county by the discoverers, Packard and Krise, remote grantors of appellant. The Glendower Lode was discovered the 6th December, 1878, was surveyed and staked the 20th February, 1879, and a certificate of location filed the 21st February, 1879. On the 26th of August, 1879, Pollard, who had become the owner by purchase of the Hardin Lode, filed a certificate of relocation thereof, for the purpose, in the words of the certificate, 'of more definitely defining the...

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59I Description 62

59🔑7 Location of corners. 6

37. Brackett v. Cleveland

Supreme Court of Colorado, In Department. | July 24, 1961 | 147 Colo. 328

Headnote: Conventional "compass rule" method of balancing used by commissioner in the establishment of placer corners the monuments of which had disappeared was neither erroneous nor illegal. C.R.S. '53, 118-11-1 et seq.

Document Summary: Action for the establishment of lost, destroyed and disputed corners and boundaries to a placer claim. The District Court, Boulder County, Dale E. Shannon, J., rendered a judgment favoring the plaintiffs and the defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that conventional 'compass rule' method of balancing used by the commissioner in the establishment of placer corners was neither erroneous nor illegal. Affirmed.

38. Lugon v. Crosier

Supreme Court of Colorado. | September 14, 1925 | 78 Colo. 141

Headnote: Gen.L.O.Reg. 47, relating to reestablishing lost or obliterated closing corner, does not apply to closing corner from which no standard parallel has been initiated nor directed.

Document Summary: En Banc. Error to District Court, Routt County; Charles E. Herrick, Judge. Action by Emile Gay Crosier and others against Fidel Lugon and others. Decree adopting report of commissioner was entered, and defendants bring error. Affirmed.

39. Lugon v. Crosier

Supreme Court of Colorado. | September 14, 1925 | 78 Colo. 141

Headnote: Where northeast corner of section could not be established by monument, proper way to establish corner was by running line due north from undisputed southeast corner to correction line, bounding section on north, which was where original surveyor should have put corner.

Document Summary: En Banc. Error to District Court, Routt County; Charles E. Herrick, Judge. Action by Emile Gay Crosier and others against Fidel Lugon and others. Decree adopting report of commissioner was entered, and defendants bring error. Affirmed.

40. Lugon v. Crosier

Supreme Court of Colorado. | September 14, 1925 | 78 Colo. 141

Headnote: Where monument representing northwest corner of section was found north and east of southwest corner of adjoining section, true corner will be established by running line between true southwest corner of section and monument to intersection with correction line between sections, correction line having been established before monument, and surveyor had no right to cross it when monument was established.

Document Summary: En Banc. Error to District Court, Routt County; Charles E. Herrick, Judge. Action by Emile Gay Crosier and others against Fidel Lugon and others. Decree adopting report of commissioner was entered, and defendants bring error. Affirmed.

41. [Lugon v. Crosier](#)

Supreme Court of Colorado. | September 14, 1925 | 78 Colo. 141

Headnote: The true corner is on the correction line, where the surveyor ought to have stopped, and where his notes say he stopped.

Document Summary: En Banc. Error to District Court, Routt County; Charles E. Herrick, Judge. Action by Emile Gay Crosier and others against Fidel Lugon and others. Decree adopting report of commissioner was entered, and defendants bring error. Affirmed.

42. [Biddle v. Newman](#)

Supreme Court of Colorado. | December 7, 1914 | 58 Colo. 243

Headnote: When the place at which the surveyor subdividing the public lands for the government placed a stone to mark a section corner can be ascertained, that point is the corner.

Document Summary: Error to District Court, Morgan County; H. P. Burke, Judge. Action by Pheby J. Biddle against Emily C. Newman. Judgment for defendant, and plaintiff brings error. Affirmed.

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[59I-8 Location of lines](#). 2

43. [Derham v. Hill](#)

Supreme Court of Colorado. | July 8, 1914 | 57 Colo. 345

Headnote: A conveyance of land held to require running of the boundary lines from the beginning point of the owner's land instead of a point which according to the particular description would have embraced land in a road not owned by the grantor.

Document Summary: Error to District Court, Mesa County; Sprigg Shackelford, Judge. Action by Robert A. Hill and another against William H. Derham and another. There was a judgment for plaintiffs, and defendants bring error. Affirmed.

44. [Derham v. Hill](#)

Supreme Court of Colorado. | July 8, 1914 | 57 Colo. 345

Headnote: Lots 21 and 28, in a subdivision were separated by a road 40 feet wide. The proprietor of lot 28 executed a deed containing the following description: "The north nine acres, more or less of lot 28, etc., more particularly described as follows: Beginning at the southwest corner of lot 21" and running east 640 feet, south 605 feet, west 640 feet, and north to the place of beginning. Held apparent that the point of beginning at the southwest corner of lot 21 was false, and must be rejected; that the north line of lot 28 must be accepted as the north boundary of the lands intended to be conveyed, that with this line in view as controlling the initial point of the survey, the description by metes and bounds being found to include 8.88 acres, this corresponded sufficiently with the area declared to be conveyed, and fixed its locality; that subsequent purchasers from the grantee in this deed were chargeable with notice of the intention of the grantor so ascertained.

Document Summary: Error to District Court, Mesa County; Sprigg Shackelford, Judge. Action by Robert A. Hill and another against William H. Derham and another. There was a judgment for plaintiffs, and defendants bring error. Affirmed.

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[59🔑10 Maps, plats, and field notes.](#) 1

45. [Lundquist v. Eisenmann](#)

Supreme Court of Colorado. | [June 30, 1930](#) | [87 Colo. 584](#)

Headnote: Plaintiff could rely upon original plat filed by vendors as against subsequent plat under which defendant adjoining owner claimed strip.

Document Summary: Department 1. Error to District Court, Pueblo County; Samuel D. Trimble, Judge. Action by Andrew Eisenmann against Betsy Lundquist. Judgment for plaintiff, and defendant brings error. Affirmed.

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[59🔑12 Waters and Water Courses](#) 9

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46. [Smith v. Town of Fowler](#)

Supreme Court of Colorado, En Banc. | [January 12, 1959](#) | [138 Colo. 359](#)

Headnote: Considered in light of surrounding circumstances, patent, under which defendants derived their title “according to the Official Plat thereof returned to the General Land Office”, showed boundaries of land to be not river but meander line along bank of river.

[1 Case that cites this legal issue](#)

Document Summary: Action to quiet title. Defendants contested title of plaintiff and claimed title in themselves. The District Court, Otero County, William L. Gobin, J., rendered judgment and decree for plaintiff, and defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that as a general rule meander lines are not run as boundary lines of land surveyed but are run to determine outlines of stream or other body of water and as a means of ascertaining quantity of land embraced in survey; but held that there are exceptions, one of which applies where parties to instrument of conveyance intend to use meander line, and another of which is applicable where public officers in making sales have actually or by necessary implication made meander line the boundary line; and held that where either or both of such exceptions apply, the law of accretion cannot come into being. Affirmed.

47. [Smith v. Town of Fowler](#)

Supreme Court of Colorado, En Banc. | [January 12, 1959](#) | [138 Colo. 359](#)

Headnote: As a general rule, meander lines are not run as boundary lines of land surveyed but are run to determine outlines of stream or other body of water and as a means of ascertaining quantity of land embraced in survey; but there are exceptions, one of which applies where parties to instrument of conveyance intend to use meander line and another of which is applicable where public officers in making sales have actually or by necessary implication made meander line the boundary line; and where either or both of such exceptions apply, the law of accretion cannot come into being.

[1 Case that cites this legal issue](#)

Document Summary: Action to quiet title. Defendants contested title of plaintiff and claimed title in themselves. The District Court, Otero County, William L. Gobin, J., rendered judgment and decree for plaintiff, and defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that as a general rule meander lines are not run as boundary lines of land surveyed but are run to determine outlines of stream or other body of water and as a means of ascertaining quantity of land embraced in survey; but held that there are exceptions, one of which applies where parties to instrument of conveyance intend to use meander line, and another of which is applicable where public officers in making sales have actually or by necessary implication made meander line the boundary line; and held that where either or both of such exceptions apply, the law of accretion cannot come into being. Affirmed.

48. **Strecker v. Goertzen**

Supreme Court of Colorado. En Banc. | January 18, 1954 | 128 Colo. 600

Headnote: The traverse of the margin of a permanent, natural body of water is termed the "meander line."

Document Summary: Vendor's suit for specific performance. The District Court, Prowers County, Alfred A. Arraj, J., rendered judgment adverse to plaintiff, and plaintiff brought error. The Supreme Court, Holland, J., held that the evidence sustained the defense of failure to show merchantable title. Affirmed.

49. **Strecker v. Goertzen**

Supreme Court of Colorado. En Banc. | January 18, 1954 | 128 Colo. 600

Headnote: Existence of a permanent body of water is essential to a proper meander line.

Document Summary: Vendor's suit for specific performance. The District Court, Prowers County, Alfred A. Arraj, J., rendered judgment adverse to plaintiff, and plaintiff brought error. The Supreme Court, Holland, J., held that the evidence sustained the defense of failure to show merchantable title. Affirmed.

50. **Heimbecher v. City and County of Denver**

Supreme Court of Colorado. | March 7, 1932 | 90 Colo. 346

Headnote: General presumption is that conveyance of land bounding on nonnavigable stream carries fee to center thereof.

Document Summary: In Department. Error to District Court, City and County of Denver; E. V. Holland, Judge. Condemnation proceeding by City and County of Denver, a municipal corporation, against Charles F. Heimbecher. To review the judgment, defendant brings error. Affirmed.

51. **City of Denver v. Pearce**

Supreme Court of Colorado. | November 8, 1889 | 6 L.R.A. 541

Headnote: A deed which describes the land conveyed as bounded by an unnavigable stream conveys the title prima facie to the thread of the stream, or as far as the grantor owns.

[7 Cases that cite this legal issue](#)

Document Summary: Commissioners' decision. Appeal from district court, Arapahoe county. The plaintiff alleges in his complaint, which was filed April 2, 1884, that he was then, and for a long time had been, seised in fee of a parcel of land situated in the city of Denver, described as follows: 'All that certain piece of land lying between the western line of lot numbered nine (9) and Cherry creek and the northern line of Lawrence street, in the block numbered seventy-one, (71,) in the east division of the city of Denver, excepting a strip adjoining the said lot 9, in said block 71, which is four feet in width, fronting on Lawrence street, and extending back of equal width to the full depth of said lot 9.' He further alleged peaceable and undisturbed possession of the premises

described, and the erection and occupation of valuable improvements thereon; that defendant claimed some interest in the premises, and had advertised to sell the same. He prays that he may be adjudged to be the...

59 BOUNDARIES 207

59I Description 62

59🔑12 Waters and Water Courses 9

59🔑14 Construction of language of description. 3

52. Hall v. Brannan Sand & Gravel Co.

Supreme Court of Colorado, In Department. | September 20, 1965 | 158 Colo. 201

Headnote: Deed conveying all of a portion of a quarter of a quarter section on northwest side of "present channel" of river, containing about 10 acres more or less, did not indicate that grantee was not to have benefit of accretion and reliction; the words were descriptive only and tied the boundary to the thread of stream as it existed at the time of the deed.

Document Summary: Action for alleged trespass and removal of diverse quantities of sand, gravel, and valuable earths. Both sides moved for summary judgment. The District Court, Arapahoe County, Robert B. Lee, J., granted defendant's motion and denied plaintiff's, holding as matter of law that plaintiff was not the owner of the land in question, which at the time in question was northwest of nonnavigable stream, and plaintiff brought error. The Supreme Court, Frantz, J., held that in absence of showing of how change, if any, in course of navigable river took place, any change was presumed to be by accretion and not by sudden and violent force, and that deed conveying to defendant all of a portion of a quarter of a quarter section on northwest side of 'present channel' of river, containing about 10 acres more or less, did not indicate that defendant was not to have benefit of accretion and reliction; the words were descriptive only and tied the boundary to the thread of stream as it...

53. Smith v. Town of Fowler

Supreme Court of Colorado, En Banc. | January 12, 1959 | 138 Colo. 359

Headnote: Where stream is designated as boundary, grant extends to thread of stream.

Document Summary: Action to quiet title. Defendants contested title of plaintiff and claimed title in themselves. The District Court, Otero County, William L. Gobin, J., rendered judgment and decree for plaintiff, and defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that as a general rule meander lines are not run as boundary lines of land surveyed but are run to determine outlines of stream or other body of water and as a means of ascertaining quantity of land embraced in survey; but held that there are exceptions, one of which applies where parties to instrument of conveyance intend to use meander line, and another of which is applicable where public officers in making sales have actually or by necessary implication made meander line the boundary line; and held that where either or both of such exceptions apply, the law of accretion cannot come into being. Affirmed.

54. Smith v. Town of Fowler

Supreme Court of Colorado, En Banc. | January 12, 1959 | 138 Colo. 359

Headnote: Where the words "along", "to" or "bounded by" a watercourse, or similar expressions, are used to describe a grant, rule that where stream is designated as boundary grant extends to thread of stream applies, unless contrary intention of parties appears.

[2 Cases that cite this legal issue](#)

Document Summary: Action to quiet title. Defendants contested title of plaintiff and claimed title in themselves. The District Court, Otero County, William L. Gobin, J., rendered judgment and decree for plaintiff, and defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that as a general rule meander

lines are not run as boundary lines of land surveyed but are run to determine outlines of stream or other body of water and as a means of ascertaining quantity of land embraced in survey; but held that there are exceptions, one of which applies where parties to instrument of conveyance intend to use meander line, and another of which is applicable where public officers in making sales have actually or by necessary implication made meander line the boundary line; and held that where either or both of such exceptions apply, the law of accretion cannot come into being. Affirmed.

59 BOUNDARIES 207

59I Description 62

59I-19 Roads, Ways, and Public Grounds 5

59I-20 Public Ways 4

59I-20(1) In general. 3

55. **Asmussen v. United States**

Supreme Court of Colorado. | July 1, 2013 | 304 P.3d 552

Headnote: At common law, the conveyance of land abutting a highway or street is presumed to carry title to the center of that roadway to the extent that the grantor has any interest therein, unless a contrary intent appears on the face of the conveyance.

Document Summary: REAL PROPERTY - Neighboring Properties. Centerline presumption applies to property abutting railroad right-of-way.#

56. **Near v. Calkins**

Colorado Court of Appeals, Div. V. | March 6, 1997 | 946 P.2d 537

Headnote: Under circumstances, owner of platted lots in subdivision owned to center of abutting street which was subject of attempted common law dedication, absent express or implied exclusion of street in prior conveyance.

[2 Cases that cite this legal issue](#)

Document Summary: REAL ESTATE - Streets. Owner of subdivision lots owned to center of abutting street.

57. **Overland Mach. Co. v. Alpenfels**

Supreme Court of Colorado. | April 17, 1902 | 30 Colo. 163

Headnote: A conveyance of a lot which borders upon a highway presumptively carries the title to the center of the street, if the grantor owns the land on which the highway is laid out, and one is presumed to convey the highest estate he owns in the lands granted, unless a smaller estate is described.

[4 Cases that cite this legal issue](#)

Document Summary: Appeal from district court, Arapahoe county. Consolidated actions to recover real estate by Caroline Alpenfels and Thomas F. Lynch against the Overland Machinery Company and others. From a judgment for plaintiffs, defendants appeal. Reversed. Caroline Alpenfels and Thomas F. Lynch, appellees, as plaintiffs below, brought separate actions against the defendants (appellants here) to recover possession of certain parcels of land in the city of Denver. The facts of the two cases are in all material respects the same, and the same legal principles govern each. By consent of parties, they were consolidated and tried as one action. The judgment was in favor of the plaintiffs, and the defendants have brought the case here by appeal. There was an agreed statement of facts, the parts of which material to the decision are here reproduced: In the month of April, 1868, Frederick J. Ebert and Francis M. Case were the owners of certain lands in the city of Denver, Arapahoe county, and on the...

59 BOUNDARIES 207

59I Description 62

[59🔑19 Roads, Ways, and Public Grounds](#) 5

[59🔑20 Public Ways](#) 4

[59🔑20\(3\) Conveyance by state, municipality, or owner of fee of bed of highway.](#) 1

58. McDonald v. Kummer

Supreme Court of Colorado. | December 1, 1913 | 56 Colo. 153

Headnote: Rule that deed describing land as bounded by street or highway means the middle thereof held not to apply where the title to a street is in the government or municipality, or where the grantor is a corporation holding the street for public purposes.

[2 Cases that cite this legal issue](#)

Document Summary: Error to District Court, Jefferson County; Charles McCall, Judge. Action by Henry McDonald and another against William Kummer and another. Judgment for defendants, and plaintiffs bring error. Reversed, with directions.

[59 BOUNDARIES](#) 207

[59I Description](#) 62

[59🔑19 Roads, Ways, and Public Grounds](#) 5

[59🔑22 Railroad rights of way](#) 1

59. Asmussen v. United States

Supreme Court of Colorado. | July 1, 2013 | 304 P.3d 552

Headnote: Before it can be presumed that grantor of land underlying abandoned railroad right-of-way intended to convey an interest in property underlying the right-of-way, it must be established that grantor actually held an interest in the property; therefore, to claim ownership in the abandoned right-of-way under the centerline presumption, adjacent landowner must trace title to the owner of the fee underlying that right-of-way.

Document Summary: REAL PROPERTY - Neighboring Properties. Centerline presumption applies to property abutting railroad right-of-way.#

[59 BOUNDARIES](#) 207

[59I Description](#) 62

[59🔑25 Priority of surveys.](#) 3



60. Friends of the Black Forest Regional Park, Inc. v. Board of County Com'rs of County of El Paso

Colorado Court of Appeals, Div. III. | April 24, 2003 | 80 P.3d 871

Headnote: A land survey made by the officers of the United States and confirmed by the land department is not open to challenge by any collateral attack in the courts.

Document Summary: GOVERNMENT - Property. Sisk Act restrictions applied to county park of 80.5 acres.



61. Friends of the Black Forest Regional Park, Inc. v. Board of County Com'rs of County of El Paso

Colorado Court of Appeals, Div. III. | April 24, 2003 | 80 P.3d 871

Headnote: The fact that a modern land survey may be more accurate than the original government survey cannot defeat ownership rights flowing from the original grant and the boundaries originally marked off.

Document Summary: GOVERNMENT - Property. Sisk Act restrictions applied to county park of 80.5 acres.

62. Radio San Juan, Inc. v. Baker

Colorado Court of Appeals, Div. II. | July 5, 1972 | 31 Colo.App. 151

Headnote: Change in township boundary lines as result of resurvey did not affect boundary of lands conveyed on basis of original township survey.

Document Summary: Action to determine interest in triangular tract of land. The District Court, La Plata County, William S. Eakes, J., rendered judgment that purchaser was owner of disputed tract, and vendor appealed. The Court of Appeals, Enoch, J., held that change in township boundary lines as result of resurvey did not affect boundary of lands conveyed on basis of original township survey. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑26 Nature and form of remedy. 3

63. Durbin v. Bonanza Corp.

Colorado Court of Appeals, Div. II. | February 27, 1986 | 716 P.2d 1124

Headnote: Provisions of rules of civil procedure do not apply insofar as they conflict with procedure and practice provided by C.R.S. 38-44-101 et seq. to establish a disputed boundary.

Document Summary: Adjoining landowners brought special statutory proceeding to establish a disputed boundary and also sought adjudication of prescriptive easement for ingress to and egress from their property over roadway in question, and corporation also sought determination of disputed boundary pursuant to statute. The District Court, El Paso County, Matthew M. Railey, J., determined the disputed boundary and awarded adjoining landowners prescriptive easement over roadway, and corporation appealed. The Court of Appeals, Babcock, J., held that: (1) decision to utilize surveyor as a master in special statutory proceeding to establish disputed boundary was not reversible error; (2) corporation was bound by its stipulation that report of surveyor be adopted and approved to establish disputed boundary; (3) refusal to take judicial notice of records of county clerk and recorder allegedly establishing government ownership of roadway within prescriptive period was not...

64. Durbin v. Bonanza Corp.

Colorado Court of Appeals, Div. II. | February 27, 1986 | 716 P.2d 1124

Headnote: Boundary dispute may be resolved under C.R.S. 38-44-101 et seq., establishing special statutory proceeding for such purpose, or under other appropriate statutory or common-law proceedings.

Document Summary: Adjoining landowners brought special statutory proceeding to establish a disputed boundary and also sought adjudication of prescriptive easement for ingress to and egress from their property over roadway in question, and corporation also sought determination of disputed boundary pursuant to statute. The District Court, El Paso County, Matthew M. Railey, J., determined the disputed boundary and awarded adjoining landowners prescriptive easement over roadway, and corporation appealed. The Court of Appeals, Babcock, J., held that: (1) decision to utilize surveyor as a master in special statutory proceeding to establish disputed boundary was not reversible error; (2) corporation was bound by its stipulation that report of surveyor be adopted and approved to establish disputed boundary; (3) refusal to take judicial notice of records of county clerk and recorder allegedly establishing government ownership of roadway within prescriptive period was not...

65. Canady v. Shelden

Colorado Court of Appeals, Div. I. | November 3, 1983 | 683 P.2d 1205

Headnote: In view of language of statute pertaining to boundary disputes, stating that one may bring an action under that particular statute, it is not mandatory that a boundary dispute be resolved under provisions of that particular statute to exclusion of other statutory or common-law proceedings. [C.R.S. 38-44-101](#) et seq.

[1 Case that cites this legal issue](#)

Document Summary: Action was commenced in which plaintiff landowners sought removal of chain link fence which defendant landowners had allegedly installed on plaintiffs' side of boundary. The Superior Court, City and County of Denver, Charles E. Bennett, J., found that fence was on plaintiffs' property and ordered it moved back in accordance with plaintiffs' survey, and denied damage claim. The defendants appealed. The Court of Appeals, Van Cise, J., held that: (1) Superior Court had jurisdiction to hear action, and (2) action was one for recovery of possession of real property and 18-year statute of limitations was applicable thereto. Affirmed.

59 BOUNDARIES 207

[59II Evidence, Ascertainment, and Establishment 145](#)

[59🔑27 Right of action and defenses 3](#)

66. [Canady v. Shelden](#)

Colorado Court of Appeals, Div. I. | November 3, 1983 | 683 P.2d 1205

Headnote: Action seeking removal of fence from plaintiffs' land was an action for recovery of possession of real property and 18-year statute of limitations was applicable thereto, rather than the six-year statute of limitations pertaining to trespass actions, and thus action, which was commenced ten years after fence was erected, was not barred. [C.R.S. 13-80-110\(1\)\(e\)](#), [38-41-101\(1\)](#).

Document Summary: Action was commenced in which plaintiff landowners sought removal of chain link fence which defendant landowners had allegedly installed on plaintiffs' side of boundary. The Superior Court, City and County of Denver, Charles E. Bennett, J., found that fence was on plaintiffs' property and ordered it moved back in accordance with plaintiffs' survey, and denied damage claim. The defendants appealed. The Court of Appeals, Van Cise, J., held that: (1) Superior Court had jurisdiction to hear action, and (2) action was one for recovery of possession of real property and 18-year statute of limitations was applicable thereto. Affirmed.

67. [Reinhardt v. Meyer](#)

Supreme Court of Colorado, In Department. | October 7, 1963 | 153 Colo. 296

Headnote: Whether title to property involved in boundary dispute lay in defendants or in heirs of defendants' predecessor in title was of no concern to plaintiff.

Document Summary: Boundary dispute case. The District Court, Jefferson County, Christian D. Stoner, J., dismissed the action as to plaintiff's grantors and found title to disputed strip of land to be in defendants, and plaintiff brought error. The Supreme Court, Sutton, J., held that evidence supported finding of open, notorious, continuous, adverse possession for more than 20 years by defendants and their predecessor in title to land on which barn and shed belonging to defendants and their predecessor long stood. Affirmed.

68. [Reinhardt v. Meyer](#)

Supreme Court of Colorado, In Department. | October 7, 1963 | 153 Colo. 296

Headnote: Plaintiff out of possession of land involved in boundary dispute could succeed only on strength of his own title, not on weakness, if any, of title of defendants.

Document Summary: Boundary dispute case. The District Court, Jefferson County, Christian D. Stoner, J., dismissed the action as to plaintiff's grantors and found title to disputed strip of land to be in defendants, and plaintiff brought error. The Supreme Court, Sutton, J., held that evidence supported finding of open, notorious,

continuous, adverse possession for more than 20 years by defendants and their predecessor in title to land on which barn and shed belonging to defendants and their predecessor long stood. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑31 Process and appearance. 1

69. Gibson v. Neikirk

Supreme Court of Colorado. | March 16, 1936 | 98 Colo. 389

Headnote: In proceeding to establish disputed boundaries, service of process held not insufficient so as to deprive court of jurisdiction of person of defendants, because of appointment of commissioner before service of summons on two defendants or expiration of time for pleading, in absence of evidence that defendants were deprived of any rights thereby (Code, §298 et seq.).

Document Summary: In Department. Proceeding by H. D. Neikirk and others, as the sole heirs at law of Phoebe Neikirk, deceased, and others against George W. Gibson, also known as G. W. Gibson, and others, as heirs at law and devisees of John S. Shaw, deceased, and another. From an adverse decree, the defendants appeal. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑32 Pleading. 1

70. Brackett v. Cleveland

Supreme Court of Colorado, In Department. | July 24, 1961 | 147 Colo. 328

Headnote: Issue in proceeding for establishment of lost, destroyed and disputed corners and boundaries of placer claim, the patent survey of which was admittedly erroneous, was not what original patent description provided but where it did in fact exist on ground. C.R.S. '53, 118-11-1 et seq.

Document Summary: Action for the establishment of lost, destroyed and disputed corners and boundaries to a placer claim. The District Court, Boulder County, Dale E. Shannon, J., rendered a judgment favoring the plaintiffs and the defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that conventional 'compass rule' method of balancing used by the commissioner in the establishment of placer corners was neither erroneous nor illegal. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑33 Presumptions and burden of proof. 9

71. Asmussen v. United States

Supreme Court of Colorado. | July 1, 2013 | 304 P.3d 552

Headnote: Primary purpose of applying centerline presumption to the conveyance of land abutting a highway or street is to effectuate probable intent of grantor; if grantor owns fee underlying right-of-way, it is presumed that grantor intends to convey it because a grantor generally does not intend to retain ownership in a narrow strip of land that is of little value to all but the adjacent landowner.

Document Summary: REAL PROPERTY - Neighboring Properties. Centerline presumption applies to property abutting railroad right-of-way.#

72. *Asmussen v. United States*

Supreme Court of Colorado. | July 1, 2013 | 304 P.3d 552

Headnote: The presumption that grantor of property abutting highway or street intended to convey the underlying right-of-way to the center of the street applies to conveyances of property abutting a railroad right-of-way.

Document Summary: REAL PROPERTY - Neighboring Properties. Centerline presumption applies to property abutting railroad right-of-way.#

73. *Asmussen v. United States*

Supreme Court of Colorado. | July 1, 2013 | 304 P.3d 552

Headnote: Under the common law centerline presumption, an adjacent landowner may claim title to an abandoned right-of-way only if he or she can trace title to the owner of the fee underlying that right-of-way.

Document Summary: REAL PROPERTY - Neighboring Properties. Centerline presumption applies to property abutting railroad right-of-way.#

74. *Asmussen v. United States*

Supreme Court of Colorado. | July 1, 2013 | 304 P.3d 552

Headnote: Before it can be presumed that grantor of land underlying abandoned railroad right-of-way intended to convey an interest in property underlying the right-of-way, it must be established that grantor actually held an interest in the property; therefore, to claim ownership in the abandoned right-of-way under the centerline presumption, adjacent landowner must trace title to the owner of the fee underlying that right-of-way.

Document Summary: REAL PROPERTY - Neighboring Properties. Centerline presumption applies to property abutting railroad right-of-way.#

75. *Asmussen v. United States*

Supreme Court of Colorado. | July 1, 2013 | 304 P.3d 552

Headnote: Once landowner adduces evidence that grantor in chain of title actually owned land underlying abandoned railroad right-of-way, centerline presumption operates to presume that grantor intended to convey that interest with the abutting property; however, absent that chain of title, adjacent landowner cannot rely on the centerline presumption to claim ownership to the centerline of the abandoned right-of-way.

Document Summary: REAL PROPERTY - Neighboring Properties. Centerline presumption applies to property abutting railroad right-of-way.#

76. *Cumpston v. Neirinckx*

Colorado Court of Appeals, Div. II. | January 20, 2000 | 1 P.3d 752

Headnote: Landowner who asserted that a boundary between two parcels had been established either by adverse possession or by acquiescence had the burden of establishing those claims in declaratory judgment action by adjoining landowner to confirm county surveyor's location of a section corner. [West's C.R.S.A. §30-10-906](#).

Document Summary: REAL PROPERTY - Boundaries. Declaratory judgment action was proper means to confirm county surveyor's location of quarter corner.



77. Near v. Calkins

Colorado Court of Appeals, Div. V. | March 6, 1997 | 946 P.2d 537

Headnote: Holder of deed which describes property as bounded on roadway, or which references map or plat that shows highway boundary, is presumed to have title of center of roadway, unless language of deed clearly states intention to restrict boundaries of conveyance.

[1 Case that cites this legal issue](#)

Document Summary: REAL ESTATE - Streets. Owner of subdivision lots owned to center of abutting street.

78. Smith v. Town of Fowler

Supreme Court of Colorado, En Banc. | January 12, 1959 | 138 Colo. 359

Headnote: Presumption based upon patent reference to lot being north of river was overcome by showing that lot had at time been either in river bed or south of north bank of river.

Document Summary: Action to quiet title. Defendants contested title of plaintiff and claimed title in themselves. The District Court, Otero County, William L. Gobin, J., rendered judgment and decree for plaintiff, and defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that as a general rule meander lines are not run as boundary lines of land surveyed but are run to determine outlines of stream or other body of water and as a means of ascertaining quantity of land embraced in survey; but held that there are exceptions, one of which applies where parties to instrument of conveyance intend to use meander line, and another of which is applicable where public officers in making sales have actually or by necessary implication made meander line the boundary line; and held that where either or both of such exceptions apply, the law of accretion cannot come into being. Affirmed.

**79. Skeritt Inv. Co. v. City of Englewood**

Supreme Court of Colorado. | July 6, 1926 | 79 Colo. 645

Headnote: Deed, reciting that if street in front of lots should be vacated grantee might purchase strip abutting on front of lot at market value, held not to overcome presumption that grantee took title to center of vacated street.

[1 Case that cites this legal issue](#)

Document Summary: Department 3. Error to District Court, Arapahoe County; S. W. Johnson, Judge. Action to quiet title by the Skeritt Investment Company against the City of Englewood and another. Decree quieting title save as to one lot, and from part of decree affecting that lot plaintiff brings error. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑34 Admissibility of Evidence 4

59🔑35 In General 4

59🔑35(1) In general. 1

80. Murray v. Hobson

Supreme Court of Colorado. | May 18, 1887 | 10 Colo. 66

Headnote: A deed of land included in a town site described the land as “designated on the recorded plat as the vacant land formed by change of the bed of the Arkansas river,” and by metes and bounds. Held, in an action involving the title to the land conveyed, that the description by metes and bounds, as well as that by way of reference to the plat, was properly admitted in evidence, and was not objectionable as liable to create a conflict as to the identity of the tract.

[1 Case that cites this legal issue](#)

Document Summary: Appeal from district court, Pueblo county.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑34 Admissibility of Evidence 4

59🔑35 In General 4

59🔑35(3) Testimony of surveyors and their assistants. 2

81. Everett v. Lantz

Supreme Court of Colorado, en Banc. | November 17, 1952 | 126 Colo. 504

Headnote: Where government ordered a dependent resurvey of certain townships to identify the boundaries of remaining public lands within the township, but did not purport to authorize identification or establishment of boundaries of land already patented, the dependent resurvey would not settle disputed boundaries between existing patentees, but testimony of cadastral engineers who made and superintended the dependent resurvey would be received and given same weight and credence as any other engineer's testimony.

Document Summary: Plaintiffs brought two suits to determine boundaries between adjoining tracts of realty owned by the plaintiffs and defendants. The District Court, Fremont County, Joseph D. Blunt, J., entered judgment favorable to defendants, and plaintiffs brought error. The Supreme Court, Alter, J., held that evidence established that dependent resurvey of 1939 was an exact retracement of original 1881 survey under which plaintiffs and defendants held title, and that the acreage designated in the original patents under which the plaintiffs claimed title was inaccurate. Affirmed.

82. Beaver Brook Resort Co. v. Stevens

Supreme Court of Colorado. | July 7, 1924 | 76 Colo. 131

Headnote: That one making survey for his father, who was owner of property, had no license under C.L. §4696, to practice surveying, did not render his testimony as to location of corner incompetent; "to practice a profession" being to hold one's self out as following it, as calling or one's usual business.

2 Cases that cite this legal issue

Document Summary: Department 3. Error to District Court, Clear Creek County; S. W. Johnson, Judge. Action by Clara Stevens against the Beaver Brook Resort Company and others. Judgment for plaintiff, and defendants bring error. Reversed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑34 Admissibility of Evidence 4

59🔑35 In General 4

59🔑35(4) Agreement, acquiescence, and practical location by parties. 1

**83. Reinhardt v. Meyer**

Supreme Court of Colorado, In Department. | October 7, 1963 | 153 Colo. 296

Headnote: That a few years prior to action involving boundary dispute, an adjoining fence line had been moved without protest by defendants' predecessor in title was immaterial.

Document Summary: Boundary dispute case. The District Court, Jefferson County, Christian D. Stoner, J., dismissed the action as to plaintiff's grantors and found title to disputed strip of land to be in defendants, and plaintiff brought error. The Supreme Court, Sutton, J., held that evidence supported finding of open, notorious, continuous, adverse possession for more than 20 years by defendants and their predecessor in title to land on which barn and shed belonging to defendants and their predecessor long stood. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑37 Weight and Sufficiency of Evidence 23

59🔑37(1) In general. 4

84. Wallace v. Hirsch

Supreme Court of Colorado, In Department. | March 28, 1960 | 142 Colo. 264

Headnote: In action to determine boundary line between realty of plaintiff and defendants, wherein it was agreed by both plaintiff and defendants that there was an error in description, which was contained in plaintiff's deed from their common grantor, and which was repeated in exception of land in deed of defendants, evidence sustained the trial court's finding that boundary was located as contended by plaintiff.

[2 Cases that cite this legal issue](#)

Document Summary: Action was brought to determine common boundary line between realty of plaintiff and realty of defendants. The District Court of Delta County, Charles E. Blaine, J., entered judgment in favor of the plaintiff, and the defendants brought error. The Supreme Court held that evidence sustained finding of District Court that boundary line was located as contended by plaintiff. Judgment affirmed.

85. Camp v. Winegar

Supreme Court of Colorado. | October 2, 1922 | 72 Colo. 160

Headnote: Evidence held not to support the conclusion of a boundary commissioner that a township had never been subdivided, but to show that it had.

Document Summary: Department 2. Error to District Court, Kit Carson County; Arthur Cornforth, Judge. Petition of A. W. Winegar and others against J. Camp and others, to establish township boundaries. Upon judgment approving the report of the Commission, defendants bring error. Judgment reversed and cause remanded, with directions.

86. Morse v. Breen

Supreme Court of Colorado. | July 7, 1919 | 66 Colo. 398

Headnote: In action involving question of whether section in which land was situated was section 3 or 4 of certain township, where topographical features of land and surrounding country agreed in all respects with plats and notes showing the section to be No. 4, and one corner of land was marked by monuments on township line where plat showed it, court was justified in finding land to be in section 4, though corner stones on south boundary of the section were marked section 3.

Document Summary: Department 1. Error to District Court, Rio Grande County; A. Watson McHendrie, Judge. Suit by Thomas Breen against William W. Morse and another. Judgment for plaintiff, and defendants bring error. Affirmed.

**87. Overland Mach. Co. v. Alpenfels**

Supreme Court of Colorado. | April 17, 1902 | 30 Colo. 163

Headnote: A clause in a deed of a city lot, executed after the vacation of an adjoining street, reciting that it includes all appurtenances to the lot, and the erasure of all words of warranty of title in a subsequent deed to the adjoining portion of the street, executed by the same grantor to another grantee, do not show on an issue as to whether the street passed by the first deed, that the grantor understood that the latter deed passed no title.

[1 Case that cites this legal issue](#)

Document Summary: Appeal from district court, Arapahoe county. Consolidated actions to recover real estate by Caroline Alpenfels and Thomas F. Lynch against the Overland Machinery Company and others. From a judgment for plaintiffs, defendants appeal. Reversed. Caroline Alpenfels and Thomas F. Lynch, appellees, as

plaintiffs below, brought separate actions against the defendants (appellants here) to recover possession of certain parcels of land in the city of Denver. The facts of the two cases are in all material respects the same, and the same legal principles govern each. By consent of parties, they were consolidated and tried as one action. The judgment was in favor of the plaintiffs, and the defendants have brought the case here by appeal. There was an agreed statement of facts, the parts of which material to the decision are here reproduced: In the month of April, 1868, Frederick J. Ebert and Francis M. Case were the owners of certain lands in the city of Denver, Arapahoe county, and on the...

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑37 Weight and Sufficiency of Evidence 23

59🔑37(3) Location of corners, lines, and monuments. 12



88. **Drug v. Wooldridge**

Colorado Court of Appeals, Div. II. | July 2, 1974 | 34 Colo.App. 186

Headnote: Government survey did not conclusively fix or control boundaries of quarter section and testimony by surveyor that all properties in surrounding area had been based upon north quarter corner as determined by one particular nongovernment survey sustained finding that land in question, which was bounded by the north quarter corner, was surveyed on the basis of the nongovernment plat and thus contained only 16 acres, rather than 26 acres as shown by government survey and as intended by the vendor and purchaser.

Document Summary: Purchasers brought action for abatement of purchase price of land. The District Court, Jefferson County, Daniel J. Shannon, J., granted abatement and vendor appealed. The Court of Appeals, Ruland, J., held that evidence demonstrated that deed was based on particular survey and that land conveyed was thus less than intended or believed by the parties; that evidence demonstrated that parties intended sale of tract of land in gross and not by acre so that purchasers were entitled to rescission but not to abatement; and that issue of propriety of abatement could be considered by court even though it was not raised by vendor until motion for new trial. Reversed and remanded. Pierce, J., dissented and filed an opinion.

89. **First Nat. Bank of Louisville v. Perrella**

Colorado Court of Appeals, Div. I. | July 25, 1972 | 499 P.2d 1202

Headnote: Evidence was sufficient to support determination that certain survey correctly established boundary line between plaintiff and appealing party.

Document Summary: Dispute over boundary line between two commercial properties. The District Court, Boucher County, John B. Barnard, J., entered judgment for plaintiff, and defendants appealed. The Court of Appeals, Pierce, J., held that refusal to grant new trial in boundary dispute, upon submission of reportedly new evidence consisting of three aerial photographs, was not an abuse of discretion where it appeared that the photographs were merely cumulative of evidence already before the court. Affirmed.



90. **Kelly v. Mullin**

Supreme Court of Colorado, In Department. | April 18, 1966 | 159 Colo. 573

Headnote: Evidence supported finding that fence was merely a barrier and not a boundary line.

Document Summary: Boundary dispute. The District Court, Yuma County, Hilbert Schauer, J., rendered judgment, and the defendants brought error. The Supreme Court, Day, J., held that the defendants failed to prove their claim of adverse possession. The Court further held that the trial court should not have required the

defendants to remove the present meandering barrier fence of historic origin and to build a new fence on the boundary, with the expense thereof to be shared by the parties. Affirmed in part and reversed in part.

91. Fisher v. Peterson

Supreme Court of Colorado, In Department. | April 29, 1963 | 152 Colo. 221

Headnote: Evidence supported finding that fence which admittedly was not located on a section line and was claimed by owners to have been recognized and acquiesced in for more than twenty years as actual line separating their realty from that of adjoining owner had not been acquiesced in as the boundary line but was merely a barrier and that the true boundary was the section line. C.R.S. '53, 118-11-9.

[2 Cases that cite this legal issue](#)

Document Summary: Boundary dispute case. The District Court of Douglas County, William M. Calvert, J., determined that a fence was not the boundary line but was merely a barrier and rendered judgment accordingly, and error was brought. The Supreme Court, Moore, J., held that evidence supported finding that fence which admittedly was not located on a section line and was claimed by owners to have been recognized and acquiesced in for more than twenty years as actual line separating their realty from that of adjoining owner had not been acquiesced in as the boundary line but was merely a barrier and that the true boundary was the section line. Affirmed.

92. Davis v. Dilley

Supreme Court of Colorado, In Department. | August 7, 1961 | 147 Colo. 395

Headnote: Evidence justified location of disputed boundary between northeast and northwest quarter sections on basis of north and south quarter corners as marked by well-established monuments corresponding with situation on the ground.

Document Summary: Action to determine location of northeast corner of northwest quarter section owned by plaintiffs, eject defendant from plaintiffs' land and quiet title to disputed acreage in plaintiffs. The District Court, Custer County, Joseph D. Blunt, J., entered judgment dismissing amended complaint, and plaintiffs brought error. The Supreme Court, Moore, J., held that the evidence justified location of true boundary on basis of north and south quarter corners as marked by well-established monuments corresponding with the situation on the ground. Judgment affirmed.

93. Brackett v. Cleveland

Supreme Court of Colorado, In Department. | July 24, 1961 | 147 Colo. 328

Headnote: There was no evidence that commissioner re-establishing situs on ground of original monuments, which had disappeared, marking boundaries of placer claim, had changed size or shape of claim. C.R.S. '53, 118-11-1 et seq.

Document Summary: Action for the establishment of lost, destroyed and disputed corners and boundaries to a placer claim. The District Court, Boulder County, Dale E. Shannon, J., rendered a judgment favoring the plaintiffs and the defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that conventional 'compass rule' method of balancing used by the commissioner in the establishment of placer corners was neither erroneous nor illegal. Affirmed.

94. Brackett v. Cleveland

Supreme Court of Colorado, In Department. | July 24, 1961 | 147 Colo. 328

Headnote: Commissioner, establishing boundaries and corners of placer claim the monuments of which had disappeared, was not chargeable with disregarding available primary evidence. C.R.S. '53, 118-11-1 et seq.

Document Summary: Action for the establishment of lost, destroyed and disputed corners and boundaries to a placer claim. The District Court, Boulder County, Dale E. Shannon, J., rendered a judgment favoring the plaintiffs and the defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that conventional

'compass rule' method of balancing used by the commissioner in the establishment of placer corners was neither erroneous nor illegal. Affirmed.

95. [Archuleta v. Rose](#)

Supreme Court of Colorado, En Banc. | September 9, 1957 | 136 Colo. 211

Headnote: In action to establish ownership of one-half of vacated street contiguous to adjoining landowners' property, evidence sustained finding to effect that fence, which was placed on one side of vacated street, served as a barrier rather than to mark a boundary line and defendant was not entitled to vacated street on theory of adverse possession. [Rules of Civil Procedure, rule 105\(a\)](#).

[3 Cases that cite this legal issue](#)

Document Summary: Action to establish ownership of one-half of vacated street which was contiguous to the property of plaintiff and defendants. The District Court of Adams County, Osmer E. Smith, J., entered judgment for plaintiff and defendants brought error. The Supreme Court, Moore, C. J., held evidence sustained finding to the effect that a fence, which had been erected on disputed ground, served as a barrier rather than to mark boundary line between property and therefore defendants could not claim disputed land on theory of adverse possession. Judgment affirmed.

96. [Beaver Brook Resort Co. v. Stevens](#)

Supreme Court of Colorado. | July 7, 1924 | 76 Colo. 131

Headnote: Court held not justified in accepting line run by surveyor from corner fixed by two marked trees, in view of other competent evidence as to stone in place marked as corner and blazed trees on lines running therefrom on courses given in field notes.

Document Summary: Department 3. Error to District Court, Clear Creek County; S. W. Johnson, Judge. Action by Clara Stevens against the Beaver Brook Resort Company and others. Judgment for plaintiff, and defendants bring error. Reversed.

97. [Camp v. Winegar](#)

Supreme Court of Colorado. | October 2, 1922 | 72 Colo. 160

Headnote: Testimony that monuments such as are made in the survey of public lands were many years ago seen and recognized as such is not contradicted by the expressed opinion of a surveyor, who did not see them, that they were not such corners.

Document Summary: Department 2. Error to District Court, Kit Carson County; Arthur Cornforth, Judge. Petition of A. W. Winegar and others against J. Camp and others, to establish township boundaries. Upon judgment approving the report of the Commission, defendants bring error. Judgment reversed and cause remanded, with directions.

98. [Davies v. Craig](#)

Supreme Court of Colorado. | July 3, 1921 | 70 Colo. 296

Headnote: Evidence founded on plats and field notes, which contained errors, and which were contradicted by monuments and eyewitnesses of the survey, held not sufficient to sustain the findings of the trial court as to location of a corner of a survey.

[1 Case that cites this legal issue](#)

Document Summary: En Banc. Error to District Court, Grand County; Harry S. Class, Judge. Action by William Bayard Craig and another against J. W. Davies and others. Judgment for plaintiffs, and defendant

named brings error. Reversed and remanded with directions. See, also, *Wescott v. Craig*, 60 Colo. 42, 151 Pac. 934.

99. *Biddle v. Newman*

Supreme Court of Colorado. | December 7, 1914 | 58 Colo. 243

Headnote: Evidence, in an action under Rev.St.1908, c. 24, as to establishment of disputed boundaries, held to sustain a finding that the corner stone called for in the field notes of the government survey was lost.

Document Summary: Error to District Court, Morgan County; H. P. Burke, Judge. Action by Pheby J. Biddle against Emily C. Newman. Judgment for defendant, and plaintiff brings error. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑37 Weight and Sufficiency of Evidence 23

59🔑37(5) Agreement or recognition as to location of boundary. 7

100. *Brehm v. Johnson*

Colorado Court of Appeals, Div. I. | December 3, 1974 | 531 P.2d 991

Headnote: Evidence in action by landowners to establish property boundaries supported findings of recognition and acquiescence in fence lines as boundaries for more than 20 years and of adverse possession of disputed land by defendants for more than 18 years. C.R.S. '63, 118-11-9; 1967 Perm.Supp., C.R.S., 118-7-1.

Document Summary: Action by landowners to establish property boundaries. The District Court, County of Weld, Robert A. Behrman, J., established boundaries, and plaintiffs appealed. The Court of Appeals, Enoch, J., held that evidence supported findings of recognition of, and acquiescence in, fence lines as property boundaries for more than 20 years and of adverse possession of disputed land for more than 18 years, and that issue whether standards, applied respecting adverse possession, violated rights under Fourteenth Amendment was not properly before Court of Appeals. Affirmed.

101. *Forristall v. Ansley*

Supreme Court of Colorado, In Department. | December 8, 1969 | 170 Colo. 391

Headnote: Evidence supported finding, in action for determination of boundary line between sections, that line as found by commissioner after survey had been recognized and acquiesced in by respective owners as true line separating the sections for more than 20 years. C.R.S. '63, 118-11-1 to 118-11-12, 118-11-4, 118-11-9.

[2 Cases that cite this legal issue](#)

Document Summary: Action for determination of boundary line between sections owned by plaintiff and defendant. From judgment of the District Court, Lincoln County, David W. Enoch, J., settling the line, defendants brought error. The Supreme Court, Moore, J., held that evidence supported finding that boundary line as found by commissioner had been recognized and acquiesced in by respective owners for more than 20 years as true line separating sections and that approval of line set by commissioner after survey was not erroneous. Affirmed.

102. *Hartley v. Ruybal*

Supreme Court of Colorado, In Department. | May 9, 1966 | 160 Colo. 80

Headnote: Evidence which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties.

[3 Cases that cite this legal issue](#)

Document Summary: Proceedings to determine disputed boundary line between adjoining properties. The District Court, Conejos County, George H. Blickhahn, J., entered judgment in favor of defendant property owners and the plaintiff property owners brought error. The Supreme Court, Day, J., held, inter alia, that where east-west boundary line between adjoining properties was contested and fence ran east and west between properties but not upon true boundary line, evidence, which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties. Judgment affirmed in part and reversed in part and cause remanded with directions.

103. [Hartley v. Ruybal](#)

Supreme Court of Colorado, In Department. | May 9, 1966 | 160 Colo. 80

Headnote: Evidence, in proceedings to determine disputed boundary line between adjoining properties, was insufficient to support trial court's conclusion that northern property owner acquiesced in fence as boundary line on east side of his property. C.R.S. '63, 118-11-1 to 118-11-12.

Document Summary: Proceedings to determine disputed boundary line between adjoining properties. The District Court, Conejos County, George H. Blickhahn, J., entered judgment in favor of defendant property owners and the plaintiff property owners brought error. The Supreme Court, Day, J., held, inter alia, that where east-west boundary line between adjoining properties was contested and fence ran east and west between properties but not upon true boundary line, evidence, which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties. Judgment affirmed in part and reversed in part and cause remanded with directions.

104. [Hartley v. Ruybal](#)

Supreme Court of Colorado, In Department. | May 9, 1966 | 160 Colo. 80

Headnote: Mere showing of existence of a fence with nothing more is insufficient to sustain finding of fence as boundary line by acquiescence.

[1 Case that cites this legal issue](#)

Document Summary: Proceedings to determine disputed boundary line between adjoining properties. The District Court, Conejos County, George H. Blickhahn, J., entered judgment in favor of defendant property owners and the plaintiff property owners brought error. The Supreme Court, Day, J., held, inter alia, that where east-west boundary line between adjoining properties was contested and fence ran east and west between properties but not upon true boundary line, evidence, which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties. Judgment affirmed in part and reversed in part and cause remanded with directions.

105. [Archuleta v. Rose](#)

Supreme Court of Colorado, En Banc. | September 9, 1957 | 136 Colo. 211

Headnote: In action by landowner against adjoining landowners to establish ownership of one-half of a vacated street contiguous to the lands of adjoining landowners, adjoining landowners failed to prove adverse possession or acquiescence in boundaries for a period of 18 years prior to the filing of the complaint. [Rules of Civil Procedure, rule 105\(a\)](#).

Document Summary: Action to establish ownership of one-half of vacated street which was contiguous to the property of plaintiff and defendants. The District Court of Adams County, Osmer E. Smith, J., entered judgment for plaintiff and defendants brought error. The Supreme Court, Moore, C. J., held evidence sustained finding to the effect that a fence, which had been erected on disputed ground, served as a barrier rather than to mark

boundary line between property and therefore defendants could not claim disputed land on theory of adverse possession. Judgment affirmed.

106. [Prieshof v. Baum](#)

Supreme Court of Colorado. | February 13, 1934 | 94 Colo. 324

Headnote: Evidence of mutual acquiescence of adjoining landowners in fence as boundary held insufficient to support claim of 20 years' mutual acquiescence (C.L. §6418).

[4 Cases that cite this legal issue](#)

Document Summary: In Department. Error to District Court, Pueblo County; John H. Voorhees, Judge. Action by Charles A. Baum, as administrator of the estate of Anthony C. Baum, deceased, against John Prieshof. Judgment for plaintiff, and defendant brings error. Affirmed.

59 BOUNDARIES 207

[59II Evidence, Ascertainment, and Establishment](#) 145

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107. [Durbin v. Bonanza Corp.](#)

Colorado Court of Appeals, Div. II. | February 27, 1986 | 716 P.2d 1124

Headnote: Decision to utilize surveyor as a master in special statutory proceeding under [C.R.S. 38-44-101](#) et seq. to establish disputed boundary was error; however, such decision was not reversible error, in that parties stipulated that surveyor's report was to be adopted and approved by trial court to establish the disputed boundary. [Rules Civ.Proc., Rule 53](#).

Document Summary: Adjoining landowners brought special statutory proceeding to establish a disputed boundary and also sought adjudication of prescriptive easement for ingress to and egress from their property over roadway in question, and corporation also sought determination of disputed boundary pursuant to statute. The District Court, El Paso County, Matthew M. Railey, J., determined the disputed boundary and awarded adjoining landowners prescriptive easement over roadway, and corporation appealed. The Court of Appeals, Babcock, J., held that: (1) decision to utilize surveyor as a master in special statutory proceeding to establish disputed boundary was not reversible error; (2) corporation was bound by its stipulation that report of surveyor be adopted and approved to establish disputed boundary; (3) refusal to take judicial notice of records of county clerk and recorder allegedly establishing government ownership of roadway within prescriptive period was not...

108. [Hildebrand v. Olinger](#)

Colorado Court of Appeals, Div. I. | May 10, 1984 | 689 P.2d 695

Headnote: It is proper for trial court to resolve discrepancies in legal descriptions.

Document Summary: Defendants appealed an order of the District Court, Jefferson County, Gaspar F. Perricone, J., determining and establishing boundary in quiet title action. The Court of Appeals, Babcock, J., held that: (1) trial court did not err in accepting report and determination of commissioner, a registered surveyor, regarding southern boundary line; (2) defendants waived their right to take exception to commissioner's determination of southern terminus of boundary line in question; and (3) trial court did not abuse its discretion in using equitable principles to determine and establish disputed boundary line. Affirmed.

109. [Hildebrand v. Olinger](#)

Colorado Court of Appeals, Div. I. | May 10, 1984 | 689 P.2d 695

Headnote: Where powers of trial court are invoked to settle boundary dispute, trial court is not precluded from fulfilling its duty by the application of equitable principles.

Document Summary: Defendants appealed an order of the District Court, Jefferson County, Gaspar F. Perricone, J., determining and establishing boundary in quiet title action. The Court of Appeals, Babcock, J., held that: (1) trial court did not err in accepting report and determination of commissioner, a registered surveyor, regarding southern boundary line; (2) defendants waived their right to take exception to commissioner's determination of southern terminus of boundary line in question; and (3) trial court did not abuse its discretion in using equitable principles to determine and establish disputed boundary line. Affirmed.

110. [Hildebrand v. Olinger](#)

Colorado Court of Appeals, Div. I. | May 10, 1984 | 689 P.2d 695

Headnote: In quiet title action, trial court did not abuse its discretion in using equitable principles to determine and establish disputed boundary line.

Document Summary: Defendants appealed an order of the District Court, Jefferson County, Gaspar F. Perricone, J., determining and establishing boundary in quiet title action. The Court of Appeals, Babcock, J., held that: (1) trial court did not err in accepting report and determination of commissioner, a registered surveyor, regarding southern boundary line; (2) defendants waived their right to take exception to commissioner's determination of southern terminus of boundary line in question; and (3) trial court did not abuse its discretion in using equitable principles to determine and establish disputed boundary line. Affirmed.

111. [Hartley v. Ruybal](#)

Supreme Court of Colorado, In Department. | May 9, 1966 | 160 Colo. 80

Headnote: When evidence, in proceedings over disputed boundary lines, raises issue of adverse possession, such issue can be considered by trial court. C.R.S. '63, 118-11-1 to 118-11-12.

Document Summary: Proceedings to determine disputed boundary line between adjoining properties. The District Court, Conejos County, George H. Blickhahn, J., entered judgment in favor of defendant property owners and the plaintiff property owners brought error. The Supreme Court, Day, J., held, inter alia, that where east-west boundary line between adjoining properties was contested and fence ran east and west between properties but not upon true boundary line, evidence, which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties. Judgment affirmed in part and reversed in part and cause remanded with directions.

112. [Brackett v. Cleveland](#)

Supreme Court of Colorado, In Department. | July 24, 1961 | 147 Colo. 328

Headnote: Commissioner in action for establishment of lost, destroyed and disputed boundaries and corners acted in accordance with normal procedures when he had both plaintiffs and defendants point out all known corners and monuments on ground before he began his work and, in so doing, could not be held to have conducted hearings or examined witnesses in a legal sense. C.R.S. '53, 118-11-1 et seq.

Document Summary: Action for the establishment of lost, destroyed and disputed corners and boundaries to a placer claim. The District Court, Boulder County, Dale E. Shannon, J., rendered a judgment favoring the plaintiffs and the defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that conventional 'compass rule' method of balancing used by the commissioner in the establishment of placer corners was neither erroneous nor illegal. Affirmed.

- 59🔑38 Trial of Issues 13
- 59🔑40 Questions for Jury 7
- 59🔑40(1) In general 2

113. **Burns v. Landreth**

Supreme Court of Colorado. | February 6, 1933 | 92 Colo. 235

Headnote: True location of section line, differently located by different surveyors testifying in ejectment suit, is fact question for jury.

Document Summary: In Department. Error to District Court, Phillips County; H. E. Munson, Judge. Action by Cora E. Burns against A. S. Landreth. Judgment for defendant, and plaintiff brings error. Affirmed.

114. **Cullacott v. Cash Gold & Silver Mining Co.**

Supreme Court of Colorado | March 6, 1885 | 8 Colo. 179

Headnote: The existence and location of monuments may become questions of fact, to be determined like other questions of fact, according to the rules of evidence.

[1 Case that cites this legal issue](#)

Document Summary: Appeal from district court of Boulder county.

59 BOUNDARIES 207

- 59II Evidence, Ascertainment, and Establishment 145
- 59🔑38 Trial of Issues 13
- 59🔑40 Questions for Jury 7
- 59🔑40(3) Agreement, recognition, or acquiescence. 5

115. **Cumpston v. Neirinckx**

Colorado Court of Appeals, Div. II. | January 20, 2000 | 1 P.3d 752

Headnote: Whether boundary between two parcels has been established by adverse possession or acquiescence is a question of fact, and the trial court's findings on that issue will not be disturbed on review unless they are clearly erroneous.

Document Summary: REAL PROPERTY - Boundaries. Declaratory judgment action was proper means to confirm county surveyor's location of quarter corner.

116. **Terry v. Salazar**

Colorado Court of Appeals, Div. III. | August 11, 1994 | 892 P.2d 391

Headnote: Whether fence is acquiesced in as boundary or merely exists to serve as barrier is question of fact to be decided by finder of fact.

Document Summary: Boundaries. Common ownership of property abrogated any acquiescence chargeable to parties concerning fence as actual division line.

117. **Brehm v. Johnson**

Colorado Court of Appeals, Div. I. | December 3, 1974 | 531 P.2d 991

Headnote: Whether a fence has been acquiesced in so that it becomes permanently established boundary respecting real property is question of fact.

[1 Case that cites this legal issue](#)

Document Summary: Action by landowners to establish property boundaries. The District Court, County of Weld, Robert A. Behrman, J., established boundaries, and plaintiffs appealed. The Court of Appeals, Enoch, J., held that evidence supported findings of recognition of, and acquiescence in, fence lines as property boundaries for more than 20 years and of adverse possession of disputed land for more than 18 years, and that issue whether standards, applied respecting adverse possession, violated rights under Fourteenth Amendment was not properly before Court of Appeals. Affirmed.

118. [Hartley v. Ruybal](#)

Supreme Court of Colorado, In Department. | May 9, 1966 | 160 Colo. 80

Headnote: Whether a fence is acquiesced in as a boundary or merely exists to serve as a barrier is question of fact to be decided by trial court.

[1 Case that cites this legal issue](#)

Document Summary: Proceedings to determine disputed boundary line between adjoining properties. The District Court, Conejos County, George H. Blickhahn, J., entered judgment in favor of defendant property owners and the plaintiff property owners brought error. The Supreme Court, Day, J., held, inter alia, that where east-west boundary line between adjoining properties was contested and fence ran east and west between properties but not upon true boundary line, evidence, which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties. Judgment affirmed in part and reversed in part and cause remanded with directions.

119. [Kelly v. Mullin](#)

Supreme Court of Colorado, In Department. | April 18, 1966 | 159 Colo. 573

Headnote: The question of what function a fence has performed over a period of years and whether it has been acquiesced in as a boundary is peculiarly a question of fact.

[1 Case that cites this legal issue](#)

Document Summary: Boundary dispute. The District Court, Yuma County, Hilbert Schauer, J., rendered judgment, and the defendants brought error. The Supreme Court, Day, J., held that the defendants failed to prove their claim of adverse possession. The Court further held that the trial court should not have required the defendants to remove the present meandering barrier fence of historic origin and to build a new fence on the boundary, with the expense thereof to be shared by the parties. Affirmed in part and reversed in part.

59 BOUNDARIES 207

[59II Evidence, Ascertainment, and Establishment 145](#)

[59III Judgment and enforcement thereof. 10](#)

120. [Perfect Place v. Semler](#)

Colorado Court of Appeals, Div. V. | October 20, 2016 | --- P.3d ----

Headnote: A trial court may properly amend boundaries in a declaration map as part of its equitable power. Colo. R. Civ. P. 105.

Document Summary: REAL PROPERTY - Condominiums. Substantial compliance, not strict compliance, with subdivision procedures CCIOA is required.

121. [Kelly v. Mullin](#)

Supreme Court of Colorado, In Department. | April 18, 1966 | 159 Colo. 573

Headnote: In proceeding to establish boundary, it was error for the court to enter an order for the defendants to remove meandering barrier fence from plaintiffs' property and to order both parties to share equally the expense of a new fence along the boundary. C.R.S. '63, 8-13-1 to 8-13-15.

Document Summary: Boundary dispute. The District Court, Yuma County, Hilbert Schauer, J., rendered judgment, and the defendants brought error. The Supreme Court, Day, J., held that the defendants failed to prove their claim of adverse possession. The Court further held that the trial court should not have required the defendants to remove the present meandering barrier fence of historic origin and to build a new fence on the boundary, with the expense thereof to be shared by the parties. Affirmed in part and reversed in part.

122. Reinhardt v. Meyer

Supreme Court of Colorado, In Department. | October 7, 1963 | 153 Colo. 296

Headnote: Description used by trial court in vesting title to land involved in boundary dispute in defendants was of no concern to plaintiff in absence of difficulty in legally establishing the line itself so that the plaintiff would know where it was.

Document Summary: Boundary dispute case. The District Court, Jefferson County, Christian D. Stoner, J., dismissed the action as to plaintiff's grantors and found title to disputed strip of land to be in defendants, and plaintiff brought error. The Supreme Court, Sutton, J., held that evidence supported finding of open, notorious, continuous, adverse possession for more than 20 years by defendants and their predecessor in title to land on which barn and shed belonging to defendants and their predecessor long stood. Affirmed.

123. Reinhardt v. Meyer

Supreme Court of Colorado, In Department. | October 7, 1963 | 153 Colo. 296

Headnote: Although the better practice is to describe disputed boundary line in the decree itself by metes and bounds tied to quarter sections, use of legal description furnished by unsuccessful plaintiff as part of the pleadings which incorporated by reference a surveyor's plat and description was not error.

Document Summary: Boundary dispute case. The District Court, Jefferson County, Christian D. Stoner, J., dismissed the action as to plaintiff's grantors and found title to disputed strip of land to be in defendants, and plaintiff brought error. The Supreme Court, Sutton, J., held that evidence supported finding of open, notorious, continuous, adverse possession for more than 20 years by defendants and their predecessor in title to land on which barn and shed belonging to defendants and their predecessor long stood. Affirmed.

124. Reinhardt v. Meyer

Supreme Court of Colorado, In Department. | October 7, 1963 | 153 Colo. 296

Headnote: Trial court which found for defendants who were involved in boundary dispute and had asked injunction against interference with possession and use by plaintiff had jurisdiction to grant injunctive relief against interference by plaintiff.

Document Summary: Boundary dispute case. The District Court, Jefferson County, Christian D. Stoner, J., dismissed the action as to plaintiff's grantors and found title to disputed strip of land to be in defendants, and plaintiff brought error. The Supreme Court, Sutton, J., held that evidence supported finding of open, notorious, continuous, adverse possession for more than 20 years by defendants and their predecessor in title to land on which barn and shed belonging to defendants and their predecessor long stood. Affirmed.

125. Pull v. Barnes

Supreme Court of Colorado, In Department. | March 28, 1960 | 142 Colo. 272

Headnote: Where powers of trial court were invoked to settle boundary dispute and problems arising from situation in which plaintiffs and defendants found themselves, without bad faith on part of any of parties, it was court's duty to grant relief in equity which situation demanded.

[4 Cases that cite this legal issue](#)

Document Summary: Action to determine boundary lines between properties owned by plaintiffs and defendants, and for damages and other relief. The District Court, Jefferson County, Osmer E. Smith, J., rendered judgment for defendants and plaintiffs brought error. The Supreme Court held that where plaintiffs purchased land from parties who, in good faith, asserted title to land which later was discovered to be owned by defendants, and plaintiffs constructed cabin upon such land, plaintiffs were entitled to remove improvements from land and, if removal was not feasible, then value thereof should be determined and land would be subjected to lien in favor of plaintiffs in amount equal to such value. Judgment reversed with directions.

126. [Calvin v. Fitzsimmons](#)

Supreme Court of Colorado, En Banc. | May 17, 1954 | 129 Colo. 420

Headnote: A judgment and decree involving the right to possession of real property must definitely and sufficiently describe it in order that an officer charged with the duty of executing a writ of possession may go upon the premises, and, without exercising any judicial functions whatever, ascertain with certainty the boundary lines fixed by the judgment.

[1 Case that cites this legal issue](#)

Document Summary: Action involving determination of boundary line. The District Court, Kit Carson County, Joseph D. Blunt, J., entered judgment for plaintiff on verdict and denied defendants' motion to specifically and definitely locate corners of land involved. Defendants brought writ of error. the Supreme Court, Alter, J., held that judgment, which fixed controverted boundary lines by fence that had been destroyed prior to bringing of the action, was too indefinite, uncertain, vague and ambiguous. Reversed and remanded for retrial or consent judgment.

127. [Calvin v. Fitzsimmons](#)

Supreme Court of Colorado, En Banc. | May 17, 1954 | 129 Colo. 420

Headnote: A judgment and decree must be so definite and specific in defining the proper location of boundary lines that all the parties affected thereby may comply with the judgment in every respect.

Document Summary: Action involving determination of boundary line. The District Court, Kit Carson County, Joseph D. Blunt, J., entered judgment for plaintiff on verdict and denied defendants' motion to specifically and definitely locate corners of land involved. Defendants brought writ of error. the Supreme Court, Alter, J., held that judgment, which fixed controverted boundary lines by fence that had been destroyed prior to bringing of the action, was too indefinite, uncertain, vague and ambiguous. Reversed and remanded for retrial or consent judgment.

128. [Calvin v. Fitzsimmons](#)

Supreme Court of Colorado, En Banc. | May 17, 1954 | 129 Colo. 420

Headnote: Where judgment, in action involving determination of boundary line, merely fixed controverted boundary line by fence that had been completely destroyed prior to bringing of the action, judgment was too indefinite and ambiguous to enable parties to definitely locate boundary lines between the specific portions of land involved. [Rules of Civil Procedure, rules 52, 105.](#)

Document Summary: Action involving determination of boundary line. The District Court, Kit Carson County, Joseph D. Blunt, J., entered judgment for plaintiff on verdict and denied defendants' motion to specifically and definitely locate corners of land involved. Defendants brought writ of error. the Supreme Court, Alter, J., held that judgment, which fixed controverted boundary lines by fence that had been destroyed prior to bringing of the action, was too indefinite, uncertain, vague and ambiguous. Reversed and remanded for retrial or consent judgment.

129. Wescott v. Craig

Supreme Court of Colorado. | July 6, 1915 | 60 Colo. 42

Headnote: In proceedings to locate a boundary, decree of court, based on survey assuming correctness of notes by which the corner to be located was connected with a meander corner and ignoring other calls in conflict, actual and field note distances varying, was improper.

[3 Cases that cite this legal issue](#)

Document Summary: Error to District Court, Grand County; Charles McCall, Judge. Action by William Bayard Craig and another against Joseph L. Wescott and another. Judgment for plaintiffs, and defendants bring error. Former opinion withdrawn, judgment reversed, and cause remanded, with directions. Bailey, Garrigues, and Scott, JJ., dissent.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑44 Review. 14

130. Cumpston v. Neirinckx

Colorado Court of Appeals, Div. II. | January 20, 2000 | 1 P.3d 752

Headnote: Whether boundary between two parcels has been established by adverse possession or acquiescence is a question of fact, and the trial court's findings on that issue will not be disturbed on review unless they are clearly erroneous.

Document Summary: REAL PROPERTY - Boundaries. Declaratory judgment action was proper means to confirm county surveyor's location of quarter corner.

131. Durbin v. Bonanza Corp.

Colorado Court of Appeals, Div. II. | February 27, 1986 | 716 P.2d 1124

Headnote: Decision to utilize surveyor as a master in special statutory proceeding under C.R.S. 38-44-101 et seq. to establish disputed boundary was error; however, such decision was not reversible error, in that parties stipulated that surveyor's report was to be adopted and approved by trial court to establish the disputed boundary. [Rules Civ.Proc., Rule 53](#).

Document Summary: Adjoining landowners brought special statutory proceeding to establish a disputed boundary and also sought adjudication of prescriptive easement for ingress to and egress from their property over roadway in question, and corporation also sought determination of disputed boundary pursuant to statute. The District Court, El Paso County, Matthew M. Railey, J., determined the disputed boundary and awarded adjoining landowners prescriptive easement over roadway, and corporation appealed. The Court of Appeals, Babcock, J., held that: (1) decision to utilize surveyor as a master in special statutory proceeding to establish disputed boundary was not reversible error; (2) corporation was bound by its stipulation that report of surveyor be adopted and approved to establish disputed boundary; (3) refusal to take judicial notice of records of county clerk and recorder allegedly establishing government ownership of roadway within prescriptive period was not...

132. Brewster v. Nandrea

Supreme Court of Colorado, En Banc. | August 19, 1985 | 705 P.2d 1

Headnote: Where issue of allocating costs of boundary commission to third-party defendants in boundary dispute was not raised in plaintiffs' motion for new trial, Court of Appeals had no jurisdiction to decide that issue, and should have considered only whether district court abused its discretion in assessing half the cost to plaintiffs under C.R.S. 38-44-111.

Document Summary: Property owners brought action against adjacent landowner for determination of proper location of property boundaries between the parties, and defendant filed third-party complaint joining numerous third-party defendants. The District Court, Jefferson County, Winston J. Wolvington, J., entered judgment

establishing boundary and allocated costs equally between plaintiffs and defendant, and plaintiffs appealed. The Court of Appeals, 663 P.2d 1068, held that each owner should have been allocated cost incurred in determining the legal description of that party's boundary lines. Third-party defendants petitioned for certiorari. Certiorari was granted, and the Supreme Court, Dubofsky, J., held that: (1) Court of Appeals' refusal to enlarge time for third-party defendants to file their petition for rehearing was an abuse of discretion, effectively denying third-party defendants their due process right to file a petition for rehearing; (2)...

133. [Brewster v. Nandrea](#)

Supreme Court of Colorado, En Banc. | August 19, 1985 | 705 P.2d 1

Headnote: District court's assessment of costs of boundary commission should be reviewed only for an abuse of discretion. C.R.S. 38-44-111.

Document Summary: Property owners brought action against adjacent landowner for determination of proper location of property boundaries between the parties, and defendant filed third-party complaint joining numerous third-party defendants. The District Court, Jefferson County, Winston J. Wolvinton, J., entered judgment establishing boundary and allocated costs equally between plaintiffs and defendant, and plaintiffs appealed. The Court of Appeals, 663 P.2d 1068, held that each owner should have been allocated cost incurred in determining the legal description of that party's boundary lines. Third-party defendants petitioned for certiorari. Certiorari was granted, and the Supreme Court, Dubofsky, J., held that: (1) Court of Appeals' refusal to enlarge time for third-party defendants to file their petition for rehearing was an abuse of discretion, effectively denying third-party defendants their due process right to file a petition for rehearing; (2)...

134. [Gibson v. Neikirk](#)

Supreme Court of Colorado. | March 16, 1936 | 98 Colo. 389

Headnote: Commencement of statutory proceedings to establish disputed boundaries conferred initial jurisdiction of subject-matter on district court, in absence of special exception so that error thereafter committed would merely raise question as to whether there was prejudicial irregularity (Code, §298 et seq.).

Document Summary: In Department. Proceeding by H. D. Neikirk and others, as the sole heirs at law of Phoebe Neikirk, deceased, and others against George W. Gibson, also known as G. W. Gibson, and others, as heirs at law and devisees of John S. Shaw, deceased, and another. From an adverse decree, the defendants appeal. Affirmed.

135. [Gibson v. Neikirk](#)

Supreme Court of Colorado. | March 16, 1936 | 98 Colo. 389

Headnote: In proceeding to establish disputed boundaries, irregularities in method and time of appointment of commissioner held not to invalidate decree, in absence of showing of prejudice resulting therefrom (Code, §298 et seq.).

Document Summary: In Department. Proceeding by H. D. Neikirk and others, as the sole heirs at law of Phoebe Neikirk, deceased, and others against George W. Gibson, also known as G. W. Gibson, and others, as heirs at law and devisees of John S. Shaw, deceased, and another. From an adverse decree, the defendants appeal. Affirmed.

136. [Gibson v. Neikirk](#)

Supreme Court of Colorado. | March 16, 1936 | 98 Colo. 389

Headnote: In proceeding to establish disputed boundaries, failure to instruct commissioner held not to invalidate decree, in absence of showing that commissioner did not proceed in same way that court might lawfully have instructed him to do and where no instructions were requested (Code, §298 et seq.).

Document Summary: In Department. Proceeding by H. D. Neikirk and others, as the sole heirs at law of Phoebe Neikirk, deceased, and others against George W. Gibson, also known as G. W. Gibson, and others, as heirs at law and devisees of John S. Shaw, deceased, and another. From an adverse decree, the defendants appeal. Affirmed.

137. [Gibson v. Neikirk](#)

Supreme Court of Colorado. | March 16, 1936 | 98 Colo. 389

Headnote: In proceeding to establish disputed boundaries, errors and omissions in commissioner's methods held not to invalidate decree, where methods were those ordinarily adopted by surveyors and notice was given by commissioner of time and place of beginning work (Code, §298 et seq.).

Document Summary: In Department. Proceeding by H. D. Neikirk and others, as the sole heirs at law of Phoebe Neikirk, deceased, and others against George W. Gibson, also known as G. W. Gibson, and others, as heirs at law and devisees of John S. Shaw, deceased, and another. From an adverse decree, the defendants appeal. Affirmed.

138. [Gibson v. Neikirk](#)

Supreme Court of Colorado. | March 16, 1936 | 98 Colo. 389

Headnote: In proceeding to establish disputed boundaries, report of commissioner held not subject to objection on appeal, where all parties were given opportunity of correcting possible mistakes or errors therein and participated in hearing held in open court (Code, §298 et seq.).

Document Summary: In Department. Proceeding by H. D. Neikirk and others, as the sole heirs at law of Phoebe Neikirk, deceased, and others against George W. Gibson, also known as G. W. Gibson, and others, as heirs at law and devisees of John S. Shaw, deceased, and another. From an adverse decree, the defendants appeal. Affirmed.

139. [Gibson v. Neikirk](#)

Supreme Court of Colorado. | March 16, 1936 | 98 Colo. 389

Headnote: Contention of error in decree establishing disputed boundaries held not available on appeal, where trial court afforded all parties every facility for eliciting facts and conducted hearing after filing of commissioner's report and decree was modified favorably to appellant as to location of certain boundaries (Code, §298 et seq.).

Document Summary: In Department. Proceeding by H. D. Neikirk and others, as the sole heirs at law of Phoebe Neikirk, deceased, and others against George W. Gibson, also known as G. W. Gibson, and others, as heirs at law and devisees of John S. Shaw, deceased, and another. From an adverse decree, the defendants appeal. Affirmed.

140. [Gibson v. Neikirk](#)

Supreme Court of Colorado. | March 16, 1936 | 98 Colo. 389

Headnote: Decree in proceeding to establish disputed boundaries held not invalid on ground that other lands necessarily involved were not included in proceeding and owners thereof were not made parties, where such owners, if any, did not complain (Code, §298 et seq.).

Document Summary: In Department. Proceeding by H. D. Neikirk and others, as the sole heirs at law of Phoebe Neikirk, deceased, and others against George W. Gibson, also known as G. W. Gibson, and others, as heirs at law and devisees of John S. Shaw, deceased, and another. From an adverse decree, the defendants appeal. Affirmed.

141. Van Dyke v. Fishman

Supreme Court of Colorado. | May 4, 1925 | 77 Colo. 333

Headnote: If action to establish disputed corners and boundaries under Laws 1907, p. 286, inserted in Rev.St.1908, as Code Civ.Proc. §§297-308, and in C.L.1921 as Code Civ.Proc. §§298-309, is special statutory proceeding outside the Code, for which special procedure by appeal is provided, Laws 1911, p. 9, abolishing appeals and substituting writs of error is inapplicable, and writ of error does not lie to decree in such case.

[2 Cases that cite this legal issue](#)

Document Summary: Department 3. Error to District Court, Kit Carson County; Arthur Cornforth, Judge. Action by S. Fishman and others against N. J. Van Dyke and others. Decree for plaintiffs, and defendants bring error and apply for supersedeas. Writ dismissed.

142. Van Dyke v. Fishman

Supreme Court of Colorado. | May 4, 1925 | 77 Colo. 333

Headnote: Final decree, in action under Laws 1907, p. 286, to establish disputed corners and boundaries, cannot be reviewed on writ of error, sued out over year after its rendition, to review subsequent order refusing to vacate decree, even if Supreme Court rule 18, and not special statutory procedure by appeal, applies as in ordinary equity action, such order not being final judgment reviewable by writ of error.

[2 Cases that cite this legal issue](#)

Document Summary: Department 3. Error to District Court, Kit Carson County; Arthur Cornforth, Judge. Action by S. Fishman and others against N. J. Van Dyke and others. Decree for plaintiffs, and defendants bring error and apply for supersedeas. Writ dismissed.

143. Fugate v. Smith

Court of Appeals of Colorado | January 9, 1894 | 4 Colo.App. 201

Headnote: A verdict for plaintiff in trespass for breaking down a fence which defendant alleged was on his land will not be reversed, where all witnesses testified from plats made by surveyors for the respective parties; the surveyor for each party testified that his plat was correct; the plats were before the jury, but not in the record; and the testimony in the record was unintelligible, because the witnesses referred to various parts of the plats as "here,," "there," "this line," "the next line," and "the red line."

[4 Cases that cite this legal issue](#)

Document Summary: Appeal from district court, Custer county. Action by Robert S. Smith against J.H. Fugate for trespass to real estate. From a judgment for plaintiff, defendant appeals. Affirmed.

59 BOUNDARIES 207

[59II Evidence, Ascertainment, and Establishment 145](#)[59🔑45 Costs. 6](#)**144. Brewster v. Nandrea**

Supreme Court of Colorado, En Banc. | August 19, 1985 | 705 P.2d 1

Headnote: District court did not abuse its discretion in assessing costs of boundary commission equally between landowners who brought action and neighboring landowner who allegedly built his house on plaintiffs' property, despite fact that boundary commission also determined boundaries of nearby landowners, where plaintiffs' complaint requested the appointment of boundary commission which led to adjustment of all property boundaries within quarter-section. [C.R.S. 38-44-111](#).

Document Summary: Property owners brought action against adjacent landowner for determination of proper location of property boundaries between the parties, and defendant filed third-party complaint joining numerous third-party defendants. The District Court, Jefferson County, Winston J. Wolvington, J., entered judgment establishing boundary and allocated costs equally between plaintiffs and defendant, and plaintiffs appealed. The Court of Appeals, 663 P.2d 1068, held that each owner should have been allocated cost incurred in determining

the legal description of that party's boundary lines. Third-party defendants petitioned for certiorari. Certiorari was granted, and the Supreme Court, Dubofsky, J., held that: (1) Court of Appeals' refusal to enlarge time for third-party defendants to file their petition for rehearing was an abuse of discretion, effectively denying third-party defendants their due process right to file a petition for rehearing; (2)...

145. **Nandrea v. Board of Com'rs of Jefferson County**

Colorado Court of Appeals, Div. I. | May 12, 1983 | 663 P.2d 1068

Headnote: In action for determination of proper location of property boundaries, in which defendant filed third-party complaint joining numerous third-party defendants, and in which trial court adjusted the boundary between all of the various owners, each owner should have been allocated those costs incurred in determining the legal description of that party's boundary lines. C.R.S.1973, 38-44-111.

Document Summary: Property owners brought action against adjacent landowner for determination of proper location of property boundaries between the parties, and defendant filed third-party complaint joining numerous third-party defendants. The District Court, Jefferson County, Winston J. Wolvington, J., entered judgment establishing boundary and allocated costs equally between plaintiffs and defendant, and plaintiffs appealed. The Court of Appeals, Coyte, J., retired, sitting by assignment, held that each owner should have been allocated those costs incurred in determining the legal description of that party's boundary lines. Reversed and remanded.

146. **Leavitt v. Reiss**

Colorado Court of Appeals, Div. II. | June 6, 1972 | 497 P.2d 1280

Headnote: Where defendant, disagreeing with plaintiff's surveyor, hired surveyor to check accuracy of plaintiff's survey, and after suit was filed, and without request by commission appointed by court to determine the correct boundary and without court approval or defendant's consent, plaintiff obtained a third survey on the basis of which plaintiff and defendant were able to agree on the property lines, award to plaintiff of one-half of the cost of plaintiff's first survey instead of awarding plaintiff cost of the final survey was proper. C.R.S. '63, 118-11-11.

Document Summary: Suit to determine boundary. The District Court, County of El Paso, William M. Calvert, J., entered judgment on stipulation and allocated costs incurred by the parties and plaintiff appealed. The Court of Appeals, Enoch, J., held that where defendant, disagreeing with plaintiff's surveyor, hired surveyor to check accuracy of plaintiff's survey, and after suit was filed, and without request by commission appointed by court to determine the correct boundary and without court approval or defendant's consent, plaintiff obtained a third survey on the basis of which plaintiff and defendant were able to agree on the property lines, award to plaintiff of one-half of the cost of plaintiff's first survey instead of awarding plaintiff cost of the final survey was proper. Affirmed.

147. **Schleining v. White**

Supreme Court of Colorado, In Department. | September 11, 1967 | 163 Colo. 481

Headnote: Assessing defendant \$174.84 for "expenses" in carrying on boundary dispute litigation was improper.

Document Summary: Suit involving proper location of boundary fence and seeking damages from defendant's relocating fence. The District Court, Bent County, William L. Gobin, J., rendered judgment for plaintiffs and defendant appealed. The Supreme Court, Day, J., held that where defendant's predecessor in title had agreed to relocation of boundary fence, defendant was not in position to attack that agreement collaterally or to invoke statutory procedure for boundary disputes merely by creating a dispute. Reversed in part and affirmed in part.

148. Kelly v. Mullin

Supreme Court of Colorado, In Department. | April 18, 1966 | 159 Colo. 573

Headnote: Judgment in boundary case properly assessed cost of survey and expenses of commissioners to losing party. C.R.S. '63, 118-11-11.[2 Cases that cite this legal issue](#)

Document Summary: Boundary dispute. The District Court, Yuma County, Hilbert Schauer, J., rendered judgment, and the defendants brought error. The Supreme Court, Day, J., held that the defendants failed to prove their claim of adverse possession. The Court further held that the trial court should not have required the defendants to remove the present meandering barrier fence of historic origin and to build a new fence on the boundary, with the expense thereof to be shared by the parties. Affirmed in part and reversed in part.

149. Brackett v. Cleveland

Supreme Court of Colorado, In Department. | July 24, 1961 | 147 Colo. 328

Headnote: Trial court committed no abuse of discretion in assessing all costs in action for establishment of lost, destroyed and disputed corners and boundaries against defendants after rendering decision which was favorable to plaintiffs and which affirmed the commissioner's report. C.R.S. '53, 118-11-1 et seq., 118-11-11.[1 Case that cites this legal issue](#)

Document Summary: Action for the establishment of lost, destroyed and disputed corners and boundaries to a placer claim. The District Court, Boulder County, Dale E. Shannon, J., rendered a judgment favoring the plaintiffs and the defendants brought error. The Supreme Court, Sutton, J., held, inter alia, that conventional 'compass rule' method of balancing used by the commissioner in the establishment of placer corners was neither erroneous nor illegal. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑46 Agreements Between Parties 8

59🔑46(1) Validity in general. 5

150. Chappell v. Bonds

Colorado Court of Appeals, Div. II. | December 8, 1983 | 677 P.2d 955

Headnote: Rationall for rule permitting establishment of disputed boundary line by oral agreement of the adjoining owners is that the compromise of conflicting claims constitutes consideration for a contract to convey land along the disputed boundary, and the marking or recognition of the boundary and taking of possession under the agreement constitutes part performance removing the contract from operation of the statute of frauds.[1 Case that cites this legal issue](#)

Document Summary: Plaintiff landowners sued defendant adjoining landowners for preliminary injunction, declaration of quiet title and damages for trespass, assault and conversion. The District Court, Pueblo County, Phillip J. Cabibi, J., entered summary judgment for defendants and dismissed second amended complaint and awarded attorney fees to defendants and plaintiffs appealed. The Court of Appeals, Kelly, J., held that: (1) since there was no honest dispute as to location of the boundary the rule permitting establishment of a disputed boundary by oral agreement was inapplicable; (2) it was error to dismiss second amended complaint as it contained a different trespass claim; and (3) award of attorney fees for bringing frivolous or groundless suit was not warranted. Affirmed in part, reversed in part and remanded.

151. Chappell v. Bonds

Colorado Court of Appeals, Div. II. | December 8, 1983 | 677 P.2d 955

Headnote: Where it was undisputed that defendants' parcel was surveyed when it was severed from tract owned in common by plaintiffs' predecessor, plaintiffs conceded that alleged oral agreement was made to resolve dispute concerning true location of boundary and that no permanent fence or other monument had been constructed marking the boundary allegedly established by the agreement, there was no honest dispute warranting application of the Schleinig rule permitting establishment of a disputed boundary by oral agreement.

Document Summary: Plaintiff landowners sued defendant adjoining landowners for preliminary injunction, declaration of quiet title and damages for trespass, assault and conversion. The District Court, Pueblo County, Phillip J. Cabibi, J., entered summary judgment for defendants and dismissed second amended complaint and awarded attorney fees to defendants and plaintiffs appealed. The Court of Appeals, Kelly, J., held that: (1) since there was no honest dispute as to location of the boundary the rule permitting establishment of a disputed boundary by oral agreement was inapplicable; (2) it was error to dismiss second amended complaint as it contained a different trespass claim; and (3) award of attorney fees for bringing frivolous or groundless suit was not warranted. Affirmed in part, reversed in part and remanded.

152. **Sobol v. Gulinson**

Supreme Court of Colorado. | December 22, 1933 | 94 Colo. 92

Headnote: Where there is uncertainty or dispute as to true location of boundary line, adjoining owners may by parol establish division line, and when actual possession is taken under agreement, it is conclusive against owners and those claiming under them.

[4 Cases that cite this legal issue](#)

Document Summary: In Department. Error to District Court, City and County of Denver; Charles C. Sackmann, Judge. Suit in ejectment by Ella Sobol against Cassell Gulinson. Judgment for defendant, and plaintiff brings error. Affirmed.

153. **Sobol v. Gulinson**

Supreme Court of Colorado. | December 22, 1933 | 94 Colo. 92

Headnote: That boundary line could have been ascertained by expensive survey did not prevent uncertainty within rule that uncertain or disputed boundary may be fixed by parol.

[1 Case that cites this legal issue](#)

Document Summary: In Department. Error to District Court, City and County of Denver; Charles C. Sackmann, Judge. Suit in ejectment by Ella Sobol against Cassell Gulinson. Judgment for defendant, and plaintiff brings error. Affirmed.

154. **Sobol v. Gulinson**

Supreme Court of Colorado. | December 22, 1933 | 94 Colo. 92

Headnote: Where purchaser of lot, boundary of which was uncertain, agreed with adjoining owner in 1909 and in 1912 that fence should constitute boundary, and purchaser constructed building to such line, agreement was binding on subsequent purchaser of adjoining lot.

[1 Case that cites this legal issue](#)

Document Summary: In Department. Error to District Court, City and County of Denver; Charles C. Sackmann, Judge. Suit in ejectment by Ella Sobol against Cassell Gulinson. Judgment for defendant, and plaintiff brings error. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59-46 Agreements Between Parties 8

[59🔑46\(2\) Persons bound by agreement.](#) 2**155. Schleining v. White**

Supreme Court of Colorado, In Department. | September 11, 1967 | 163 Colo. 481

Headnote: Where defendant's predecessor in title had agreed to relocation of boundary fence, defendant was not in position to attack that agreement collaterally or to invoke statutory procedure for boundary disputes merely by creating a dispute. C.R.S. '63, 118-11-1 et seq.

Document Summary: Suit involving proper location of boundary fence and seeking damages from defendant's relocating fence. The District Court, Bent County, William L. Gobin, J., rendered judgment for plaintiffs and defendant appealed. The Supreme Court, Day, J., held that where defendant's predecessor in title had agreed to relocation of boundary fence, defendant was not in position to attack that agreement collaterally or to invoke statutory procedure for boundary disputes merely by creating a dispute. Reversed in part and affirmed in part.

**156. Schleining v. White**

Supreme Court of Colorado, In Department. | September 11, 1967 | 163 Colo. 481

Headnote: Owners of adjoining property may properly agree upon erection of fence between their properties, and agreement is conclusive against owners and those claiming under them.

[1 Case that cites this legal issue](#)

Document Summary: Suit involving proper location of boundary fence and seeking damages from defendant's relocating fence. The District Court, Bent County, William L. Gobin, J., rendered judgment for plaintiffs and defendant appealed. The Supreme Court, Day, J., held that where defendant's predecessor in title had agreed to relocation of boundary fence, defendant was not in position to attack that agreement collaterally or to invoke statutory procedure for boundary disputes merely by creating a dispute. Reversed in part and affirmed in part.

59 BOUNDARIES 207[59II Evidence, Ascertainment, and Establishment](#) 145[59🔑46 Agreements Between Parties](#) 8[59🔑46\(3\) Conclusiveness and effect of agreement.](#) 1**157. Schleining v. White**

Supreme Court of Colorado, In Department. | September 11, 1967 | 163 Colo. 481

Headnote: Where defendant's predecessor in title had agreed to relocation of boundary fence, defendant was not in position to attack that agreement collaterally or to invoke statutory procedure for boundary disputes merely by creating a dispute. C.R.S. '63, 118-11-1 et seq.

Document Summary: Suit involving proper location of boundary fence and seeking damages from defendant's relocating fence. The District Court, Bent County, William L. Gobin, J., rendered judgment for plaintiffs and defendant appealed. The Supreme Court, Day, J., held that where defendant's predecessor in title had agreed to relocation of boundary fence, defendant was not in position to attack that agreement collaterally or to invoke statutory procedure for boundary disputes merely by creating a dispute. Reversed in part and affirmed in part.

59 BOUNDARIES 207[59II Evidence, Ascertainment, and Establishment](#) 145

59  48 Recognition and Acquiescence 21

59  48(1) In general. 5

158. Salazar v. Terry

Supreme Court of Colorado, En Banc. | February 12, 1996 | 911 P.2d 1086

Headnote: Fifteen-day common ownership of two tracts of adjoining land eradicated significance of any acquiescence in fence as legal boundary separating tracts that existed prior to period of common ownership as a matter of law, where description in deed conveying tract acquired by one party's predecessor in interest from common owner did not indicate that fence constituted boundary.

[1 Case that cites this legal issue](#)

Document Summary: REAL ESTATE - Property. Fifteen-day common ownership of two tracts of land extinguished any acquiescence in fence as boundary by prior owners of tracts.

159. Salazar v. Terry

Supreme Court of Colorado, En Banc. | February 12, 1996 | 911 P.2d 1086

Headnote: Intent of common owner of adjoining tracts of land with regard to merger of tracts is not relevant to determination of whether common ownership eradicated prior owners' acquiescence in legal boundary separating tracts, unless common owner's intent is manifested in deed.

Document Summary: REAL ESTATE - Property. Fifteen-day common ownership of two tracts of land extinguished any acquiescence in fence as boundary by prior owners of tracts.

160. Salazar v. Terry

Supreme Court of Colorado, En Banc. | February 12, 1996 | 911 P.2d 1086

Headnote: Common ownership of two tracts of land extinguishes any acquiescence in boundary lines attributable to prior landowners of the tracts unless deed adopts boundary lines as previously acquiesced upon.

Document Summary: REAL ESTATE - Property. Fifteen-day common ownership of two tracts of land extinguished any acquiescence in fence as boundary by prior owners of tracts.

161. Terry v. Salazar

Colorado Court of Appeals, Div. III. | August 11, 1994 | 892 P.2d 391

Headnote: Common ownership of two parcels of land separated by fence removed any binding effect of any prior mutual recognition by nullifying effect of fence as boundary between two separately owned parcels; once ownership was joined, fence no longer served as external boundary, but only as internal barrier.

Document Summary: Boundaries. Common ownership of property abrogated any acquiescence chargeable to parties concerning fence as actual division line.

162. Terry v. Salazar

Colorado Court of Appeals, Div. III. | August 11, 1994 | 892 P.2d 391

Headnote: When common owner acquires title to adjoining tracts of land, any agreement as to division that had previously been made while ownership was in two different persons ceases to exist or to be effective.

Document Summary: Boundaries. Common ownership of property abrogated any acquiescence chargeable to parties concerning fence as actual division line.

59  48 Recognition and Acquiescence 21

59  48(2) What constitutes acquiescence. 7

163. Terry v. Salazar

Colorado Court of Appeals, Div. III. | August 11, 1994 | 892 P.2d 391

Headnote: There must be mutuality in fixing of boundary in order for acquiescence to be found.

Document Summary: Boundaries. Common ownership of property abrogated any acquiescence chargeable to parties concerning fence as actual division line.

164. Terry v. Salazar

Colorado Court of Appeals, Div. III. | August 11, 1994 | 892 P.2d 391

Headnote: Test for acquiescence in boundary line, in addition to existence of fence over prescribed period of time, is actual possession and dominion over property of fence.

Document Summary: Boundaries. Common ownership of property abrogated any acquiescence chargeable to parties concerning fence as actual division line.

165. Terry v. Salazar

Colorado Court of Appeals, Div. III. | August 11, 1994 | 892 P.2d 391

Headnote: Mere existence of fence with evidence of nothing more is insufficient to sustain finding that fence operates as boundary by acquiescence.

Document Summary: Boundaries. Common ownership of property abrogated any acquiescence chargeable to parties concerning fence as actual division line.

166. Hartley v. Ruybal

Supreme Court of Colorado, In Department. | May 9, 1966 | 160 Colo. 80

Headnote: There must be mutuality in fixing of a boundary in order for acquiescence in a boundary to be found.

Document Summary: Proceedings to determine disputed boundary line between adjoining properties. The District Court, Conejos County, George H. Blickhahn, J., entered judgment in favor of defendant property owners and the plaintiff property owners brought error. The Supreme Court, Day, J., held, inter alia, that where east-west boundary line between adjoining properties was contested and fence ran east and west between properties but not upon true boundary line, evidence, which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties. Judgment affirmed in part and reversed in part and cause remanded with directions.

167. Hartley v. Ruybal

Supreme Court of Colorado, In Department. | May 9, 1966 | 160 Colo. 80

Headnote: Among tests of acquiescence in a boundary line in addition to existence of a fence over prescribed period of time is actual possession and dominion over property up to a fence.

[5 Cases that cite this legal issue](#)

Document Summary: Proceedings to determine disputed boundary line between adjoining properties. The District Court, Conejos County, George H. Blickhahn, J., entered judgment in favor of defendant property owners and the plaintiff property owners brought error. The Supreme Court, Day, J., held, inter alia, that where east-west boundary line between adjoining properties was contested and fence ran east and west between

properties but not upon true boundary line, evidence, which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties. Judgment affirmed in part and reversed in part and cause remanded with directions.

168. [Connell v. Clifford](#)

Supreme Court of Colorado. | February 4, 1907 | 39 Colo. 121

Headnote: Where neither plaintiff nor those under whom she claimed had any knowledge that defendant's building extended onto plaintiff's lot until just prior to the commencement of plaintiff's action to recover the strip in controversy, complainant could not be held to have lost her right by acquiescence in defendant's occupation.

[3 Cases that cite this legal issue](#)

Document Summary: Appeal from District Court, City and County of Denver; Samuel L. Carpenter, Judge. Action by Catharine M. Clifford against Edward Connell and another. From a judgment in favor of plaintiff, defendants appeal. Affirmed.

169. [Connell v. Clifford](#)

Supreme Court of Colorado. | February 4, 1907 | 39 Colo. 121

Headnote: Where, in an action to recover a strip of land adjoining a boundary line, it is sought to enforce the doctrine of acquiescence against the plaintiff, it must be shown that he either had knowledge of, consented to, or, by practical location established, the line which is afterwards sought to be questioned by him.

[5 Cases that cite this legal issue](#)

Document Summary: Appeal from District Court, City and County of Denver; Samuel L. Carpenter, Judge. Action by Catharine M. Clifford against Edward Connell and another. From a judgment in favor of plaintiff, defendants appeal. Affirmed.

59 BOUNDARIES 207

[59II Evidence, Ascertainment, and Establishment](#) 145

[59II-48 Recognition and Acquiescence](#) 21

[59II-48\(3\) Time of acquiescence.](#) 7

170. [Salazar v. Terry](#)

Supreme Court of Colorado, En Banc. | February 12, 1996 | 911 P.2d 1086

Headnote: Once common ownership of two tracts of adjoining land destroyed prior acquiescence in fence as legal boundary separating tracts, statutory periods for acquiescence and adverse possession began to run anew. [West's C.R.S.A. §§ 38-41-101\(1\), 38-44-109.](#)

[2 Cases that cite this legal issue](#)

Document Summary: REAL ESTATE - Property. Fifteen-day common ownership of two tracts of land extinguished any acquiescence in fence as boundary by prior owners of tracts.

171. [Salazar v. Terry](#)

Supreme Court of Colorado, En Banc. | February 12, 1996 | 911 P.2d 1086

Headnote: Statutory period for establishing acquiescence in fence as boundary separating adjoining tracts of land and for establishing adverse possession began to run as of date parcels were separated from common ownership. [West's C.R.S.A. §§ 38-41-101\(1\), 38-44-109.](#)

[1 Case that cites this legal issue](#)

Document Summary: REAL ESTATE - Property. Fifteen-day common ownership of two tracts of land extinguished any acquiescence in fence as boundary by prior owners of tracts.

172. [Brehm v. Johnson](#)

Colorado Court of Appeals, Div. I. | December 3, 1974 | 531 P.2d 991

Headnote: Where parties mistakenly locate fence between their properties and thereafter conduct themselves in manner indicating that they claim no property beyond that fence for period exceeding 20 years, fence line becomes accepted boundary between properties.

Document Summary: Action by landowners to establish property boundaries. The District Court, County of Weld, Robert A. Behrman, J., established boundaries, and plaintiffs appealed. The Court of Appeals, Enoch, J., held that evidence supported findings of recognition of, and acquiescence in, fence lines as property boundaries for more than 20 years and of adverse possession of disputed land for more than 18 years, and that issue whether standards, applied respecting adverse possession, violated rights under Fourteenth Amendment was not properly before Court of Appeals. Affirmed.

173. [Antholz v. Squirrel](#)

Colorado Court of Appeals, Div. I. | September 17, 1974 | 528 P.2d 257

Headnote: Both the 20-year period for recognition and acquiescence in a boundary and the 18-year period of adverse possession were satisfied where, when suit was commenced in 1970, petitioner landowners and their predecessors in title had been in open, notorious, continuous and adverse possession of disputed property adjacent to fence since its construction in 1944. 1967 Perm.Supp., C.R.S., 118-7-1; C.R.S. '63, 118-11-1, 118-11-3.

Document Summary: Action by petitioner landowners to ascertain and permanently establish boundary with their neighbor landowner along two fences built by their respective predecessors in title in 1944 and in 1951. The District Court, Gunnison County, George B. Kempf, J., held that the correct boundary line was that upon which fences were erected, and neighboring landowner appealed. The Court of Appeals, Smith, J., held that the record supported findings made by the trial court, which thus would not be disturbed on review; that the statutes of limitations for both recognition and acquiescence in a boundary and adverse possession had run as to disputed property adjacent to fence constructed in 1944, and that the 18-year adverse possession statute had run as to land adjacent to 1951 agreed boundary fence. Affirmed.

174. [Forristall v. Ansley](#)

Supreme Court of Colorado, In Department. | December 8, 1969 | 170 Colo. 391

Headnote: Where respective owners of two sections of land had acquiesced in boundary line between sections for more than 20 years, boundary line was binding upon parties and their successors in interest. C.R.S. '63, 118-11-9.

[2 Cases that cite this legal issue](#)

Document Summary: Action for determination of boundary line between sections owned by plaintiff and defendant. From judgment of the District Court, Lincoln County, David W. Enoch, J., settling the line, defendants brought error. The Supreme Court, Moore, J., held that evidence supported finding that boundary line as found by commissioner had been recognized and acquiesced in by respective owners for more than 20 years as true line separating sections and that approval of line set by commissioner after survey was not erroneous. Affirmed.

175. [Sall v. City of Colorado Springs](#)

Supreme Court of Colorado, En Banc. | December 27, 1966 | 161 Colo. 297

Headnote: Fence which had been in existence at its present location for more than thirty years became line to establish boundary between properties where its use as a boundary line was acquiesced in by adjoining property owners during entire period.

Document Summary: Landowner brought action for an injunction restraining city from interfering with access to his property from city road. The District Court of El Paso County, William M. Calvert, J., denied a temporary injunction and landowner brought error. The Supreme Court, Schauer, J., held that landowner whose only access to his property was through road maintained by city and traversing nearby park used by city for public recreational purposes did not have legal right of ingress to and egress from his property by use of road where strip of land separated boundary of his property from the road. Affirmed. Frantz and Moore, JJ., dissented.

176. **Priehof v. Baum**

Supreme Court of Colorado. | February 13, 1934 | 94 Colo. 324

Headnote: Acquiescence for 20 years after he acquired title to his land is necessary to bar adjoining landowner from disputing boundary fixed by agreement (C.L. §6418).

[2 Cases that cite this legal issue](#)

Document Summary: In Department. Error to District Court, Pueblo County; John H. Voorhees, Judge. Action by Charles A. Baum, as administrator of the estate of Anthony C. Baum, deceased, against John Priehof. Judgment for plaintiff, and defendant brings error. Affirmed.

59 BOUNDARIES 207

[59II Evidence, Ascertainment, and Establishment 145](#)

[59🔑48 Recognition and Acquiescence 21](#)

[59🔑48\(6\) Conclusiveness and effect of acquiescence in general. 1](#)

177. **Brehm v. Johnson**

Colorado Court of Appeals, Div. I. | December 3, 1974 | 531 P.2d 991

Headnote: Where parties mistakenly locate fence between their properties and thereafter conduct themselves in manner indicating that they claim no property beyond that fence for period exceeding 20 years, fence line becomes accepted boundary between properties.

Document Summary: Action by landowners to establish property boundaries. The District Court, County of Weld, Robert A. Behrman, J., established boundaries, and plaintiffs appealed. The Court of Appeals, Enoch, J., held that evidence supported findings of recognition of, and acquiescence in, fence lines as property boundaries for more than 20 years and of adverse possession of disputed land for more than 18 years, and that issue whether standards, applied respecting adverse possession, violated rights under Fourteenth Amendment was not properly before Court of Appeals. Affirmed.

59 BOUNDARIES 207

[59II Evidence, Ascertainment, and Establishment 145](#)

[59🔑48 Recognition and Acquiescence 21](#)

[59🔑48\(7\) Effect of mistake, misrepresentation, or ignorance of rights. 1](#)

178. **Hartley v. Ruybal**

Supreme Court of Colorado, In Department. | May 9, 1966 | 160 Colo. 80

Headnote: Although southern property owners, in proceedings to determine disputed east-west boundary line between adjoining properties, were laboring under misapprehension as to where true boundary line existed, they could nonetheless acquiesce in a fence which ran between the adjoining properties as the boundary line. C.R.S. '63, 118-11-1 to 118-11-12.

Document Summary: Proceedings to determine disputed boundary line between adjoining properties. The District Court, Conejos County, George H. Blickhahn, J., entered judgment in favor of defendant property owners and the plaintiff property owners brought error. The Supreme Court, Day, J., held, inter alia, that where east-west boundary line between adjoining properties was contested and fence ran east and west between properties but not upon true boundary line, evidence, which disclosed that northern property owner exercised actual possession and dominion over property up to fence was sufficient to support finding that southern property owner had acquiesced in fence as boundary line between properties. Judgment affirmed in part and reversed in part and cause remanded with directions.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑50 Adjudication by Public Authorities 5

59🔑51 In general. 1

179. Archuleta v. Rose

Supreme Court of Colorado, En Banc. | September 9, 1957 | 136 Colo. 211

Headnote: Where there was no dispute as to location of actual boundaries of vacated street, which was claimed by adjoining landowners and correct original boundaries could be determined with accuracy, adjoining landowners were not entitled to have a commission appointed to establish an alleged disputed boundary. C.R.S. '53, 118-11-1 et seq.

Document Summary: Action to establish ownership of one-half of vacated street which was contiguous to the property of plaintiff and defendants. The District Court of Adams County, Osmer E. Smith, J., entered judgment for plaintiff and defendants brought error. The Supreme Court, Moore, C. J., held evidence sustained finding to the effect that a fence, which had been erected on disputed ground, served as a barrier rather than to mark boundary line between property and therefore defendants could not claim disputed land on theory of adverse possession. Judgment affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑50 Adjudication by Public Authorities 5

59🔑52 Appointment and Proceedings of Commissioners or Processioners 4

59🔑52(1) In general. 2

180. Gaines v. City of Sterling

Supreme Court of Colorado, En Banc. | July 20, 1959 | 140 Colo. 63

Headnote: Rule of procedure providing that an action may be brought for purpose of obtaining a complete adjudication of rights of all parties to realty did not apply to an action for determination of boundaries between two Torrens Act titles, and in such an action, appointment of a commissioner under applicable statute was proper. [Rules of Civil Procedure, rule 105](#); C.R.S. '53, 118-11-1 et seq.

1 Case that cites this legal issue

Document Summary: Action involving a boundary dispute. The District Court, Logan County, Francis L. Shallenberger, J., entered judgment establishing a boundary unsatisfactory to plaintiffs, and they brought error. The Supreme Court, Sutton, J., held that where commissioner located his proposed dividing line without relocating the section corners of the land which was part of a United States survey, and instead established such line by theoretical reconstruction of the original government survey, by reference to an old fence line, although there was no evidence that such fence was established as a boundary line or agreed upon or accepted by the parties or their predecessors, such boundary line was incorrectly established, and case would

be remanded with instructions to appoint another commissioner to locate the boundary lines in accordance with applicable rules of law. Judgment and order reversed with instructions.

181. **Camp v. Winegar**

Supreme Court of Colorado. | October 2, 1922 | 72 Colo. 160

Headnote: Laws 1907, p. 286, providing for a commission to establish boundaries in case of dispute, and to take testimony in relation thereto, and also as to boundaries recognized and acquiesced in for 20 years or more, and for establishing such boundaries, is intended only for settlement of disputed boundaries, to which the survey must be limited, and it does not authorize a resurvey of a whole township because some boundaries therein are in dispute, and much less where none is in dispute.

[2 Cases that cite this legal issue](#)

Document Summary: Department 2. Error to District Court, Kit Carson County; Arthur Cornforth, Judge. Petition of A. W. Winegar and others against J. Camp and others, to establish township boundaries. Upon judgment approving the report of the Commission, defendants bring error. Judgment reversed and cause remanded, with directions.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑50 Adjudication by Public Authorities 5

59🔑52 Appointment and Proceedings of Commissioners or Processioners 4

59🔑52(2) Review by court. 2

182. **Smith v. Dorsey**

Colorado Court of Appeals, Div. I. | April 13, 1971 | 29 Colo.App. 369

Headnote: Method used by surveyor, who established measurements of his survey from monuments, one of which had to be reset, was not more accurate as a matter of law than proportionate measurement method used by court-appointed commissioner who determined the boundaries to be slightly more than four feet to the east of boundaries determined in first survey, and it was proper for trial court to resolve discrepancies in suit for ascertainment of disputed boundary lines between adjacent property owners. C.R.S. '63, 118-11-1 et seq., 118-11-6, 118-11-8, 118-11-9.

[1 Case that cites this legal issue](#)

Document Summary: Plaintiffs filed suit against adjacent property owners for ascertainment of disputed boundary lines, and defendants filed third-party suit against their grantor, grantor's agent, a surveyor and their neighbors to the east, who in turn filed fourth-party complaint against their neighbors. The District Court of Jefferson County, George G. Priest, J., dismissed suit against surveyor, confirmed commissioner's report that true boundary lines were slightly more than four feet to the east of the fence lines and ordered all parties to exchange deeds so that their properties complied with existing fence lines, and plaintiffs brought error. The Court of Appeals, Coyte, J., held that it was proper for trial court to resolve discrepancies between prior survey and survey conducted by commissioner, but that where no relief of any nature other than ascertainment of true boundary line was sought by any of parties to the suit, trial court lacked authority to order plaintiffs to deed...

183. **Smith v. Dorsey**

Colorado Court of Appeals, Div. I. | April 13, 1971 | 29 Colo.App. 369

Headnote: Where no relief of any nature other than ascertainment of true boundary line was sought by any of parties to the suit, where court-appointed commissioner's survey showed that west boundaries of property belonging to several parties were each slightly more than four feet to the east of the fence lines and where court accepted the report in full without modification, trial court lacked authority to order plaintiffs to deed their east four feet to adjacent landowners. C.R.S. '63, 118-11-1 et seq., 118-11-6, 118-11-8, 118-11-9.

[1 Case that cites this legal issue](#)

Document Summary: Plaintiffs filed suit against adjacent property owners for ascertainment of disputed boundary lines, and defendants filed third-party suit against their grantor, grantor's agent, a surveyor and their neighbors to the east, who in turn filed fourth-party complaint against their neighbors. The District Court of Jefferson County, George G. Priest, J., dismissed suit against surveyor, confirmed commissioner's report that true boundary lines were slightly more than four feet to the east of the fence lines and ordered all parties to exchange deeds so that their properties complied with existing fence lines, and plaintiffs brought error. The Court of Appeals, Coyte, J., held that it was proper for trial court to resolve discrepancies between prior survey and survey conducted by commissioner, but that where no relief of any nature other than ascertainment of true boundary line was sought by any of parties to the suit, trial court lacked authority to order plaintiffs to deed...

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑53 Private surveys. 13

184. Survey Engineers, Inc. v. Zoline Foundation

Supreme Court of Colorado, En Banc. | March 15, 1976 | 190 Colo. 352

Headnote: Before court could allow recovery on quantum meruit, it was necessary to determine benefit, if any, received by land owners from services rendered by surveyor; such benefit was not necessarily the reasonable value of the surveyor's work as fixed by trial court.

[2 Cases that cite this legal issue](#)

Document Summary: A surveying corporation brought action for services rendered in surveying land. A judgment of the District Court, Pitkin County, Gavin D. Litwiller, J., in favor of the surveyor was affirmed in part and reversed in part by the Court of Appeals, 35 Colo.App. 186, 532 P.2d 748. On grant of certiorari, the Supreme Court, Pringle, C.J., held that reliance by Court of Appeals on initial findings by the trial court was clearly erroneous, inasmuch as initial findings of fact and conclusions of law had been expressly vacated by terms of an amended judgment. Before the court could allow recovery on quantum meruit, it was necessary to determine benefit, if any, received by the land owners from services rendered by the surveyor; such benefit was not necessarily the reasonable value of the surveyor's work as fixed by the trial court. Court of Appeals reversed and action remanded to trial court with directions.

185. South Park Land & Livestock Co., Inc. v. Hamilton Enterprises, Ltd.

Supreme Court of Colorado, En Banc. | July 21, 1975 | 189 Colo. 157

Headnote: Even though landowner should not have altered two plats without surveyor's knowledge or permission, surveyor's revocation of its surveyor's certificate for all 23 plats filed with planning commission, thereby rendering its work totally valueless to landowner, was arbitrary and unreasonable and surveyor was not entitled to compensation for its surveying work pursuant to contract.

[1 Case that cites this legal issue](#)

Document Summary: Surveyor appealed from judgment of the District Court of the County of Park, which held that surveyor's claim for compensation against corporation be denied and surveyor appealed. The Court of Appeals, Smith, J., 34 Colo.App. 261, 527 P.2d 886, reversed and remanded with directions and certiorari was granted. The Supreme Court, Day, J., held that even though landowner should not have altered two plats without surveyor's knowledge or permission, surveyor's revocation of its surveyor's certificate for all 23 plats filed with planning commission, thereby rendering its work totally valueless to landowner, was arbitrary and unreasonable and surveyor was not entitled to compensation for its surveying work pursuant to contract. Reversed and remanded to reinstate trial court judgment of dismissal. Erickson, J., did not participate.



186. Survey Engineers, Inc. v. Zoline Foundation

Colorado Court of Appeals, Div. II. | December 31, 1974 | 35 Colo.App. 186

Headnote: Award of \$607.50 as reasonable value of services of surveying corporation for portion of survey that was accurate, was proper.

Document Summary: Action by surveying corporation to recover monies for services rendered in surveying land. The District Court, Pitkin County, Gavin D. Litwiller, J., awarded \$607.50 for portion of survey that was accurate, and then, after hearing motion for new trial, entered judgment for surveying corporation for additional \$6,000, and defendants appealed. The Court of Appeals, Coyte, J., held that award of \$607.50 was proper, but that award of \$6,000 for reasonable value of services was improper where such services resulted in no benefit to defendants because of inaccuracy of survey, and that awards of costs and interest to surveying corporation were improper. Affirmed in part and reversed in part.

187. Survey Engineers, Inc. v. Zoline Foundation

Colorado Court of Appeals, Div. II. | December 31, 1974 | 35 Colo.App. 186

Headnote: Award, on quantum meruit theory, of \$6,000 as reasonable value for survey, which incorrectly located east quarter section corner of land surveyed, and left west line subject to question, with result that entire north line was out of position and whole survey was inaccurate, and which resulted in no benefit to commissioners of survey, was improper.

Document Summary: Action by surveying corporation to recover monies for services rendered in surveying land. The District Court, Pitkin County, Gavin D. Litwiller, J., awarded \$607.50 for portion of survey that was accurate, and then, after hearing motion for new trial, entered judgment for surveying corporation for additional \$6,000, and defendants appealed. The Court of Appeals, Coyte, J., held that award of \$607.50 was proper, but that award of \$6,000 for reasonable value of services was improper where such services resulted in no benefit to defendants because of inaccuracy of survey, and that awards of costs and interest to surveying corporation were improper. Affirmed in part and reversed in part.

188. Survey Engineers, Inc. v. Zoline Foundation

Colorado Court of Appeals, Div. II. | December 31, 1974 | 35 Colo.App. 186

Headnote: Where time sheets were not kept in reliable manner by survey corporation and on occasions work performed was improperly charged so that court was unable to determine contract price of survey which survey corporation and its predecessor agreed to perform for commissioners of survey, no factual finding existed which could support conclusion that commissioners were indebted to survey corporation in amount of \$6,000, or in any amount.

Document Summary: Action by surveying corporation to recover monies for services rendered in surveying land. The District Court, Pitkin County, Gavin D. Litwiller, J., awarded \$607.50 for portion of survey that was accurate, and then, after hearing motion for new trial, entered judgment for surveying corporation for additional \$6,000, and defendants appealed. The Court of Appeals, Coyte, J., held that award of \$607.50 was proper, but that award of \$6,000 for reasonable value of services was improper where such services resulted in no benefit to defendants because of inaccuracy of survey, and that awards of costs and interest to surveying corporation were improper. Affirmed in part and reversed in part.

189. Survey Engineers, Inc. v. Zoline Foundation

Colorado Court of Appeals, Div. II. | December 31, 1974 | 35 Colo.App. 186

Headnote: Where survey incorrectly located east one-quarter corner of land surveyed and left west line subject to question, with result that north line of survey was out of position and whole survey inaccurate, survey corporation was precluded from recovery on substantial performance theory.

Document Summary: Action by surveying corporation to recover monies for services rendered in surveying land. The District Court, Pitkin County, Gavin D. Litwiller, J., awarded \$607.50 for portion of survey that was accurate, and then, after hearing motion for new trial, entered judgment for surveying corporation for additional

\$6,000, and defendants appealed. The Court of Appeals, Coyte, J., held that award of \$607.50 was proper, but that award of \$6,000 for reasonable value of services was improper where such services resulted in no benefit to defendants because of inaccuracy of survey, and that awards of costs and interest to surveying corporation were improper. Affirmed in part and reversed in part.

190. **Hamilton Enterprises, Ltd. v. South Park Land & Livestock Co., Inc.**

Colorado Court of Appeals, Div. I. | August 7, 1974 | 34 Colo.App. 261

Headnote: Statutes regulating professional conduct of engineers and surveyors evidence an explicit legislative scheme to protect the public by providing accurate land surveys and by prescribing strict professional standards for licensed engineers and surveyors. C.R.S. '63, 51-2-1, 51-2-7(3), 51-2-10; 1967 Perm.Supp., C.R.S., 51-2-10, 136-4-12.

Document Summary: Surveyor appealed from judgment of the District Court of the County of Park, Howard E. Purdy, J., which held that surveyor's claim for compensation against corporation be denied and that mechanic's lien be stricken from county record, and surveyor appealed. The Court of Appeals, Smith, J., held that where corporation had altered plats prepared by surveyor and remainder of the plats were unavailable for surveyor's inspection, surveyor complied with legislative intent to protect public welfare and acted prudently in protecting its own license by revoking certification, and that the operative act in causing destruction of the value of the survey work was corporation's own alteration of the documents after surveyor had completed its performance of the contract and not surveyor's revocation of certification. The Court also held that surveyor substantially complied with contract which, by its terms, did not require surveyor to do additional work in order to...

191. **Hamilton Enterprises, Ltd. v. South Park Land & Livestock Co., Inc.**

Colorado Court of Appeals, Div. I. | August 7, 1974 | 34 Colo.App. 261

Headnote: Statute requiring official seal of land surveyors bearing registrant's name and the legend, "registered land surveyor", constitutes a certification to the general public that qualified land surveyor has supervised or performed work as represented in certified document and represents also, an acknowledgment of responsibility to general public by surveyor for any mistakes or negligence in preparation of the survey which bears his seal. C.R.S. '63, 51-2-10(2).

Document Summary: Surveyor appealed from judgment of the District Court of the County of Park, Howard E. Purdy, J., which held that surveyor's claim for compensation against corporation be denied and that mechanic's lien be stricken from county record, and surveyor appealed. The Court of Appeals, Smith, J., held that where corporation had altered plats prepared by surveyor and remainder of the plats were unavailable for surveyor's inspection, surveyor complied with legislative intent to protect public welfare and acted prudently in protecting its own license by revoking certification, and that the operative act in causing destruction of the value of the survey work was corporation's own alteration of the documents after surveyor had completed its performance of the contract and not surveyor's revocation of certification. The Court also held that surveyor substantially complied with contract which, by its terms, did not require surveyor to do additional work in order to...

192. **Hamilton Enterprises, Ltd. v. South Park Land & Livestock Co., Inc.**

Colorado Court of Appeals, Div. I. | August 7, 1974 | 34 Colo.App. 261

Headnote: Where documents prepared by licensed engineer or surveyor have been changed without the licensee's knowledge or approval before they become of public record, the licensee has an obligation to revoke his certification on them. C.R.S. '63, 51-2-7(3), 51-2-10(2); 1967 Perm.Supp., C.R.S., 51-2-10, 136-4-12.

Document Summary: Surveyor appealed from judgment of the District Court of the County of Park, Howard E. Purdy, J., which held that surveyor's claim for compensation against corporation be denied and that mechanic's lien be stricken from county record, and surveyor appealed. The Court of Appeals, Smith, J., held that where corporation had altered plats prepared by surveyor and remainder of the plats were unavailable for

surveyor's inspection, surveyor complied with legislative intent to protect public welfare and acted prudently in protecting its own license by revoking certification, and that the operative act in causing destruction of the value of the survey work was corporation's own alteration of the documents after surveyor had completed its performance of the contract and not surveyor's revocation of certification. The Court also held that surveyor substantially complied with contract which, by its terms, did not require surveyor to do additional work in order to...

193. [Hamilton Enterprises, Ltd. v. South Park Land & Livestock Co., Inc.](#)

Colorado Court of Appeals, Div. I. | August 7, 1974 | 34 Colo.App. 261

Headnote: Where corporation had altered two plats which had been approved by licensed surveyor and remainder of plats were unavailable for surveyor's inspection, surveyor complied with legislative intent of statutes governing licensing of surveyors and engineers to protect public welfare, and acted prudently in protecting its own license, by revoking its certification. C.R.S. '63, 51-2-7(3), 51-2-10(2).

Document Summary: Surveyor appealed from judgment of the District Court of the County of Park, Howard E. Purdy, J., which held that surveyor's claim for compensation against corporation be denied and that mechanic's lien be stricken from county record, and surveyor appealed. The Court of Appeals, Smith, J., held that where corporation had altered plats prepared by surveyor and remainder of the plats were unavailable for surveyor's inspection, surveyor complied with legislative intent to protect public welfare and acted prudently in protecting its own license by revoking certification, and that the operative act in causing destruction of the value of the survey work was corporation's own alteration of the documents after surveyor had completed its performance of the contract and not surveyor's revocation of certification. The Court also held that surveyor substantially complied with contract which, by its terms, did not require surveyor to do additional work in order to...

194. [Hamilton Enterprises, Ltd. v. South Park Land & Livestock Co., Inc.](#)

Colorado Court of Appeals, Div. I. | August 7, 1974 | 34 Colo.App. 261

Headnote: Surveyor's revocation of its certificate on plats and plans which had been subsequently altered by surveyor's clients did not destroy the value of the survey work and thus relieve corporation of obligation to pay balance due on its account with surveyor where corporation made no effort to contact surveyor and secure its approval of their changes or recertification of those plats which had not been changed. C.R.S. '63, 51-2-7(3), 51-2-10(2); 1967 Perm.Supp., C.R.S., 51-2-10, 136-4-12.

Document Summary: Surveyor appealed from judgment of the District Court of the County of Park, Howard E. Purdy, J., which held that surveyor's claim for compensation against corporation be denied and that mechanic's lien be stricken from county record, and surveyor appealed. The Court of Appeals, Smith, J., held that where corporation had altered plats prepared by surveyor and remainder of the plats were unavailable for surveyor's inspection, surveyor complied with legislative intent to protect public welfare and acted prudently in protecting its own license by revoking certification, and that the operative act in causing destruction of the value of the survey work was corporation's own alteration of the documents after surveyor had completed its performance of the contract and not surveyor's revocation of certification. The Court also held that surveyor substantially complied with contract which, by its terms, did not require surveyor to do additional work in order to...

195. [Hamilton Enterprises, Ltd. v. South Park Land & Livestock Co., Inc.](#)

Colorado Court of Appeals, Div. I. | August 7, 1974 | 34 Colo.App. 261

Headnote: Where there was nothing which indicated that contract between corporation and surveyor obligated surveyor to approve any of corporation's alterations on plats and plans subsequent to surveyor's approval, and surveyor had substantially complied with original agreement to survey, it was not required to do additional work in order to collect balance due on billing. C.R.S. '63, 51-2-7(3), 51-2-10(2); 1967 Perm.Supp., C.R.S., 51-2-10, 136-4-12.

Document Summary: Surveyor appealed from judgment of the District Court of the County of Park, Howard E. Purdy, J., which held that surveyor's claim for compensation against corporation be denied and that mechanic's lien be stricken from county record, and surveyor appealed. The Court of Appeals, Smith, J., held that where corporation had altered plats prepared by surveyor and remainder of the plats were unavailable for surveyor's inspection, surveyor complied with legislative intent to protect public welfare and acted prudently in protecting its own license by revoking certification, and that the operative act in causing destruction of the value of the survey work was corporation's own alteration of the documents after surveyor had completed its performance of the contract and not surveyor's revocation of certification. The Court also held that surveyor substantially complied with contract which, by its terms, did not require surveyor to do additional work in order to...

196. [Norris v. City of Pueblo](#)

Court of Appeals of Colorado | December 12, 1898 | 12 Colo.App. 290

Headnote: Where persons interested in a boundary line settle it by a survey, squatters in a condemnation proceeding cannot question the effect of such survey nor the title of the parties.

Document Summary: Error to district court, Pueblo county. Condemnation proceeding by the city of Pueblo against John Norris and others. There was a judgment for plaintiff, from which defendants bring error. Reversed in part.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑54 Official Surveys 10

59🔑54(1) In general. 2

197. [Board of County Com'rs of County of San Miguel v. Roberts](#)

Colorado Court of Appeals, Div. VI. | December 28, 2006 | 159 P.3d 800

Headnote: Application of statute authorizing surveyors to enter private lands and perform boundary surveys was not limited to situations involving an existing legal interest in property, but instead could be invoked by county surveyor to enter landowners' properties to establish boundaries of former county road in anticipation of condemnation; statute did not state or imply that the lawfulness of an entry was conditioned on the manner in which a surveyor would utilize the evidence obtained by the survey, or the purposes motivating the survey. *West's C.R.S.A. §18-4-515.*

Document Summary: GOVERNMENT - Highways and Roads. Surveyor authorized to enter private properties in order to survey former county road in anticipation of condemnation.

198. [Hildebrand v. Olinger](#)

Colorado Court of Appeals, Div. I. | May 10, 1984 | 689 P.2d 695

Headnote: In quiet title action, trial court did not err in accepting report and determination of commissioner, a registered surveyor, regarding southern boundary line of property. *C.R.S. 38-44-108.*

Document Summary: Defendants appealed an order of the District Court, Jefferson County, Gaspar F. Perricone, J., determining and establishing boundary in quiet title action. The Court of Appeals, Babcock, J., held that: (1) trial court did not err in accepting report and determination of commissioner, a registered surveyor, regarding southern boundary line; (2) defendants waived their right to take exception to commissioner's determination of southern terminus of boundary line in question; and (3) trial court did not abuse its discretion in using equitable principles to determine and establish disputed boundary line. Affirmed.

59 BOUNDARIES 207

[59II Evidence, Ascertainment, and Establishment](#) 145[59🔑54 Official Surveys](#) 10[59🔑54\(2\) Method of making surveys.](#) 5**199. [Cumpston v. Neirinckx](#)**

Colorado Court of Appeals, Div. II. | January 20, 2000 | 1 P.3d 752

Headnote: County surveyor complied with statutory requirements, in private dispute over location of a quarter corner, in deciding not to excavate section corner to locate original monument and in relying on physical evidence to determine location of quarter corner; surveyor did not run afoul of procedures contained in Manual of Surveying Instructions. [West's C.R.S.A. §30-10-906](#).

Document Summary: REAL PROPERTY - Boundaries. Declaratory judgment action was proper means to confirm county surveyor's location of quarter corner.

200. [Gaines v. City of Sterling](#)

Supreme Court of Colorado, En Banc. | July 20, 1959 | 140 Colo. 63

Headnote: Regardless of whether there was either a common original title or a later common title to a section or a fraction of a section, on government surveyed land, where section and quarter-section corners have been obliterated and there is an interior boundary line dispute with no adequate evidence before the trial court of the correct possessory lines, the correct rule to determine an interior quarter-section line is first to relocate the exterior section corners, and then proceed to locate the quarter-section corner by applying procedure set out in statute dealing with procedure to be followed by a surveyor making a subdivision of a section established by a United States survey. C.R.S. '53, 136-1-1.

[2 Cases that cite this legal issue](#)

Document Summary: Action involving a boundary dispute. The District Court, Logan County, Francis L. Shallenberger, J., entered judgment establishing a boundary unsatisfactory to plaintiffs, and they brought error. The Supreme Court, Sutton, J., held that where commissioner located his proposed dividing line without relocating the section corners of the land which was part of a United States survey, and instead established such line by theoretical reconstruction of the original government survey, by reference to an old fence line, although there was no evidence that such fence was established as a boundary line or agreed upon or accepted by the parties or their predecessors, such boundary line was incorrectly established, and case would be remanded with instructions to appoint another commissioner to locate the boundary lines in accordance with applicable rules of law. Judgment and order reversed with instructions.

201. [Gaines v. City of Sterling](#)

Supreme Court of Colorado, En Banc. | July 20, 1959 | 140 Colo. 63

Headnote: Where, in an action involving a boundary dispute, commissioner located his proposed dividing line without relocating the section corners of the land which was part of a United States survey, and instead established such line by theoretical reconstruction of the original government survey, by reference to an old fence line, although there was no evidence that such fence was established as a boundary line or agreed upon or accepted by the parties or their predecessors, such boundary line was incorrectly established, and case would be remanded with instructions to appoint another commissioner to locate the boundary lines in accordance with applicable rules of law. C.R.S. '53, 136-1-1.

[2 Cases that cite this legal issue](#)

Document Summary: Action involving a boundary dispute. The District Court, Logan County, Francis L. Shallenberger, J., entered judgment establishing a boundary unsatisfactory to plaintiffs, and they brought error. The Supreme Court, Sutton, J., held that where commissioner located his proposed dividing line without relocating the section corners of the land which was part of a United States survey, and instead established such line by theoretical reconstruction of the original government survey, by reference to an old fence line, although there was no evidence that such fence was established as a boundary line or agreed upon or accepted by the parties or their predecessors, such boundary line was incorrectly established, and case would

be remanded with instructions to appoint another commissioner to locate the boundary lines in accordance with applicable rules of law. Judgment and order reversed with instructions.

202. Beaver Brook Resort Co. v. Stevens

Supreme Court of Colorado. | July 7, 1924 | 76 Colo. 131

Headnote: To establish lost corner, surveyor should locate, if possible, government corners in every direction from it, and apportion distance between such points.

Document Summary: Department 3. Error to District Court, Clear Creek County; S. W. Johnson, Judge. Action by Clara Stevens against the Beaver Brook Resort Company and others. Judgment for plaintiff, and defendants bring error. Reversed.

203. Fugate v. Smith

Court of Appeals of Colorado | January 9, 1894 | 4 Colo.App. 201

Headnote: In trespass the surveyors for the respective parties each testified that he made a survey in accordance with field notes of the original United States surveys, but it did not appear whether either was made in the usual and proper manner. Held, that defendant was not entitled to an instruction that the boundary line must be re-established by reference to the field notes of the original United States surveys, and by surveys made in the usual and proper manner in accordance therewith.

Document Summary: Appeal from district court, Custer county. Action by Robert S. Smith against J.H. Fugate for trespass to real estate. From a judgment for plaintiff, defendant appeals. Affirmed.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑54 Official Surveys 10

59🔑54(4) Conclusiveness in general. 2

204. Hildebrand v. Olinger

Colorado Court of Appeals, Div. I. | May 10, 1984 | 689 P.2d 695

Headnote: In quiet title action, defendants waived their right to take exception to determination of commissioner, a registered surveyor, of southern terminus of boundary line in question where defendants failed to file exceptions within ten-day statutory period. C.R.S. 38-44-108.

Document Summary: Defendants appealed an order of the District Court, Jefferson County, Gaspar F. Perricone, J., determining and establishing boundary in quiet title action. The Court of Appeals, Babcock, J., held that: (1) trial court did not err in accepting report and determination of commissioner, a registered surveyor, regarding southern boundary line; (2) defendants waived their right to take exception to commissioner's determination of southern terminus of boundary line in question; and (3) trial court did not abuse its discretion in using equitable principles to determine and establish disputed boundary line. Affirmed.

205. Hildebrand v. Olinger

Colorado Court of Appeals, Div. I. | May 10, 1984 | 689 P.2d 695

Headnote: In quiet title action, trial court has discretion either to accept, reject, or modify survey set forth in commissioner's report. C.R.S. 38-44-108.

Document Summary: Defendants appealed an order of the District Court, Jefferson County, Gaspar F. Perricone, J., determining and establishing boundary in quiet title action. The Court of Appeals, Babcock, J., held that: (1) trial court did not err in accepting report and determination of commissioner, a registered surveyor, regarding southern boundary line; (2) defendants waived their right to take exception to commissioner's

determination of southern terminus of boundary line in question; and (3) trial court did not abuse its discretion in using equitable principles to determine and establish disputed boundary line. Affirmed.

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59II Evidence, Ascertainment, and Establishment 145

59🔑54 Official Surveys 10

59🔑54(6) Presumption as to correctness and regularity. 1

206. Camp v. Winegar

Supreme Court of Colorado. | October 2, 1922 | 72 Colo. 160

Headnote: The presumption is that government records showing an interior survey are correct.

Document Summary: Department 2. Error to District Court, Kit Carson County; Arthur Cornforth, Judge. Petition of A. W. Winegar and others against J. Camp and others, to establish township boundaries. Upon judgment approving the report of the Commission, defendants bring error. Judgment reversed and cause remanded, with directions.

59 BOUNDARIES 207

59II Evidence, Ascertainment, and Establishment 145

59🔑55 Apportionment of excess or deficiency. 1

207. Gaines v. City of Sterling

Supreme Court of Colorado, En Banc. | July 20, 1959 | 140 Colo. 63

Headnote: Where a tract of land is subdivided into parts or lots, title to which becomes vested in different persons, none of the grantees are entitled to a preference over the others upon the discovery of an excess or deficiency in the quantity of land contained in the original tract, but the excess or deficiency is to be divided among all the lots or parcels in proportion to their areas.

Document Summary: Action involving a boundary dispute. The District Court, Logan County, Francis L. Shallenberger, J., entered judgment establishing a boundary unsatisfactory to plaintiffs, and they brought error. The Supreme Court, Sutton, J., held that where commissioner located his proposed dividing line without relocating the section corners of the land which was part of a United States survey, and instead established such line by theoretical reconstruction of the original government survey, by reference to an old fence line, although there was no evidence that such fence was established as a boundary line or agreed upon or accepted by the parties or their predecessors, such boundary line was incorrectly established, and case would be remanded with instructions to appoint another commissioner to locate the boundary lines in accordance with applicable rules of law. Judgment and order reversed with instructions.