DEPARTMENT OF PROPERTY.

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WOOD *v.* WEST.[1] SUPREME COURT OF NEBRASKA.

Boundaries—Field-Notes—Location of Government Corner.

Field-notes and plats of the original government survey are competent evidence in ascertaining where monuments are located in case a government corner is destroyed, or the point where it was originally placed cannot be found, or the location of the original corner is in dispute.

BOUNDARIES.

In a survey of public lands, after the township corners have been fixed and the township lines run, it is the duty of the surveyor to subdivide the township into sections and quarter sections, and to do this he is required to start at the southeast corner of the township so that the regulation found in Par. 5 of Sec. 2395, Rev. St., that "Where the exterior lines of the townships which may be subdivided into sections or half sections exceed, or do not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of sections or half sections in such township," etc., may be complied with.

"The sections shall be numbered respectively, beginning with the number one in the northeast section and proceeding west and east alternatively through the township with progressive numbers till the thirty-six be completed:" Par. 3, Sec. 2395, Rev. St. Therefore the surveyor would begin his subdivision of the township at the southeast corner of Section 36, and from there he would run along the township line west two miles, and establish a corner for Section 35, having established the

[1] Reported in 58 Northwestern Reporter, 938.

southwest corner of Section 36 at the distance of one mile from the southeast township corner from which he started his survey, thence he runs north to the north line of the township—and so on across the south township line until the west township line is reached. On the east township line the surveyor proceeds in the same manner, running north two miles and there marking a corner; having established a corner on the way one mile north of the southeast township corner, from which two mile corner he runs a line parallel to the south township line till he reaches the west boundary of the township and so on north on the east township line till the north corner is reached, when the township will be divided by lines into nine sections, and by corners into thirty-six sections—each section, if the township is not fractional, containing 640 acres of land—the township being six miles square.

At or near the corners established, the deputy surveyor is directed by the Revised Statutes to mark on a tree, within the section, the number of the section, and over it the number of the township within which such section may be.

Each surveyor is required to keep a field-book, and in it to note the names of the corner trees, and the numbers made on them. The true situations of all mines, salt licks, salt springs, and mill seats which come to his knowledge; all water-courses over which the line he runs may pass; and also the quality of the land. These field-books are returned to the surveyor-general, who makes out therefrom a description of the whole lands surveyed, and a "fair plat" of the townships and fractional parts of townships contained in the lands, describing the subdivisions thereof, and the marks of the corners. The description is to be transmitted to the officers who may superintend the sales, and the plat is to be recorded in books to be kept for that purpose; and a copy of it shall be kept open at the surveyor-general's office for public information, and other copies shall be sent to the places of the sale, and to the General Land Office.

With this knowledge of the duties of the government surveyors, let us come to the general question suggested by the above case of Woods *v.* West, and as the best way of making

that question still clearer we will first state a supposititious case:

A surveyor started properly at the southeast corner of a township, and, according to his instructions, ran along the township line two miles, establishing a section corner between Sections 36 and 35, as he supposed, at the distance of one mile from the township corner. As a matter of fact, the monuments erected on the ground at this corner are only three-quarters of a mile from the township corner, and by a line run parallel with the east section line one mile north, this Section 36 loses the entire western tier of sections containing forty acres each. The common corner of Sections 25, 26, 35 and 36 could not be established on account of a lake. The field notes returned to the surveyor-general, and from which he prepared his plat by which the land was to be sold, gave the correct length of one mile from the township corner on the south township line to the section corner between Sections 35 and 36, but recited that at that distance were certain monuments, which in reality were not there at all, but were one-quarter of a mile nearer to the township corner.

Two purchasers secured from the government patents, one for Section 36 and the other for Section 35, whom we will call A and B, respectively. They, of course, purchased according to the official plat returned by the surveyor-general, and each thought that he was purchasing 640 acres; but when they came to separate the two sections on the ground, if the monuments erected there were to govern, then A, the purchaser of Section 36, would have a shortage of 160 acres from the amount of land called for in his patent, and B would have a plusage of an equal amount.

The surveyor placed several trees on the quarter line, and the two corners are found just as he described them, except as to distance. Thus, the question arose directly as to which was to govern the plat recited in the patent, giving by quantity and by course and distance his full share to each purchaser, or the monuments actually placed on the ground, by which a discrepancy of 160 acres appears.

The common law rule is, beyond a doubt, that natural or artificial monuments actually placed on the land, and by their

nature permanent, will control less stable monuments, and course, and distance, and quantity are of no importance, and are considered only in case a monument cannot be discovered as a means of refixing a corner. In the case of Powell *v.* Clark, 5 Mass. 355 (1809), Parsons, C. J., says: "In a conveyance of land by deed, in which the land is certainly bounded, it is very immaterial whether any or what quantity is expressed, for the description by the boundaries is conclusive. And when the quantity is mentioned in addition to a description of the boundaries, without any express covenant that the land contains that quantity, the whole must be considered as mere description, although the quantity mentioned is an uncertain part of the description, and must yield to the location by certain boundaries, if there is a disagreement, whether the quantity mentioned is more or less than the quantity contained within the limits expressed." It is further laid down by Fowler, J., in Hall *v.* Davis, 36 N. H, 569 (1858), "that, in the description of a line what is most material and certain shall control that which is less material and uncertain; that boundaries marked on the land, as being most material and certain, are to control courses and distances; that if the plan, or the line described in a deed or charter, and the monuments made by an original survey of a tract or township of land, do not correspond, the monuments are always to determine the true location, and that the marks on the ground of an old survey, indicating the lines originally run, are the best evidence of the true location of that survey: Hanson *v.* Russell, 28 N. H. 111. The same rule has often been recognized in other jurisdictions, and it may be regarded as well settled, that where land is conveyed by a deed referring to a plan or to a charter line, between which and the actual original survey, as shown by fixed monuments upon the ground, there is a difference in the courses and distances, the location of lines and monuments, as originally located and marked on the ground are to govern, however they may differ from those represented on the plan or described in the charter: Missouri *v.* Iowa, 7 Howard, 660; Gratz *v.* Hoover, 16 Pa. 232; see also 1 U. S. Dig., Boundaries, I and II, §§ 1–99.

The case of Brown *v.* Huger, 21 Howard, 305 (1858) is an authority for the statement that "In ascertaining the boundaries of surveys or patents, the universal rule is this: that wherever natural or permanent objects are embraced in the calls of either, these have absolute control, and both course and distance must yield to their influence, and where a survey and patent call for a boundary to run down a river to its point of junction with another and thence up that other, the rivers are obviously intended as the boundaries, and courses must be disregarded, especially when it is manifest that one of them has been interpolated through error," but this decision is founded on the common law rule as to boundaries, and no mention is made of the Revised Statutes.

It is said, in the case of Nesselrode *v.* Parish, 59 Iowa, 570 (1882), "The rule we think is well established that the true corner is where the United States Surveyor in fact established it, whether such location is right or wrong as may be shown by a subsequent survey." The "corner established" in this rule must mean that fixed by the surveyor-general on the plat returned by him and not that located on the ground, for the reason that the direction found in the Revised Statutes, § 2396, is as follows:

1. All corners marked in the surveys, returned by the surveyor-general, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from two corners which stand on the same line.

2. The boundary lines, actually run and marked in the surveys returned by the surveyor-general, shall be established as the proper boundary lines of the sections or subdivisions for which they were intended, and the *length* of such lines, as *returned*, shall be held and considered as the *true length* thereof . . . .

3. Each section or subdivision of section, the contents whereof have been returned by the surveyor-general, shall be held and considered as containing the *exact quantity* expressed in such return; and in Paragraph 5 of Section 2395, it is

directed that all sections not fractional shall be sold as containing the complete legal quantity.

What could be a clearer declaration that the old common law rule was intended to be done away with for the purpose of the sale of public lands? Indeed, the rule itself has been held to be not a cast-iron one, but to have its exceptions. For instance, it is said in White *v.* Luning, 93 U. S. 514 (1876), that "The rule that monuments, natural or artificial, rather than courses and distances, must control, will not be enforced, where the instrument would be defeated by such construction, and where the rejection of a call for a monument would reconcile other parts of the description and leave enough to identify the land:" Davis *v.* Rainsford, 17 Mass. 207; Jones *v.* Bargett, 46 Texas, 484.

The facts in the case of Bates *v.* Illinois Central Railroad Company were these: Plaintiff brought suit in ejectment for certain lands which he claimed to be included in his patent from the government. The Chicago River was one of the boundaries called for by the survey and patent. If the river was at the place where it is laid down in the plat of the survey and mentioned in the field-notes, then the plaintiff's tract did not include the sand-bar for which he brought suit.

Mr. Justice Catron says: "The question raised is, by what rule is the public survey to which the patent refers for identity to be construed? The land granted is 102.29 acres lying north of the Chicago River, bounded by it on the south and by the lake on the east. The mouth of the river being found establishes the southeast corner of the tract. The plat of the survey, and a call for the mouth of the river in the field-notes, show that the survey made in 1821 recognized the entrance of the river into the lake through the sand-bar in an almost direct line easterly, disregarding the channel west of the sand-bar, where the river most usually flowed before the piers were erected. It is immaterial where the most usual mouth of the river was in 1821; nor whether this northern mouth was occasional, or the flow of water only temporary at particular times, and this flow produced to some extent by artificial means, by a cut through the bar, leaving the water to wash

out an enlarged channel in seasons of freshets. The public had the option to declare the true mouth of the river for the purposes of a survey and sale of the public land. And the court below properly left it to the jury to find whether the land on which the railroad lies is within the boundary of the tract surveyed and granted. According to the judge's construction of the plat and calls, and the patent bounded on the survey, the jury was bound to find for the defendant, and therefore this ruling was conclusive of the controversy."

In Railroad Company *v.* Schurmeir, 7 Wallace, 272 (1868), a government grant of land in Minnesota (9.28 acres) bounded on one side by the Mississippi, was held to include a parcel (2.78 acres) four feet lower than the main body, and which at very low water was separated from it by a slough or channel twenty-eight feet wide, through which no water flowed, but in which water remained in pools where at medium water it flowed through the depression, making an island; and where, at high water, the parcel was submerged; the whole place having, previous to the controversy, been laid out as a city, and the municipal authorities having graded and filled up the place to the river edge of the parcel.

Mr. Justice Clifford, in delivering the opinion of the court, says: "Appellants contend that the river is not a boundary in the official survey; that the tract as surveyed did not extend to the river, but that the survey stopped at the meander-posts and the described trees on the bank of the river—accordingly they insist that Lot 1 did not extend to the river, but only to the points where the township and section lines intersect the left bank of the river as shown by the meander-posts.

"The finding of the referee also shows that the meander-line of Lot 1 was run, in the official survey, along the left or north bank of a channel which then existed between that bank and a certain parcel of land in front of the same not mentioned in the field-notes nor delineated on the official plat."

"Provision was made by the Act of February 11, 1805, that townships should be 'subdivided into sections, by running straight lines from the mile corners marked as therein required, to the opposite corresponding corners and by

marking on each of said lines intermediate corners, as nearly as possible equidistant from the corners of the sections on the same.' Corners thus marked in the survey are to be regarded as the proper corners of sections and the provision is that the corners of half and quarter sections, not actually run and marked on the surveys, shall be placed, as nearly as possible, equidistant from the two corners standing on the same line. Boundary lines actually run and marked on the surveys returned are made the proper boundary lines of the sections or subdivisions for which they were intended, and the second article of the second section provides, that the length of such lines, as returned, shall be held and considered the true length thereof. Lines intended as boundaries, but which were not actually run and marked, must be ascertained by running straight lines from the established corners to the opposite corresponding corners; but where no such opposite corresponding corners have been or can be fixed, the boundary lines are required to be ascertained by running from the established corners due north and south or east and west, as the case may be, to the water-course, Indian boundary line, or other external boundary of such fractional townships."

"Express decision of the Supreme Court of the State was that the river in this case and not the meander-line, is the west boundary of the lot, and in that conclusion of the State court we entirely concur:" Schurmeir *v.* The Railroad, 10 Minnesota, 82. Meander-lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser.

In preparing the official plat from the field-notes, the meander-line is represented as the border-line of the stream, and shows, to a demonstration, that the water-course and not the meander-line, as actually run on the land, is the boundary.

The case of Chapman *v.* Polack, decided in 1886, by the Supreme Court of California, and reported in 11 Pacific

Reports, 764, is a strong authority for the rule that land sold with reference to a plat is to be considered as bounded and as containing whatever the plat made up from the field-notes and returned by the surveyor-general to the place of sale.

The plaintiff was the owner of southeast quarter of a certain section and Mary Polack, the defendant, is owner of the northeast quarter of the same section. She contended that a certain hotel and cottages were upon the northeast quarter of Section 13. Searle, C. J., says: "The whole case turned at the trial not upon the title to the respective quarter sections of land for that was established beyond dispute, but upon the location of the dividing line between these quarter sections. If the line running through the centre of Section 13 from east to west and dividing the northeast quarter from the southeast quarter, runs north of the hotel and cottages, then the judgment of the court below is correct; if, on the contrary, that line runs south of the buildings, defendants are entitled to judgment."

"The defendants contended that the government survey fixed the lines of demarkation and situation of the hotel and buildings, and that, as thus established under the approved survey they are all in the northeast quarter of the section, and that such approved survey is conclusive and must prevail, whether right or wrong, and to admit evidence to the contrary was error. Upon the official plat of the approved survey, a certified copy of which is in evidence, the Geyser Hotel is platted and located in the northeast quarter of Section 13. In other words, the dividing or quarter section line east and west through Section 13, runs south of the buildings in dispute, and if conclusive gives the demanded premises to defendants."

The opinion gives a citation of the Revised Statutes as establishing principles for determining the boundaries and contents of the several sections, half sections and quarter sections of the public lands under the laws of Congress.

"From the data furnished by the surveyor the plats are prepared, and these official plats are made the basis of all sales of the public lands, and are solely referred to in the usual

patents to show what lands are patented: Bates *v.* Illinois Central R. R. Co., 1 Black. 207. By the plats of public surveys lands must be identified and boundaries ascertained in all cases of the kind: Brown *v.* Clements, 3 How. 671; Gazzam *v.* Phillips, 20 How. 375."

The approved official plat of the survey, whether accurate or not, is to be deemed and taken as true and is conclusive, and neither private surveys nor parol evidence can be admitted to show that the line should in fact run differently from that run in the plat.

Taking the above cited cases of Bates *v.* Illinois Central Railroad Co., Railroad Co. *v.* Schurmeir and Chapman *v.* Polack as laying down a proper rule for the construction of patents with reference to an official plat, let us attempt to apply that rule to the case supposed by way of illustration. That the position of the monuments mentioned in the field-notes as being one mile from the township corner and so fixed on the official plat, according to which the purchase of both A and B was made, is the correct position seems clear, because the Revised Statutes say, "all corners marked in the surveys returned by the surveyor-general shall be established as the proper corners—and the length of the lines returned shall be taken as the true length thereof;" and the statutes do not say all corners established by the survey on the ground and returned to the surveyor-general shall be established as the proper corners—nor do they say the monuments fixed on the field by the surveyor-general shall be taken as determining the true length of the boundary lines.

Just as in the case of Chapman *v.* Polack, the owner of the section, in which, on the official plat of the survey, the hotel and cottages were placed, was protected in his rights and the line as run, established as the true boundary, so in our case the line as run in the plat, establishing a full section, must be taken as the true boundary line, and the length of it is fixed by the return of the surveyor-general, and A and B purchasing by that return have each vested rights in exactly what the official plat gives them, that is, a full section.

The government is obliged to stand by an original survey

by which it conveys land and under which right became vested, and therefore where a man bought land according to an official survey, duly filed in the proper office, the conveyance could not be set aside on the ground that by a subsequent survey it was found that his house was partly in another quarter section from that for which he obtained a patent: Lindsey *v.* Hawes, 2 Black. 554 (U. S.).

Where a map or plan of a tract of land with lines drawn upon it marking the boundaries and with the natural objects upon its surface laid down, is referred to in a deed containing a description of the premises therein conveyed, this map or plan is to be regarded as giving the true description of the land conveyed as much as if it was expressly recited and marked down in the deed itself: Vance *v.* Fore, 24 Cal. 436; Black *v.* Sprague, 54 Cal. 266; Cragin *v.* Powell, 128 U. S. 691.

In the case of Beaty *v.* Robertson, 30 N. E. Rep. 702 (1892), Supreme Court of Indiana, there was a variance between the plat and the field-notes of the original survey of public lands, and Miller, J., says, quoting from Doe *v.* Hildreth, 2 Ind. 274: "If there was any variance between the plat and field-notes, the former must control; for it represented the lines and corners as fixed by the surveyor-general, and by which the land was sold, and the law declares that the corners and boundaries as returned by, not to, that office, shall be the corners and boundaries." Mr. Justice Miller goes on to say, "In Vance *v.* Fore, 24 Cal. 436, it was said: 'The map may be regarded as a daguerreotype of the land which the grantor intended to convey.' In Cornett *v.* Dixon, 11 S. W. Rep. 660, a patent made in accordance with a plat and survey was held sufficient to control the length of a line as given in the field-notes of the surveyor."

In our supposed case the plat and field-notes agree as to the distance on the township line from township corner to section corner, and disagree only in the placing of certain monuments, now under this case of Cornet *v.* Dixon, *supra*, it seems that the plat is of superior weight as evidence of what land is granted by a patent to any other evidence. The court say in Cornett *v.* Dixon, "The patent is in strict accordance

with this plat and survey. The patent being in accordance with the plat and survey, as to the length of the said line, we cannot say that the contradictory statements as to the distance of the line contained in the minutes of the surveyor's proceedings are sufficient to justify the conclusion that the statement contained in the plat and patent as to the distance of said line is a mistake. On the contrary said statement furnishes strong, if not conclusive, evidence of the correctness of the length of the line.

So take the contradictory statements in the minutes of the surveyor in our case as to the position of certain monuments and the length of the line, and we can no more conclude that the length of the line as given in the field-notes and shown in official plat is a mistake than that in the above case the length of the line returned by the surveyor-general was a mistake.

In Chan *v.* Brandt, 47 N. W. Rep. 461 (1890), Supreme Court of Minnesota, Vanderburgh, J., says, "The boundaries, as established by the government surveyors and returned to, and accepted by the government are unchangeable, and control the description of lands patented, and it is well settled that mistakes in the surveys cannot be corrected by the judicial department of the government:" Cragin *v.* Powell, 9 Sup. Ct. Rep. 203.

The surveyor-general in his return established his section corner at the distance of one mile from the southeast township corner, and this he was right in doing even though the field-notes had given a less distance, for the surveyor-general is to correct inaccuracies in measurements, etc., of his deputy surveyors, though, of course, he would have no power to move the monuments.

The section line is not established by the surveyor, the government establishes it through the surveyor and not until the official plat returned by the surveyor-general is approved by the government are the lines established and by that plat the government sell its lands. "When the boundary is not fixed and known, but is in dispute, courses, distances and contents may be considered in fixing and knowing the true boundary. When the dispute is as to which of two points is

the established corner, and one point is where such corners are usually established, and such as to give to each owner the quantity of land purchased, and the other is remote, and gives to some more and to others less, than the quantity of land purchased, it will surely require less evidence to convince the mind that the former is the true line than that the latter is." This is taken from the opinion in the case of Hanson *v.* Township of Red Rock, 57 N. W. Rep. 11 (1893). The case itself rather leaves out of consideration the directions of the Revised Statutes and proceeds according to the old common law rules to determine that "When the boundaries of land are fixed, known and unquestionable monuments, although neither courses nor distances, nor the computed contents correspond, the monuments must govern." In this statement all the directions of the Revised Statutes are put out of sight and it is not remembered that all corners established on the plat by the surveyor-general by course and distance shall be taken to be the true corners of the section—and the length of the boundary lines returned shall be considered the true length thereof, nor that the sections are to be sold as containing the legal quantity of lands.

One of the best cases on this subject of boundaries is Goltermann *v.* Schiermeyer, 19 S. W. Rep. 484, May 9, 1892, and as it establishes my point and construes to a certain extent the directions given in the Revised Statutes in reference to the survey of public land, it may be well to go into the case rather fully, and even to state the more important facts upon which the judgment of the court is founded. The controversy in this case arose out of a dispute as to the true line dividing the north half and the south half of a certain section. Goltermann obtained two patents from the United States, in one the land conveyed is described as Lot 2 of the northwest quarter of this section, containing 103.27 acres "according to the official plat of the survey of said land returned to the general land office by the surveyor-general;" and in the other the land is described as Lot 1 in the northwest quarter and the west half of the northeast quarter of this section, containing 160 acres, with a similar reference to an official plat.

The plaintiff in this case is one of the heirs of Goltermann, and he acquired the interest of the other heirs in the land, except a part of the north line in dispute. Plaintiff put in evidence a survey made by a county surveyor pending this suit, and a copy of the plat of the entire township as returned by the surveyor-general.

The defendant put in evidence his title and certain surveys, one of which is known as the Krepel survey; Krepel, in making his survey, found the quarter section corner on the east section line to be 43.20 chains from the southeast section corner, thus making an excess of 3.20 chains over the government survey. From that quarter section corner he ran a line west, parallel to the south section line, and planted a corner on the west section line.

The survey put in evidence by the plaintiff also varied from the government plat, in as much as the distance between the western section corners measured on it 85.54½ chains instead of 85.50 chains as laid down on the government plat. The excess of 4½ links was divided between the lines proportionately according to the length of each, as shown on the government plat, making the west line of the southwest quarter 40.02 chains, and the west line of the northwest quarter 45.52½ chains. From the point thus obtained he ran a straight line to the government quarter section corner on the east section line. The difference between the two surveys is a strip of land 4.38 chains wide on the west section line running east three-quarters of a mile to a width of 1.06 chains.

On the above state of facts, Black, J., says: "As the United States sold the north half of the section, and set off to the State for schools the south half, by reference to the survey returned by the surveyor-general, it is perfectly obvious that the section must be divided according to that plat, and the Act of Congress relating to the survey of the public domain. The patents from the United States to Goltermann all refer to the official plat of the survey returned by the surveyor-general to the General Land Office, for a description of the land granted. The land having been granted according to the plat, the plat and the figures and marks thereon designating this corner

became a part of the grant, the same as if the descriptive features represented by them had been written out in full in the patents. In short the plat, with all its marks and figures and the field-notes, became a part of the patent for all purposes of identifying the land granted. But it is here insisted that the figures '40.00,' representing the length of the west line of the southwest quarter, and the figures '45.50' representing the length of the west line of the northwest quarter, are no part of the plat. These figures as they appear on the plat are in red ink, showing that they do not represent distances actually measured in the field. It is, therefore, insisted that they were placed on the plat without authority of law, and should be rejected and disregarded. The Acts of Congress of May 10, 1800, and February 11, 1805, are carried into Revised Statutes, U. S., 1878 (second edition), to which reference is made. Section 2396 provides, among other things: 1st. 'All the corners marked in the surveys returned by the surveyor-general shall be established as the proper corners of sections or subdivisions of sections they were intended to designate, and the corners of half and quarter sections not marked on the survey shall be placed, as nearly as possible equidistant from two corners which stand on the same line.' The claim is that the words 'marked in the surveys returned,' mean corners actually established on the ground. We think the words have a much broader meaning. This will be more apparent by referring to some of the duties of the surveyor-general in respect of sections on the west township line. Section 2395 provides that where townships which are subdivided exceed or do not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of sections or half sections, and that these irregular sections and half sections shall be sold as containing only the quantity expressed in the returns and plats, and all others as containing the legal quantity. It is, therefore, the duty of the surveyor, not only to note this excess or deficiency, but to calculate the contents of these irregular subdivisions, and to note the quantity on the surveys returned. Hence, it is clear that the 'surveys

returned' properly show more than mere lines actually run and corners planted. If it is his duty to calculate the areas, and state the result on the plat, it is certainly competent for him to note the basis upon which he made the calculation, and especially so since the irregular subdivisions of the sections lying in the northern and western ranges of sections must be sold as containing the quantity expressed on the plat. The statutes are general in their terms, and many things are left to the discretion of the surveyor-general and the land department. We entertain no doubt but the surveyor-general had full power and authority by himself or deputies to designate these distances on the plat. But for the purposes of this case, and no other, let it be assumed that these figures should have been omitted from the plat, still it does not follow that the courts can undo what the surveyor-general and his deputies have done. He by himself or his subordinates fixed this quarter section corner on the plat, by stating its distance from section corners, and the government accepted the plat and sold the land pursuant thereto. By these acts the government, through its political departments, adopted the plat and all the marks and figures thereon. If this plat was incorrect, it was for the land department to reject it. That department had the power to accept or reject it. It did accept the plat, and that act is not reviewable by the courts. The government having accepted the plat, and sold the land pursuant to it, the courts have nothing to do but ascertain its meaning, and give effect to that meaning. It follows from what has been said, that we are to take this plat, with the figures thereon, and read it as part of the patents. Guided by the plat, there is no difficulty whatever in finding the principle upon which this dividing line should be run. In running the north section line west through to the township line it fell 5.50 chains north of the mile monument set in the township line. The west section line is therefore 85.50 chains in length. The plat also makes the west line of the southwest quarter 40 chains and the west line of the northwest quarter 45.50 chains. If, as in this case, an accurate measurement shows that the section line exceeds 85.50 chains, then the

excess must be divided between the quarter section lines in the proportion of the length of those lines as stated on the plat. The point thus ascertained is the true quarter section corner, and a straight line from that point to the east quarter section corner is the true dividing line.

"On the other hand, there are cases which insist that the monuments set in the field, when actually found, govern and control all other descriptions, and it is said in Goltermann *v.* Schiermeyer, *supra*, the monuments set by the deputy United States Surveyor for the west section corners must control as to the proper location of those corners.

"In the late Nebraska case, Woods *v.* West, 58 N.W. Rep. 938, which we have taken as the text, it is held, as we have seen, the field-notes and plat are competent evidence in ascertaining where monuments are located, in case a government corner is destroyed or the point where it was originally placed cannot be found, or the location of the original corner is in dispute; but when it is shown by uncontradicted evidence that a section corner was located by the government surveyors at a certain point, such location must control, even though it is at a place different from that given in the plat and field-notes. This decision of the Supreme Court of Nebraska is reached without reference to the Revised Statutes of the United States, and simply on the ground that the monuments erected upon the land are facts; the field-notes and plat returned by the surveyor-general, indicating course, distance and quantity, are but description which serve to assist in ascertaining those facts. This is undoubtedly true as a general principle of law, but it is altered by the explicit direction in § 2396, Rev. St., February 11, 1805, that, the boundary lines actually run and marked in the survey returned by the surveyor-general shall be established as the proper boundary lines of the sections or subdivisions for which they were intended, and the *length of such lines as returned* shall be held and considered as *the true length thereof*—apparently regardless of monuments placed erroneously in the field."

The Chief Justice, in giving his opinion in the case of Woods *v.* West, *supra*, says: "There is no room for doubt,

that if a certain known corner is the point at which the government surveyors located the corner of Sections 8, 9, 16 and 17, the one in dispute, then so much of the government field-notes as assume to state the length of the lines of the original survey is *inaccurate and unreliable*."

Such a statement is surely made without reference to the Revised Statutes as to the force to be given to the statement of the surveyor-general as to the length of the boundary lines.

McClintock *v.* Rogers, 11 Ill. 279 (1849), holds that in construing a patent from the United States which describes land granted by the number of the section, township and range, courts will look to the plat and field-notes, made and returned *to* the surveyor-general by the government surveyors, in order to locate the land. The lines actually run upon the grounds by the original surveyor become the true external boundaries of all lands sold by the government, if they can be ascertained by reference to the monuments erected upon the land by the surveyor.

In the case of Jones *v.* Kimble, 19 Wis. 452, the plat and field-notes are taken as giving the proper boundaries; but court expressly states that that was because the monuments located in the field could not be found, and that if they had been found they would have governed all other descriptions.

Martin *v.* Carlin, 19 Wis. 477, the court refused to go out of a section as established to reach a natural object or monument admitted to be erroneously placed within the section and made a boundary of.

See also Whitney *v.* Limber Co., 78 Wis. 240.

If the sections of the Revised Statutes quoted are to be followed, it would seem clear that the monuments located by the surveyor on the ground one-quarter of a mile too near to the southeast township corner ought to be ignored, and the length of the line, as returned by the surveyor-general, giving to A and B, respectively, the amount of land each thought he was purchasing, should be considered as the true length thereof.

J. HOWARD RHOADS.