S.H.COWAN I.H.BURNEY

COWAN & BURNEY
LAWYERS
FORT WORTH, TEXAS

RECEIVED
JUN 29 1913
Referred to Comr.

1627

June 21, 1913.

Hon. J. T. Robison,

Austin, Texas.

Dear Sir:

We have received a letter from the Attorney General or rather his Assistant Mr. Smedley, advising us of the applicationmade by your department to the Attorney General for his advice on the matter of the vacancy claimed by Morgan. We have confidence in the decision already rendered by your department and we assume that that would be final in so far as awarding the lands are concerned. It occurs to us that there has been no sufficient showing to justify disturbing the conditions in Dickens Co. in connection with this matter. We of course realize that this matter will be decided by you and the Attorney General on a high plane regardless of anything we say. We are much impressed, however, that to allow this vacancy and sell this land would be wholly inequitable and being inequitable it seems to us it would be iniquitous. When Mr. Cowan returns, if not before, we will be searching the authorities for a case parallel to the one in question. If Mr. Morgan or his attorneys submitted any decision of our courts either to you or the Attorney General, concerning this matter, we think it only fair that we should be referred to those decisions. This would not only be fair, but it would save us work and put us on the lead to the authorities and we might be of benefit in furnishing light upon the subject. Anyway we have thought it appropriate to send you copy of the preliminary letter which we have written the Attorney General.

Very Truly,

Cowan & Burney

IHB

Counter 20985

June 20, 1913.

To the Honorable Attorney General,
G. B. Smedley, Assistant,

Austin, Texas.

Dear Sir:

We are in receipt of yours of the 19th. Replying thereto we beg to advise that we are general attorneys for the Matador Land & Cattle Co. and in that your informationis correct. Your letter serves notice upon us as such attorneys that an application has been filed with you by or at the instance of attorneysrepresenting persons who have applied to purchase supposed vacancies covering the ground now occupied by the Blanco County school lands in Dickens County, asking your opinion as to whether such vacancy exists and whether or not application for the land would be granted or suit filed by the state to establish the vacancy.

This is an old question and has been thrashed out several times, and our Mr. Cowan, who will be absent in New York for the next two weeks, represented the Matador Land & Cattle Co. in a suit here in the federal court involving that question. He went into the question very thoroughly while the writer did not. We would prefer, therefore, to have you await his return for final answer to your letter. The writer, however, willmake some comments and inquiries with reference to the situation at this time.

We take it from what you say that you would like to have us file a brief upon the question presented, authorities etc. It occurs to us in this connection that if the parties representing this application have filed a brief or authoritieswith you, it would be appropriate to furnish same to us in order that we might reply thereto. If you will furnish us any argument, brief or authorities to which the applicants have beforehand the writer will take pleasure, pending the return of Mr. Cowan, in running down the authorities and aid your department in any way possible to arrive at the correct conclusion about this matter. We will await your answer to this suggestion and also to the suggestion that the matter go over until Mr. Cowan's return.

Independent of any legal and technical ground for this application, we should like to stress the point that the state has already sold every acre of ground in that vicinity, and that the state, more particularly than with individuals, it occurs to us, there ought to be a most thorough consideration of the moral or equity viewpoint. We feel certain an adjudication of this question by a fair tribunal will leave the land and its ownership just where the land office has placed it, and that no vacancy will be opened up.

Let us assume, however, for the present and before investigation, that upon some strictly technical and legal ground Blanco Co. or its assigns can be divested of the title to the lands for which they have paid. If that should turn out to be the status of the matter, then it occurs to us that it is a situation where the great State of Texas would not want to act in aid of such a result, if by no action such result could not follow. It has surely been a situation where the Legislative Department would have seen fit to validate these titles by a validating act such as it has passed in many instances, if the matter

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had been called to its attention. Therefore in our first communication upon this subject, we appeal to you to consider the equities of the situation before setting in motion any procedure that can lift the state's seal of security from these titles. Representatives of the state in the land department if not in your department have heretofore taken this view of the matter. In making this suggestion we again repeat, however, that we do not know of any technical legal ground which by your proceeding could alone be brought to life and action which could destroy most unjustly the equities of the situation which no one can deny We simply ask why should these titles be subjected to such a contingency?

You state that it is the theory of applicants that the office survey was made of the Blanco Co. school lands at a time when the land office recognized the western or four mile position of Sur. 1, R.T. Co. instead of its eastern or 1 mile position, and that this office survey gave these lands an immovable position. In the outset and before any final communication to you, we will say that neither of these positions appeals to us as being true. We doubt if it can be said that the land office was recognizing this four mile position at all. It is true that some agent of the land office by an unauthorized spoliation, after securing the assent at long range of Mr. Spiller upon some representation of what character we know not, made an interlineation in the field notes of this survey 1 R.T.Co. which if legal would have placed it four miles west instead of one mile ~~xxxx~~. Of course this unauthorized spoiliation of the field notes after they were filed could not change the location of the land. When the original field notes were filed the land was segregated and even a regular return of the field notes for correction under due safeguards could not have changed the location of the land. Adams v. Railway Co., 70 Tex. 252. Surely, then, this interlineation made without any semblance of right and without the withdrawing of the field notes, and either made by mistake or on account of some mysterious motive that has not been explained, could not change the location of the land. Of course Mr. Spiller as soon as he learned that he had been imposed upon sent down a request to restore these field notes to their original condition and this was in a very short time. Besides, we find in our office a plat from J.H.Kemble certified to Sept. 7, 1879, showing that he did not consider Sur. 1 R.T.Co. to occupy the western position. This was even less than a year after he had filed his field notes to the Blanco Co. school lands. So we doubt if it can be affirmatively said that the land office or the surveyor of the Young Land District were really recognizing the western position of these lands in the interval during which this spoliation of the field notes remained without correction. It may be true that there was some plat in the land office during that time showing such western position and that some employe in writing up the patent or otherwise may have copied these field notes with this four mile amendment in same, but we doubt if at this time, a third of a century later, it can be said that there was any real recognition of the western position of this survey 1 R.T.Co. How can it be said that the land commissioner ~~xxx~~ ever recognized this spoliation of these field notes? There was a plat on file from Mr. Hays when he returned his field notes to the R.T.Co. showing that he placed it in the eastern position, so there were plats on file showing both positions, and Mr. Kemble's plat in 1879 and before the recorrection of these field notes, was on file showing he and the land office were recognizing the eastern position of this survey 1 R.T.Co.

On the other point it seems to us that it is very technical and highly metaphysical to contend that because somebody in the land

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office or some surveyor may have been recognizing the western position of Sur. 1 R.T.Co., that therefore these Blanco County school lands became eternally fixed at that hypothetical position. It seems to us much more practical and in consonance with good sense to say that Blanco County school lands will rest in connection and in harmony with the real and true position of Sur. 1 R.T.Co., or rather Sur. 3 T.W.N.G.Ry.Co. for which the Blanco County school lands field notes call. We doubt if it is proper to talk about its sliding back and forth, sliding out west with the base survey on which it rests, and then not sliding back with it. We contend that it never slided west and never in truhh existed in the western position.

But Blanco County under the constitution was entitkd to a part of the public domain. It has never occupied the position of a private individual or corporation acquiring his interest in the public domain by purchasing the certificate. It has occupied the position of owning under the constitution an interest in the public domain. It and the state has agreed as to where these lands are located. We claim that they were originally located in the eastern position as a matter of law, and logically, and that they had never moved therefrom. But let us suppose they were moved west in a sort of theoretical metaphysical sense as per the contention of applicants. They were never fastened down to the western position by any actual marks on the ground or by any actual survey. Later in 1883 the county judge of Blanco County comes in and undertakes to settle this matter with the state and asks for a resurvey of all or a part of his county's lands. A resurvey was then made of part of the lands and they were fixed absolutely on the ground in accordance with the eeastern position. Later on and before these applicants made their "drive" for land, the state had had these lands surveyed and staked out in the locality where the land office had recognized them to be for more than a quarter of a century. We believe such facts and such course of history will hold these lands in their position and that Blanco County which owned a part of the public domain shall notm be forever deprived of its rights therein.

We shall be glad later on to investigate this question further and run down the authorities, but in the meantime surely we will be furnished with any authorities that applicants may have presented, because presumably our services in the matter willbe for the purpose of aiding your department in the correct solution of the situation. In the meantime, however, we again appeal to your sense of justice and equity to know why, and we repeat again why should these titles be opened up to a possible unrighteous and inquitable defeat by an action of the land office department, when it rests upon the present right and justice of the situation no such evil can befall these titles. Even an individual could not look well in such a light. We do not believe the state ought to occupy a different position.

We did not intend to comment at such length at this time. We thank you very much for your communication and beg to assure you that it shall be our desire to furnish you all the light we can upon this matter and aid in any way we can in arriving at a correct solution of the question that has been presented to you.

Very Truly,

IHB

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Cowan & Burney
Correspondence.
6/24/1913. 6/23/13-
Dickens Co

6/23/13.

County 20989

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