

MILLER & MILLER  
LAWYERS  
FORT WORTH, TEXAS

GEO. E. MILLER  
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409-411 REYNOLDS BLDG.  
PHONE LAMAR 879

May 24th, 1918.

Hon. J.T. Robinson,  
Commissioner General Land Office,  
Austin, Texas.

RECEIVED  
MAY 31 1918  
Referred to Law

Dear Sir:

I acknowledge receipt of yours of the 20th inst. which came two days ago. I carefully note what you say.

I have never seen a copy of the letter of Mr. F.M. Maddox to you dated April 26th referred to in your letter to us of date May 20th and of course I have no means whatever of knowing what arguments may have been urged to you by Mr. Maddox to make you believe that the patents for Sections 1 and 2, Block 1, L.H. Fox surveys were erroneously issued.

These patents were not obtained by any device or representations on my part to your office, nor on the part of Mr. Yarbrough. Sometime in the early part of the month of April I wrote you, asking what was necessary to be done to patent the Fox surveys and the substance of your reply was that all that was necessary was to pay the unpaid purchase price, that the necessary surveying had been done to authorize the issuance of the patents. Thereupon, I sent to Austin, exchange for the purchase price, patent fees, etc., and in due course the patents were received and delivered by me to the owner of the land, Mr. T.B. Yarbrough of this City.

According to my understanding from Mr. Yarbrough, in the year 1902, before I had done any business for him, the late



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Major W.W. Flood of this City was his <sup>n</sup>counsel in connection with his land matters in Cottle County, and Mr. Yarbrough advises me that Mr. F.M. Maddox of your City was employed by Major Flood to act for him with the land office in adjusting the lines of his land, and further, that the surveying of the Fox surveys and the application to purchase them were made under Mr. Maddox's direction. At that time, Mr. Carroll, the County surveyor of Cottle County believed that a vacancy existed between the North line of the Dexter survey and the South line of Section 585, Block H., W.& N.W. sufficient for the Fox surveys, for the field notes under his official oath show this. If Mr. Yarbrough is correct in his recollection that Mr. Maddox was then acting for him in the matter of his transactions with the general land office, then I feel justified in assuming that Mr. Maddox then concurred with Mr. Carroll in his opinion.

Some years ago a suit was instituted by the White-Swearingen Livestock Company, which owns a large body of land adjoining Mr. Yarbrough's pasture on the South in Cottle County, to determine the location upon the ground of lines between its holdings and Mr. Yarbrough's holdings. In this suit I was employed to represent Mr. Yarbrough and I made a trip to Austin and spent at least one day and perhaps more with Mr. Ernest Von Rosenberg who was then Chief Draftsman in the General Land Office, in examining records, and to satisfy myself as to the facts, and to secure the necessary copies to support Mr. Yarbrough's side of the controversy. I had the fullest benefit of Mr. Von Rosenberg's extensive knowledge concerning matters in the General Land Office



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and his most whole-hearted assistance in securing what I needed. Mr. Von Rosenberg, as I understood it, was strongly of the opinion that Mr. Yarbrough's contention concerning the locations of the questioned lines was correct and these contentions held the location of the Samuel Dexter survey as now contended for by Mr. Yarbrough, and as indicated by the land office by the issuance of the patents for the Fox surveys. I arranged with Mr. Von Rosenberg to go to Paducah at the trial of the case as a witness, and to take with him original maps, sketches, field notes, etc. in the General Land Office, and which, under the law, cannot leave the land office except in the custody of an employee of it.

Later, I spent another day in the land office upon the same issue with Capt. George Spiller of Jacksboro, Texas who worked as the representative of the Houston & Texas Central R.R. Co. with Joe L. Long, State surveyor in making the re-survey of W. & N.W. Block H., in the spring of 1888, and was further confirmed in my opinion concerning the location of these surveys by information received from Capt. Spiller concerning the work actually done on the ground, and information received from Mr. Von Rosenberg, and records from the General Land Office, as to what was shown there.

This law suit between the White-Swearingen Livestock Company and T.B. Yarbrough was finally settled by written agreement, which matured into a judgment of the District Court of Cottle County. It is my information that a certified copy of the judgment of this suit has been filed with the records of the General Land Office. If my information on this point is in-



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correct, I will be glad if you will advise me and I will then obtain a certified copy of the judgment and send to you for your records.

Since the agreement settling the suit mentioned, and the judgment entered thereon, the White-Swearingen Livestock Company has not had, nor claimed, as I understand, any interest in any lands lying in Mr. Yarbrough's pasture North of the line fixed in said judgment, and which includes the Dexter survey and the two Fox surveys, lying between the Dexter and W. & N.W. survey 585, Block H.

As I now understand, Mr. F.M. Maddox is employed by the White-Swearingen Livestock Company to represent it in the fixing of land lines in its pasture, and the present complications between the land office and Mr. Yarbrough, as I understand, have arisen by reason of the activities of the White-Swearingen Livestock Company in fixing its lines. These activities of the White-Swearingen Livestock Company have led to the patenting to D.D. Swearingen of that County of about 133 acres of land lying immediately East of the A.W. Long Section and which is a part of the Samuel Dexter, if the Samuel Dexter be located according to the calls for survey 550 W. & N.W. Block H., and according to the sketch shown in the original field notes of the William Shelton when returned to the General Land office by J.P. Earle, District Surveyor of the Clay land district who located both the Shelton and the Dexter surveys.

Mr. Yarbrough had no hearing in the General Land office concerning the location and patenting of this D.D. Swearingen survey of 133 acres, and had no notice that any such file was made or vacancy claimed until after the issuance of the patent. I am strongly of the opinion that had Mr. Yarbrough's side of the



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controversy been presented to the land office, Mr. Swearingen's file would have been refused and the patent would never have been issued.

The receipt of Mr. Swearingen's file and the patenting of this strip of land involved the moving of the Dexter survey from the position shown by it on the map from 1902, the time of Carroll's field notes of the Fox, to about 1918, when the Swearingen patent was issued, - for about sixteen years.

In a letter to me from Mr. F.M. Maddox under date April 4, 1918, when Mr. Maddox was endeavoring to get me to advise Mr. Yarbrough to agree with the White-Swearingen Livestock Company concerning the location of land lines in Mr. Yarbrough's pasture, as the White-Swearingen Company, for its own interest, with reference to lands lying in its own pasture, wanted, he said that the Dexter has no call to locate it except its beginning call.

As I understand the original field notes of the Dexter survey, which are also contained in the patent of it, Mr. Maddox was in grievous error in this statement, and this error was, and has been, the cause of much confusion.

The original field notes of the Samuel Dexter survey made on May 23, 1874 by J.P. Earle, District Survey, are as follows:

"Beginning at the S.W. corner of a 640 acre survey for W. & N.W.R.R. Co. #585 in Block H;  
Thence S. 2321 varas corner;  
Thence E. crossing Pease river at 2321 varas corner;

Thence North crossing said river and at 2320 varas corner on South line of #550; (underscore mine).

Thence West at 421 vrs. past S.E. corner afore-said 585 and 2321 (varas?) to the place of beginning.  
(Underscore mine).



It will be noted from the above field notes that no marks of any kind whatever are called for in the field notes of the Dexter at its beginning corner.

The Dexter was located fourteen years before the re-survey made by Joe L. Long, State Surveyor in 1888 and the S.W. corner of 585, as located by Long's re-survey, cannot control in the location of the Dexter unless it be found that the location of said corner, according to Long, is identical with its original location.

In the original field notes of said survey 585, no marks either natural or artificial are called for at its S.W. corner, nor any other corner, and from this it must be considered that the location of said S.W. corner upon the ground cannot be determined from any calls in the field notes of that survey. Its location upon the ground could not be determined except by running course and distance from known corners in the vicinity of where Quanah is now, or by running course and distance from Section 783 in the same block. Therefore I feel very sure that I am justified in the assumption that the location of the Dexter cannot be determined by its beginning call unless the beginning call harmonizes with the other calls in the field notes of the survey. I shall explain in a later portion of this letter that the call for the beginning corner in the field notes of the Dexter as 585, as now recognized upon the ground, does not harmonize with the other calls in the field notes and conflicts with the configuration of the survey, and its location with reference to other surveys located by the same surveyor at the same time.

The course of the South lines of the South tier of sur-



veys in W. & N.W. Block H. in Cottle County lying East of the West line of survey 550 is accurately determined by monuments on or near Groesbeck creek in the vicinity of Red river near where Quanah is now, and where the surveyors who located Block H. must have begun, if they actually did their work upon the ground. The position of these monuments is now well known to all of the older surveyors who are acquainted with lands in that vicinity and I believe there would be no difference between them as to where these monuments are. Running the course West called for in the field notes of the surveys in that block from these monuments, and Thence South for distance, the location of the South line of the surveys 513, 514, 515 519 and 550 in W. & N.W. Block H. is definitely fixed. In fact, so far as I know, there is now no controversy between surveyors as to the South lines of these surveys run from known corners fixed by monuments in the vicinity of Quanah. As I gather from the field notes, all the surveys in Block H. lying East of a line projected North from the N.W. corner of the survey 550 were located from one land office, and all the surveys in said block lying West of such line were located from another land office. There seemed to have been some confusion at the time as to whether these surveys should be located from the office of the Jack ~~County~~ Land District, whose surveyor was W.A. Benson, or from the Montague Land District whose surveyor was A.L. Shoemaker.

As I understand the position now on the ground, all surveys lying West of a line projected North from the N.W. corner of Section 550 is determined by running course and distance from <sup>the</sup> gun barrel corner which is the beginning corner of section



783, according to the re-survey made by Joe L. Long, State Surveyor, on April 25, 1888.

This gun barrel corner, or the gun barrel itself is not called for in the original field notes of survey 783, whose original field notes are dated June, 1873 and filed by R.B. Thornton, Deputy Surveyor, Jack Land District, and are as follows, to-wit:

"Beginning at the N.E. corner of survey No. 783 at a stake in mesquite prairie;  
Thence North 1900 vrs. to a stake on the South bank of prairie Dog River;  
Thence W. 380 varas crossing Hutchings Creek in mesquite prairie from which a wild china tree 16 in. in diameter bears North 28 E. 50 varas, another bears North 9 W. 20 vrs;  
Thence South 1900 varas to a stake in mesquite prairie;  
Thence East 1150 varas crossing Hutchings creek 1900 vrs. to place of beginning.

The first time the gun barrel/<sup>is</sup> mentioned at said corner as a mark is in the field notes made by Joe L. Long, State Surveyor when he made his re-survey of Block H. in April 1888, and his field notes of survey 783 are as follows:

"Beginning at a gun barrel in ground and four pits, the N.W. corner of this survey from which a china marked X bears N. 23 E. 60 vrs., and do. marked V bears N. 41 E. 52 vrs;  
Thence E. at 1453 vrs. Baylor Creek at 1900 vrs. stake on side of sand hill for N.E. corner of this survey and N. W. corner of No. 732;  
Thence S. 1900 vrs. to the N.W. corner of survey No. 733 for S.E. corner of this survey and N.E. corner of 782;  
Thence W. cross Baylor creek a railroad 1900 vrs. to a rock mound for N.E. corner of survey No. 785, for S.W. corner of this survey;  
Thence North at 1293 varas, cross Denver & Ft. W. R.R. track 1900 varas to place of beginning.

I am sure you will note that Baylor creek is not mentioned in the original field notes of 783, and Hutchings creek is



not mentioned in the corrected field notes. I have concluded that these names apply to the same creek. The sand hill here called for at the Northeast corner, in the corrected field notes, is not mentioned in the original field notes.

If Baylor creek called for in the corrected field notes is identical with Hutchings Creek called for in the original field notes and its location was not changed between the time of the original field notes and the corrected field notes, then the Northwest corner of 783 is located 23 varas farther West than according to the original field notes. Further, it seems apparent that the wild chinas called for in the corrected field notes are not the same wild chinas called for in the original field notes, made fifteen years before, or, at any rate, the description of them is not identical. In the original field notes the first wild china called for is 16 in. in diameter and is ~~was~~ North 28 East 50 varas from the corner, and the original field notes do not show that it was marked, while in the corrected field notes the size of the wild china is not given.; it is marked X and is located 60 varas N. 23 East from the corner. In the original field notes a second wild china is located 20 varas North 9 W. from the Northwest corner, while in the corrected field notes the china called for marked V bears North 41 East 52 varas from the corner. I believe that the bearing trees called for at the Northwest corner of the corrected field notes of 783 are not the bearing trees called for at the Northwest corner of the same survey in the original field notes.

At any rate, it is not debatable that the gun barrel it-



self which marks this corner was not placed there by the original surveyor, Thornton. It may well be that the location of the South lines of survey 585, and the other surveys in the same tier, running West by course and distance from the gun barrel corner, when the person making the re-survey did not accurately know where the original Northwest corner of 783 was located may account for the discrepancy between the South line of survey 585 projected West and the South corner of 550 projected East.

In Mr. Maddox's letter to me under date of April 4, 1918, he said:

"As I understand it, there is no controversy about the location of the William Shelton survey or surveys to its East or South, or the location on the ground of the dividing line between the White-Swearingen Livestock Company, and T.B. Yarbrough, that boundary being fixed as far West as the West line of the J. Poitevent, Block I, by agreement and judgment, and copy filed in the general land office.

Not only that, but so far as I am advised, there has never been any controversy about the location upon the ground of the William Shelton survey. Now the William Shelton survey is an office survey. It was located by J.P. Earle, District Surveyor Clay Land District, June 4, 1874. The field notes of the William Shelton do not show who were the chain carriers, but on the same day, to-wit, June 4, 1874, Earle located the William Donohoe lying immediately East of the William Shelton, and afterwards floated, and whose Northwest corner is co-incident with the Northeast corner of the William Shelton, and in the field notes of the William Donohoe, B.L. Frost and D.G. King are named as chain carriers. It is my information that D.G. King is dead. At any rate I have been unable to find him, though I have inquired of old timers of Clay



County, and heard he was dead, but B.L. Frost is living. I know him well. I had some correspondence with him when the case of White-Swearingen Livestock Company vs. Yarbrough was pending and took his deposition in that case, and proved by him that he never was chain carrier for J.P. Earle, or any other surveyor in running out any lines in Cottle County. He was living in Clay County at that time. In the same case I proved by the deposition of L.C. Barrett now living in Amarillo, Texas, that in the year 1874 he and J.P. Earle officed together at Henrietta, Texas and that J.P. Earle did not, in that year, go on any survey <sup>ing</sup> trip West of the West line of Clay County. In June 1874, according to the records in the office of the Secretary of War at Washington, and the holdings of the Court of Claims of the United States, a state of war existed ~~the United States and~~ between hostile Indians who were constantly making raids into Harde- man County and the Counties West. That was before Gen. McKenzie fought a battle with them at the foot of the plains where he whipped them and killed all their ponies. It is not at all likely that Earle, who was not noted for headlong courage, would risk himself in Cottle County at that time.

On May 22, 1874, Earle located in Cottle County, the following surveys, to-wit:

B.B.B. & C. RR. Co. Nos. 1 and 2;  
S.P. RR Co. Nos. 1, 2, 3 and 4.  
The John Hoffer;  
The Cyrus Waterhouse;  
The Thomas Williams.

In the field notes of each of these surveys, B.L. Frost and D.G. King were named as chain carriers when, as I have noted above, the deposition of Frost, ~~has shown~~ shows that he never carried a chain in any surveying in that country. On May 25, 1874 Earle located



S.P. R.R. Co. surveys 27 and 28 and in the field notes, D.G. King and G.W. Frost are named as chain carriers.

On January 3, 1874, Earle located the Anthony Jones survey in Cottle County, and on the second day of that month he located B.B.B. & C. survey, certificate No. 814, and in the field notes of these surveys W.T. Young and George Slack were named as chain carriers. I know George Slack very well indeed. I have not seen him for some years, and have not inquired about him in about five years, but he was living at that time, according to my information, and it is my understanding that he never did any work as chain carrier for Earle in January 1874 and as above noted, L.C. Barrett testified that Earle did not leave his office in the town of Henrietta in that month. I believe that it is not debatable that Earle did not do the actual surveying in Cottle County indicated by the field notes above mentioned, but all of said surveys are what is known as office surveys. I am confirmed in this opinion by the fact that in none of these surveys does Earle call for any mark natural or artificial, on the ground to locate them. In some of them he did call for Pease river but these are ~~extracted~~ by merely passing calls, and such as might be made in the office by one having before him a map.

The William Donohoe survey was abandoned and its place on the ground taken by the Plemons survey. The field notes of the William Shelton are as follows, to-wit:

"Beginning at the Northwest corner of a league and labor survey made for William Donohoe, and on the S.B. line of a 640 acre survey No. 514 for the W. & N.W. R.R. Co. in Block H. and 600 vrs. East of the S.W. corner of said No. 514;

Thence S. with W.B. line of said



Donohoe at 500 vrs. Pease river and at 3275 vrs.  
corner in same;

Thence West at 3275 vrs. corner;

Thence North at 2100 vrs. said river and at  
3275 varas corner on S.B. line of No. 550 for afore-  
said W. & N.W. R.R. Co.

Thence E. with S.B. line of same at 775 vrs.  
and with S.B. line of 549 and 514 at 3275, the place  
of beginning."

As noted, no chain carriers are named in the original field notes of the William Shelton. Theretofore, and on the 23rd day of May, 1874 J.P. Earle had located the Samuel Dexter survey and in the original field notes of the said survey B.L. Frost and D.G. King are named as chain carriers. As noted above B.L. Frost is still living, and has testified that he did not do any such work for Earle in what is now Cottle County. The original field notes of the Dexter are copied in a foregoing part of this letter.

The field notes of the Shelton survey were filed in the general land office on July 6, 1874 and the field notes of the Dexter were filed in the general land office on July 25, 1874. With the field notes of the Samuel Dexter was a sketch showing that the South line of surveys 585 and 586 of Waco and Northwestern Ry. Co. Block H. were a projection West of the South lines of 549 and 550 and the maps in use in the general land office at that time showed the same thing. It has been noted from the field notes of the Shelton that for 775 vrs. the North line of the William Shelton is the same as the South line of survey 550, and from the field notes of the Dexter, it will be noted that for 421 vrs. the South line of the same survey 550 is identical with the North line of the Dexter. The sketch returned with the field notes of the Dexter shows the location of the Shelton and the scale will



show the distance, and, according to said sketch made by Earle at the time the field notes were made and returned by him to the General Land office, the Northeast corner of the Samuel Dexter shows to be due West of the Northwest line of the William Shelton, and a projection of the North line of the William Shelton also to be the North line of the Samuel Dexter. This proves conclusively where Earle intended the Samuel Dexter to be located with refernece to survey 550 and the William Shelton.

Until the re-survey of Block H. W. & N.W. was made by Joe L. Long in 1888, fourteen years after the location of the Dexter and of the Shelton, the maps in use in the General Land Office showed the South lines of 585 and 586 to be a projection West of the South lines of 514, 549 and 550 in the same Block and further showed that the Samuel Dexter was located exactly West of the William Shelton, and at a distance of 704 vrs. When Joe L. Long, State Surveyor, made his re-survey of Block H. in 1888, he disregarded the South lines of the surveys in said block as located from the known and definite corners in the vicinity of Quanah so far as those surveys in the Block West of the West line of 550 projected North are concerned, and in the location of the surveys in said block West of the line mentioned, was guided solely by his idea of the correct location of the Northwest corner of 783 where he established what has since been known as the gun barrel corner.

I have noted above that the description of this Northwest corner in the corrected field notes is not identical with its description in the original field notes. I am not clear and definite in my mind as to how Long fixed this Northwest corner in making



his re-survey. Surely he did not fix it from any marked objects called for in the original field notes, because no marked objects are called for. Surely he did not fix it by the chinas, etc. called for in the original field notes because his description is different from the description of them in the original field notes. He may have fixed the point by reference to Hutchings, or Baylor, creek.

Now calls for natural objects, such as creeks, are controlling where they are locative calls, and it is shown that the survey was actually made on the ground, or where the presumption that they were made actually upon the ground is not overcome by evidence showing that they were not; but when the survey is not made upon the ground such calls are not controlling as determined by our Supreme Court in the case of Sanborn vs. Gunter & Munson, 84 Texas 273 to 301, where it is shown that Mr. F.M. Maddox called for as large a natural object as the Canadian River without really knowing where it was. And, the supreme Court held that the call was not controlling but located the survey on the opposite side of the river called for.

In making the re-survey of Block H. a well known and definite corner of W. & N. W. section 365, as I now recall was found by Long and Spiller, and this corner, at that time, was marked by a post oak bearing tree and running thence South the distance called for in the field notes, the South lines of 549 and 550 will be found located as we contend they should be, and as they are established from the well known corners in the vicinity of Quanah. Capt. Spiller is still living and the location of the corner and identification of the corner proven by the post



oak can be made by him and we believe that the stump of this post oak has been found by Mr. Henry Dickson doing some surveying for Mr. Yarbrough in that vicinity.

It is a fundamental principle of boundary law that in the absence of evidence showing a mistake upon the part of a surveyor in the calls of his field notes, calls for course will prevail over calls for distance. In locating these surveys in Block H. W. of the W. line of 550 projected North, Mr. Long reversed this well recognized principle of boundary law and made the calls for course from the corners in the vicinity of Quanah and the post oak corners above mentioned, yield to the calls for distance for the N.W. corner of 783 and, as we believe, the confusion in the location of these surveys has resulted from the disregard of this well known principle of surveying by Mr. Long.

It is too clear for argument from the testimony of B.L. Frost and L.C. Barrett that the Dexter survey as well as the Shelton survey was an office survey. Corroborating the theory that the Dexter is an office survey, I call your attention to the fact that the original field notes do not call for any marked corners or bearing trees. I have heretofore called your attention to the fact that the original field notes of 585 do not call for any marked corners or bearing trees of its own, and that the location of that survey can only be fixed by running course and distance from known corners of other surveys miles distant. It is too clear for argument that Earle, who located the Dexter, only estimated the S.W. corner of 585 from the maps he had in hand which showed that corner to lie 1900 vrs. immediately West of the Southwest corner of 550.



We have noted from the field notes of the Dexter that there is only one call ~~intended~~ for survey 585, while there are two calls in the Dexter for the South line of 550, and that is the point where the East line of the Dexter running North touches the South line of 550 and again the S.W. corner of 550.

It must be conceded by everyone that when Earle located the Dexter he intended it to lie South of survey 550 and not to lie West of survey 550 and the next survey North of it. And, for the very sufficient reason that the location of the Dexter West of 550 and the survey lying North of it would create a conflict between the Dexter and 550 of 421 varas East and W. At that time the whole country was open and there was no possible reason which could be imagined why Earle should want to locate the Dexter in conflict with any survey. The country was not as it is now, covered with surveys, some of which overlap or conflict with each other.

After the completion of the re-survey of Joe L. Long in 1888, it appears that the land office, in moving North the sections of Block H. lying West of the W. line of 550 projected North in order to harmonize with the N.W. corner of 783, made the Dexter survey correspond thereto and thereby created a conflict of 421 varas East and West by 1900 varas North and South with Section 550 and a conflict of 400 varas East and West by 421 varas North and South with the survey lying immediately North of 550, a result, which we believe, is <sup>not permissible</sup> ~~reasonable~~ under the facts showing Earle's location of it.

Since there are no calls on the ground in the original field notes of 585 whereby its S.W. corner can be located and fixed



there is no reason, either in law or surveying, for the land office to make the Dexter occupy the same position with reference to 585 after it had been moved North to conform with the known corner of 783.

It is a well recognized principle of boundary law that the beginning corner of a survey has no more force or higher dignity than any other corner of it. This principle has been established by numerous decisions of the Supreme Court of Texas.

The rule of surveying as established in the boundary law, as I understand it, is that in determining where the locating surveyor who actually ran the lines of a survey upon the ground located the survey, the question to be determined is where such locating surveyor actually ran his lines upon the ground in locating it, and when that is determined that fixes the location upon the ground of the survey so located. But, upon the other hand, if the survey was not actually located upon the ground by the locating surveyor, but only platted in his office, as was the Dexter as well as the Shelton, it will have to be determined what land the State intended to grant in its patent. This question is determined by the field notes of adjacent surveys as they existed at the time of the locating of such office survey, the maps and plats in use in the office of the locating surveyor and in the general land office, the configuration of the office survey, and its relation to the other surveys in that vicinity, and its relation to other surveys made by the locating surveyor at the same time or about the same time. These principles are established by numerous decisions.

Now, Earle did not himself locate the surveys in Block H.



We have no reason to believe that Earle knew where a single one of those surveys was located upon the ground. We have every reason to believe and know that the maps and sketches to which he had access at that time, which werethe official maps in the General Land office and lithographed copie<sup>A</sup> thereof, showed the South lines of Sections 514, 549, 550, 585, and 586 to be as they are represented upon the sketch returned by Earle to the General Land office, with his field notes to the Samuel Dexter. However, Earle did know where he intended to locate the William Shelton and did know that heintended to locate it South of surveys 514, 549 and 550, Bloch H. and we further know from Earle's work and his field notes where he intended the Samuel Dexter to be located, and that was 704 varas West of the William Shelton and South of the S. line of surveys 550 and 585.

The Samuel Dexter survey was patented long before the change of the location of survey 585 and before that time the State had parted with all its title to the lands included within the field notes of the Samuel Dexter. No changes, after the patenting of the Dexter, in the location of 585 could effect a change in the location of the Dexter except that the patent thereto should be yielded up and cancelled and a new patent issued for the other location.

As I understand it, it is Mr. Maddox's idea, representing the White-Swearingen Livestock Company, that the Dexter should be located immediately South of 585 because its beginning corner calls for the S.W. corner of 585. To do this would violate two calls in the field notes of the Dexter for 550; and, would violate the configuration of the survey, and change its calls with reference



to 550 and bring it West of 550 instead of South as Earle intended it; would alter its position with reference to the William Shelton located by the same surveyor who located the Dexter, and cause a conflict of 421 varas East and West with 550 and the survey North of it for a distance of 421 varas North and South. This result is not permissible under the law. It has been held:

"In ascertaining the boundaries of surveys where all of the calls made by the surveyor cannot be strictly observed, as few should be disregarded as can be consistently done." Hill vs. Smith, 25 S.W. 1079; Phillips vs. Ayres, 45 Texas 601; Roberts vs. Helms, 20 S.W. 1004; Ripy vs. McCullough, 60 S.W. 974; Crouch vs. Texas & Pacific Railway Co. 107 S.W. 872.

Again, it has been held:

"Where, on an issue as to the location of a boundary line it appears that some of the calls in the field notes of the surveyor must be treated as mistakes, those should be selected as made by mistake, which will produce the fewest possible conflicts." Lyon vs. Waggoner, 83 S.W. 46.

Certainly Earle did not intend a conflict between the Dexter and 550, and the survey lying North of it. Earle intended that the North line of the Dexter should be a projection West of the North line of the Shelton. If the Dexter be located as Mr. Maddox contends, then a projection West of the North line of the Shelton would miss even the South line of the Dexter, ~~by a~~  
~~distance of 1479 varas~~ Can this result be permitted when the Dexter and Shelton were located by the same surveyor at the same time? In short, the location of the Dexter in accordance with Mr. Maddox's contention would violate every call in its field notes except for the Southwest corner of 585 and would violate every act of the locating surveyor of the Dexter done about the same



time with other surveys, and we do not believe the law will admit this.

I have concluded that Mr. Maddox and Mr. Carroll, the Surveyor of Cottle County were correct in 1902 in their construction of the location of the Samuel Dexter so as to leave room between it and survey 585 according to Long's re-survey of Block H. for the two Fox surveys, and this was the position that the Dexter has occupied in the records of the land office from 1902 until about April 1918.

That the land office recognized the location of the Samuel Dexter to be as we contend it is, is proven by the fact that it caused the North and South lines of the A.W. Long survey to be shortened from 1900 varas to 1468 varas., which would be the amount of conflict between the Dexter and said Long, if the Long be located where Earle located it and intended it to be, and when Mr. Maddox persuaded the land office that the Dexter should be moved North to harmonize with 585, according to Long's re-survey, would violate all of the other calls in its field notes, and thereby left room for the D.D. Swearingen survey of 133.3 acres lying East of the Long after the removal of the Dexter to a position it had never occupied and where it should not be.

As I understand the facts in this case, our contention as to the correct location of the Dexter is not controlled by the fact that such location would cause a conflict with the surveys in the Poitevent Block, which seem to have been moved to the North to conform with Long's re-survey of the western part of Block H. nor by the fact that if the Poitevent should be moved South to conform to the true location of the Dexter a conflict would result



between the Poitevent and the Forsythe blocks, and the Forsythe Block is a much later block, made by a different surveyor from a different land office. ~~and~~ It is probably true that if the White-Swearingen Livestock Company was as diligent in ascertaining the correct location of the lines of its own land as it has been to attempt to ~~disturb~~ the lines of Mr. Yarbrough's lands, it would discover that in its pasture is a very considerable vacancy which the State is entitled to, and of which the Texas school children should get the benefit.

I cannot see where the White-Swearingen Livestock Company or Mr. Maddox as its representative can be interested in the disturbance of Mr. Yarbrough's land lines. This Company has no interest whatever in any of the lands lying North of the agreed line between its lands and Mr. Yarbrough's lands definitely shown in the judgment of the District Court of Cottle County, copy of which has been filed in your office. It is quite immaterial, so far as its interests are concerned, whether the land lying West of the Shelton is called the Dexter or Poitevent, or as to whether the land lying West of 550 and the survey North of it is called the Fox or the Dexter. It is of importance to Mr. Yarbrough that his lines be not disturbed as he has paid to the State every penny owing for every acre of land lying North of the agreed line between him and the White-Swearingen Company.

Nor, can I see, since the State has been paid for all of the land lying North of the agreed line between the White-Swearingen Company and Mr. Yarbrough, where the State is interested in disturbing Mr. Yarbrough's lines by cancelling patents which it has already issued, whereby it would be compelled to issue other patents for the same area of land in the names of other persons.



Under all the circumstances in this case I am strongly convinced that the location claimed by us for the Dexter, to-wit: West of the Shelton and South of 550 for its correct location, and that being so located there is room between the Dexter and 585 for the two Fox surveys, if 585 be located according to the Long re-survey, and so believing, I cannot advise Mr. Yarbrough to deliver up the Fox patents for cancellation, and he is not inclined to do so.

I feel strongly convinced that Mr. Maddox's present contention concerning the location of the Dexter would not have been so convincing to the land office had all of the matters hereinabove noted been called to its attention.

My theory of the correct location of the Dexter survey and the facts upon which it is based are fully set out in a letter from me to Mr. Maddox of date April 23, 1918, which he must have received before his letter to you of date April 26th. In that letter I called Mr. Maddox's attention to the same matters which are called to your attention in this letter. Did he show you this letter? If he did not, this is the first time you have been advised of the facts upon which our theory is based.

I have had transactions with the General Land Office during every administration since the early part of the year 1884, and under all of the Commissioners, including yourself, I have always found the Land Office under all these administrations, to be judicial in temperament and fair in practice, and I have found this to be the case during your administration. I feel sure



that you do not want to pass on the matter now before you except upon a full hearing from both sides. Mr. Yarbrough did not have any hearing before your office before the issuance of the patent to the D.D. Swearingen 133.3 acre survey which is occupied by the Samuel Dexter, if the Samuel Dexter be located according to the plat Earle returned to the General Land office when he sent in the field notes of the Dexter and Shelton. We believe that it would be more on consonance with the original location of the Dexter and Shelton for the Land office to call upon Mr. Swearingen to return the patent he has to this 133.3 acres of land lying East of the A.W. Long and offer to return the money paid therefor, than it is to call upon Mr. Yarbrough at this time to return his patents to the Fox for cancellation, and to receive back his money.

I feel sure that the Land Office has had no intention of taking sides with either part in this controversy between White-Swearingen Livestock Company and Mr. Yarbrough and I am more than ever convinced that your action is due to having heard only one side instead of both sides of the question.

At the very least, we cannot see where anybody would be injured by allowing White-Swearingen Livestock Company <sup>and</sup> Mr. Yarbrough to settle their controversy in the Courts instead of giving The White-Swearingen- Livestock Company the powerful aid of the Land Office by changing lines recognized as correct for more than sixteen years.

I apologize for the extreme length of this letter but upon reading it over I cannot see where I could have left out any part of it and made my position clear.



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I will be glad to hear from you further with reference  
to the matter.

Very respectfully,

W. L. Beville,

GEM:h

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