

GARZA CO. RLD. SK. # 7.

(Flat Folder)

Correspondence Relative To The Seniority Of Block 5,
G. H. & H. R.R. CO. And Block 8, H. & G. N. R.R. CO.
By W. D. Twichell, Apr. 13 - 15, 1905.

counter 45227

W. D. TWICHELL,
SURVEYOR.

Texas Land Boundaries a Specialty.

*See Carbon copy
of letter to Twichell
in file 6124,
re: land chet Blk no. 5,
it is superior to this
Blk. no. 8.*

Amarillo, Texas, April 13th 1905.

Hon. John J. Terrill
Austin, Texas.

Dear Sir:-

I herewith submit corrected field notes for surveys 7, 4, 5 & 6 which appear to cover a part of block 5, and ask consideration of the following facts which indicate that the surveys in block 9 are superior to the surveys in block 5. Parties owning the land in question have acquiesced in the fence line, shown on map, as the north boundary of block 5 and the south boundary of block 8; and correspondence between the owners of the patent lands shows that the German corners under the fence have been accepted as the true line between the blocks for five years or more. For this reason parties on the ground will be disturbed less if block 9 is found to be superior to block 5.

The act providing that counties which lost their organization by reason of Indian incursions etc., should be, for judicial purposes, attached to the nearest organized county, and remain until again legally organized (act of Nov. 5th 1875.) does not provide that the counties are so attached for surveying purposes, unless a construction is placed upon the clause providing for recording instruments, and this duty would not include taking surveys in the field. This act is in conflict with the statute passed in *Kimmarle v H & T C* which has no occasion to notice the act passed May 25th 1871 providing for the appointment of county surveyors for more counties and by express provision repealing all laws in conflict. (Gen. L. 1871 pp 132-133.)

*McF
Law
5/15/05*

Lewis T. Valentine was regularly appointed under this statute (which does not provide for surveying county lines or transcripts of records; and repeals all laws in conflict) and hence he became the legally authorized surveyor for Young Land District (Boon was appointed surveyor for Jack the same way and his official capacity was fully recognized in *H & T C* against A. A. De Barry. In 1872 Lewis T. Valentine is appointed under statute approved May 25th 1871, and he was publicly recognized as the official surveyor for Young Land District by De Barry, a Deputy Surveyor for Jack the same year, who corrected his field notes in my presence, to be approved by Valentine. After they were drawn to be approved by the Jack District Surveyor; and Valentine is publicly recognized by his field notes being duly filed in the Land Office. It therefore appears that Valentine is, under any circumstances, de facto surveyor for Young Land District at this time, and his acts, publicly recognized are presumed to be regular and as binding as a surveyor's signature.

counts 152-0

W. D. TWICHELL,
SURVEYOR.

Texas Land Boundaries a Specialty.

Hon. John J. Terrell, # 2.

Amarillo, Texas.

and that his surveys being prior will be superior. But it does not appear and nothing I can find will indicate that Valentine is not surveyor de jure as well as de facto.

Many corroborating facts and decisions might be cited but in this letter I am calling attention to the facts which I hope will enable your office to reach the correct conclusion as to priority in these surveys.

Since the Commissioner of the General Land Office in 1873 was familiar with all the facts and recognized Valentine as duly authorized; and since the District Surveyor of Jack Land District did not at that time or afterwards attempt to locate lands on the territory occupied by block 9, it appears that those best informed and most interested in this matter, conceded that Valentine had full authority to approve the field notes for block 9, the case of Valentine v Benson was decided in Jack District court Sept. 29th 1873, about two months after the survey of block 9, and the field notes of block 9 were filed in the General Land Office Oct. 2nd 1873 without objection, before or after, from Benson. From these circumstances it appears that Valentine's actions were conceded to be regular and with full authority. The Commissioner of the General Land Office necessarily knew the circumstances at that time and can not be presumed to have recognized a survey unless made with due authority. All these circumstances taken together make Valentine at least surveyor de facto for he is recognized by the public as the legally authorized surveyor, and his authority to locate block 9 not being called in question at the time, and the indorsements on the field notes in question, show that subsequent land commissioners have accepted the Valentine field notes as duly authorized. The people on the ground have accepted the surveys as having been made by the proper authority and everything connected with this survey has recognized it as duly authorized, hence Valentine is, under the most critical ^{analysis} necessarily surveyor de facto, and the land office could hardly reverse its constant position for a period of years and now insist that Valentine had no official authority, especially when he is duly appointed under a statute which repeals all laws in conflict.

The various validating acts, and holdings of our courts follow a uniform policy of curing all questions affecting the validity of land ~~locations~~ locations made at this time, the surveyors being compelled to labor under all the disadvantages of a wild frontier; and this policy is sustained by the holding ~~was~~ in the case of Kable v H & T Co.

counter 45 231

W. D. TWICHELL

W. D. TWICHELL
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W. D. TWICHELL

Garza Co Rld Sk 7

no change in result, for Jack District Surveyor was surveyed for title for
the lands in question.

from this it seems there is nothing in Kinsale v. W & T Co which can di-
rectly or indirectly determine the official capacity of Valentine, and
under the provisions of May 25th 1971 he is clearly surveyor de facto for Young
Land District.

Yours respectfully,

counter 45232

W. D. Twichell

W. D. TWICHELL.

W. D. TWICHELL,
SURVEYOR,

Texas, Land Boundaries a Specialty.

4710-976

Amarillo, Texas. April 17th 1905.

Hon. John H. Carroll,

Austin, Texas.

Dear Sir:-

I am enclosing herewith requested field notes for the balance of block 9. Attached to section 3 will be found a brief statement summarizing the main points which I have been able to find bearing upon the superiority of block 8 and block 5. A summary of all the facts indicates that Valentine was surveyor de jure for the short time which he served and the Jack District surveyor was surveyor de facto. ^{That} These surveyors never attempted to locate certificates in the same territory and that in *Kimmarle v F & T Co* the court held the Valentine appointment immaterial because it was irrelevant to the questions before the court, that Jack District surveyor was surveyor de facto to locate the *Waco* and *North-West* certificates and hence the court held he had authority to do so. That placing Yours in Jack till 1875 is dicta. That conditions on the ground have shaped themselves to the continuous holding in the *S. L. Co.* of the superiority of block 8 and to reverse this holding would work a hardship on purchasers in good faith.

I inclose blank field notes requested by Mr. Von Rosenberg. There ^{now} remains only twelve surveys to report which were properly included in my first instructions and which I surveyed by special request of all owners to enable them to correct their fences. This work ^{to report} completes block 1 B S & F and includes four surveys south of said block. I am preparing sketch and field notes for this work now and will forward same in a few days.

Yours respectfully,

W. D. Twichell

S. 11192-13989
14133
8568
F 15 995 + 66915

10 F Note 4750
No charge

counter 45233

The intent that Valentine was an official authority, especially when he is duly appointed under a statute which repeals all laws in conflict. The various validating acts, and holdings of our courts follow a uniform policy in all questions affecting the validity of ^{that} locations made at this time, the surveyors being compelled to locate under the disadvantages of a wild frontier; and the holding was in the case of *Kimmarle v F & T Co.*

counter 45231