

William Myers vs. Milton Merrifield

Jim Barnes – 4 March 2009 – originally written for the Stevens Park Estates Neighborhood *Newsletter*
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MILTON MERRIFIELD

BORN Sept. 5, 1817 **DIED** Nov. 23, 1888

He took him from a world of care, An everlasting bliss to share.

Little Bethel Cemetery -- 1803 South Cedar Hill Road; Duncanville [Dallas County] Texas

History research is especially fun when something totally surprising turns up; which is what happened when I opened the file of the 1852 lawsuit *William Myers versus Milton Merrifield*. My picture of the past suddenly changed. Previously I had seen references to this particular court case, where William Myers drove away a squatter, Milton Merrifield (son of the John Merrifield buried in the little cemetery on the corner of Jefferson and Hampton). I had imagined that Milton Merrifield had set up a cabin a little too far away from his father's and that Myers had used a court action to shoo him off back. What I found was something rather different.

First, I discovered Caswell C. Overton. Previously, I had reasoned that if William Myers had been awarded the original patent of land title to this specific one square mile area then he must have been the first pioneer to live here. John Henry Brown's *History of Dallas County* (1887; page 82) states that "*Myers, William, and his family came in 1843...*" which is only a year after the first settlers started claiming land on the west bank of the Trinity River. But these old court documents surprised me when they revealed that William Myers had bought his section from a Caswell Overton who had previously built a house and put "*about 31 acres in cultivation, the same being enclosed with cedar rails*". The transaction signatures were 'attested' by William Coombes. It is noteworthy that the boundaries of the section had apparently already been marked by the Peters Colony surveyors, because the contract describes the land by its colonial survey designation, Section 19: Township 1-South: Range 1-East. Myers purchased Overton's claim to Section 19 on the 18th of May 1846 for a price of \$275 cash and a promise to delivery to Caswell Overton's father "*600 rails in lieu of the 600 rails*" he had provided for his son's farm.

Caswell Overton was a son of Aaron Overton, the pioneer settler who owned Kidd Springs, the adjoining half-section immediately to the east. I have a lot of speculations about the Overton family, William Coombes, and Captain Mabel Gilbert, who all settled in the neighborhood between 1842 and 1846; but a separate essay should discuss them later. For now, let me simply note that the Overton family's arrival in Dallas is typically dated 1844, about two years prior to the sale to William Myers.

When did William Myers come to Texas?

So, if William Myers did not buy the William Myers Section until May of 1846, then when had he come to Texas? John Henry Brown's 1843 date looks rather dubious. Prior to coming to Texas, William Myers had lived in Garrard County, Kentucky. In her genealogy book *The Descendants of Jost Meyer* (page 75), Nelda Myers Smith reports that the Garrard County Sheriff delivered an official court notice to William Myers there on the 14th of August 1843. Myers did not appear at the trial later that month. William Myers and his brother Isaac initiated a counter-suit on the 4th February 1845; and I think it is fair to imagine that he must have been in Kentucky for at least the commencement of that litigation. The case concluded in November of 1845. These two Kentucky court cases contended payments on a debt; a legal battle that William Myers and his brother eventually won.

The legal battle that William Myers was not winning, however, was a lawsuit that began in 1840 when he mortgaged his 500 acre homestead and slaves twice, to two separate groups of lenders. The loans weren't repaid, the lenders foreclosed, and in September of 1843 the Kentucky court decreed that the land and slaves were to be sold at auction. A final auction was not held until three years later; but by late 1843 William Myers was a man whose home was soon to be taken by the law. The Peters Colony, a land development corporation headquartered in Louisville, Kentucky had been licensed by the Republic of Texas in 1841 to solicit emigrants. Peters Colony advertisements were broadcast throughout the countryside of Kentucky, trying to lure settlers to leave for Texas. In Texas new settlers were promised free land.

In 1846 there would have still been hundreds of square miles of empty land in Dallas County that William Myers could have claimed for free. It is interesting that he decided to buy someone else's claim, rather than start a free one himself.

John Henry Brown's recollection of William Myers' arrival in Dallas County during the year 1843 is unique, and is contradicted by another old publication. In the 1892 *Memorial and Biographical History of Texas*' sketch of Alfred Pemberton (William Myers' son-in-law), it states (p. 596) that "William Myers was reared to farm life, and after reaching manhood began dealing in stock, and continued that business until November 1, 1846, when he and his wife and five children came to Texas, which was then the frontier of civilization." A November 1846 date for departure from Kentucky is corroborated by a "Power of Attorney" document that William Myers signed in Garrard County, dated 21st November 1846, which begins, "I, William Myers of Garrard County Kentucky, about to Remove to Texas..." (Nelda Smith; op. cit., page 77). So, if the dates on these legal documents are accurate, William Myers would have been in Dallas in May buying land from Caswell Overton but back in Kentucky six months later assigning Power of Attorney in order to close out his affairs and return to his new home in Texas.

The court ordered auction to sell-off William Myers Kentucky land and slaves had finally been held on the 20th of October 1846. The next day William Myers' wife, Mary Ann, signed her acknowledgement to that transaction; but her husband's acknowledgement was signed by a proxy. (Nelda Smith; *ibid.*) It is therefore possible that William Myers had not returned from Texas by the 21st of October 1846. Whether or not that is the case, it seems likely that William Myers had made his initial land acquisition trip to Texas without his entire family. A 1905 newspaper obituary of William's son Meredith Myers states that "Bro. Myers emigrated to Texas in 1846." (*History of the William Myers Section, Vol. 1, "William Myers & Family"*; 2001, page 93.) Whether Meredith Myers, who in 1846 was seventeen years old, had made the first journey to Texas with his father is unknown.

So, when had William Myers first come to Texas? It is remotely possible that William Myers journeyed from Garrard County to Texas more than twice. I suppose also that my limited evidence would leave it technically possible that Myers had been in Dallas County for a year before he bought the William Myers Section in May of 1846; and along that line it is even imaginable that he had staked prior claims which he later sold. But such possibilities all add complications without evidence. Six years later, testimony in the Merrifield trespass trial informed its jury that William Myers had settled on Section 19 in 1847, a date which comfortably fits with the records in Kentucky. The time of William Myers' earlier initial arrival in Dallas County remains, to me at this time, something of a mystery. The safest date is 1846.

When and where was this other settlement?

When William Myers sued Milton Merrifield in April of 1852, he claimed that he alone held rightful title to the full 640 acres of Section 19. Merrifield replied that the western half of that particular square mile was rightfully his alone. Merrifield reported to the 1852 court that he had bought the land from John E. Helms, who had bought it from Hannah, who had bought it from Calvin White, who had arrived and started improvements on the vacant half-section on the 1st day of January 1846. Merrifield's attorney's petitioned the court to require William Myers to show evidence of his claim to title. Its spring 1852 term ended and the itinerant Texas 14th District Court left Dallas.

Merrifield's claim of ownership employed a Certificate issued by the Peters Colony granting land to Abraham Snider; for which Merrifield reported that he had later substituted the 640 acre Certificate originally granted to John B. Hibbert. The Peters Colony routinely issued such

Certificates to pioneers who had fulfilled the Colony's residency requirements and who had entered the Colony before its 1st July 1848 deadline. Certificates were often not tied to specific sites. Many such unlocated Certificates were later sold to other pioneers. Certificates were traded throughout the state. That Milton Merrifield's claim depended on someone else's Peters Colony Certificate strongly suggests that he had arrived inside the Peters Colony north Texas domain after the 1st July 1848 deadline had passed, too late to earn his own Certificate. This is confirmed by descendant Fred Armstrong's Merrifield family genealogy, wherein Milton Merrifield's third daughter, Elizabeth Boone Merrifield, was born on the 22nd of January 1849 in Kentucky. Merrifield's plea to the Texas court stated that in April of 1852, he had been in possession of the west half of Section 19 for more than three years. Therefore, presuming that Milton Merrifield was in Kentucky during his daughter's birth, the window of possible dates for Milton Merrifield's family's arrival in Dallas can be narrowed to a point in time somewhere between late-January and mid-April 1849.

The Court's record does not give any specific date for when Merrifield purchased Helm's claim. Similarly Merrifield's case file contains no written record of the purchase of the land by Helms from Hannah, nor of the purchase by Hannah from White. Merrifield's defense argued that his chain of title began long before William Myers settled on the section; but actually all these "facts" would have been little more than a story someone had told him. To substantiate this story, Merrifield's defense relied heavily on the testimony of longtime neighbors.

One of the arguments that Merrifield attorney made was a contention that Merrifield had been in "*uninterrupted adverse possession of said land*" and that William Myers had not paid for the improvements Merrifield made; nor had Myers paid governmental taxes on the value of those improvements. The improvements were then enumerated as consisting of "*houses built, fencing and cleaning of land, out houses, etc. etc. of the value of one thousand dollars*". This provides confirmation that Milton Merrifield had a house located on the west half of Section 19, though I find no evidence to tell us more exactly where this house was situated.

Caswell Overton sold the complete square mile to William Myers at the end of May 1846 with a special warranty provision, promising, "*I bind myself to refund [the \$275 contract sales price] to said Myers in the event that any legal claims should be set up for the said Section No. 19 and I further bind myself to pay any damages said Myers may sustain by such claims.*" If Calvin White had already been living on the western half of the Section for the past five months, then why was Caswell Overton so oblivious? Should we also believe that William Myers bought the entire Section without riding across the Creek to look around?

What I find easier to imagine is that William Myers purchased Caswell Overton's section and then headed back for his family in Kentucky. When he returned to Dallas County months later, he discovered someone new living on his land, and that they now claimed it as their own. William Myers would have then suddenly found himself a stranger in a strange land, and simply not known what to do.

As part of his defense, Milton Merrifield reported to the court that William Myers had publicly stated his acceptance of Merrifield's ownership. At the time Merrifield purchased his claim William Myers "*gave it out in a speech in his neighborhood that he did not claim nor did he expect to hold but 320 acres of said Section*" and that Myers requested Merrifield "*to settle upon said land as he wanted him ... for neighbor*".

William Myers and the Hedgcoxe War

One of the sacred images of the pioneer days is of humble immigrant families cheerfully helping each other in their struggles against the brutal hardships of nature -- a golden age of communal cooperation. Though in many respects I think it is fair to preserve such an image, this court case reveals one of the thornier paths through such a Garden of Eden. We first see steady streams of strangers constantly arriving and leaving. Some spent only one night; some staked a claim but then quickly sold it to leave; and some, but only a few, stayed. Almost everyone came for the free land. There were land disputes – lots and lots of land disputes. And if you think real estate entitlement law is complicated today, you should have seen it then. Rules changed with every session of the legislature in Austin; but spreading information across the frontier was far from easy. There certainly must have been a lot of confusing gossip. Nevertheless, the law expected people like Milton Merrifield, whose father was so illiterate he couldn't even sign his own name, to know and abide by the State's immensely complicated and fast-changing standards of land entitlement. As William Myers himself complained in an 1853 letter to the General Land Office, "*There is various opinions and statements by our would-be little great men about what is necessary in filing our clames...[they] all differ widely and all clame to know that they are right*". (*History of the William Myers Section, Vol. 1, "William Myers & Family"*; 2001, page 112.)

William Myers had a neighbor who was an attorney, Colonel John M. Crockett, who lived a mile to the east. Crockett filed Myers' original grievance with the court. Then, at some point during the court's spring term of 1852, William Myers decided to hire a different attorney, Nat Burford. The Judge for the Texas 14th Circuit Court presiding over the trial of *William Myers vs. Milton Merrifield* was famed jurist John H. Reagan. Perhaps one of these three legal experts told Myers that the status of his title documents was shaky and could be strengthened. It must have come as an annoying surprise to Myers to be told that he had started his lawsuit against Milton Merrifield without having his own title documents in proper order. He had the 1846 purchase contract document from Caswell Overton and he had his 1850 Certificate from the Peters Colony awarding him 640 acres, witnessed by John Neely Bryan. The Certificate did not grant him any specific location; but the earlier contract with Overton had explicitly stated the Peters Colony survey location designation. Perhaps instead of being informed by a legal expert at court, Myers read one of the printed proclamations sent out in May of 1852 by Henry Oliver Hedgcoxe, the Agent of the Peters Colony (*Handbook of Texas Online: Hedgcoxe War*, Victoria S. Murphy). Hedgcoxe's publication attempted to explain to colonists what was required to properly establish land claims. At present I do not know why Myers was motivated to acquire additional documentation about his homestead claim after his trial for title had already begun, but what Myers did next gave him the decisive advantage and won his case

On the 29th of May 1852 William Myers traveled north to the office of Henry O. Hedgcoxe, the Agent of the Peters Colony. There he filed a claim to the 640 acres of Section 19, Township 1-South, Range 1-East of the Peters Colony's survey. Agent Hedgcoxe then gave William Myers signed certification acknowledging the validity of his claim, and Agent Hedgcoxe also gave Myers written verification that his new claim had been filed with the General Land Office of Texas.

Milton Merrifield had no such documents. Merrifield presented to the court the Certificate he had bought from John Hibbert (and perhaps Snider's) wherein the Peters Colony had granted the Certificate holder 640 acres of land. And Merrifield also presented a survey of the western half of the William Myers Section that had been performed by A.G. Walker, as Deputy Surveyor for Robertson County. [It is interesting to note that the A.G. Walker, who signed the documentation of Merrifield's survey as Deputy Surveyor of Robertson County, seems to be the same A.G. Walker who had defeated John H. Reagan for a seat in the Texas senate during an election in 1849, a senate

seat that Walker then resigned in 1851. (John Henry Brown; op. cit. 32.)] In retrospect it is unclear why Merrifield believed that Robertson County still had jurisdictional authority. The Texas legislature had formally organized Dallas County in 1846 and the Robertson County crew surveyed Milton Merrifield's claim three and half years later.

Merrifield and Myers certainly were not the only Dallas County land settlers confused by Texas land laws. Exasperated settlers, fearful of losing their land, gathered in riotous meetings and finally vented their rage in open rebellion. Henry O. Hedgcoxe's proclamation of May 1852 might have directed William Myers in the proper procedure to insure title to his claim, but to many other Colonists the proclamation only sounded arrogant and autocratic. A militia of vigilante rode from Dallas to Denton County on the night of 16 July 1852, accosted Hedgcoxe, and impounded the Peters Colony's land records. The 1942 *WPA Guide & History of Dallas* (1992 edition, page 49) reports, "*Of this episode John H. Reagan in his memoirs asserts that 'but for the efforts of Col. M.T. Johnson of Tarrant County, the Hon. John M. Crockett of Dallas, and myself, violent measures against the agent of the company would certainly have been adopted' "* Hedgcoxe fled to Austin the next day. That night the Peters Colony land records were all brought back to Dallas and thereafter lost to history. The rebels celebrated at the Dallas courthouse square through the night and its militia leader, John J. Good, recalled in a letter written to John C. Easton the next day that "*'William Myers, a spy of the [Peters] company here was seized, rode around for some time on the sharp edge of rail and other spies of the company are notified that one month is given them in which to arrange their business and to leave this country.'*" (*The Peters Colony of Texas*; Seymour V. Connor; 1959; p. 142). I have no other further information about William Myers' role in the Hedgcoxe War, except to note that in his letter to the General Land Office written in May the following year, Myers writes "*Mr. Hedgcoxe's office was robbed by that celebrated mob and I suppose the papers destroyed.*" (*History of the William Myers Section, Vol. 1: William Myers & Family*; J. Barnes; 2001; page 109.)

It is certainly remarkable that every legal professional involved in the *William Myers vs. Milton Merrifield* trial, except Myers' second counsel, Nat Burford, seems to have been a leader in the rebellion against agent Hedgcoxe. *The Peters Colony of Texas* says that Judge John H. Reagan rose to political prominence through his opposition to the Colony and its agent. John M. Crockett similarly profited by championing the rebel cause; and his professional law partner, John J. Good, led the militia to Denton County to oust Hedgcoxe and confiscate the Peters Colony records. Merrifield's attorney, Warren Stone is cited as a rebel leader; and the John Easton to whom John J. Good wrote about William Myers being ridden around the Dallas courthouse square on a rail, was Stone's partner in law practice. The Peters Colony rebellion was quelled by passage in the Texas State legislature of a new land law in February of 1853; so by the time the 14th Circuit Court reconvened in Dallas for its spring 1853 term, the Hedgcoxe War and its troubles had ended.

Testimony and Judgment

The next spring, when the trial for trespass of *William Myers vs. Milton Merrifield* reconvened, both sides presented to the court the documents they believed substantiated their conflicting claims of land ownership. A series of witnesses were summoned and arguments presented to a jury. The summoned witnesses include some of the oldest pioneer settlers of Dallas County. William Myers summoned the following to testify in his behalf: John P. Cole (whose son was foreman of the jury); his own son Meredith Myers, T. V. Griffin, Edwin Reid, and J. M. Robertson. Milton Merrifield summoned the following to testify in his defense: Aaron Overton, David Cameron, Eldridge Gill, Mrs. Selvidge, and A.G. Walker. Both sides summoned William Coombes to testify. It is

noteworthy that Caswell Overton, the pioneer who sold Section 19 to William Myers seven years previously was not summoned; I assume that he had since died.

It would be wonderful to know now what these early pioneer witnesses told the court, but there is no record of their testimony. It is amazing enough that any court records have survived at all.

Various motions were heard and recorded. Judge John H. Reagan wrote out his final instructions to the jury, a handwritten speech by one of Texas' foremost jurists. Judge Reagan told the jury that Hedgcoxe's documents gave William Myers a valid claim; but that the survey made for Merrifield by the Robertson County Surveyor was without proper authority, conferred no title, and should be considered as no defense of Merrifield's claim. Regarding Merrifield's assertions that Myers had publicly accepted Merrifield as his neighbor, Reagan then instructed the jury in lengthy detail about the various issues of law on which they were to deliberate and decide.

On the 19th of May 1853, the court Minutes recorded that the juror decided the case in favor of William Myers. By that decree Milton Merrifield was to pay all of Myers' court costs. A Writ of Possession was sent to the Sheriff assuring William Myers' possession of the entire square mile of disputed land.

Aftermath of the Trial

It is hard to imagine the devastating effect that the court's decree brought to Milton Merrifield and his family. In February of 1851, Milton's father, John Merrifield, had purchased the half-section farm just south of the half-section his son Milton had settled upon two years prior. Now Milton was forced to leave his 61 year old father to look for a new home. He moved south, along the ridge-route highway, to the town of Cedar Hill, where the family of Milton Merrifield became one of the legendary pioneer families in that corner of Dallas County.

The Merrifields were in the freighting business, so they must have loaded up and moved everything they could carry: log cabins, barns, and wooden fence rails. Eight days after the verdict was recorded, William Myers, in his letter to the General Land Office in Austin, complained how "*that speculator Meryfeld*" was still squatting on his land. But in October of 1853, six months after the verdict of expulsion, the Dallas County Sheriff stopped by to inspect and gave written confirmation that the William Myers Section was entirely in the possession of William Myers.

It is to the everlasting credit of the Merrifield family that they peacefully complied with the verdict of the court. Whatever bitterness they felt at losing their homestead, it was neither recorded nor remembered. In the histories of the Milton Merrifield family, I find nothing mentioned of their three years of life on the William Myers Section that ended in expulsion -- with one exception. For the seventy-fourth birthday of one of Cedar Hill's most distinguished old pioneers, Sue Ellen Merrifield Bryan, *The Dallas Morning News* (1925-Nov-29; Section VI, page 16) reported that 'Aunt Susie', a daughter of Milton and Margaret Merrifield, had been born in the town of Cedar Hill on the 25th of November 1851. But fifteen years later, on her eighty-ninth birthday, that story was changed, and *The Dallas Morning News* (1940-Dec-6; Section 1, page 9) then reported that 'Aunt Susie' had been born "*near the site of Kidd Springs*" and had moved to Cedar Hill when she was two years old. That second report fits correctly with the court records' dates for Milton Merrifield's occupation of the western half of the William Myers Section. In Dallas County pioneer-talk, Kidd Springs, though it would have been about a mile to the east, would have been "*near*". Sue Ellen Merrifield married James Bracken Bryan, a nephew of Dallas founder John Neely Bryan. Contrary to my previously published conclusion that William Myers' granddaughter Eleanor Eddy was probably the first settler child born on the William Myers Section, I now have better reason to

believe that Sue Ellen Merrifield hold the better claim of being the first Euro-American settler born here, her birth having been about ten years earlier.¹

The courts gave William Myers the western half of the William Myers Section in 1853, but the courts then took the whole Section away. The southwestern quarter of the section was sold at a court ordered foreclosure sale on the 2nd of February 1858; the northwestern quarter-section was similarly sold at a court ordered foreclosure sale on the 10th of April 1860; and nine years later the remaining eastern half of the William Myers Section was sold at a court ordered foreclosure auction.

One of the ironies of Dallas County settlement is that pioneers like William Myers and Milton Merrifield who must have come to Texas for free land and to live as free men, instead became ensnarled in the same legal problems they had hoped to escape. They must have come expecting the rest of their lives would be spent befriending savage Indians, battling raging bear, bravely enduring the hardships of untamed nature -- romantically superhuman efforts needed to maintain their humble isolated new homes, virtually alone in a vast green wilderness. Instead they discovered that in order to live with their strange new neighbors they needed to create a government similar to the one they had left behind. How quickly then they found themselves to be the loosing victims of complicated entanglements – ignorant and helpless prey to the complex legal system they helped reinvent.

The White Effect

I have no idea what became of Calvin White, the 1846 settler who supposedly started the land dispute with William Myers. I picture him joyously “discovering and claiming” the 320 acres in and around Stevens Park while William Myers was away in Kentucky gathering up his family to move to Texas. Mr. White must have been delighted that he was the very first man to claim such a beautiful little slice of the planet Earth and dreamed of it being the beginning of an eternal home for his future family dynasty. I don’t know where he built his cabin; maybe here in Stevens Park Estates; nevertheless, I amuse myself with speculation over whether the presence of the spirit of Calvin White explains the proliferation of people named White who have lived in Stevens Park. Some of the most notable residents in our brief neighborhood history have been named White. There was an early homebuilder here named W.E. White. The celebrated actor of stage and screen, L.R. ‘Lasses’ White, built his home on the corner of Old Orchard and Mayflower during in the 1920s. Then W.T. White, the long-time Superintendent of the Dallas Independent School District, built his home on Old Orchard. And today we have famed community activist Randall White living on Mayflower; plus we have longtime residents Charles and Dorothy White living on North Oak Cliff Boulevard. Is there any logical explanation except that Calvin White’s ghost is present? Well? So, how many people around here do you know named Myers, or Merrifield?

(End)

¹ As a sequel to the deliberation about who should be considered as the first birth on the William Myers Section, I must add a comment about another, even earlier, birth that might supersede Sue Ellen Merrifield’s claim. The 1850 U.S. Census includes a Dallas, Texas listing for Casuel (*sic*) Overton and his wife Mandony (*sic*). Among their four children is listed Elizabeth A., 4 years old, born in Texas. Therefore, it is possible that an Elizabeth A. Overton was born before her family left the house they sold to William Myers, and if so, she would rightfully hold the claim to being the first Euro-American settler child born on the William Myers Section, six years prior to Sue Ellen Merrifield’s 1851 birth.