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JAN 7 1920
Hon. J. T. Robison, Commr G.L.O.

Austin Texas, January 7, 1920

Referred to Map
in Texas.

See Letter to
Foster & Foster,
Jan, Oct 8, 1920
slip for SW
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Dear Sir:-

In 1911 you as Commissioner sold to me certain
scrap lands in the N.W. part of Edwards County-being S.F.10011-10016

These lands are situated along the East sides of G.C & S F.
R.R.Co.Blocks B.D.& L.

Mr.R.S.Dod,state surveyor,has recently filed in your office
a report of a survey he has made in these blocks for the owners of
the larger part of these blocks. He has given these surveys ex-
cesses,which if allowed,will wipe out my surveys.

I protest against such a construction of these blocks and
wish to submit my reasons why you should now take no action towards
recognizing such a construction of these blocks.

I sold the lands referred to -reserving the mineral rights
and I am liable on my warranties and I am entitled to be heard on
the matter.

When these lands were sold to me you and your then chief
draftsman took the position that Blocks B.D & L.must be constructed
by course and distance from the S.W.corner of C & M Block A in Val
Verde County-disregarding the calls for the other surveys.

This position was based on the circumstantial evidence in the
Land Office which showed that Barton,the original surveyor,could
not have surveyed the surveys in these blocks,and in addition Mr.R
M.Thomson who was with Barton told you what he did in the field in
locating these blocks.

The sales to me were made on the assumption that Blocks B,D.
and L.were office surveys. If this assumption was correct-and
it was,this is the proper construction under the decisions of our
Supreme Court.

THE LAW.

The law makes no provision for surveys made in blocks and
each survey must stand on its own facts.

Where it is shown a survey was made and given an excess the
survey will hold the excess,and where the calls of a patent call
for natural or artificial objects and it requires an excess to go
to those objects the court will presume a survey in the absence of
evidence to the contrary and give the survey the excess,but where
it is shown that no survey was made the survey will be put in by
course and distance,regardless of the calls for natural or artifi-

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cial objects. Boon vs Hunter 62 Tex.592,Phillips vs Ayres 45 Tex. 601,Johnson vs Archibald 78 Tex.102,Bell vs Preston 47 S.W.R.375.

For a practical application of these rules see N.Y.& Tex.L.00 vs Thomson 83 Tex.169,Sanborn vs Gunter 84 Tex.273.

Many lawyers and some judges do not draw a distinction between a case where a survey is shown not to have been made and one where a survey is presumed in the absence of proof that it was not made,but the Supreme Court always draws this distinction. That is the very gist of this whole question.

There is another feature of the law that I wish to specially call to your attention and that is as to the intention of the surveyor. A surveyor cannot,without making a survey,call for other surveys and give his survey an excess.

In Blackwell vs Coleman County 94 Tex.216 (which was a certified question) the Supreme Court said:

" The question seems to have been whether or not calls for course and distance or those for lines of older surveys should prevail. Upon this question,we are of the opinion that the testimony of the surveyor stating his intention in making the survey was not admissible. In determining the location of the land in such cases,the courts seek to ascertain the true intention of the parties concerned in the survey,but the intention referred to is not that which exists only in the mind of the surveyor. It is defined as that which may'be gathered from the language of the grant' or as 'the intention apparent on the face of the grant' (Hubert vs Bartlett 9 Tex.104) or 'the legal meaning of the language of the patent when considered in the light shed upon it by the acts constituting the survey' (Robertson vs Mosson 26 Tex.251,Robinson vs Doss 53 Tex.507,Brown vs Bedinger 72 Tex.247,Richardson vs Powell 83 Tex.591.) When reference is made in the decisions to the intention of the surveyor,the purpose deduced from what he did in making the survey and description of the land is meant and not one which has not found expression in his acts. Grants are issued by the state and accepted by the grantees upon the acts done by the surveyor in identifying and describing the lands,and the rights of both parties are to be determined by the legal effect of those acts and not by intentions which cannot be deduced from a ^{consideration} ~~construction~~ of the description in the grants with the aid of the facts consti-

tuting the survey upon which they are based.

Hence, if the intention of the surveyor appears from his fieldnotes and his acts done in making the survey, his evidence to prove his intention is superfluous, while if it does not so appear it cannot control or affect the grant."

It is only where you can follow the foot-steps of the surveyor, or where a survey is presumed in the absence of proof that a survey was not made that the excess is allowed. you will find no decision of our Supreme Court that holds the contrary.

THE FACTS.

Cassin put in C & M Blocks A and B in Val Verde County—running over into Edwards Co. and C.C.S.D. & R.G.N.G.R.R.Co. and H.E. and W.T.R.R.Co. Blocks East of them in Edwards and some surveys N. of all these blocks in Sutton Co. in 1880—commencing in January and ending in September or October of that year. This is shown by his fieldnotes.

He surveyed these blocks or rather he ran certain base lines and made certain corners and gave bearings and he gave the surveys excesses, but the excesses vary in amounts.

Most of his corners and bearings have been found and identified. I have seen three of his corners. When he made a corner he did a good job and gave bearings well marked and left no room for any doubt.

On your maps you have a small circle marked around his corners where he called for bearings, which I understand is the practice, and I will not here enumerate all of these corners.

On the South side of C & M Block A he called for bearings at the S.W. corners of surveys 2, 3, 4 & 5. On the West side of C.C. S.D. & R.G.N.G. Block he called for bearings at the N.W. corners of surveys 149, 150 and 151. These are all the bearings called for by Cassin joining block B, his other calls being for rock mounds.

Mr. Dod found all of these enumerated corners. He began at the S.E. corner of survey 1 C & M Block A and ran the line East to N.W. corner of 149 and he found it 13 miles and 685 varas.

My surveyor, J.T. Gray began at same point and ran S. and E. and N. to N.W. corner of 151 (which is 2 miles S. of N.W. cor. 149) and he found it to be 13 miles and 695 varas. They both made

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accurate measurements and that is as near as any two surveyors could make it. Saunders in surveying on the North found this same distance 13 miles and 755 varas.

So the space between these two points is at least 13 miles and 685 varas. The space called for in the fieldnotes is 13 miles, Saunders gives surveys 60 and 1 in Block A an excess of 68 varas.

Barton put in Blocks B, D, & L, and F, and K East of them in Edwards Co. If you will examine his fieldnotes in all these five blocks you will find that he purports to have surveyed 354 sections from October 5th to 25th 1880, a period of 21~~0~~ days.

The application for the surveys in Block B, which is in Bexar S-32050 was filed with the Bexar District Surveyor on September 25th 1880. I have not examined the applications for the other four blocks but assume they were filed at the same time. They are doubtless all on file in your office.

Barton in his fieldnotes called for bearings somewhat like Cassin but more of them. They are indicated on the maps and I will not here enumerate them.

No one has ever found and identified a single one of his corners, and you have on file reports of some 5 or 6 or more different surveyors on their efforts.

Pickens claimed to have found ~~some~~ several of Barton's corners but he failed to identify them and you rejected his report.

Mr. Dod has made the greatest effort of any surveyor to find and identify his corners and he failed.

The reason they have never been found is that Barton did not, in fact, make them except perhaps a few on the West side of blocks B and D. If found they could not change the result.

Mr. R. M. Thomson had blocks B, D, & L, and F, and K located for the owners of the certificates and he was with Barton when he did what surveying was done in locating these five blocks—a total of 354 sections. He says that Barton began at the S.W. corner of C & M Block A and ran a few lines and then ran S 45 E 3 or 4 miles and came on in to San Antonio and made out his fieldnotes. That he had to haul water from Beaver Lake—about 9 miles from his beginning point and was about to run out of water and that he was also in a hurry to get his fieldnotes approved and recorded before Na-

varro went out of office at the November election in 1880.

Should you wish to question Mr. Thomson I will have him appear before you and make a statement or I will procure his affidavit if you wish it. He made the statement to your chief draftsman when my applications were under consideration before the sales were made to me.

The fieldnotes of the surveys in C & M Block A were filed in the Land Office in June 1880.

The fieldnotes of the surveys in Blocks B.D. & L. were filed in the first part of December 1880 and all the fieldnotes in these three blocks were filed in the Land Office before those in C.C.S.D & R.G.N.G. Block were filed. Surveys 149, 150, 151 and 152 were surveyed by Cassin August 24, 1880 and the fieldnotes were approved by Navarro October 28, 1880 and they were filed in the Land Office December 14, 1880.

The indications (from the dates shown by the fieldnotes) are that Cassin was still surveying in Edwards and Sutton Counties and had not returned any fieldnotes-except to the surveys in C & M Block A before Barton went out there.

You cannot assume that Barton had previously done the surveying for your records show that he had just been appointed Deputy and a question was raised about his authority to make these surveys.

There is no ambiguity in the fieldnotes of Barton's survey. It is only from a survey on the ground that an ambiguity arises.

ARGUMENT.

I have stated all the material facts bearing on the question. They bring the matter within the rules of law above quoted.

A survey cannot be presumed in the face of these facts. Barton purports to have surveyed 354 sections-1416 miles in 21 days. He described bearings with apparent accuracy at 57 corners in blocks B.D & L in Val Verde County alone. It would take him on an average of at least 29 minutes to make a corner and measure off and mark the bearing tree. If he had marked the trees with a letter instead of an X it would take him 30 minutes.

It would take him at least three days of the 21 days to have made the corners in Val Verde County.

His bearings were what is now called camouflage. He evidently put them in in order to get his work by the District Survey-

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or and Land Office.

In determining whether a survey was made the courts will look to the dates of the various fieldnotes and the circumstances surrounding the survey. See *McSpadden vs Vannerson* 169 S.W.R.1079.

As said by Judge Williams in *Blackwell vs Coleman Co.* the court will look to the calls in the patents and take into consideration what Barton did on the ground in arriving at the intention and pay no ^{at} attention to the intention of the surveyor except as shown by his fieldnotes and what he did on the ground. The calls in his fieldnotes show that it was his intention to locate the surveys one mile square. His calls for Cassin's surveys were made by conjecture and were not locative calls. He could not have known where those surveys were located on the ground. As a matter of fact Cassin's surveys on the East had not been recorded before Barton left San Antonio to do the work. He could not have known of Cassin's excesses.

It is clear that he saw Cassin's fieldnotes before he made out his fieldnotes. He must have seen them in San Antonio after he had returned from the field. The fieldnotes indicate that both Cassin and Barton were pretty busy making out their fieldnotes just before Navarro went out of office.

It is immaterial what Barton's intentions were when he made out the fieldnotes. He could not by his intention give the surveys an excess when he had not surveyed them.

In *Johnson vs Archibald* 78 Tex.102 the Court said:

" It follows therefore that whenever the evidence is sufficient to induce the belief that the mistake is in the call for natural or artificial objects and not in the call for course and distance, the later will prevail, and the former will be disregarded."

Mr. Dod suggests that the beginning corner is of no more importance than any other corner and that it would be as good an idea as any to reverse and begin the block on survey 15 Block B where it calls for Cassin's corners on the East. He also in his report calls attention to the fact that surveys 1-15 purport to have been surveyed by Barton in one day.

You will find no decision of any court authorizing you to locate a block of surveys by reversing the calls. Reversing the calls applies only to individual surveys, and only to such of them

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as have been surveyed or partly surveyed or such as are presumed presumed to have been surveyed.

The object of reversing the calls of a survey is to try to follow the foot-steps of the surveyor. It is useless to try to follow the foot-steps of the surveyor when he made none. Each survey must stand on its own facts. The block is built up from the S.W. corner of Block A and to construct survey 15 you must do so from the beginning of the block.

In Bolton vs Lane 16 Tex. 112 the court said: "What are boundaries is a matter of law; where they are is a matter of fact."

Mr. Dod has shown himself to be a good surveyor but a very poor lawyer and not much of a logician. He calls attention to the fact that Barton purports to have surveyed surveys 1-15 in one day and he suggests that you reverse the calls to locate his foot-steps.

The whole question is a matter of law but to determine the question you must ascertain the facts as to the surveying.

you may contend that the question as to whether Barton actually made the surveys on the ground is a matter for the courts.

your department passed on it in 1911 and if you had the right then you have it now. Your department passed on it nine years ago and held that Barton's Blocks must be constructed by course and distance beginning at the S.W. corner of C & M Block A.

You had all the facts before you then that you have now. Dod has added nothing new but has only confirmed those facts.

The only change is in the personal of chief draftsman.

In the meantime your construction of these blocks has been acted on and many of the adjoining surveys to Block L have been surveyed out and claimed under that construction.

So far as I know or believe Whitehead Brothers are the only ones who contend for a construction of these Blocks with an excess. They own the greater part of Blocks B and D and part of Block L in Val Verde County and a mile or two in Edwards County of B and D

A number of surveys South and S.E. of Block L have their connection with these blocks as constructed by course and distance.

There is on file in Bexar S-35229 a connection by McNicol connecting the S.E. corner of survey 1 C & M Block A with the S.E.

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