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# RIGHT TO THE ISSUANCE OF CORRECTED PATENTS ON SECTIONS 34, 32, 30, 28, 26, 24 AND 22 IN BLOCK 43, TOWNSHIP 1, NORTH, T-P RESERVATION, AND SECTIONS 21 AND 22 OF BLOCK A, ORIGINALLY LAID OUT AS A PART OF BLOCK 43, TOWNSHIP 1, NORTH, ECTOR COUNTY, TEXAS

Cowden area

## I.

## ORIGINAL LOCATION

Prior to 1884, or thereabouts, under certificates duly issued to it, the T-P Railway Company caused the location to be made of Block 43, Township 1, North, in the T-P Reservation that had been expressly granted to it by the Act of May 2, 1873 (7 Gammel's Laws, page 1018). In making this location of this one township, it did so from a base line that had been run out by it in the Reservation. This base line, at the point where it is material here, is referred to as "the center line". With the center line as its south boundary, the T-P Railway, along with a number of other townships, located on the ground the west, north and east boundary lines of Block 43, Township 1, North. This township lay immediately north of the center line. The only ground work which we have been able to find that was done in the original location was the monumenting on the ground of the exterior lines of this township. This monumenting is directly referred to in the original field books of the surveyors of the T-P Railway Company, copies of which are now on file in the General Land Office and reference to which, for the original ground work, is hereby made.

Shortly after the original location of this township, the T-P Railway Company, after sections within the township had been granted to it and patented in November of 1884, caused a re-survey to be made by a man named Murray Harris. Murray Harris found practically all of the original monuments along the center line in the area material to this township in issue and for a great distance west and east of this township. These exterior lines of this township can again today be located on the ground by the location of at least five of the original and re-built original monuments on the exterior lines of this township.

When such exterior lines of the township are re-built, it is found that an excess over call distance in the field notes within the township of 156-1/2 varas north and south and 130-1/2 varas east and west exists on the ground today.

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The interior work within the township is not thought to be the result of any ground work whatever, except the exterior lines of the exterior tiers of sections on the south, west, north and east coincide with and call for a sufficient number of objects locating the exterior lines of the township to show that the exterior sections are unquestionably tied to the exterior lines of the township. Other than this exterior tier of sections, the other interior work in the sections inside the township is thought to be office work. This is true notwithstanding the original field notes in the interior sections, including the railway and school sections, each call for mounds and pits and other apparently locative objects at their corners.

With the township having been laid down on the ground and its location on the ground known to the surveyors for the T-P Railway, it is therefore considered that the sections inside the township were laid out so as to consume all the area within the exterior lines of the township. Under this procedure, a system was thereby built up within the township, each connecting with the other, so that the sections consume all the area within the monumented exterior lines of the township. That such sections within the township constitute a system of surveys, we believe, cannot be successfully contradicted. The definition of a system of surveys has been recently laid down and applied by the Supreme Court of Texas in the case of Stanolind Oil and Gas Company vs. State, 101 S.W. (2d) 801, 129 Texas_____ (Opinion by Judge Hickman). Before the Supreme Court in that case for construction were the River Surveys in Block 1, I. & G. N., in Pecos County, Texas, in what is now known as the Yates Oil Field. A cross-section of these River Surveys is depicted on the map found at page 803 of 101 S.W. (2d).

The Court of Civil Appeals at El Paso had found as a fact and as a matter of law that the River Surveys, and particularly the sections involved in this suit of Stanolind vs. State, were all laid down by the same man, Jacob Kuechler, on the same day, November 10, 1876, and the field notes therefor written on the same day, December 5, 1876. It had therefore found that such surveys were a system of surveys, and the Supreme Court, in approving the finding of fact and law of the Court of Civil Appeals, said:

> "We are in full agreement with this language in the opinion of the Court of Civil Appeals: 'We also unconditionally hold that Block 1 is a system of connected surveys made by the same surveyor at the same time; the surveys being built one upon the other from the south to the north.'"

So is the same thing laid down in Standefer vs. Vaughan, 219 S.W. 484; Stahlman vs. Riordon, 227 S.W. 726; Johnson vs. Knippa, 127 S.W. 905; Knippa vs. Umlang, 27 S.W. 916; Brooks vs. Slaughter, 218 S.W. 632; Welder vs. Carroll, 29 Texas 318, at p. 335; Ware vs. McQuinn, 26 S.W. 126; and Sellers vs. Reed, 46 Texas 377; each and all approved and cited by the Supreme Court in Stanolind vs. State.

In defining what shall be a system of surveys and the effect of the calls for each other, and corners that may mark or locate on the ground any one of such system, the Court of Civil Appeals at Amarillo in McCormack vs. Crawford, 181 S.W. 485, in approving the opinion in Clement vs. Packer, said:

> "But it is equally well settled by an unbroken current of decisions in that State that the surveys constituting a block are not to be treated as separate and individual surveys; nor can each tract be treated independently of the rest by its own individual lines or corners or courses and distances, but such surveys are to be located together as one block or one large tract. If lines and corners made for such blocks of surveys can be found upon the ground, this fixes the location of the block, even to the disregard for the call for adjoinders. The lines and corners found upon any part of the block of surveys belong to each and every tract of the block as much as though they do to the particular tract which they adjoin."

The Court of Civil Appeals at Amarillo, in Brooks vs. Slaughter, defined a system of surveys as follows:

> "We recognize fully that all corners and field notes of a system of surveys may be looked to in locating any of the surveys of the system and that it is not necessary, in order to constitute a block of surveys one system, that the surveying be done on the same date, and that it is only necessary that the work 'was continuous from day to day and connected as a part of the series of surveys though such work may be continued for many days or even weeks and months.' Regard for this principle was the controlling factor in the decision of the case of Standefer vs. Vaughan, No. 1557, decided by us on this date."

With the sections within Township 1, North, being unquestionably a system of surveys and being originally located and laid down by the same surveyors at the same time, for the same certificate holder, and patents having been issued on the

railway sections in November, 1884, the grantees in those patents thereby acquired a title to all the land within each section, as it would bear in any proper proration of excess to whatever excess then or now exists between the east and west lines and north and south lines of the township. We do not think this can at all be controverted. If this premise be true, then the railway sections when patented in November, 1884, then acquired to themselves the pro rata part of the excess east and west within the township, as well as the pro rata part of the excess north and south within the township, and certainly such pro rata part of excess that might exist between the monuments then actually on the ground or that have in the succeeding years been found to have existed on the ground at that time.

In this situation, therefore, the grantees in the railway sections, since their patents issued in November, 1884, have been the owners under those patents of the pro rata part of the excess that must be allocated to those railway sections. This was held early by the Supreme Court in Welder vs. Carroll, 29 Texas 318, at page 335, the Supreme Court saying:

> "The external lines of the two surveys can no doubt be easily ascertained. Within these lines the different grants call for 13 leagues of land. If there be an excess in the quantity of land within these lines, it is nevertheless apportioned and covered by the grants and should be shared between them in proportion to the respective amounts to which they are mutually entitled. And on the other hand if there be not sufficient to satisfy both surveys, the diminution must be borne by them in the same proportion."

This same rule is brought forward in the most recent decision of this point in Stanolind vs. State, 101 S.W. (2d) 801, 129 Texas_____, wherein, at page 806, the Supreme Court said:

> "The very fact that it is not known where or how the mistakes were made makes applicable the rule of prorating the excess between the different surveys. Since there is no showing that the variance arose from a defective survey of any part, it must be concluded that it arose from a defective survey of the whole line. The rule is an equitable one and prescribes the only logical and reasonable method of meeting a situation like that here presented. * * * We conclude that Dod, in his resurvey under instruction of the land commissioner, properly prorated the excess by



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giving to the back line of each of these river surveys a length of 993 varas instead of 950 varas. Welder vs. Carroll, 29 Tex. 517; Sellers vs. Reed, 46 Tex. 377; Ware vs. McQuinn, 26 S.W. 126; and a number of other cases."

By these decisions we think it unquestionably true that the owners and holders of the patents originally issued to theT-P Railway Company and the owners and holders of awards and subsequent patents issued to the alternate school sections have each been the owners of the proportionate part of the excess east and west and north and south within the exterior lines of the township with which we are dealing. If this be true, then the subsequent actions of surveyors in writing corrected field notes for the respective school sections and throwing into those school sections an accumulation east and west of one-third of the total 130-1/2 varas existing between the east and west lines of the township is wrong. The total amount of that excess could not be accumulated and thrown into any three sections east and west, but must be equally prorated between six sections - both school and private - existing between the east and west lines of this township. Notwithstanding the fact that it may have been erroneous to have so re-located the school sections, same has been done and the excess is attempted to be thrown therein from an east and west standpoint, without any excess put in for the north and south position of such school sections.

For illustration, take Section 34, which is in the extreme southern tier of sections in this township, and its corrected and patent field notes show that it actually has a call distance east and west of 1941 varas, whereas the original field notes call for it to be 1900 varas. This is, therefore, at once evidence of the fact that the surveyor who re-located and drafted the corrected field notes for Section 34 conceived that it was entitled to one-third of the total excess east and west between the west and east lines of the township and attempted to insert into the east and west distance of Section 34 an excess of 41 varas, whereas it was entitled to only one-sixth of 130-1/2 varas. This, therefore, causes Section 34 to overlap on its west with the true east line of T-P Railway Section 33. This correction of Section 34 and the breaking of its northwest corner away from the southwest corner of Section 27 and southeast corner of Section 28, I understand, was done as a result of the Land Office application of the Act of 1889 (Chapter 90, page 103, Acts of the Twenty-first Legislature; Articles 4274-4278, Revised Statutes of 1895; Articles 5396-5400, Revised Statutes of 1911).

This 1883 Act, however, in Section 5, expressly provided "that nothing in this Act shall apply to any lands for which patents have been issued." On its face, therefore, it could have no application to the patented railway sections which had been patented since November, 1884. The Supreme Court, in Willoughby vs. Long, 96 Texas 194, and the Court of Civil Appeals at Amarillo in Brooks vs. Slaughter, 218 S.W. 632, and Standefer vs. Vaughan, 219 S.W. 484, so expressly construed this Act of 1883 and held that it did not by its very terms, could not and, under the Constitution, would be unconstitutional if it did purport to have any application to patents which had been granted prior to the date of the enactment of the Act.

In Willoughby vs. Long, 96 Texas 194, The Supreme Court said, with respect to the application of the Act to patents already granted and the power of the Commissioner to attempt to give and inject excess into school sections which would take from private sections excess to which they might properly be entitled:

> "That such authority could have been conferred upon him as to lands which had already been sold is a proposition which, it seems to us, cannot be maintained."

The Amarillo Court, in Brooks vs. Slaughter, 218 S.W. 632, at page 635, said:

> "In the first place, said Act can have no application to this case because all the surveys herein involved were patented long prior to the enactment, and it is expressly provided by Section 5 thereof that nothing in the Act 'shall apply to any lands for which patent has been issued.'"

In Standefer vs. Vaughan, 219 S.W. 484, at page 491, the Court not only holds that the Act has no application to a system of surveys in which the private surveys had been patented prior to the enactment of the Act, but that such Act itself aids in the construction of a system of surveys such as that found in this township by requiring that each be constructed in a manner so as to give to each section the pro rata part of the excess that may be due it from an east and west and north and south construction. The Court said:

> "We believe this Act evidences that in constructing blocks of surveys in which there is an excess they must be constructed consecutively

as placed therein by the original maps, sketches or field notes. The rights of all the parties to this act, as to the school land sections, originated after the Act in question went into effect."

The same facts are present in our situation here. All the patents to the school sections with which we are concerned were granted after the enactment of the 1889 Act. But the enactment of the Act could not take away from the holders of the railway sections rights already vested in them to have allocated to each section its pro rata part of the excess in the harmonious and systemized construction of the township as it is required to be constructed under the rules of boundary hereinbefore set out. In fact, the Act on its face seems to require that such a system of surveys be so located where a school section may be a part of a system such as that found within Township 1, North. The Act sayd:

"Provided that where such surveys were made in blocks of two or more surveys, said respective surveys shall remain on the ground consecutively as placed therein, as shown by the maps, sketches and field notes originally returned to the General Land Office."

Hence, we believe it can be said without successful contradiction that the Act of 1889 does not give any greater right now to the holders of awards upon school sections or patents upon school sections in this township than is correspondingly accorded to the holders of patents upon railway sections. However, it so happens that such makes no difference in our instance. This is true because of the construction that necessarily must be given to this township by the allowance of the pro rata excess north and south and east and west, in which construction almost identically the same acreage will be contained in each of the school sections that is now recited to be contained in such sections under their present patents. By this we mean to say that, taking Section 34 for illustration, where it recites a certain acreage in its patent, by allocating to it an unwarranted east and west excess of 41 varas over call distance and cutting it back to its east and west distance and north and south distance that will be given under the corrected field notes which we propose to tender, in which it will be given its pro rata part of the excess east and west, north and south, almost identically the same acreage will then be contained in Section 34 under such construction that is now recited under the present patent to be contained therein. Hence, we do not believe anyone can complain that the Act of 1889 (even if applicable, which it is not) has been violated.

II.

BY CORRECTED LOCATION OF THE SCHOOL SECTIONS 34, 32, 30, 28, 26, 22 and 24 OF BLOCK 43, TOWNSHIP 1, NORTH, AND 21 AND 22 OF BLOCK A, ORIGINALLY LOCATED WITHIN THE TOWNSHIP, A CONFLICT IS CREATED BETWEEN SUCH SCHOOL SECTIONS AND THEIR ADJOINING RAILWAY SECTIONS

By the corrected field notes upon which patents have been issued upon Sections 34, 32, 30, 28, 26, 22 and 24 of Block 43, Township 1, North, in which an attempt has been made to incorporate into each of such tiers of sections running east and west twice the amount of excess to which each of such sections is lawfully entitled, there has been actually created a conflict east and west between such respective school section and its corresponding railway section, either on its west or east as the case may be. For illustration, Section 34 overlaps Section 33 on the east side of Section 33. Section 32 overlaps Section 31 on the east side of Section 31. Due to the fact that such re-locators of Sections 34 and 32 did not give to each of said sections the proportionate excess to which it was entitled, a north and south construction has resulted in failure of the north line of Section 34 to meet the true south line of 37, as it must be constructed by the allocation of its pro rata part of the excess north and south, and the north line of 32 has correspondingly failed to reach the south line of Section 29, as such south line of 29 must be constructed by the allocation to it of its pro rata part of the north and south excess. This is true of all the sections for which corrected patents will be applied for.

In addition to the fact that the north lines of these sections do not coincide on the ground with the south lines of the sections immediately to the north, we also find that the south line of Section 22, Block A, due to the failure of its north line to go the distance north it should have gone, has been brought down too far south and conflicts with the north line of Section 25. Without going into too much detail, suffice it to say that there is a conflict on either the east and west or north and south, or on both, of each of the sections for which corrected patents have been applied for and will be applied for, so that the conflict between such sections actually exists as a predicate, under the statute, for the issuance of corrected patents.

In this connection, it likewise must be borne in mind that in each of said sections for which corrected patents are issued, by reference to the original file wrappers it will be

found that the original awards before corrected field notes were returned entitle the holder of such award to all the land within the four boundaries of said school sections, giving such four boundary lines coincidence with the surrounding sections. For illustration, the award on Section 34 gave to the holder all the land within the east line of Section 33, the south line of Section 27, and the west line of Section 35, and bounded on the south by the center line, which is the same as the south line of Section 34. It is only when the corrected field notes were returned and patent issued on these corrected field notes for Section 34 that land originally contained in the award of Section 34 is omitted along the north and land to which the original awardee was entitled along the west out of Section 33 has purportedly been included in the corrected field notes and the patent.

Under this situation the original awardee from the State unquestionably has an equitable title to all the land described and contained in the original award, even though same may not be included within the field notes of the corrected patent issued thereon, and this is particularly true so long as the rights of third parties have not intervened. In the instances here we do not have any parties contesting the rights to the issuance of corrected patents under the claim or basis of an intervening right created since the time of the issuance of the patent on the corrected field notes. With this state of facts we think there is a perfect basis outlined in the statute for the issuance of corrected patents.

## III.

## ARTICLES 5409 AND 5410 AUTHORIZE THE ISSUANCE OF CORRECTED PATENTS UNDER THE FACTS PRESENT HERE

Article 5409 reads as follows:

"Where a patent to land through mistake is issued upon any valid claim for land, which is afterwards found to be in conflict with any older title, it shall be competent for the owner of such patent, or of any part of the land embraced therein, and within such conflict, to return the same to the Commissioner for cancellation, or in case the owner of such land in conflict cannot obtain the patent, then he shall return instead thereof legal evidence of his title to such patent, or part thereof. In either case he shall make and file with said Commissioner an affidavit that he is still the owner of the same, and has not sold or transferred it. If it appears from

the Land Office records or from a duly certified copy of a judgment of any court of competent jurisdiction before which the title to such land may have been adjudicated, that such conflict really exists, it shall be lawful for the Commissioner to cancel the patent, or such part thereof as shall appear to belong to the party so applying."

Article 5410 reads as follows:

"In cases where there is only a partial conflict, the Commissioner may, under like circumstances and in like manner as provided in the preceding article, cancel any patent presented to him, and issue a patent to the applicant for such portion of the land covered by his patent as may not be in conflict with the older title, where from the field notes the same may be done."

There is probably no necessity to cite authority that the Commissioner of the General Land Office has ample power, under these statutes, to issue corrected patents when any one of the facts mentioned in the statute exists as a predicate for the application and issuance of such corrected patent. Any number of authorities so sustain the power and right of the Commissioner to so issue corrected patents. In fact, it is held that the Commissioner has the power to issue a corrected patent where a mistake has been made in corrected field notes, even though such mistake in such corrected field notes may not create one of the conflicts or one of the other grounds enumerated in the above statutes as a predicate for power of the Commissioner to issue such corrected patent.

In Kuykendall vs, Spiller, 299 S.W. 522, at page 525, Judge Dunklin of the Court of Civil Appeals said:

"The proof showed that the cancellation by the land commissioner of the original patent to Benj. Stevens to the 160 acres therein described and the issuance of another patent to take its place was made because the commissioner was convinced that the land which Benj. Stevens made application to purchase was <u>erroneously</u> described in said original patent, and that the two subsequent patents were issued in order to correct that error. <u>Authority to cancel a patent whenever the land is found to be erroneously described and to issue another to take its place is conferred upon the land commissioner by articles 5409 and 5410, Revised Statutes of 1925.</u>"

The facts in this case will be referred to more in detail hereinafter. They appear to be rather complicated, but when closely read the facts are very simple and the case is very easily understood.

IV.

THE HOLDERS OF PATENTS OF THE VARIOUS SCHOOL SECTIONS NOW SOUGHT TO BE CORRECTED HAVE NOT WAIVED THEIR TITLE TO THE LAND INCLUDED IN THEIR ORIGINAL AWARD BUT OMITTED FROM THE CORRECTED AND PATENT FIELD NOTES, MERELY BECAUSE THEY HAVE ACCEPTED A PATENT ON SUCH CORRECTED FIELD NOTES, AND PARTICULARLY IS THIS TRUE WHEN NO INTERVENING RIGHT OF ANY COMPLAINING PARTY IS NOW PRESENTED TO THE COMMISSIONER OF THE GENERAL LAND OFFICE AND NO ONE IS OPPOSING THE ISSUANCE OF SUCH CORRECTED PATENT

In the discussion on June 6, mention was made of the fact that these corrected patents now sought to be issued could possibly be issued without question but for a possible waiver of any land included in the original awards to the present holders of patents but excluded from the field notes of those patents that may have been accepted by present holders of titles to these respective school sections involved. We think that the question of any waiver of title is directly and conclusively ruled in the case of Kuykendall vs. Spiller, 299 S.W. 522 (writ of error refused).

A map at page 523 illustrates the matters in issue. Stevens, holder of a certificate for which he applied and was granted a patent upon 160 acres of land delineated on the plat by the letters ABC and D. This was applied for as the south one-fourth of B.S.&F. Section 2, which was supposed to be a section containing 640 acres of land. This application, therefore, was intended to apply to the extreme south 160 acres of the section. As actually surveyed on the ground and as illustrated by the letters ABC and D on the plat, the field notes did not actually cover the extreme south 160 acres of the section, but left land south of the 160 acres actually located on the ground and actually patented. Thinking that the first patent covered the south 160 acres, Stevens applied to purchase the next 160 acres immediately north, which was described as the north one-half of the south one-half of B.S.&F. No. 2. This would have given to him the south 320 acres of what was thought to be the 640-acre section, or the equivalent of the south one-half of the entire section. Upon his application patent was issued to him for this additional 160 acres of land.

Both of these patents were accepted by Stevens and by his assignee, B. W. Clendenen. They were kept from 1904 until May 16, 1926. This was a period of 22 years. On May 16, 1926, Sylvan Sanders, a licensed land surveyor, re-surveyed the whole of B.S.&F. No. 2 and discovered that the two patents issued to Clendenen, as assignee of Stevens, did not actually cover the complete south 320 acres of B.S.&F. No. 2 and that a mistake had been made in the location of the two separate 160-acre tracts thought to compose the south 320 acres of this section. Hence, he returned corrected field notes. With these corrected field notes was an application by Kuykendall, who had succeeded to the rights of Clendenen and Stevens, in which Kuykendall sought the issuance of a corrected patent upon the south one-half of B.S.&F. No. 2.

Patent was issued to Kuykendall on June 1, 1926, for a correction of the original patent to cover the extreme south 160 acres of B.S.&F. No. 2. On September 10, 1926, a second corrected patent was issued to Kuykendall, as assignee and grantee of Clendenen and Stevens, to cover the 160 acres immediately north of the south 160 acres, so that both patents, dated June 1 and September 10, 1926, covered the south one-half of B.S.&F. No. 2.

Prior to the issuance of these corrected patents, and probably provoking the re-survey by Sylvan Sanders on May 16, 1926, Spiller, appellee in the case, had on March 12 and April 5, 1926, respectively, filed applications for a mineral permit under the statutes then authorizing such applications and such mineral permits. These respective dates therefore show that the application for mineral permit by Spiller was prior in date to the issuance by the Commissioner of corrected patents dated June 1 and September 10, 1926. In his application for mineral permit dated April 5, 1926, Spiller described the land as "all of the unsold portion of B.S.&F. Section No. 2, certificate No. 1/261, lying south of the 160 acres patented to B. W. Clendenen, assignee of Ben Stevens, by patent No. 272, Vol. 28, and north of the south 80 acres of said section, containing about 81 acres of land."

Under these facts, the Court of Civil Appeals found as a fact that the applications of Spiller were filed "prior to the cancellation of the original patent issued to Ben Stevens and the issuance of another patent in lieu thereof covering the land in controversy."

Based upon these facts, Spiller contended that the Commissioner of the General Land Office was without power to issue the corrected patents to Kuykendall, as assignee and grantee of Clendenen and Stevens, but that the land granted in the original patents must be the only land Kuykendall could claim title to and that therefore the applications for mineral permits by Spiller must be granted. The trial Court agreed with these contentions of Spiller and awarded judgment in favor of Spiller. Judge Dunklin reversed and rendered the judgment and held the corrected patents issued by the Commissioner to Kuykendall vested in Kuykendall a valid, legal title to all of the land therein described, superior to any rights of Spiller, notwithstanding the application of Spiller was filed prior to the date of the issuance of such corrected patents. This holding by Judge Dunklin likewise expressly concludes that the acceptance by Clendenen, as predecessor in title of Kuykendall, of a patent upon land that was thought to cover all of the south half of B.S.&F. No. 2 did not constitute a waiver by either Clendenen or his grantee, Kuykendall, of their rights to the issuance of a corrected patent upon lands described in their original application for an award and in their original field notes, and that notwithstanding the acceptance of such patent originally failing to cover all the land intended to be purchased by Clendenen and intended by the State to be sold to Clendenen, that Clendenen and his grantee, Kuykendall, nevertheless were entitled to corrected patent upon the land included in their original field notes and in their application for an original award. With respect to this Judge Dunklin says:

> "It thus appears that as between Benj. Stevens (the original applicant to purchase the south one-half of B.S.&F. No. 2) and those claiming title in privity with him on the one side and the state of Texas on the other side, the defendant Kuykendall is vested with a fee simple title to the land in controversy, <u>in accordance with the corrected patent issued to B. W. Clendenen as the assignee of Benj. Stevens</u>."

This holding of Judge Dunklin is expressly approved by the Supreme Court by the refusal of a writ of error.

It is likewise to be noticed in this case that the claim was made by Spiller that he had an intervening right upon the land not included in the original patent but which was included in the corrected patent. In addition to that, he contended that not only had Stevens, Clendenen and Kuykendall waived any rights to land not included in their original patent, even though described and intended to be purchased by their original application for an award, but

that they were estopped to assert title to any land omitted from the original patent but sought to be included in their corrected patent. Upon this contention the Court said:

> "Since Beni. Stevens made application to purchase the south 1/4 of section 8 in statutory form and placed the same in the hands of the surveyor to be surveyed, in accordance with the requirements of the statutes, and paid to the state the purchase price therefor, he thereby acquired an equitable title to the land covered by his application and purchase, even though the field notes of different surveys made thereafter were incorrect. His equitable title later ripened into a legal title when the land was correctly resurveyed by Sylvan Sanders and another patent issued in accordance with those corrected field notes; and appellants had the right to have such title awarded to them unless it can be said that Beni. Stevens and those claiming under him, including B. W. Clendenen and A. B. Kuykendall, are estopped from asserting such title as against the claim asserted by Kyle Spiller for oil and gas permits upon the same land."

The Court further concluded that Stevens, Clendenen and Kuykendall were not estopped by the acceptance of original patents, inasmuch as they immediately procured a corrected patent as soon as it was ascertained that their original patent did not cover the land they originally sought to purchase and which the State intended originally to sell to them. In fact, it seems to us that this case is much stronger in supporting the right to the issuance of a corrected patent and in supporting the title vested under the corrected patent than our facts now presented for the issuance of corrected patents on these school sections in Block 43, Township 1, North, in Ector County. In our situation presented here we do not have the intervention of any third party in which it is now contesting the issuance of corrected patents. It is only in those situations where there is a contest by one claiming an adverse interest or an intervening right that the acceptance of a patent has been held to preclude the holder of that patent from asserting a title to land originally included within the original field notes or original award but omitted by the corrected field notes or by the patent field notes issued to and accepted by him.

This is the identical basis of the holding of the Supreme Court in Miller vs. Yates, 61 S.W. (2d) 767, 122 Texas 435; and Holmes vs. Yates, 61 S.W. (2d) 771, 122 Texas 428.

In Miller vs. Yates original field notes to Sections 101 and 103, T. C. Ry. Survey, included 1900 varas north and south and 1900 varas east and west. A map illustrating the location of these sections as they were originally and as they were corrected is found at page 355 of 122 Texas Reports. Also a map illustrating the same thing is found in 101 S.W. (2d) 803, in the case of Stanolind vs. State. Reference to this map will show that sections 101 and 103, certificates for which were originally owned by Miller, would have included all the land from the south line of Runnels County School Land to the north line of Block 194. This would have, therefore, included an area 1900 varas east and west, later included in Section 34-1/2, patent for which had been issued to I. G. Yates, when the litigation was initiated that culminated in the case of Miller vs. Yates.

Likewise, Miller was claiming that Section 103 ought to be extended south to the north line of Block 194 to take in an area of the same dimensions as Section 34-1/2.

Ruby Holmes, claiming to be the holder of the original certificate upon Section 102, was contending that such section should be extended southward so that its south line would be coincident with the north line of Block 194, and an area 625 varas north and south by 1900 varas east and west out of Section 34-1/2 would thereby be included in Section 102.

The writer of this article is extremely familiar with this litigation, as he came into the case of Miller vs. Yates in its final stages in the Supreme Court of Texas, and Stanolind Oil and Gas Company is now the owner of an oil and gas lease upon Section 34-1/2.

The facts show, though, that under the original field notes to Sections 101, 102 and 103, as approved by the Commissioner of the General Land Office, each of those sections would have been given the land 1900 varas north and south and 1900 varas east and west, thereby taking in the area from the south line of Runnels County School Land on the north to the north line of Block 194 on the south. Corrected field notes, however, had been returned for each of these three sections, cutting them back to 1209 varas north and south. When this was done, the area later patended as Section 34-1/2 to Yates was thereby left as vacant land. It was not known to either Mrs. Holmes or Mrs. Miller that it was vacant land at the time they returned corrected field notes or at the time Mrs. Miller accepted the patent on Sections 101 and 103. Section 102 had never been patented, but such corrected field notes had been returned by Mrs. Holmes and approved by the Land Office.

It later developed that in 1920 a survey was made by R. S. Dod, and it was revealed that the land that had been cut off the south end of these T. C. Ry. sections by which they had been cut back to 1209 varas was vacant land. I. G. Yates, therefore, applied by letter of inquiry to purchase the land. His letter of inquiry was approved, field notes by Dod returned to the Land Office for Mr. Yates, and in 1927 patent issued to Mr. Yates. About that time the Yates Oil Field developed and Mr. Yates, as agent of the State and owner of the soil, executed and delivered oil and gas leases to the various defendants allied with him in Miller vs. Yates and Holmes vs. Yates.

It thus is at once apparent that the intervening rights of Yates had come in after the time of the acceptance of patents and after the date Mrs. Holmes had filed and caused the Land Office to approve corrected field notes upon Section 102. That is a situation that is not presented in the matter of these school sections in Ector County.

In holding that both Mrs. Miller and Mrs. Holmes must be relegated to the area contained in their corrected field notes and patents issued to them upon such corrected field notes, Judge Greenwood, for the Supreme Court, said that such parties would not be permitted "to subsequently assert title to that to which he had thus plainly disclaimed further title, <u>after adverse interests had been lawfully acquired</u>."

It is, therefore, apparent that the basis of the decision in Miller vs. Yates and Holmes vs. Yates is the acquisition by Yates of an adverse legal title, under patent issued in 1927 by the State of Texas, to Section 34-1/2, which was the very area that had been omitted from the original field notes of the T. C. Ry. sections by the corrected field notes and the patents issued on such corrected field notes to such T. C. Ry. sections.

We, therefore, very seriously believe that the acceptance of a patent by the present owners of the school sections involved has not constituted any waiver of the land that was included in their original awards or in their original applications, but by inadvertence omitted from the corrected field notes and the patents issued to them on these sections.

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In defining what shall be a system of surveys and the effect of the calls for each other and the right to the issuance of corrected patents on certain surveys in Ector county.

Filed - June 24, 1957