

*Archer Co.*

*This came with 10 field notes  
under Act Feb 23/1900  
North of Bridges Co. S. D.*

*Sketch*

TRANSCRIPT OF RECORD.

*files*

UNITED STATES  
CIRCUIT COURT OF APPEALS  
FIFTH CIRCUIT.

*Dist. No. 804. (See decree of court. P. 45/6)*

MRS. AGNES PLATT, ET AL.,  
Plaintiffs in Error,  
versus

ANDREW VERMILLION, ET AL.,  
Defendants in Error.

Error to the United States Circuit Court, Northern District of  
Texas, at Fort Worth.

ORIGINAL RECORD FILED FEBRUARY 23, 1899.

Printed Copy of Record,  
FILED.

AP 34 99

*filed  
9/10/1900*

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[a]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

MRS. AGNES PLATT, ET AL.,  
vs.  
A. VERMILLION, ET AL. No. 92.

AGREEMENT AS TO PRINTING.

We agree that the following portions of the transcript, as filed in the United States Court of Appeals at New Orleans, may be omitted in printing the said record:

Caption; original petition No. 92; citation No. 92, pg. 3; citation No. 92, pg. 5; citation No. 92, 7; affidavit for sequestration No. 92; bond for sequestration No. 92; writ of sequestration No. 92; agreement to continue No. 92 and 93; motion to transfer to Fort Worth No. 92 and 93; continuance at Fort Worth No. 92; original petition No. 93; citation No. 93; continuance at Fort Worth, No. 93; plaintiff's exception to defendant's special plea; order of Court on continuance of trial; and verdict of the jury.

And we agree that the printed record shall contain only the following; affidavit for sequestration No. 93; bond for sequestration No. 93; writ of sequestration No. 93; transcript of orders at Graham and Abilene Courts No. 93; motion to consolidate the two causes; order consolidating No. 93 with No. 92; order in No. 92, consolidating No. 93 therewith; plaintiff's first amended original petition; defendant's special plea to jurisdiction; defendant's original answer and plea of res adjudicata; plaintiff's first supplemental petition; defendant's demurrer to plaintiff's plea of res adjudicata; agreement of counsel as to testimony and maps and sketches; agreement of counsel as to ownership of lands and issue; order of Court on demurrer, etc., and beginning of trial; charge of the Court; from pg. 50 to pg. 56 inc.; judgment; agreement as to judgment shown on pg. 64; plaintiff's motion for a new trial; order overruling said motion; order granting until November 24th, 1898.

for plaintiff to file exceptions; petition for writ of error; bond for writ of error; writ of error and citation in error and acceptance of service; bill of exceptions No. 1; bill of exceptions No. 2; bill of exceptions No. 3; bill of exception No. 4; sketch of Brazos county school lands and adjacent surveys; map of Archer county; assignment of errors; clerk's certificate.

R. F. ARNOLD and  
STANLEY, SPONTS & THOMPSON,  
Attorneys for Plaintiff in Error.  
F. E. DYCUS,  
Attorney for Defendants.

(Indorsement:) In U. S. Court of Appeals. Mrs. Agnes Platt, et al., vs. A. Vermillion, et al. Agreement to publish

### AFFIDAVIT AND BOND FOR SEQUESTRATION.

Filed June 4th, 1895.

Circuit Court of the United States, for the Northern District of Texas, at Graham, October Term, 1895.

The United States of America,  
State of Texas.

Personally appeared before me the undersigned authority W. M. Coleman, who being by me duly sworn says, that he is the legally authorized agent for Mrs. Agnes Platt, Mrs. Lula P. Hunt and Clyde D. V. Hunt, plaintiffs in the above styled cause. That said plaintiffs are the legal and equitable owners in fee simple of the lands and tenements set out and described in plaintiffs petition filed herein to-wit, situated in Archer County, Texas. Beginning at the S. W. corner of John Minter sur, thence East with the south line of the said Minter sur the S. P. R. R. Co. sur No. 5, sur No. 8, in the name of H. H. Duff, H. & T. C. R. R. Co., surs 1, 2 & 3, 11,400 vrs to the West line of H. & T. C. R. R. Co. sur No. 4. Thence S. 917 vrs a stake. Thence West 11,400 to a stake. Thence North 917 vrs. to the beginning. And as such owners are entitled to the possession of the same.

That the said property is reasonably worth the sum of five thousand dollars. That plaintiff fear, and this affiant as the agent of said plaintiffs fears that the defendants in said cause to-wit, J. S. Splawn, and Mrs. J. S. Davis, will make use of their possession of said land to injure such property by plowing up and destroying the grass now growing upon said land and that said defendants will convert to their own use and benefit the fruits and revenues arising from said land. That said premises are now covered with a heavy and thick coat of grass, which is of great value to plaintiffs. That the facts herein set out are within the knowledge of affiant. Wherefore affiant prays for a writ of sequestration as provided by law.

W. M. COLEMAN.

Sworn to and subscribed to before me this 4th June, 1895.  
F. W. GIRAND, Deputy Clerk.

## BOND.

Circuit Court of the United States, for the Northern District of  
Texas, at Graham, October Term, 1895.

Mrs. Agnes Platt et al  
vs.  
J. S. Splawn et al.

The United States of America,  
State of Texas.

Know all men by these presents that we, Mrs. Agnes Platt, Mrs. Lula P. Hunt and Clyde D. V. Hunt, as principals, and W. M. Coleman and R. F. Arnold as sureties, do hereby acknowledge ourselves bound to pay to J. S. Splawn and Mrs. J. S. Davis the sum of ten thousand dollars, conditioned that Mrs. Agnes Platt, Mrs. Lula P. Hunt, and Clyde D. V. Hunt, plaintiffs in the above styled cause, who have applied for a writ of sequestration in said suit, will pay to defendants all such damages as may be awarded against them and all costs in case it shall be decided that such sequestration was wrongfully issued.

Witness our hands on this the 4th day of June, 1895.

Mrs. AGNES PLATT.

MRS. LULA P. HUNT.

CLYDE D. V. HUNT.

By R. F. Arnold, Attorney.

R. F. ARNOLD.

W. M. COLEMAN.

Approved June 4th, 1895.

J. H. FINKS, Clerk.

By F. W. GIRAND, Deputy.

The foregoing Affidavit and Bond is endorsed as follows, to-wit: No. 93. Mrs. Agnes Platt et al vs. J. S. Splawn et al. Affidavit and Bond for Sequestration. Filed 4th June, 1895. J. H. Finks, Clerk. By F. W. Girand, Deputy. Filed Jan. 6th, 1898. J. H. Finks, Clerk. By Thomas P. Martin, Deputy.

## WRIT OF SEQUESTRATION.

Issued June 4th, 1895, in the United States Circuit Court, 5th  
Circuit and Northern District of Texas.

The President of the United States of America, to the Marshal of the Northern District of Texas, Greeting:—

You are hereby commanded, that you take into your possession the following described property, if to be found in your District, viz: A certain tract of land situated in Archer County, Texas, beginning at the S. W. corner of the John Minter survey. Thence East with the south line of said Minter survey, the S. P. R. R. Co. survey No. 5, survey No. 8, in the name of H. H. Duff, H. & T. C. R. R. Co. survey Nos. 1, 2 & 3, 11,400 vrs. to the west line of H. & T. C. R. R. Co. sur. No. 4. Thence S. 917 vrs. a stake. Thence West 11,400 vrs. to a stake, thence North 917 vrs. to the beginning. That said land is valued at five thousand (\$5000.00) dollars, and keep the same subject to the future order of said court in and for the Northern District of Texas, holding sessions at Graham, in a certain cause therein pending, wherein Mrs. Agnes Platt, and Mrs. Lula P. Hunt and Clyde D. V. Hunt, plaintiffs, and J. S. Splawn and Mrs. S. J. Davis are defendants, unless the same is replevied according to law.

Herein fail not, but you have this writ with your return thereon, showing how you have executed the same before our Circuit Court in and for the Northern District of Texas, at Graham, on the third Monday of October next, it being the 21st day of said month, A. D., 1895.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States and the seal of said Circuit Court at the City of Graham this the 4th day of June, A. D., 1895.

(Seal)

J. H. FINKS, Clerk.

By F. W. GIRAND, Deputy.

## Marshal's Return.

Received this writ on June 4th, 1895, at 2 o'clock P. M., and executed on the 5th day of June, 1895, at 2 o'clock P. M., by taking into my possession the lands and tenements set out and described in said writ and by reading said writ to each of the within named defendants, to-wit, J. S. Splawn and Mrs. S. J. Davis in person and by dispossessing them and each of them from said lands, each of said defendants being found by me about 12 miles S. E. from Archer or 25 miles from the land described in the within writ. The replevin bond having been set by me at the sum of ten thousand dollars. Witness our hands this the 10th day of June, 1895.

R. M. LOVE, U. S. Marshal.

By J. W. CORNELIUS, Deputy.

Received of R. F. Arnold, attorney for Plaintiffs, \$30.00 this  
June 10th, 1895.

The foregoing Writ of Sequestration in endorsed as follows, to-wit: No. 277, No. 93. Mrs. Agnes Platt et al vs. J. S. Splawn et al. Writ of Sequestration. Issued 4th June, 1895. Returnable Oct. Term. J. H. Finks, Clerk. By F. W. Girand, Deputy. Returned and filed 10th June, 1895. J. H. Finks, Clerk. By F. W. Girand, Deputy. Filed Jan. 6th, 1898. J. H. Finks, Clerk. By Thomas P. Martin, Deputy.

TRANSCRIPT OF RECORD FROM GRAHAM AND ABILENE COURTS.

Filed January 6th, 1898.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas.

No. 277. Mrs. Agnes Platt et al vs. J. S. Splawn. Tuesday October 23rd, 1895. Ordered that this cause be continued by consent.

No. 277. Mrs. Agnes Platt et al vs. J. S. Splawn. March 9th, 1896. Ordered that this cause be continued by consent.

No. 277. Mrs. Agnes Platt et al vs. J. S. Splawn. October 18th, 1897.

This day came on to be heard the motion of plaintiffs to transfer this cause to the Fort Worth branch of this court, and the court having heard said motion is of the opinion that the same should be granted, it is therefore ordered that the Clerk of this Court transmit all papers in this cause to the Fort Worth branch of this court together with a certified copy of all orders made in this cause and a certified copy of cost bill.

I, J. H. Finks, Clerk of the Circuit Court of the United States for the Northern District of Texas, do hereby certify that the above and foregoing is a true and correct copy of all orders made in the above cause.

In witness whereof I hereunto set my hand and affix the seal of said court at Abilene this 3rd day of January, 1898. (Seal) J. H. FINKS, Clerk. By F. W. GIRAND, Deputy.

Endorsed:—No. 93, Platt vs. Splawn. Transcript of Record from Graham and Abilene Courts. Filed January 6, 1898. J. H. Finks, Clerk. By Thomas P. Martin, Deputy.

PLAINTIFFS' MOTION TO CONSOLIDATE.

Filed October 13th, 1898.

Circuit Court of the United States for the Northern District of Texas, at Fort Worth, October Term, 1898.

No. 92. Mrs. Agnes Platt et al vs. A. Vermillion et al. No. 93. Mrs. Agnes Platt et al vs. J. S. Splawn et al.

Now at this time comes the plaintiffs in the above styled causes and shows to the Court that the plaintiffs are the same in both actions. That each action involves the same land and each will depend both in prosecution and defense upon the same evidence. That the defenses to be made by the several defendants therein will be consistent with each other and no valid reason exists why said actions should not be consolidated and tried jointly.

Wherefore plaintiffs pray that the same be consolidated and tried as one cause.

STANLEY SPOONTS & THOMPSON. R. F. ARNOLD, for Defendants.

The foregoing motion is endorsed as follows, to-wit: No. 92 & 93. Mrs. Agnes Platt et al vs. A. Vermillion et al. and J. S. Splawn et al. Plaintiffs Motion to Consolidate. Filed Oct. 13, 1898. J. H. Finks, Clerk. By Thomas P. Martin, Deputy.

## ORDER CONSOLIDATING WITH NO. 92.

No. 93. Mrs. Agnes Platt et al.  
vs.  
J. S. Splawn et al.

October 13th, 1898.

On this day came on to be heard the motion of plaintiffs to consolidate this cause with No. 92, same plaintiffs against Andrew Vermillion et al., all parties being present by attorneys, and the court having heard same and being fully advised:

It is therefore ordered by the court that this cause be and the same is hereby consolidated with said cause No. 92.

Order consolidating No. 93 with No. 92.

No. 92. Mrs. Agnes Platt et al.  
vs.  
Andrew Vermillion et al.

October 13th, 1898.

On this day came on to be heard the motion of plaintiffs to consolidate with this cause, No. 93, same plaintiffs against J. S. Splawn et al.—all parties being present by attorney—and the court having heard same and being fully advised:

It is therefore ordered by the court that the said last-named cause be and same is hereby consolidated with this cause No. 92.

## PLAINTIFFS FIRST AMENDED ORIGINAL PETITION.

Filed October 13th, 1898.

Circuit Court of the United States, for the Northern District of Texas, at Fort Worth, October Term, 1898.

The United States of America,  
State of Texas.

To the Hon. Circuit Court of the United States, for the Northern District of Texas, at Fort Worth:

Your petitioners, Mrs. Agnes Platt, and Mrs. Lula P. Hunt, formerly Lula P. Dickey, both of whom are feme soles and reside in Cook County Illinois by leave of the court file this their first amended original petition in said cause as consolidated upon the docket of this court and by way of amendment, your petitioners complain of J. S. Splawn and Mrs. S. J. Davis, a widow, Andrew Vermillion, J. D. Spencer, Greer Davidson, Jane McCall, J. S. Garner, J. D. Davis, William Huffman, W. T.

Slaughter, John Slaughter, Albert Keen, Ed. Simmons, J. W. McCall, Walter Keen, J. S. Speers, and J. W. Edgin, all of whom reside in Archer County, Texas.

Plaintiffs would respectfully represent and show to the court that heretofore, to-wit, on the 1st day of January, A. D. 1895, they were lawfully seized and possessed of the lands hereinafter set out and described, holding the same in fee simple. That on said day and date said defendants unlawfully and with force entered upon said premises and ejected plaintiffs therefrom and now unlawfully withhold from plaintiffs the possession thereof to their damage five thousand dollars.

That the premises so unlawfully entered upon by defendants and now withheld by them from plaintiffs are situated in Archer County, Texas, and bounded as follows, to-wit: beginning at the S. W. corner of the John Minter sur. Thence East with the south line of said Minter sur., the S. P. R. R. Co. sur. No. 5, sur. No. 8, in the name of H. H. Duff, H. & T. C. R. R. Co. surs. No. 1, 2 & 3, 11,400 vrs. to the west line of H. & T. C. R. R. Co. sur. No. 4. Thence S. 917 vrs. a stake. Thence West 11,400 vrs. to a stake. Thence North 917 vrs. to the beginning and being a part of the Brazos County School land four league grant which said land is reasonably worth the sum of five thousand dollars.

That said four league grant in the name of Brazos County school land of which the land in controversy is a part, is described as follows, to-wit: Beginning at the most Eastern Northeast corner of No. 38, in the name of A. Sterne and Wm. Duckworth. Thence West 1900 vrs. to another N. E. corner of the same survey. Thence S. 950 vrs. to another N. E. corner of said sur. Thence W. 3618 vrs. to the N. W. cor. of said sur. Thence S. 3535 vrs. to the N. E. cor. of No. 60. Thence W. 1208 vrs. to the N. W. cor. of No. 60, at 4908 vrs., the N. W. cor. of No. 61. Thence S. 800 vrs. the N. W. cor. of No. 65. Thence West 1980 vrs. the N. W. cor. of No. 65. Thence N. 800 vrs. pass the S. E. cor. of No. 114, 4112 vrs. the N. E. cor. of No. 114. Thence W. 4650 vrs. the N. W. cor. of No. 114. Thence N. 4486 vrs. a cor. in E. line of No. 113. Thence E. 20,056 vrs. a cor. in West line No. 34. Thence S. 2396 vrs. to the beginning.

Wherefore plaintiffs pray that defendants be cited to appear and answer herein and upon a final trial of said cause that they have judgment against each and all of said defendants for the restitution of said lands and for their damages, costs of suit and relief both general and special.

STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plaintiffs.

The foregoing petition is indorsed as follows, to-wit: No. 92 and 93. Mrs. Agnes Platt, et al., vs. A. Vermillion, et al. Plaintiff's First Amended Original Petition. This action is brought as well to try title as for damages. Stanley, Spoons & Thompson, R. F. Arnold, for Plffs. Filed Oct. 13, 1898. J. H. Finks, Clerk, by Thomas P. Martin, Deputy.

SPECIAL PLEA TO JURISDICTION.

Filed Oct. 13, 1898.

In the Circuit Court of the United States for the Northern District of Texas, at Ft. Worth.

Mrs. Agnes Platt, et al., Plaintiffs,  
vs.  
A. Vermillion, et al., Defendants.

Now come the defendants by way of a special plea only, and for the sole purpose of claiming the right to be sued in the county of their residence in the State Court, and not waiving any such right or privilege, the defendants now show to the Court: That each of them claim a separate tract or parcel of land containing not more than 160 acres, as hereinbefore shown, of the land involved in this suit; that they do not claim said land jointly but in severalty and that each of them claim by metes and bounds some specific portion of said land and are the legal and equitable owners thereof by title in fee simple, being more particularly described as follows: All situated in Archer Co., Texas. This is to say, the defendant J. S. Garner is the owner of the following described land: Beginning at the S. W. cor. of the J. T. S. Gant homestead survey on the North of the Brazos County School land as located by what is known as its short call; thence North at 917 vrs. the N. W. cor. of said Gant survey on or near the division fence between the . . . . . and word pasture; thence West on the South line of the 640 acres R. R. Co. survey No. 3, 984 vrs. to cor. Thence South on East line of homestead survey for E. A. McDonald 917 vrs. to cor. on North line of said school land; thence East on said line 984 vrs. to the beginning.

And the defendant, Mrs. S. J. Davis is the owner of the following described land, viz: Beginning on the North line of the Brazos Co. School land as located by what is known as its short call; thence North on the West line of a survey for Jane

McCall 917 vrs. to her N. W. cor. Thence West on the South line of R. R. Co. survey 984 vrs. to cor. Thence South 917 vrs. to cor. Thence East 984 vrs. to beginning.

And the defendant Jno. Davis is the owner of the following described land, viz: Beginning on the North line of the Brazos Co. School land as located by its short call, and the S. W. cor. of a survey for Mrs. S. J. Davis; thence North on her West line 917 vrs. to her N. W. cor. Thence West on the South line of the R. R. Co. survey 984 vrs. Thence South 917 vrs. to a point in the North line of said school land; thence East 984 vrs. to the beginning.

And the defendant A. Vermillion is the owner of the following described land: Beginning at the S. W. cor. of a survey for Speers on the North line of the Brazos Co. School land as located by what is known as its short call; thence North on the West line of said Speers survey 917 vrs. to its N. W. cor. Thence West on the South line of the Duff and R. R. Co. surveys 984 vrs. to cor.; thence South 917 vrs. to said school land; thence East 984 vrs. the beginning.

And the defendant W. M. Huffman is the owner of the following described land: Beginning at the S. W. cor. of a homestead survey for A. Vermillion on the North line of the Brazos Co. School land when located by its short call; thence North 917 vrs. to the N. W. cor. of said Vermillion survey; thence West 984 vrs. to cor. on South line of R. R. Co. survey; thence South 917 vrs. to the South line of said school land; thence East 984 vrs. the beginning.

And the defendant J. D. Spence is the owner of the following described land, viz: Beginning on the North line of the Brazos County School land as located by its short call; thence N. on the West line of a homestead survey in the name of Huffman 917 vrs. to his N. W. cor. Thence West on the South line of S. P. R. Co. survey No. 1, 0784 vrs. to cor. Thence South 917 vrs. to the North line of said school land; thence East 984 vrs. to the place of beginning.

And the defendant W. T. Slaught is the owner of the following described land, viz: Beginning on the North line of the Brazos Co. School land as located by its short call; thence North on the West line of J. D. Spence survey; thence West on the South line of the Jno. Minter survey 487 vrs. to cor. on said line of said Minter survey; thence South 917 vrs. to cor. on North line of said school land; thence East 487 vrs. the beginning.

And the defendant Jno. Slaught is the owner of the following described land, viz: Beginning at the S. W. cor. of a homestead survey for W. T. Slaught on North line of Brazos Co. School land as located by its short call; thence North on



said Slaughter West Line 917 vrs. his N. W. cor. Thence West on South line of Jno. Minter's survey 487 vrs to cor.; thence South 917 vrs. to the North line of said school land; thence East on said line 487 vrs. to the place of beginning.

And the defendant J. S. Splawn is the owner of the following described land, viz: Beginning at the S. W. cor. of a homestead survey for W. T. Slaughter on North line of the Brazos School land as located by its short call; thence North on said Slaughter's West line to the South line of said Minter survey; thence West 984 vrs. to the S. W. cor. of said Minter's survey; thence South 917 vrs. to the N. W. cor. of said school land; thence East 984 vrs. to the North line of said school land the place of beginning.

And the defendant J. S. Spears is the owner of the following described land, viz: Beginning on the North line of the Brazos Co. school land as located by its short call; thence North 917 vrs. to the N. W. cor. of a homestead survey for C. C. Davis; thence West 984 vrs. to cor. in South line of a survey for H. H. Duff; thence South 917 vrs. to North line of Brazos Co. School land; thence East 917 vrs. to the beginning.

And the defendant Miss Jane McCall is the owner of the following described land: Beginning on the North line of the Brazos Co. School land as located by its short call; thence North on the West line of a homestead survey for E. A. McDonald 917 vrs. to his N. W. cor. Thence West on the South line of R. R. Co. survey 492 vrs. to cor. Thence South 917 vrs. to North line of said school land survey; thence East on said line 492 vrs. to the beginning.

And the said defendants assert that they have never claimed said land jointly but they have at all times asserted a separate claim each defendant to his own tract only and to no more; nor has either defendant been in possession of any other portion of said land than the tract claimed by them; and the defendants here charge that said lands were never of greater value than \$3.00 per acre and no one of the tracts in controversy herein claimed by any of the defendants of the aggregate value of \$2000.00 but is and was at the date of the institution of this suit of far less value than the sum last aforesaid, and the defendants charge that plaintiffs well knew it at the time and prior to the time of the institution of this suit.

Defendants further charge that the plaintiffs knew at the time and prior to the time of the institution of this suit that the lands were claimed by them severally only and that they were not claiming or in possession of said lands jointly, and that no one of the tracts herein described was of the value of \$2000.00; but notwithstanding this, said plaintiffs, for the sole purpose of

conferring jurisdiction upon this Honorable Court and for the purpose of misleading said Court and inducing it to take cognizance of this cause.

Wherefore they pray that this Court take no further jurisdiction of this cause; that the same be dismissed and stricken from the docket and that defendants recover of plaintiffs, all costs hereby incurred. And so will ever pray, etc.

Sworn to and subscribed before me, J. S. Garner, one of the defendants herein.

Notary Public, Tarrant Co., Texas.

The foregoing plea to jurisdiction is indorsed as follows, to-wit: No. 92 and 93. Mrs. Agnes Platt vs. A. Vermillion, et al. Special Plea to Jurisdiction. Filed Oct. 13, 1898. J. H. Finks, Clerk, by Thomas P. Martin, Deputy.

ORIGINAL ANSWER AND PLEA OF RES  
ADJUDICATA.

Filed Oct. 13, 1898.

In the Circuit Court of the United States for the Northern  
District of Texas.

Mrs. Agnes Platt

vs.

A. Vermillion, et al.

Now come the defendants and for special plea herein say, that the plaintiffs ought not to have and maintain our aforesaid action against them, because they say that the matter which the plaintiffs attempt to litigate by this suit has already been determined by a Court of competent jurisdiction, as hereinafter stated and, that the matter as now in res adjudicata as to the said defendants and plaintiffs pleads said matter in res adjudicata as follows:

Defendants show that heretofore, to-wit, on the . . . day of July, 1894, one C. C. Davis filed a certain suit in the District Court of Archer County, Texas against W. M. Coleman, Clyde D. V. Hunt and Mrs. Lula P. Hunt to recover the title to and possession of 160 acres of land in Archer County, Texas, and that at the same time E. A. McDonald filed another suit in the same Court against the same defendants to recover 160 acres

36 SW. R.  
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near to the other tract of land, to-wit, the one claimed by Davis. The defendants answered in said causes and afterwards, to-wit, at the August term, 1894, of the District Court of Archer County, said causes were consolidated by order of the Court and thereafter prosecuted under the name and style of C. C. Davis, et al., vs. W. M. Coleman, et al., and the Court entered an order changing the venue in said Court to the District Court of Jack County, Texas, and on the 20th day of March, 1895, said cause came on for trial in the District Court of Jack County, Texas, and resulted in a judgment for the plaintiffs E. A. McDonald and C. C. Davis against all of said defendants for the title to and possession of said land. From this judgment the defendants appealed to the Court of Civil Appeals for the Second Supreme Judicial District of Texas, and on the 21st day of March, 1896, said judgment was duly affirmed by the said Court. An application was made for re-hearing which was in all things overruled by said Court, from which the defendants applied to the Supreme Court of Texas for a writ of error and their application was dismissed for want of jurisdiction and thereby the said judgment became final and conclusive as between the parties thereto and as against all persons claiming by, through or under them.

Defendants show that the question in controversy in this case and the question involved in the case of Davis, et al., vs. Coleman, et al., as above stated are one and the same, and that the sole question in each case is as to the true location of the North line of the Brazos County School land survey, situated in Archer County, Texas, and the true location of the John Minter and other surveys North of said Brazos County, some of which were owned by said Lula P. Hunt at the time of the trial of said cause and at the institution of the said suit, and defendants show that the present plaintiffs in this suit claim title only and solely through the said Lula P. Hunt arising after the institution of said suits, and that the true question in each case was as to whether there is a strip of land between the Brazos County School land on the South, and the John Minter and H. & T. C. Ry. surveys on the North; and defendants further show that in said judgment it was fully determined and conclusively established that the said strip was not embraced in any of plaintiffs' said surveys and that the title was not in plaintiffs to said land. That the said Davis and McDonald each claim 160 acres of said strip and the defendants in this case each claim 160 acres of said strip and that the effect of said judgment was to fully establish the fact, that the plaintiffs herein and their vendor Mrs. Lula P. Hunt had no title to said strip.

Defendants further show that said strip contains in all about

2,000.00 acres and lies wholly on the North side of the said school land survey. That in the year 1897, at a regular term of the District Court of Clay County, Texas, in a certain cause therein pending wherein J. T. S. Gant, E. C. Simmons and W. H. Keen were plaintiffs and one C. W. Word and Robert Housells were defendants, a part of the same strip was involved in the question presented was as to the true North line of the Brazos County School land, and the true South line of the surveys belonging to the said Word on the North of said school land lying due East of said Minter. The question in other words being as to whether there was a strip of land not included in said Brazos Co. and said Word surveys. That on the trial of said cause in said Court, a judgment was rendered in favor of said plaintiffs and it was found and established that there was a vacant strip of land between said surveys being a part of the same strip involved in this case. That said judgment so rendered, is now final and conclusive and has never been appealed from and that by the rendition of said judgment, it has become and is now res adjudicata as between all the parties to said suit, and is stare decisis herein.

Wherefore plaintiffs say that the said judgments herein mentioned fully establish the fact that the plaintiffs ought not to prevail in this action and that the land for which the plaintiffs are suing is a part and parcel of the strip of vacant land lying between said Brazos School land and the old surveys on the North thereof and leaves no room for controversy or doubt that the defendants are entitled to said land.

Wherefore defendants plead said judgments in bar of this action and prays for judgment, for the title to and possession of said land and for all costs of suit and general relief.

F. E. DYCUS, for Defts.

And now comes the defendants and each for himself disclaims all rights, title and interest in and to the lands in controversy, except that each defendant claims only the tract of land described as belonging to him in said original plea in abatement, viz:

That is to say, the defendant J. S. Garner is the owner of the following described lands: Beginning at the S. W. cor. of the J. T. S. Gant homestead survey on the North line of the Brazos Co. School land, as located by what is known as its short call thence South at 717 vrs. the N. W. cor. of said Gant survey on or near the division fence between the ..... and Word pasture; thence West on the South of the 640 acres R. R. Co. survey No. 3, 984 vrs. to cor.; thence South on East line of homestead survey for E. A. McDonald 917 vrs. to cor. on North

line of said school land; thence East on said line 984 vrs. to the beginning.

And the defendant Mrs. S. J. Davis is the owner of the following described land, viz: Beginning on the North line of the Brazos Co. School land as located by what is known as its short call; thence North on the West line of a survey for Jane McCall 917 vrs to her N. W. cor. Thence West on the South line of R. R. Co. survey 984 vrs. to cor. Thence South 917 vrs. to cor. Thence East 984 vrs. to beginning.

And the defendant Jno. Davis is the owner of the following described land, viz: Beginning on the North line of the Brazos Co. School land as located by its short call and the S. W. cor. of a survey for Mrs. S. J. Davis. Thence North on the West line 917 vrs. to her N. W. cor. Thence West on the South line of the R. R. Co. survey 984 vrs; thence South 917 vrs. to a point in the North line of said school land; thence East 984 vrs. to the beginning.

And the defendant A. Vermillion is the owner of the following described land: Beginning at the Southwest cor. of a survey for Speers on the North line of the Brazos Co. School land as located by what is known as its short call; thence North on the West line of said Speers survey 917 vrs. to its N. W. cor. Thence West on the South line of the Duff and R. R. Co. surveys 984 vrs. to cor.; thence South 917 vrs. to said school land; thence East 984 vrs the beginning.

And the defendant W. M. Huffman is the owner of the following described land: Beginning at the S. W. cor. of a homestead survey for A. Vermillion on the North line of the Brazos Co. School land, when located by its short call; thence North 917 vrs. to the N. W. cor. of said Vermillion survey; thence West 984 vrs. to cor. on South line of R. R. Co. survey; thence South 917 vrs. to the South line of said school land; thence East 984 vrs. the beginning.

And the defendant J. D. Spears is the owner of the following described land, viz: Beginning on the North line of the Brazos Co. School land as located by its short call; thence North on the West line of a homestead survey in the name of Huffman 917 vrs. to his Northwest cor. Thence West on the South line of S. P. R. R. Co. survey No. 1, 984 vrs. to cor. Thence South 917 vrs. to the North line of said school land; thence East 984 vrs. to the place of beginning.

And the defendant W. T. Slaughter is the owner of the following described land viz: beginning on the North line of the Brazos Co. School land as located by its short call. Thence North 917 on the west line of J. D. Spears survey. Thence West on the South line of the John Minter survey 487 vrs. to

corner on South line of said Minter's Survey. Thence South 917 vrs. to corner on North line of said school land. Thence East 487 vrs. the beginning.

And the defendant Jno. Slaughter is the owner of the following described land viz.: beginning at the S. W. corner of a homestead survey for W. T. Slaughter on the North line of the Brazos Co. School land as located by its short call. Thence North on said Slaughter's west line 917 vrs. his N. W. corner. Thence West on South line of Jno. Minter survey 487 vrs. to corner. Thence South 917 vrs. to north line of said school land. Thence East on said line 487 vrs. to the place of beginning.

And the defendant, J. S. Splawn, is the owner of the following described land viz: beginning at the S. W. corner of a homestead survey for W. T. Slaughter on North line of Brazos Co. School land as located by its short call. Thence North on said Slaughter's W. line to the S. line of the said Minter's survey. Thence West 984 vrs. to the S. W. corner of said Minter's survey. Thence South 917 vrs. to the N. W. corner of said school land. Thence East 984 vrs. on the North line of said school land the place of beginning.

And the defendant J. S. Spears is the owner of the following described land viz: beginning on the North line of the Brazos Co. School land as located by its short call. Thence North 917 vrs. to the N. W. corner of a homestead survey for C. C. Davis. Thence West 984 vrs. to cor. in South line of a survey for H. H. Duff. Thence South 917 vrs. to North line of Brazos Co. School land. Thence West 984 vrs. to the beginning.

And the defendant Miss Jane McCall is the owner of the following described land: beginning on the North line of the Brazos Co. School land as located by its short call. Thence N. on the West line of a homestead survey for E. A. McDonald 917 vrs. to the N. W. corner. Thence West on the South line of R. R. Co. survey 492 vrs. to corner. Thence South 917 vrs. to N. line of said school land survey. Thence E. on said line 492 vrs. to the beginning.

And each defendant says that he never did claim or possess any of the said land except said tracts and that he has never claimed any land jointly with his co-defendants but severally only that is to say, the defendants have each claimed the tracts respectively claimed by him in his plea and disclaims as to all other land.

As to the tract described and claimed by him in said plea (said plea being here referred to and made a part hereof) he pleads not guilty and says that he is not guilty of the said supposed wrongs, injuries and trespasses laid to his charge nor any

or either of them in the manner and form as alleged by plaintiffs and of this he puts himself upon the country.

F. E. DYCUS, Attorney for Defendants.

The foregoing original Answer and Plea of Res Adjudicata is endorsed as follows, to-wit: No. 92. Mrs. Agnes Platt vs. A. Vermillion et al. Original Answer and Plea of Res Adjudicata. Filed October 13, 1898. J. H. Finks, Clerk; by Thomas P. Martin, Deputy.

PLAINTIFFS FIRST SUPPLEMENTAL PETITION.

Filed October 13th, 1898.

Circuit of the United States, for the Northern District of Texas,  
at Fort Worth, October Term, 1898.

The United States of America, in State of Texas.

To the Hon. Circuit Court of the United States for the Northern District of Texas, at Fort Worth:

Now at this comes Mrs. Agnes Platt and Mrs. Lula P. Hunt, plaintiffs herein and file this their first supplemental petition in this cause and by way of replication to defendants original answer filed herein deny all and singular the allegations and averments therein set out and call for strict proof of the same.

Wherefore they pray as in their first amended original petition.

STANLEY, SPOONTS & THOMPSON.  
R. F. ARNOLD, Attorneys for Plaintiffs.

And by way of further replication to defendants original answer these plaintiffs that heretofore on the — day of —, 1890, Mrs. Lula P. Hunt, then Mrs. Lula P. Dickey, was the sole owner and holder in fee simple of the lands and tenements set out and described in plaintiffs first amended original petition, claiming and holding the same as a part of the four league grant in the name of the Brazos County School land.

That on the day and date aforesaid, Warren West, Polk West, D. T. Meredith and W. D. Youngblood filed upon said land claiming the same to be vacant and unappropriated public domain of the State of Texas, and as such subject to their file and settlement under the homestead donation laws of said State.

That the said Mrs. Lula P. Hunt, then Dickey, instituted her action of trespass to try the title in the Circuit Court of the United States for the Northern District of Texas at Graham against said parties claiming said land to be a part of her said Brazos County School land grant, and as such not subject to the files and settlement of said parties.

That said parties answered in said cause and were represented therein by counsel. That said cause was styled on the docket of said court as No. 179, Mrs. Lula P. Dickey vs. Warren West et al. That on the 27th day of October, 1890, said cause was tried by said court and judgment duly rendered therein in favor of the said Mrs. Lula P. Dickey. That it was thereby determined and adjudged by said Circuit Court of the United States that said land was a part of the Brazos County School land and was not vacant and unappropriated public domain of said State and not subject to the files of said parties. And these plaintiffs further aver and charge that on the — day of —, 1890, Mrs. Lula P. Hunt, formerly Dickey, was the legal and equitable owner and holder in fee simple and in the peaceable possession of the land set out and described in plaintiffs first amended original petition filed herein, that on said day and date R. K. Dunlap, Mrs. Woodward, J. B. Watson, G. W. Edgin, S. Kuykendall, G. L. Allen and J. T. S. Gant entered upon said lands, claiming the same to be vacant and unappropriated public domain of said State and as such subject to their files and settlement under the homestead donation laws of said State.

That the said Mrs. Lula P. Dickey instituted suit in the Circuit Court of the United States for the Northern District of Texas, at Graham, against said parties. That said cause was styled on the docket of said Court as No. 178, Mrs. Lula P. Dickey vs. Tully Wilburne et al. That on the 27th day of October, 1890, said cause was duly tried by said Court both plaintiffs and defendants therein being represented by counsel and judgment was rendered therein for Mrs. Lula P. Dickey. Said Court holding that said land was a part of the Brazos County School land grant and not a part of the vacant and unappropriated public domain of said State.

Plaintiffs further aver that on the — day of — 1892, J. T. S. Gant and G. W. Edgin again entered upon said land claiming the same as vacant and unappropriated public domain of said State and as such subject to their file and settlement under the homestead laws of said State. That said parties instituted suit in the District Court of Archer County, Texas, each claiming 160 acres of the land hereinbefore set out, which said causes were consolidated and prosecuted under the style of J.

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T. S. Gant et al. vs. W. M. Coleman et al. No. 186. That defendant Mrs. Lula P. Hunt, then Dickey, and W. M. Coleman, her foreman, were defendants in said cause. That defendants therein to wit, Mrs. Lula P. Dickey and W. M. Coleman claimed said land as a part of the Brazos County School land grant and as such not subject to the files and settlement of said parties. That the said cause was tried by the said Court on the 4th day of March, 1892, all of said parties being present and represented by counsel. That said Court rendered judgment in said cause for Mrs. Lula P. Dickey and W. M. Coleman for said land, thereby holding and finding, that said land was a part of the Brazos Co. School land grant and not vacant and unappropriated public domain and not subject to file and settlement of said parties under the homestead donation laws of said State. That said Court after the rendition of said judgment as aforesaid was by the said Gant and Edgin appealed to the Court of Civil Appeals of said State sitting at Fort Worth, Texas, which judgment and decree was by the Court of Civil Appeals in all things affirmed, thereby holding that said lands were a part of the Brazos County School land grant as aforesaid. That all of said judgments were rendered by Courts of competent jurisdiction and are in full force and effect and are unreversed.

Plaintiffs further aver and charge that on the — day of \_\_\_\_\_, 1894, Mrs. Lula P. Hunt, joined by her husband Clyde D. V. Hunt, being the legal and equitable owner and holder in fee simple of the lands set out and described in her first amended original petition and being in the actual possession of the same in order and for the purpose of checking, restraining, preventing and avoiding the annoyance and heavy expense of continued litigation over said land with any and all persons who should settle upon said land, claiming the same as vacant, filed her Bill in Equity in the Circuit Court of the United States for the Northern District of Texas at Graham, claiming said land as a part of the Brazos County School land grant in Archer County and alleging that said land was not vacant and unappropriated public domain and were not subject to settlement under the homestead laws of said State and further alleging that one T. M. Cecil, County Surveyor of Archer County, Texas, had surveyed and were continually surveying and accepting files upon said land as vacant and unappropriated public domain under the statute regulating homestead donations.

That said cause was determined and adjudicated by said Court on the 18th day of October, 1894, and a decree rendered by said court in favor of said Mrs. Lula P. Hunt against the said T. M. Cecil as such county surveyor of Archer County, Tex.; adjudging said land to be a part of the Brazos County School

land and not vacant land and forever and perpetually enjoining and restraining the said T. M. Cecil as such surveyor his agents, Deputies, assistants and successors in office and attorneys from accepting any file or files upon said land from any one whomsoever and from furnishing any one with field notes to said land or any part thereof who might or desired to claim the same as vacant or public domain or subject to file or settlement under the homestead donation Laws of said State.

Plaintiffs further aver and charge that the Defts. in this cause claim the land in controversy as vacant land under the homestead donation Laws of said State, that said lands as claimed by each of the defendants herein is a part of the land embraced in the decrees herein before set out. That the plaintiff herein Mrs. Lulu P. Hunt was a party to all of said decrees. That the land involved herein was involved in all of said causes. That the law and facts are the same in this cause as in all of those hereinbefore set out. That these defendants are urging the same defence and setting up the same claim from the same source as urged in all of said cause, that Defts. knew of such decrees or could have known of the same by mere inquiry, that they were notorious throughout Archer County.

Plaintiffs further aver and charge that by reason of the rendition of said decrees as aforesaid the fact that the land in controversy is a part of the Brazos Co. School land and that it is not vacant and unappropriated public domain and is not subject to file and settlement under the homestead donation laws of said State, has become a settled and established fact and is now res adjudicata as to all persons so claiming the same, and is stare decisis herein.

Wherefore these plaintiffs say that Defts cannot be heard to assert such claim and that the decrees herein set out are a bar to Defts. claim wherefore they pray as in their first amended original petition.

STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Pliffs.

Endorsed. No. 92, Mrs. Agnes Platt, vs. Andrew Vermillion et al. Plaintiffs First Supplemental Petition. Filed Oct. 13, 1898. J. H. Finks, Clerk. By Thomas P. Martin, Deputy.

DEFENDANTS DEMURRER TO PLAINTIFFS PLEA  
OF RES ADJUDICATA.

Filed Oct. 13, 1898.

Agnes Platt et al.  
vs.  
A. Vermillion et al.

Now comes the defendants (except Edgin, Keen and Davidson) and demur to plaintiffs plea of res adjudicata and say that the same is wholly insufficient in law to constitute any reason why the matters and things alleged in said plea should constitute any bar to defendants defense, because:—

1. Said plea does not show that these defendants were parties to the judgments.
2. Because said plea does not aver that the defendants therein claim said land under any party to said judgments or that they were in any way parties thereto.
3. Because the petition shows that this is a fact case and that the evidence adduced in the other cases is not admissible against 3rd parties who may produce additional testimony in this cause, and because the testimony in this cause may require a judgment established said vacancy, for which reasons defendants ask judgment as to the sufficiency of said plea.

F. E. DYCUS, Atty. for Defts.

The foregoing demurrer is indorsed as follows:  
Nos. 92 and 93. Mrs. Agnes Platt, et al., vs. A. Vermillion, et al. Defts. Demurrer to Plffs. Plea of Res Adjudicata. Filed Oct. 13, 1898. J. H. Finks, Clerk. By Thomas P. Martin, Deputy.

#### AGREEMENT OF COUNSEL.

Filed Oct. 13, 1898.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Texas.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al.

Mrs. Agnes Platt, et al.,  
vs.  
J. S. Splawn, et al.

In the above styled and numbered causes the plaintiffs and

defendants to facilitate a trial herein and save costs have entered into the following agreement, viz:

1. The testimony of W. C. Twitty, J. P. Hart and T. M. Cecil as contained in the transcript on file in the Court of Civil Appeals at Fort Worth, in the case of Coleman, et al., vs. Davis, et al., appealed from the District Court of Jack Co., Texas, shall be used in evidence herein in like manner and with same effect as though said witnesses were on the stand and under oath herein and said testimony detailed by them in these causes orally.
2. The said transcript may be withdrawn and the field notes therein shown may be used in evidence by either or both parties hereto, also the maps and sketches therein contained as offered in evidence in this cause.
3. Either party to this agreement may use any other legitimate evidence whatsoever.

R. F. ARNOLD, for Plffs.  
F. E. DYCUS, for Defts.

The foregoing agreement is indorsed as follows, to-wit:  
No. 92 & 93. Mrs. Agnes Platt, et al., vs. J. S. Splawn, et al. Agreement of Counsel. Filed Oct. 13, 1898. J. H. Finks, Clerk; by Thomas P. Martin, Deputy.

#### AGREEMENT OF COUNSEL.

In the Circuit Court of the U. S. for the Northern Dist. of Texas, at Fort Worth.

Filed Oct. 13, 1898.

Agnes Platt  
vs.  
Andrew Vermillion, et al. No. 276.

Mrs. Agnes Platt, et al.,  
vs.  
J. S. Splawn, et al. No. 277.

In the above entitled and numbered causes for the purpose of saving costs and facilitating the trial of these causes and for the purposes of this case only it is hereby agreed:

1. It is admitted by the defendants that plaintiffs are the owners of the following described lands, viz: The Brazos County school land survey, the John Minter survey and the

H. & T. C. R. R. Co. surveys No. 1 & 3, and that plaintiffs are the owners of said lands by title in fee simple.

2. It is admitted by plaintiffs that the defendants are the owners by title in fee simple of the several tracts of 160 acres and 80 acres claimed by them in their answers respectively unless the lands claimed by them are within the true boundaries of plaintiffs' surveys.

3. The only issue in this cause is one of boundary and res adjudicata and neither party shall be required to make out or offer any evidence in support of the paper title to the survey claimed by him.

Witness our hands this Nov. . . . ., 1897.

F. E. DYCUS,  
Atty. for Defts.

R. F. ARNOLD,  
Atty. for Plffs.

The foregoing agreement is indorsed as follows:

Nos. 92 & 93. Mrs. Agnes Platt vs. A. Vermillion, et al.  
Agreement of Counsel. Filed Oct. 13, 1898. J. H. Finks,  
Clerk; by Thomas P Martin, Deputy.

ORDER.

Agnes Platt, et al.,  
vs.  
Andrew Vermillion, et al. No. 92.

October 13th, 1898.

This cause being this day regularly called, came the parties by their attorneys, and all announced ready for trial.

And thereupon came on to be heard the exceptions of plaintiffs to defendants' special plea to the jurisdiction of this Court, and the Court having heard said plea and said exceptions, and the argument of counsel, and being fully advised, is of opinion that the law is for the plaintiff.

It is therefore considered and ordered by the Court that the said plea of defendant to the jurisdiction of this Court be and the same is overruled, to which ruling defendants, in open Court, except.

And thereupon came on to be heard defendants' demurrer to the plea of res adjudicata as set out in the first supplemental petition of plaintiffs herein filed, and the Court having heard said plea and demurrer, and the argument of counsel, is of opinion that the law is for the defendants.

It is therefore considered and ordered by the Court that the said demurrer be and the same is sustained, and that the said plea of plaintiffs of res adjudicata be and same is overruled, to which ruling plaintiffs, in open Court, except.

And thereupon came on to be heard defendants' plea of res adjudicata and the Court having heard same and the argument of counsel thereon is of opinion that the law is against said plea.

It is therefore considered and adjudged by the Court that said plea be and the same is overruled, to which ruling defendants, in open Court, except.

And thereupon came a jury of twelve good and lawful men, to-wit: W. L. Cleveland, Jos. L. Dreibelbis, A. J. Black, G. W. Gillespie, S. J. Vestal, Coleman Tevis, John A. Evans, J. C. Andrews, W. C. Hyde, R. L. Moore, S. H. Brumley and R. W. Derrett, who were duly empaneled and sworn, and heard the evidence of witnesses in this cause.

CHARGE OF THE COURT.

Filed October 15, 1898.

Mrs. Agnes Platt, et al.,  
vs.  
Andrew Vermillion, et al.

Charge of the Court.

Gentlemen of the Jury:

In this case it is agreed by the parties that the plaintiffs are the owners of the Brazos County School land survey, the John Minter survey and surveys Nos. 1 and 3, H. & T. C. Ry. Co., lying North of said school lands 120 acres of No. 1, S. P. R. R. Co., lying North of said school land. It is also agreed that the plaintiffs own the land which they seek to recover in this action, unless the said lands are not included within the surveys above enumerated as belonging to the plaintiffs, if said lands or any part thereof occupied by the defendants is not included in said surveys then it is agreed that the defts. have title to said lands or portions of said lands occupied by defendants and not included in said survey.

The matter presented for your determination is the true boundaries of the surveys hereinbefore mentioned as belonging

to the plaintiffs, and you are given the following charge as the law in the case.

First: If you find from the evidence that there is a strip or vacancy between the North boundary line of the Brazos County School land and the South boundary line of the John Minter survey, and surveys Nos. 1, 3, &c., of the H. & T. C. Ry. Co., and that the land or any part thereof occupied by the defendants is upon the said strip or vacancy, you will find for the defendants as to the amount of land occupied by them which you may find to be in said strip or vacancy. If you do not find there is a vacancy or strip between the North boundary line of the Brazos County School land and the South boundary line of the John Minter surveys Nos. 1, 3, &c., H. & T. C. Ry. Co., you will find for the plaintiff.

To enable you to determine the boundaries involved herein you are charged that in determining the boundaries of a survey, all the calls therein should be given effect, if the same can be done, and in cases where all the calls cannot be given effect and harmonized, it is the duty of the jury to look to the calls which are the most certain and material, and if you believe from the evidence in this case that the Brazos County School land was actually surveyed on the ground by the surveyor who originally located the same, then, in locating the lines of the same you should follow the footsteps of the surveyor who originally located and surveyed the same. And if in doing this you find that the calls on the East are more reliable and certain than the calls on the West, then the calls on the East should control, and the calls on the West and on the North line of said survey should be located from said calls on the East. But on the other hand, if the calls of the West of said surveys are more definite and certain than the calls on the East of said survey, then the North line of said survey should be located by the calls on the West boundary line. And if you should find that both the calls on the East and the calls on the West are sufficiently certain to definitely locate and settle said East and West boundary lines respectively, then neither of said lines on the East and West respectively, should be controlled or governed by the other, but the calls for the East and West boundary lines respectively should be given effect.

And in this behalf you are instructed that ordinarily where there is a conflict in the calls of a grant and they cannot all be reconciled, such calls are entitled to priority as follows: First, natural objects, such as lakes, rivers, etc.; second, artificial objects, such as marked stones, trees, lines and corners of other surveys; third, course and distance, course being more reliable than distance. But you must follow those calls which are most

certain under the facts in the case, and those which will the more nearly harmonize all the calls in the grant. Where the call is for a point or corner in another survey and also for distance, and the call for a point or corner in such other survey is so imperfectly made and of such doubtful meaning that the same cannot be definitely ascertained, then the call for distance should be observed and prevail, and the call for the point or corner which is unascertainable should be ignored. If, therefore, you find that the call for the point in the East line of survey No. 113, which is the call for the West boundary line of the Brazos County School land survey, is so vague and indefinite as to be unascertainable, then it would be your duty to ignore same and recognize the call for distance therein, which is for 4486 varas North, and which has been denominated the "long call" in this case.

You have been charged that artificial objects are entitled to priority over course and distance, and therefore, where artificial objects and distance are both included in a single call in the event the artificial object conflicts with the distance, the artificial object should prevail and the distance should yield. If, therefore, you find that in the call "thence South 2396 varas the beginning", which is the call for the East boundary line of said Brazos County School land survey, the beginning referred to is an established artificial object, and that the same conflicts with the distance given in said call, then said artificial object has priority and should prevail over said distance, and you should extend the line so as to close said survey.

SPECIAL CHARGE NO. 1, BY PLAINTIFF.

Mrs. Agnes Platt, et al.,

vs.

A. Vermillion, et al.

Special Charge No. 1, by Plaintiff.

You are charged by the Court that in the calls of a grant, course and distance from an established point will prevail over a call for a supposed line or corner, which at the time of the location of a grant had not been run or established.

Therefore, if you find from the evidence that at the time the Brazos County School land four-league grant was located and the field notes made that survey No. 113, now on the ground in the name of W. R. Griffin had not been run or located, then



the call in the Brazos County field notes for a point in the East line of No. 113 will yield to course and distance and the call in said Brazos County field notes of 4486 vrs. North from the N. W. cor. of Madison County survey will prevail.

Submitted. STANLEY, SPOONTS & THOMPSON,  
Given. R. F. ARNOLD, for Plffs.

SPECIAL CHARGE NO. 2, BY PLAINTIFF.

Mrs. Agnes Platt, et al.,  
vs. No. 92.  
A. Vermillion, et al.

Special Charge No. 2, by Plaintiff.

You are further charged by the Court that if you find from the evidence that the call in the Brazos County field notes for a point in the East boundary line of No. 113 yields to the call for course and distance as hereinbefore set out; and if you further find that by allowing this call in the Brazos County School land of 4486 vrs. North from the N. W. cor. of the Madison County School land survey, the survey as so run and constructed will embrace within the Brazos County School land grant, the lands claimed by the defendants, then you will find for the plaintiffs the land in controversy.

Submitted. STANLEY, SPOONTS & THOMPSON,  
Given. R. F. ARNOLD, for Plffs.

SPECIAL CHARGE NO. 3, BY PLAINTIFFS.

Mrs. Agnes Platt, et al.,  
vs. No. 92.  
A. Vermillion, et al.

Special Charge No. 3, by Plaintiffs.

You are further charged by the Court that in ascertaining the true location of a survey, you must follow as near as possible the footsteps of the original surveyor who located such grant, and if you find from the evidence that the original surveyor, who located the Brazos County School land grant, gave to such grant the call of 4486 vrs. North from the N. W. cor. of the Madison County School land survey and such original surveyor did run, or intended to run, such distance, then you must allow such call for course and distance in constructing such survey, and if you

further find from the evidence that by giving to the Brazos County School land survey this call of 4486 vrs. North, such survey will embrace the lands claimed by the defendants, then you will find for the plaintiffs the land in controversy.

Submitted. STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plaintiffs.

SPECIAL CHARGE NO. 4, BY PLAINTIFFS.

Mrs. Agnes Platt, et al.,  
vs. No. 92.  
A. Vermillion, et al.

Special Charge No. 4, by Plaintiffs.

You are instructed by the Court that the fact that a survey by giving it the calls and field notes embraced in the patent may have or may contain an excess in the number of acres does not affect the validity of such survey or its location, and you will not consider any question of excess in the Brazos County School land grant further than as a circumstance to aid you in ascertaining the true boundary line of said survey.

Submitted. STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plaintiffs.

SECOND SPECIAL INSTRUCTIONS ASKED BY  
DEFENDANTS.

In the Circuit Court of the United States for the Northern  
District of Texas, at Fort Worth.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al.

Second Special Instruction Asked by Defendants.

Gentlemen of the Jury:

If you believe from the evidence in this cause that the beginning corner of the Brazos County School land was located on the ground and that the lines and corners of said school land grant were actually surveyed by the locating surveyor, and if you further believe from the evidence that the lines and boundaries of said school land survey can be more certainly and definitely ascertained by beginning at said beginning corner; thence running North 2386 vrs.; thence West to the East line of the

Griffin survey; thence South on the East line thereof to the Northwest corner of the Madison County School land and so on, East and South and North to the beginning according to the calls in said grant, then you are authorized to so locate said lines if you believe from the evidence that all the land marks, courses and distances called for in said grant will be thereby observed, the configuration of the survey preserved and the intent of the locating surveyor followed.

Submitted. (Special No. 2.)

SPECIAL CHARGE NO 6, BY PLAINTIFFS.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al. No. 92.

Special Charge No. 6, by Plaintiffs.

You are further charged by the Court that in ascertaining the true boundaries of a survey it is not permissible to reverse the calls of such survey and run them opposite from the calls of the field notes, unless it has been shown by the evidence that all of the corners and lines embraced in the field notes of such grant were actually run upon the ground at the time of the original location. Therefore, if you find from the evidence that all of the lines of the Brazos County School Land grant at the time of its original location were not actually run upon the ground, then you cannot be permitted to reverse the calls of such grant in determining its true location, but must run the same as called for in the field notes.

Submitted. STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plaintiffs.

FIFTH SPECIAL INSTRUCTION ASKED BY  
DEFENDANTS.

In the Circuit Court of the United States for the Northern  
District of Texas, at Fort Worth.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al.

Fifth Special Instruction Asked by Defendants.

Gentlemen of the Jury:

It is the duty of the Jury in establishing the lines and corners

of a survey to follow the footsteps of the surveyor who originally surveyed them and if you believe from the evidence that the Southwest and Southeast corners of the John Minter survey were located on the ground, and that the other surveys East of it were also located on the ground and immediately East of said Minter survey and that the call of said surveys for the North line of said school land was made by mistake, and that it is your duty to disregard the call for the North line of said school land and called for said school land only by mistake, then it is your duty to disregard the call for the North line of said school land and place said survey where they were originally located.

Submitted.

CHARGE ASKED BY DEFENDANTS.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al.

Gentlemen of the Jury:

The plaintiffs are required to make out their case by a preponderance of the evidence and the burden is upon them to show that the land in controversy is within the boundaries of the surveys belonging to them, and if they have failed to discharge the burden, you will find for the defendants.

In this connection you are further charged that if you find that any part of said strip is within the true boundaries of the H. H. Duff survey or H. & T. C. R. R. Co. survey No. 2, then as to such parts you will find for the defendants, Miss Jane McCall, Mrs. S. J. Davis, Jno. Davis, J. S. Speers and A. Vermillion, and by your verdict you will give the breadth East and West of their respective claims as described in their answer and also give the breadth North and South as you may find it.

I further charge you that in no event can said strip of land under the evidence be of greater width between said Minter, S. P. R. R. Co. and H. & T. C. R. R. Co., No. 1 and 3 on the North and the Brazos County School Land survey on the South than 717 vrs., and if you find there is any vacant land in controversy extending from the N. W. cor. of said school land to a point opposite the S. E. cor. of survey No. 3, H. & T. C. R. R. Co., then you will find for defendants said strip, finding for each of said defendants the particular tract claimed by him not exceeding 717 vrs. in width North and South and finding for plaintiffs all of the balance of said land not covered by said strip.

Submitted.

The foregoing Charge of the Court is indorsed as follows, to-wit: No. 92. Mrs. Agnes Platt, et al., vs. A. Vermillion, et al. Charge of the Court. Filed Oct. 15, 1898. J. H. Finks, Clerk, by Thomas P. Martin, Deputy.

JUDGMENT.

October 15th, 1898.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al. No. 92.

Saturday Oct. 15, 1898.

This cause having been regularly submitted for trial and all the parties having appeared and announced ready for trial and submitted the matters of fact to a jury of twelve good and lawful men, consisting of J. C. Andrews, foreman and eleven others, who having heard the pleadings, evidence and argument of counsel and having received the charge of the Court, retired to consider of their verdict and after due deliberation returned into open Court the following verdict:

We the jury find for the defendants, J. S. Garner, S. J. Davis, Jno. Davis, A. Vermillion, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Speers and Miss Jane McCall the several tracts of land claimed by them in their answer herein filed being strips 717 vrs. wide North and South and otherwise bounded as stated in said answer to which we here refer for better description. We find for plaintiffs the entire balance of the land sued for as against said defendants. We find for plaintiffs as against all the other defendants for all of the land in controversy. (Signed) J. C. Andrews, Foreman. Which verdict having been received, was approved and filed and is made a part of the record herein.

Wherefore it is ordered and adjudged by the Court, that the defendants named in said verdict, do have and recover of and from the plaintiffs, Mrs. Agnes Platt and Mrs. Lula P. Hunt the following described tracts or parcel of land situated in Archer county, Texas, and bounded and described as follows, namely; the north lines of said land lying 10,749 vrs. north of the H. S. Smith survey as fixed by an elm original bearing tree.

First Tract.

Beginning at the S. W. cor. of the J. T. S. Gant homestead

survey on the north line of the Brazos Co. school land as located by what is known as its short call; thence north at 717 vrs. the N. W. cor. of said Gant survey on or near the division fence between the T. L. and Word pasture; thence west on the south line of 640 acres Ry. Co. survey No. 3, 984 vrs. to corner thence south on the east line of the homestead survey of E. A. McDonald 717 vrs. to corner on the north line of said school land survey; thence east on said line 984 vrs. to the place of beginning.

Second Tract.

Beginning on the north line of the Brazos county school land as located by what is known as its short call; thence north on the west line of a survey for Jane McCall 717 vrs. to her north-west cor.; thence west on the south line of the R. R. Co. survey 984 vrs. to corner; thence south 717 vrs. to corner; thence east 984 vrs. to beginning.

Third Tract.

Beginning on the north line of the Brazos Co. school land as located by its short call and the S. W. corner of a survey for Mrs. S. J. Davis; thence north on her west line 717 vrs. to her N. W. cor.; thence west on the south line of the R. R. Co. survey 984 vrs.; thence south 717 vrs. to a point in the north line of said school land; thence east 984 vrs. to the beginning.

Fourth Tract.

Beginning at the southwest cor. of a survey for Speers on the north line of the Brazos county school land as located by its short call; thence north on the west line of said Speers survey 717 vrs. to its northwest cor.; thence west on the south line of the Duff and R. R. Co. survey 984 vrs. to cor.; thence south 717 vrs. to said school land survey; thence east 984 vrs. to the beginning.

Fifth Tract.

Beginning at the southwest cor. of a homestead survey for A. Vermillion on north line of the Brazos Co. school land where located by its short call; thence north 717 vrs. to the N. W. cor. of said Vermillion survey; thence west 984 vrs. to corner on the south line of R. R. Co. survey; thence south 717 vrs. to the north line of said school land; thence east 984 vrs. to beginning.

## Sixth Tract.

*Full*

Beginning at the north line of the Brazos county school land as located by its short call; thence north on the west line of a homestead survey in the name of Huffman 717 vrs. to his north-west cor.; thence west on the south line of the S. P. R. R. Co. survey 984 vrs. to cor.; thence south 717 vrs. to the north line of said school land; thence east 984 vrs. to place of beginning.

## Seventh Tract.

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*P. 1*  
*1/2*

Beginning on the north line of the Brazos county school land; thence north 717 vrs. on the west of J. D. Spencer's survey; thence west on the south line of the Jno. Minter's survey 487 vrs. to corner on the south line of said Minter; thence south 717 vrs. to corner on the north line of said school land; thence east 487 vrs. to the beginning.

## Eighth Tract.

*1/2*

Beginning at the southwest cor. of a homestead survey for W. T. Slaughter on the south line of the Brazos Co. school land; thence north on said Slaughter's west line 717 vrs. to his north-west cor.; thence west on the south line of the Jno. Minter's survey 487 vrs. to cor.; thence south 717 vrs. to the north line of said school land survey; thence east on said line 487 vrs. to the beginning.

## Ninth Tract.

*Full*

Beginning at the S. W. cor. of a homestead survey for W. T. Slaughter on north line of the Brazos Co. school land; thence north on the Slaughter's west line 717 vrs. to the south line of the said Minter's survey; thence west 984 vrs. to the southwest cor. of the said Minter; thence South 717 vrs. to the N. W. cor. of said school land; thence east 984 vrs. on the north of said school land the place of beginning.

## Tenth Tract.

*Full*

Beginning on the north line of the Brazos Co. school land; thence north 717 vrs. to the N. W. cor. of a homestead survey for C. C. Davis; thence west 984 vrs. to corner in the south line of a survey for H. H. Duff; thence south 717 vrs. to the north line of said school land survey; thence east 984 vrs. to the beginning.

## Eleventh Tract.

*1/2*

Beginning on the north line of said school land survey as located by its short call; thence north on the west line of a homestead survey for E. A. McDonald 717 vrs. to his N. W. corner; thence west on the south line of the R. R. Co. survey 492 vrs. to cor.; thence south 717 vrs. to the north line of said school land survey; thence east on said line 492 vrs. to the beginning.

It is further ordered and adjudged by the Court, that the said plaintiffs do have and recover of and from the defendants J. S. Garner, S. J. Davis, A. Vermillion, Jno. Davis, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Speers and Miss Jane McCall the title to and possession of the following described lands, namely:

Beginning at the S. W. cor. of the land herein set apart to defendants being the S. W. cor. of the tract in the name of J. S. Splawn; thence east with the south line of the said surveys in the name of Splawn, Jno. Slaughter, W. T. Slaughter, J. D. Spencer, W. M. Huffman, A. Vermillion, and J. S. Spears to C. C. Davis, Jno. Davis, Mrs. S. J. Davis, E. A. McDonald, and J. S. Garner 11,400 vrs. to a stake for cor.; thence south 200 vrs. to stake in Brazos Co. school land; thence west 11,400 vrs. to a point in the east line of No. 113 for W. R. Griffin; thence north 200 vrs. to the beginning.

It is further ordered and adjudged by the Court that the plaintiffs do have and recover of and from the other defendants to-wit: Greer Davidson, J. W. McCall, Albert Keen, Ed Simmons, Walter Keen, and J. W. Edgin on their disclaimer, all the land in controversy to-wit: Beginning at the S. W. cor. of the Minter's survey; thence east with the south line of the said Minter's survey, the S. P. R. R. Co.'s survey No. 8 in the name of H. H. Duff, H. & T. C. R. R. Co. survey No. 1, 2, and 3 11,400 vrs. to the west line of the H. & T. C. R. R. Co.'s survey No. 4; thence south 917 vrs. to a stake; thence west 11,400 vrs. to a stake; thence north 917 vrs. to the beginning.

And it is further ordered, that the defendants J. S. Garner, S. J. Davis, Jno. Davis, A. Vermillion, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Speers and Miss Jane McCall may have their writ of restitution for the lands herein adjudged to them and hereinbefore described and that as to said land as against said defendants, the plaintiffs take nothing by reason of their said suit.

It is further ordered that plaintiffs do have and recover of and from the said eleven defendants last herein above named, all

costs in this behalf incurred, except the cost incurred by or against the defendants Greer, Davidson, J. W. McCall, Albert Keen, Ed Simmons, and Walter Keen and J. W. Edgin and that as to said costs incurred by the six defendants last herein above named be adjudged against the plaintiffs on the disclaimer of said defendants.

It is further ordered that the plaintiffs may have their execution against the eleven defendants herein named who recovered a part of the land from the plaintiffs for the costs herein adjudged against them.

It is further ordered, that the officers of this Court may have their execution against each party both plaintiffs and defendants for the costs by them in this behalf incurred.

#### AGREEMENT AS TO JUDGMENT.

Filed October 15, 1898.

No. 92. Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al. Consolidated.

It is agreed in the above cause that in as much as the land in controversy adjudged to defendants is written in the judgment to be taken from the land south of the Minter and other surveys lying west as shown by the stone corners as now located on the ground thereby allowing the 200 vrs. excess claimed by J. P. Hart's testimony to lie contiguous to the north line of the Brazos county grant.

That no question as to the location of the lands of defendants will be raised on such judgment, but this agreement is not to be construed to waive or in any way effect any exception or objection which plaintiffs have to the existence of defendants land.

It is further agreed that if there is or was any vacant land between the Brazos county and surveys on the north that the judgment properly described the same, but it is not conceded by plaintiffs that there is or was any vacancy.

This Oct. 15, 1898. R. F. ARNOLD, for Plaintiffs.  
F. E. DYCUS, for Defendants.

The foregoing agreement is endorsed as follows to-wit: No. 92. Mrs. Agnes Platt, et al., vs. Andrew Vermillion, et al. Agreement as to Judgment. Filed Oct. 15, 1898. J. H. Finks, Clerk; By Thomas P. Martin, Deputy.

#### PLAINTIFFS' MOTION FOR A NEW TRIAL.

Filed October 15, 1898.

Circuit Court of the United States for the Northern District of Texas at Fort Worth, Oct. Term, 1898.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al. No. 92.

To the Honorable Circuit Court of the United States for the Northern District of Texas, at Fort Worth:

Now at this time comes the plaintiffs in the above styled cause and moves the Court to set aside the verdict of the jury rendered therein and grant them a new trial in said cause for the following reason, to-wit: 1st. Because the Court erred in sustaining defendants exceptions to plaintiffs first supplemental petition setting out plaintiffs plea of res adjudicata.

2nd. Because the Court erred in giving to the jury special charge No. 2, requested by defendants which special charge is as follows: "If you believe from the evidence in this cause that the beginning corner of the Brazos county school land was located upon the ground and with the lines and corners of said school land grant were actually surveyed by the locating surveyor, and if you further believe from the evidence that the lines and boundaries of said school land survey can be more certainly and definitely ascertained by beginning at said beginning corner, thence running north 2396 vrs.; thence west to the east line of the Griffin survey; thence south on the east line thereof to the northwest corner of the Madison county school land and so on east and south and north to the beginning according to the calls in said grant then you are authorized to locate said lines if you believe from the evidence that all the land marks, corners and distances called for in said grant will be thereby observed the configuration of the survey preserved and the intent of the locating surveyor followed."

Because said special charge was not authorized by the evidence in this that the testimony of W. C. Twitty the original locating surveyor shows that all of the lines and corners of said Brazos county grant were not located and run upon the ground and because said special charge is misleading in this that the jury could and did infer and conclude therefrom that they were thereby authorized to disregard the long call of the Brazos county on the west and thereby cut off a strip on the north thereof 717 vrs. wide north and south, and because said charge authorized

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the jury to consider the closing line established by course and distance in the absence of evidence that said line was marked on the ground or that any of the corners on the east line, north line or west line had been established by course and distance line or west line had been established or found by either natural or artificial objects and because the course and distance of said east line being the closing call given by the surveyor after establishing the west and north line by course and distance became and was immaterial, uncertain and could not control the course and distance of the north and west lines and because said special charge authorized the jury to disregard the certain calls for course and distance in the Brazos county grant and make such course and distance yield to an uncertain call for the point in the E. B. line of No. 113.

3rd. Because the verdict rendered by said jury is contrary to the law as given them by the Court and is contrary to the evidence in said cause and is not supported by either in this. The evidence shows that if the long call be given to the Brazos County field notes on the west and said survey be thus run that said Brazos County school land grant will embrace the land claimed by defendants and before the jury can render the verdict as herein given they must and did disregard this west or long call in said Brazos County field notes and did make this certain and definite call for course and distance yield to the uncertain and unreliable call in said field notes for a point in the E. B. line of sur. No. 113, which point can never be established, located or found and which survey No. 113 was shown not to exist until long after the location of the Brazos County school land grant, and because the evidence of W. C. Twitty, the original locator of the Brazos County grant, showed that he did give such long call to said grant and that he intended to and did run such course and distance on its west line and because there is no testimony of W. C. Twitty and the field notes of said grant that the footsteps of said surveyor were anywhere else than along the full course and distance of this call.

4th. The verdict rendered by said jury shows that in arriving at their conclusions they reversed the calls of the Brazos County grant when the evidence shows that the lines and corners of said grant were not all run on the ground at the original location and therefore the calls could not be reversed thereby making the short call on the east control and disregarding in toto the long call on the west.

5th. Because if the long call on the west of said Brazos County grant is disregarded the short call on the east is made the controlling call, then the Minter, S. P. R. R. Co. and H. & T. R. R. Co. surveys on the north tie to the north line of said

Brazos County grant on their south line and said survey will be pulled down to said Brazos north line and will not and cannot leave any vacancy between them.

6th. The verdict of said jury is contrary to law and evidence in this that there is no controversy about the true location of the beginning cor. of the Brazos County school land and the lines run and established therefrom south and west to its S. W. cor. to-wit: the N. W. cor. of the Madison County school land from thence north with the west line of said grant there are neither natural or artificial objects to limit the length of said line to less than the distance of 4486 vrs. and the end of such line north is certainly and definitely fixed by the calls and no other way, the call thence east is not fixed or limited by either natural or artificial objects and only by course and distance and the end of this line definitely fixed as by such course and distance the call thence south to the beginning corner is fixed and controlled by the beginning corner and not by course and distance such being the mathematical result of the established lines and is controlled by them instead of this being controlled by it, and the construction of the area included within said grant in the absence of such testimony that said lines were located elsewhere or otherwise than by course and distance is a question of law and not of fact.

Wherefore plaintiffs pray that a new trial be granted them.  
STANLEY SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plffs.

Indorsed: No. 92. Mrs. Agnes Platt, et al., vs. A. Vermillion, et al. Plaintiffs' Motion for New Trial. Filed Oct. 15, 1898. J. H. Finks, Clerk; by Thomas P. Martin, Deputy.

ORDER OVERRULING MOTION FOR NEW TRIAL.

Mrs. Agnes Platt, et al.,

vs.

A. Vermillion, et al.

No. 92.

October 15th, 1898.

On this day came on to be heard the motion of plaintiffs to set aside the verdict and judgment herein entered and for a new trial:

And the Court having heard the same, and the argument of counsel thereon, and being fully advised:

It is therefore ordered and adjudged by the Court that said motion be and is overruled.

To which ruling plaintiffs, in open Court, except.

ORDER GRANTING TIME TO FILE EXCEPTIONS, ETC.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al. No. 92.

October 15, 1898.

On this day came on to be heard the motion of plaintiffs in the above cause to have until November 24th, 1898, after the adjournment of this Court, within which to file herein their bills of exception, and for perfecting the record in said cause, and the Court, after hearing said motion, is of opinion that said motion should be granted:

It is therefore ordered by the Court that plaintiffs be and they are hereby authorized and permitted to file said bills of exception and perfect the record in said cause within said time, and that said time be allowed for such purpose, and that such bills of exception be filed by the clerk of this Court, nunc pro tunc, as of this date when presented.

PETITION FOR WRIT OF ERROR.

Filed Jany. 25, 1899.

The Circuit Court of the United States for the Northern District of Texas.

Mrs. Agnes Platt, et al.,  
vs.  
A. Vermillion, et al. No. 92.

Petition for Writ of Error.

To the Judges of the Circuit Court of the United States in and for the Northern District of Texas, at Fort Worth, . . . . ., term, 189..

Your petitioners, Mrs. Agnes Platt and Mrs. Lula P. Hunt,

both of whom are feme soles, and reside in Cooke County, Illinois, respectfully represent:

That at said term of Court, to-wit, on the 15th day of October, 1898, a judgment was rendered in this cause in favor of the defendants, J. S. Garner, S. J. Davis, Jno. Davis, A. Vermillion, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Spears and Miss Jane McCall, for the several tracts of land claimed by them, which said tracts of land are described as follows:

1st Tract. Beginning at the S. W. corner of the J. T. S. Gant homestead survey on the north line of the Brazos County School land, as located by what is known as its short call; thence N. at 717 vrs. the N. W. corner of said Gant survey on or near the division fence between the T. L. and Word pastures; thence W. on the S. line of 640 acre Railway Co. survey No. 3,984 vrs. to corner; thence S. on the east line of the homestead survey of E. A. McDonald 717 veras to corner on the N. line of said school land survey; thence E. on said line 984 veras to the place of beginning.

2nd Tract. Beginning on the north line of the Brazos County school land as located by what is known as its short call; thence N. on the W. line of a survey for Jane McCall 717 veras to her N. W. corner; thence W. on the S. line of the R. R. Co. survey 984 veras to corner; thence S. 717 veras to corner; thence E. 984 veras to beginning.

3rd Tract. Beginning on the north line of the Brazos County school land as located by its short call; and the S. W. corner of a survey for Mrs. S. J. Davis; thence north on her west line 717 veras to her N. W. corner; thence W. on the S. line of the Railway Company survey 984 veras; thence S. 717 veras to a point on the N. line of said school land; thence E. 984 veras to the beginning.

4th Tract. Beginning at the S. W. corner of a survey of Spiers on the N. line on the Brazos County school land as located by its short call; thence N. on the W. line of the said Speers survey 717 veras to its N. W. corner; thence W. on the S. line of the Duff and Railroad Company survey 984 veras to corner; thence S. 171 veras to said school land survey; thence E. 984 veras to the beginning.

5th Tract. Beginning at the S. W. corner of a homestead survey for A. Vermillion on N. line of the Brazos County school land where located by its short call; thence N. 717 veras to the N. W. corner of said Vermillion survey; thence W. 984 veras to a corner on the S. line of railway company survey; thence S. 717 veras to the N. line of said school land; thence E. 984 veras to the beginning.

6th Tract. Beginning at the N. line of the Brazos County school land as located by its short call; thence N. on the W. line of a homestead survey in the name of Huffman 717 varas to his N. W. corner; thence W. on the S. line of S. P. R. R. Co. survey 984 varas to corner; thence S. 717 varas to the N. line of said school land; thence E. 984 vrs. to place of beginning.

7th Tract. Beginning on N. line of Brazos County school land; thence N. 717 varas on the W. line of J. D. Spencer's survey; thence W. on S. line of the Jno. Minter survey 487 varas to corner on S. line of said Minter; thence S. 717 varas to corner on N. line of said school land; thence E. 487 varas to the beginning.

8th Tract. Beginning at S. W. corner of a homestead survey for W. T. Slaughter on N. line of Brazos County school land; thence N. on said Slaughter's west line 717 varas to his N. W. corner; thence W. on the S. line of the Jno. Minter's survey 487 varas to corner; thence S. 717 varas to the N. line of said school land survey; thence E. on said line 487 varas to the beginning.

9th Tract. Beginning at S. W. corner of homestead survey for W. T. Slaughter on N. line of Brazos County school land; thence N. on Slaughter's W. line 717 varas to S. line of said Minter's survey; thence W. 984 varas to S. W. corner of said Minter; thence S. 717 to the N. W. corner of said school land; thence E. 984 varas to the N. line of said school land the place of beginning.

10th Tract. Beginning on N. line of Brazos County school land; thence N. 717 varas to the N. W. corner of homestead survey for C. C. Davis; thence W. 984 varas to corner in S. line of survey for H. H. Duff; thence S. 717 varas to N. line of said school land survey; thence E. 984 varas to the beginning.

11th Tract. Beginning on N. line of said school land survey as located by its short call; thence N. on W. line of homestead survey for E. A. McDonald 717 varas to his N. W. corner; thence W. on S. line of R. R. Co. survey 492 varas to corner; thence S. 717 varas to N. line of said school land survey; thence E. on said line 492 varas to the beginning.

Also ordered and decreed in said judgment that the plaintiffs recover of and from the defendants, J. S. Garner, S. J. Davis, A. Vermillion, Jno. Davis, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Speers and Miss Jane McCall, the following described property: Beginning at the S. W. corner of the land herein set apart to defendants, being the S. W. corner of the tract in the name of

J. S. Splawn; thence E. with S. line of said surveys in the name of Splawn, Jno. Slaughter, W. T. Slaughter, J. D. Spencer, W. M. Huffman, A. Vermillion and J. S. Speers, C. C. Davis, Jno. Davis, Mrs. S. J. Davis, E. K. McDonald, J. S. Garner, 11400 varas to a stake for corner; thence S. 200 vrs. to stake in Brazos County school land; thence W. 11400 varas to a pt. in the E. line of No. 113, for R. W. Griffin; thence N. 200 varas to beginning

And it is further ordered that plaintiffs recover of the other defendants, Greer Davidson, J. W. McCall, Albert Keen, Ed. Simmons, Walter Keen and J. W. Edgin, on their disclaimers the following described property. Beginning at S. W. corner of Minters survey; thence E. with S. line of said Minter's survey the S. P. R. R. Co.'s survey No. 8, in the name H. H. Duff, H. & T. C. R. R. Co. survey No. 1, 2 and 3, 11400 varas to W. line of H. & T. C. R. R. Company's survey No. 4; thence S. 917 vrs to a stake; thence W. 11400 varas to a stake; thence N. 917 varas to beginning.

It is further ordered in said judgment that the defendants, J. S. Garner, S. J. Davis, Jno. Davis, A. Vermillion, W. M. Huffman, J. D. Spencer, J. S. Splawn, J. S. Speers and Miss Jane McCall may have their writs of restitution, and that as to said lands against said defendants the plaintiffs take nothing. It is further ordered that plaintiffs recover from said eleven defendants last mentioned all costs in this behalf incurred, except costs incurred by or against the defendants Davidson, McCall, Albert Keen, Ed. Simmons and Walter Keen and J. W. Edgin and that said costs incurred by the six last named be adjudged against the plaintiffs on the disclaimers of said defendants.

In which said proceedings and judgment there was and is manifest error to the great prejudice of petitioners; that the defendants, J. S. Garner, S. J. Davis, Jno. Davis, A. Vermillion, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Speers and Miss Jane McCall, all reside in the State of Texas in the County of Archer; that the defendants, Greer Davidson, Albert Keen, Ed. Simmons, J. W. McCall, Walter Keen and J. W. Edgin, all reside in the State of Texas, County of Archer; that the attorney of record for all of said defendants is F. E. Dycus, a resident of Tarrant County, Texas.

That petitioners have filed in this Court their assignments of error and here present same for the inspection of the Court.

Wherefore petitioners pray that they be granted a writ of error to remove said judgment and proceedings had in said cause to the United States Circuit Court of Appeals for the Fifth



Circuit, to be held at New Orleans, Louisiana, for revision, correction and reversal; and your petitioners will ever pray.

ARNOLD and ARNOLD, and  
STANLEY, SPOONTS & THOMPSON,  
Attys. for Petitioners.

Allowed this January 25th, 1899.

EDWARD R. MEEK, Judge.

The foregoing petition for writ of error is indorsed as follows:  
No. 92. Mrs. Agnes Platt, et al., vs. A. Vermillion, et al.  
Petition for Writ of Error. Filed Jany. 25, 1899. J. H. Finks, Clerk; by Thomas P. Martin, Deputy.

BOND FOR WRIT OF ERROR.

Filed Jany. 25, 1899.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

Mrs. Agnes Platt, et al.,

vs.

A. Vermillion, et al.

Writ of Error, Bond.

Know all men by these presents, that we, Mrs. Agnes Platt, a feme sole, and Mrs. Lula P. Hunt, a feme sole, as principals, and R. F. Arnold and W. M. Coleman as sureties, are held and firmly bound unto J. S. Splawn, Mrs. S. J. Davis, A. Vermillion, J. D. Spencer, Greer Davidson, Jane McCall, J. S. Garner, J. W. Davis, Wm. Huffman, W. T. Slaughter, Jno. Slaughter, Al. Keen, Ed. Simmons, J. W. McCall, Walter Keen, J. S. Speers, J. W. Edgin, in the sum of one thousand dollars, to be paid to said J. S. Splawn, Mrs. S. J. Davis, A. Vermillion, J. D. Spencer, Greer Davidson, Jane McCall, J. S. Garner, J. W. Davis, Will Huffman, W. T. Slaughter, Jno. Slaughter, Albert Keen, Ed. Simmons, J. W. McCall, Walter Keen, J. S. Speers, and J. W. Edgin, their executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents. Sealed with our seals, using scrolls, for seals, and signed with our names this the 7th day of January, 1899.

The condition of the foregoing obligation is such that whereas, lately, at a term of the Circuit Court for the Northern District of Texas, at Fort Worth, in a suit pending in said court between Mrs. Agnes Platt and Mrs. Lula P. Hunt, plaintiffs, and J. S. Splawn, Mrs. S. J. Davis, Andrew Vermillion, J. D. Spencer, Greer Davidson, Jane McCall, J. S. Garner, J. W. Davis, William Huffman, W. T. Slaughter, Jno. Slaughter, Albert Keen, Ed. Simmons, J. W. McCall, Walter Keen, J. S. Speers, and J. W. Edgin, defendants, numbered 92 on the docket of said court, a judgment was rendered on the 15th day of October, 1898, substantially as follows:

This cause having been regularly submitted for trial, and all the parties having appeared and announced ready for trial, and submitted the matters of fact to a jury of twelve good and lawful men, consisting of J. C. Andrews, foreman, and eleven others, who having heard the pleadings, evidence and argument of counsel, and having received the charge of the court, retired to consider of their verdict and after due deliberation returned into open court the following verdict: We the jury find for the defendants, J. S. Garner, S. J. Davis, A. Vermillion, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Speers, and Miss Jane McCall, the several tracts of land claimed by them in their answer herein filed, being strips 711 vrs. wide, north and south and otherwise bounded as stated in said answer to which we here refer for better description. We find for plaintiffs the entire balance of the land sued for as against said defendants. We find for plaintiffs as against all the other defendants for all of the land in controversy.

(Signed)

J. C. ANDREWS, Foreman.

Which verdict having been received, was approved and filed, and is made a part of the record herein,

Wherefore it is ordered and adjudged by the court that the defendants named in said verdict do have and recover of and from the plaintiffs Mrs. Agnes Platt and Mrs. Lula P. Hunt the following described tracts or parcels of land situated in Archer County, Texas, and bounded and described as follows: namely, the North line of said land lying 10,749 vrs. North of the H. S. Smith survey as fixed by an elm, original bearing tree.

First Tract,—beginning at the S. W. corner of the J. T. S. Gant homestead survey on the North line of the Brazos County School land as located by what is known as its short call. Thence North at 717 varas the N. W. corner of said Gant survey on or near the division fence between the T. L. and Word pastures. Thence West on the South line of 640 acres Ry. Co. survey No. 3,984 vrs. to corner. Thence S. on the east line of the homestead survey of E. A. McDonald 717 vrs. to corner on the north

line of said school land survey. Thence East on said line 984 vrs. the place of beginning.

Second Tract,—beginning on the North line of the Brazos county School land as located by what is known as its short call; thence North on the West line of a survey for Jane McCall 717 vrs. to her North West corner; thence West on the South line of the R. R. Co. survey 984 vrs. to corner; thence S. 717 vrs. to corner; thence East 984 vrs. to beginning.

Third Tract,—beginning on the North line of the Brazos Co. School land as located by its short call and S. W. corner of a survey for Mrs. S. J. Davis; thence North on her West line 717 vrs. to her N. W. corner. Thence West on the South line of the R. R. Co. survey 984 vrs. Thence S. 717 vrs. to a point in the North line of said school land; thence East 984 vrs. to the beginning.

Fourth Tract,—beginning at the Southwest corner of a survey for Speers on the North line of the Brazos Co. School land as located by its short call; thence North on the West line of said Speers survey 717 varas to its North West corner; thence West on the South line of the Duff and R. R. Co. survey 984 varas to corner. Thence South 717 varas to said school land survey; thence East 984 varas to the beginning.

Fifth Tract,—beginning at the Southwest corner of a homestead survey for A. Vermillion on North line of the Brazos Co. School land where located by its short call; thence North 717 varas to the N. W. corner of said Vermillion survey; thence West 984 vrs. to corner on the South line of R. R. Co. survey; thence South 717 vrs. to the North line of said school land; thence East 984 vrs. to beginning.

Sixth Tract,—beginning at the North line of the Brazos Co. School land as located by its short call; thence North on the West line of a homestead survey in the name of Huffman 717 vrs. to his North West corner; thence West on the South line of S. P. R. R. Co. survey 984 vrs. to corner. Thence South 717 vrs. to the North line of said school land; thence east 984 vrs. to place of beginning.

Seventh Tract,—beginning on the North line of the Brazos County School land; thence North 717 vrs. on West of J. D. Spencer survey; thence West on the South line of the Jno. Minter's survey 487 vrs. to corner on the South line of said Minter; thence South 717 vrs. to corner on the North line of said school land; thence East 487 vrs. to the beginning.

Eighth Tract,—beginning at the Southwest corner of a homestead survey for W. T. Slaughter on the North line of the Brazos Co. School land; thence North on said Slaughter's West line 717 vrs. to his North west corner. Thence W. on the South

line of Jno. Minter's survey 487 vrs. to corner. Thence S. 717 vrs. to the North line of said school land survey; thence East on said line 487 vrs. the beginning.

Ninth Tract,—beginning at the S. W. corner of a homestead survey for W. T. Slaughter on North line of the Brazos County School land; thence North on the Slaughter's West line 717 vrs. to the South line of said Minter's survey; thence West 984 vrs. to the S. W. corner of the said Minter; thence South 717 vrs. to the N. W. corner of said school land the place of beginning.

Tenth Tract,—beginning on the North line of the Brazos Co. School land; thence North 717 vrs. to the N. W. corner of a homestead survey for C. C. Davis; thence W. 984 vrs. to corner in the South line of a survey for H. H. Duff; thence South 717 vrs. to the North line of said school land survey; thence East 984 vrs. the beginning.

Eleventh Tract,—beginning on the North line of said school land survey as located by its short call; thence North on the West line of a homestead survey for E. A. McDonald 717 vrs. to his N. W. corner; thence west on the South line of the R. R. Co. survey 492 vrs. to cor; thence S. 717 vrs. to the North line of the said school land survey; thence East on the said line 492 vrs. the beginning.

It is further ordered and adjudged by the Court that the said plaintiffs do have and recover of and from defendants, J. S. Garner, S. J. Davis, A. Vermillion, Jno. Davis, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Speers, and Miss Jane McCall the title to and possession of the following described land, namely; beginning at the South West corner of the lands herein set apart to defendants being the S. W. corner of the tract in the name of J. S. Splawn; thence East with the South line of the said surveys in the name of Splawn, John Slaughter, W. T. Slaughter, J. D. Spencer, W. M. Huffman, A. Vermillion, and J. S. Speers, C. C. Davis, Jno. Davis, Mrs. S. J. Davis, E. A. McDonald, and J. S. Garner 11,400 varas to a stake for corner; thence South 200 varas to a stake in Brazos County School land; thence West 11,400 vrs. to a point in the East line of No. 113, for W. R. Griffin; thence North 200 varas to the beginning. It is further ordered and adjudged by the court that the plaintiffs do have and recover of and from the other defendants, to-wit, Greer Davidson, J. W. McCall, Albert Keen, Ed. Simmons, Walter Keen, and J. W. Edgin, on their disclaimer all of the land in controversy, to-wit, beginning at the S. W. corner of the Minter's survey; thence East with the South line of said Minter's survey, the S. P. R. R. Co.'s survey No. 8, in the name of H. H. Duff, H. & T. C. R. R. Co. survey

No. 1, 2 & 3, 11,400 vrs. to the West line of the H. & T. C. R. Co.'s survey No. 4; thence South 917 vrs. to a stake; thence West 11,400 vrs. to a stake; thence North 917 vrs. to beginning. It is further ordered that the defendants J. S. Garner, S. J. Davis, Jno. Davis, A. Vermillion, W. M. Huffman, J. D. Spencer, W. T. Slaughter, Jno. Slaughter, J. S. Splawn, J. S. Speers, and Miss Jane McCall may have their writ of restitution for the lands herein adjudged to them and hereinbefore described and that as to said land as against said defendants, the plaintiffs take nothing by reason of their said suit. It is further ordered that plaintiffs do have and recover of and from the said eleven defendants last hereinabove mentioned, all costs in this behalf incurred, except the costs incurred by or against the defendants Greer Davidson, J. W. McCall, Albert Keen, Ed. Simmons, and Walter Keen and J. W. Edgin, and that as to said costs incurred by the six defendants last hereinabove named be adjudged against the plaintiffs on the disclaimer of said defendants. It is further ordered that the plaintiffs may have their execution against the eleven defendants herein named who recovered a part of the land from plaintiffs for the costs herein adjudged against them.

And whereas the said plaintiffs Mrs. Agnes Platt, and Mrs. Lula P. Hunt have obtained a writ of error and filed a copy thereof in the office of the Clerk of said court to reverse said judgment, and also a citation directed to said defendants, J. S. Splawn, Mrs. S. J. Davis, A. Vermillion, J. D. Spencer, Greer Davidson, Jane McCall, J. S. Garner, J. W. Davis, Wm. Huffman, W. T. Slaughter, Jno. Slaughter, Al. Keen, Ed. Simmons, J. W. McCall, Walter Keen, J. S. Speers, and J. W. Edgin, and their attorney of record F. E. Dyeus, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans Feb. 24th 1899. Now if the said Agnes Platt and Lula P. Hunt shall prosecute their said writ of error to effect and answer all damages and costs if they shall fail to make good their pleas, then the above obligation to be void, else to remain in full force and virtue.

MRS. AGNES PLATT,  
MRS. LULA P. HUNT,

By B. F. Arnold, Atty.  
R. F. ARNOLD,  
W. M. COLEMAN,

Approved this January 25th, 1899,  
EDWARD R. MEEK, Judge.

Endorsed:—No. 92, Mrs. Agnes Platt et al. vs. A. Vermillion

et al. Bond for Writ of Error. Filed Jan. 25, 1899. J. H. Finks Clerk. By Thomas P. Martin Deputy.

PLAINTIFF'S BILL OF EXCEPTION NO. 1.

Filed Nov. 23, 1898.

Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Oct. Term, 1898.

Mrs. Agnes Platt, et al.,  
vs.  
Andrew Vermillion, et al.

No. 92. Consolidated.

Be it remembered that on the trial of the above styled and numbered cause by the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, at the October term, 1898, the Hon. E. R. Meek, judge presiding, the defendants therein presented to the Court their demurrer (as shown by Exhibit A hereto attached) to plaintiffs' plea of res adjudicata (as shown by Exhibit B hereto attached) which demurrer was, by the Court, sustained. To which ruling of the Court the plaintiffs then and there excepted and now here in open Court tenders this their bill of exception and prays that the same may be signed, filed and made a part of the record herein.

Submitted.

STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plffs.

The foregoing bill of exceptions is hereby allowed.

EDWARD R. MEEK, Judge.

Nov. 22, 1898.

EXHIBIT "A."

Agnes Platt, et al.,  
vs.  
A. Vermillion, et al.

Now comes the defendants (except Edgin, Keen and Davidson) and demur to plaintiffs' plea of res adjudicata and say that the same is wholly insufficient in law to constitute any

reason why the matters and things alleged in said plea should constitute any bar to defendants' defense because:

1st. Said plea does not show that these defendants were parties to the said judgment.

2nd Because said plea does not aver that the defendants herein claim said land under any party to said judgments or that they were in any way privies thereto.

3rd. Because the petition shows that this is a fact case and that the evidence adduced in the other cases is not admissible against 3rd parties who may produce additional testimony in this cause, and because the testimony in this cause may require a judgment establishing said vacancy.

For which reasons defendants ask judgment as to the sufficiency of said plea.

F. E. DYCUS,  
Atty. for Defts.

“EXHIBIT B.”

Circuit Court of the United States for the Northern District of Texas, at Fort Worth, October Term, 1898.

The United States of America, :  
State of Texas. :

To the Hon. Circuit Court of the United States for the Northern District of Texas, at Fort Worth:

Now at this time comes Mrs. Agnes Platt and Mrs. Lula P. Hunt, plaintiffs herein, and file this their first supplemental petition in this cause and by way of replication to defendants original answer filed herein deny all and singular the allegations and averments therein set out and call for strict proof of the same wherefore they pray as in their first amended original petition.

STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, Attys. for Plaintiffs.

And by way of further replication to defendants' original answer these plaintiffs say that heretofore on the . . . . . day of . . . . ., 1890, Mrs. Lula P. Hunt, then Mrs. Lula P. Dickey, was the sole owner and holder in fee simple of the lands and tenements set out and described in plaintiffs' first amended original petition claiming and holding the same as a part of her four league grant in the name of Brazos County School. That on the day and date aforesaid Warren West, Polk West, D. T. Meredith and W. D. Youngblood filed upon

Lula P. Hunt against the said T. M. Cecil as such County Surveyor of Archer County, Texas, adjudging said land to be a part of the Brazos County School land and not vacant land and forever and perpetually enjoining and restraining the said T. M. Cecil as such surveyor, his agents, deputies, assistants, successors in office and attorneys from accepting any file or files upon said land from any one whomsoever and from furnishing any one with field notes to said land or any part thereof who might or desire to claim the same as vacant or public domain or subject to file or settlement under the homestead donation laws of said State.

Plaintiffs further aver and charge that the defendants in this cause claim the land in controversy as vacant land under the homestead donation laws of said State, that said lands was claimed by each of defendants herein as a part of the land embraced in the decree hereinbefore set out. That the plaintiff herein Mrs. Lula P. Hunt was a party to all of said decrees. That the land involved herein was involved in all of said causes. That the law and facts are the same in this cause as in all of those hereinbefore set out. That these defendants are urging the same defense and setting up the same defense and setting up the same claim from the same source as urger in all of said causes. That these defendants knew of such decrees or could have known of the same by mere inquiry that they were notorious throughout Archer County.

Plaintiffs further aver and charge that by reason of the rendition of said decrees as aforesaid the fact that the land in controversy is a part of the Brazos County School land grant and that it is not vacant and unappropriated public domain and is not subject to file and settlement under the homestead donation laws of said State, has become a settled and established fact and is now res adjudicata and is herein as to all persons so claiming the same.

Wherefore these plaintiffs say that defendants cannot be heard to assert such claim and that the decree herein set out are a bar to defendants claim.

Wherefore they pray as in their first amended original petition.

STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, Attorneys for plaintiffs.

The foregoing Bill of Exemption No. 1 is endorsed as follows, to-wit: No. 92. Mrs. Agnes Platt et al. vs. A. Vermillion et al. Plaintiffs Bill of Exception No. 1. Filed November 23, 1898. J. H. Finks, Clerk. By Thomas P. Martin, Deputy.

## PLAINTIFFS BILL OF EXCEPTION NO. 2.

Filed November 23, 1898.

Circuit Court of the United States for the Northern District of  
Texas, at Fort Worth, October Term, 1898.

Mrs. Agnes Platt et al.  
vs.  
A. Vermillion et al.

Consolidated.

No. 92.

Be it remembered that on the trial of the above styled and numbered cause, the Court gave the Jury Special Charge No. 2, requested by defendants, which was as follows: "If you believe from the evidence in this cause that the beginning corner of the Brazos County School land was located upon the ground and that the lines and corners of said school land grant were actually surveyed by the locating surveyor and if you further believe from the evidence that the lines and boundaries of said school land survey can be more certainly and definitely ascertained by beginning at said beginning corner; thence running North 2,396 vrs.; thence West to the East line of the Griffin survey; thence South on the East line thereof to the N. W. corner of the Madison County School Land and so on East and South and North to the beginning according to the calls in said grant, then you are authorized to so locate said calls if you believe from the evidence that all of the land marks, courses and distances called for in said grant will be thereby observed and the configuration of the surveyor preserved and the intent of the locating surveyor followed." To which special charge plaintiffs by their counsel except. Because said special charge was not authorized by the evidence in this that the testimony of W. C. Twitty, the original locating surveyor shows that all of the lines and corners of said Brazos County grant were not located and run upon the ground, (the testimony of W. C. Twitty being attached hereto marked Ex. A.) and because said special charge is misleading in this the Jury could and would infer and did conclude therefrom that they were thereby authorized to disregard the long call of the Brazos County Grant on the West and thereby cut off a strip on the North thereof 717 vrs. wide North and South, (the field notes of the Brazos County School Land and contiguous surveys being hereto attached marked as Exhibits), and because said special charge authorized the Jury to disregard the certain call for course and distance in the Brazos County grant calls and makes such course and distance yield to an uncertain call for a point in the E. B. line of No. 113. And because said charge

said land claiming the same to be vacant and unappropriated public domain of the State of Texas, and as such subject to their file and settlement under the homestead donation laws of said State. That the said Mrs. Lula P. Hunt, then Dickey, instituted her action of trespass to try title in the Circuit Court of the United States for the Northern District of Texas at Graham against said parties claiming said lands to be a part of her said Brazos County School land grant and as such not subject to the files and settlement of said parties. That said parties answered in said cause and were represented therein by counsel. That said cause was styled on the docket of said Court as No. 179, Mrs. Lula P. Dickey vs. Warren West, et al. That on the 27th day of October, 1890, said cause was tried by said Court and a judgment duly rendered therein in favor of the said Mrs. Lula P. Dickey. That it was thereby determined and adjudged by said Circuit Court of the United States that said land was a part of the Brazos County School land and was not vacant and unappropriated public domain of said state and not subject to the files of said parties.

And these plaintiffs further aver and charge that on the — day of —, 1890, Mrs. Lula P. Hunt, formerly Dickey, was the legal and equitable owner and holder in fee simple and in the peaceable possession of the lands set out and described in plaintiffs first amended original petition filed herein that on said day and date R. K. Dunlap, Mrs. Mary Woodard, J. B. Watson, G. W. Edgin, S. Kuykendall, G. L. Allen, and J. T. S. Gant entered upon said lands claiming the same to be vacant and unappropriated public domain of said State and as such subject to their files and settlement under the homestead donation Laws of said State. That the said Mrs. Lula P. Dickey instituted suit in the Circuit Court of the United States for the Northern District of Texas at Graham against said parties, that said cause was styled on the Docket of said Court as No. 178, Mrs. Lula P. Dickey vs. Tully Wilburne et al. That on the 27th day of Oct. 1890 said cause was duly tried by said Court both plaintiffs and defendants therein being represented by counsel and judgment was rendered therein for Mrs. Lula P. Dickey.

Said Court holding that said land was a part of the Brazos County School Land grant and not apart of the vacant and unappropriated public domain of said State.

Plaintiffs further aver that on the — day of —, 1892 J. S. T. Gant and G. W. Edgin again entered upon said land claiming the same to be vacant and unappropriated public domain of said State and as such subject to their file and settlement under the homestead laws of said State.

That said parties instituted suit in the District Court of

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P. 1

Archer County, Texas, each claiming 160 acres of the land here-  
inbefore set out which said causes were consolidated and prose-  
cuted under the style of J. S. T. Gant et al vs. W. M. Coleman  
et al, No. 186. That defendant, Mrs. Lula P. Hunt, then Dickey,  
and W. M. Coleman, her foreman, were defendants in said  
cause. That defendants therein, to-wit, Mrs. Lula P. Dickey  
and W. M. Coleman claimed said land as a part of the Brazos  
County School land grant and as such not subject to the files  
and settlement of said parties. That said cause was tried by  
said court on the 4th day of March, 1892, all of said parties  
being present and represented by counsel. That said court  
rendered judgment in said cause for Mrs. Lula P. Dickey and  
W. M. Coleman for said land, thereby holding and finding that  
said land was a part of the Brazos County School land grant and  
not vacant and unappropriated public domain and not subject to  
the files and settlement of said parties under the homestead dona-  
tion laws of said State. That said cause after the rendition of  
said judgment as aforesaid was by the said Gant and Edgin ap-  
pealed to the Court of Civil Appeals of said State sitting at Fort  
Worth, Texas, which judgment and decree was by the  
Court of Civil Appeals in all things affirmed, thereby  
holding, that said lands were a part of the Brazos  
County School land grant as aforesaid. That all of said  
judgments were rendered by courts of competent jurisdiction  
and are in full force and effect and are unreversed. Plaintiffs  
further aver and charge that on the — day of —, 1894,  
Mrs. Lula P. Hunt joined by her husband Clyde D. V. Hunt,  
being the legal and equitable owner and holder in fee simple of  
the lands set out and described in her first amended original peti-  
tion and being in the actual possession of the same in order and  
for the purpose of checking, restraining, preventing and avoid-  
ing the annoyance and heavy expense of continued litigation  
over said land with any and all persons who should settle upon  
said land, claiming the same as vacant, filed her Bill in Equity  
in the Circuit Court of the United States for the Northern Dis-  
trict of Texas, at Graham, claiming said land as a part of the  
Brazos County School land grant in Archer County, and alleg-  
ing, that said land was not vacant and unappropriated public  
domain and was not subject to settlement under the homestead  
laws of said State and further alleging that one T. M. Cecil,  
County Surveyor of Archer County, Texas, has surveyed and  
was continually surveying and accepting files upon said land as  
vacant and unappropriated public domain under the statute reg-  
ulating homestead donations. That said cause was determined  
and adjudicated by said Court on the 18th day of October, 1894,  
and a decree rendered by said Court in favor of the said Mrs.

trict, do hereby certify that I have examined the foregoing plat  
and field notes and find them correct and that they are re-  
corded in my office in Book B, page 570. Given under my  
hand at Gainesville, this 20th day of Jan., 1855.

DANIEL MONTAGUE, Dist. Sur. C. L. D.

I hereby certify that the above survey has this day been re-  
located in my office this 22nd day of Sept., 1856.

J. M. PERRY, Dist. Sur. C. L. D.

I, J. P. Hart, County Surveyor of Archer County, Texas, do  
hereby certify that the pages contain a true and correct copy  
of the field notes and certificates for the Brazos County School  
Land as by the records in my office in Book C, page 171 and 172.  
Given under by hand this April 27th, 1890.

J. P. HART, Surveyor, Archer County, Texas.

"EXHIBIT C."

The State of Texas,

Dist. of Cook.

Survey for William Walker of half league of land by vir-  
tue of certificate No. 3560/3661 issued by Robt. Meegin, chief  
clk. and acting coms. at Austin on the 3rd day of July, 1854,  
situated on the Little Wichita waters of Red River. Beginning  
at a mound 389 vrs. S. from the N. W. cor. of No. 3 from  
which a mesquit brs. S.  $3\frac{1}{2}$  E. 165 vrs. mkd. X; thence West  
530 vrs. a branch 1950 vrs. a creek 3216 vrs. a large pile of  
stone; thence S. 3886 vrs. a mound in prairie from which a  
cotton wood brs. N. 436 vrs. mkd. North and South side; thence  
East 1300 vrs. Wichita 3216 vrs. pile of stone from which a  
cotton wood mkd. X brs. S. 62 W. 80 vrs.; thence North 990  
vrs. Wichita 3886 vrs. to place of beginning.

J. A. KNIGHT,

JAMES MAN, Chainmen.

I solemnly declare under oath of my office that the forego-  
ing field notes limits and bounds natural and artificial are herein  
truly described and the survey made according to law the 28th  
day of August, 1854.

WILLIAM C. TWITTY,  
Dept. S. C. L. D.

I hereby certify that I have examined the foregoing plat and  
field notes and find them correct and they are made accord-  
ing to law.

Given under my hand at Gainesville this 28th day of Au-  
gust, 1854. DANIEL MONTAGUE, S. C. L. Dist.

Transcribed from page 8, book A.

I, R. W. Watkins, County Surveyor of Clay County, do hereby certify that the foregoing field notes is a true copy of the record now in use in my office in book B, page 47.

Given under my hand at office this April 25th, 1890.

R. W. WATKINS, C. S., Clay Co., Texas.

"EXHIBIT D."

Field Notes Edward Brooks Survey.

The State of Texas,  
Cook Land Dist.

365  
P. 1

Surveyed for Edward Brooks B. Bowling assignee by virtue of bounty certificate No. 9904 issued by the Sect. of War on the 1st day of Dec., 1841, situated on the little Wichita waters of Red River, beginning on the S. line and 1316 vrs. W. of the S. E. cor. of sur. No. 31 for William Walker set a stake on bank of creek from whence a pecan mkd. X brs. S. 28, W. 2 vrs.; thence S. 100 vrs. Choal creek 1900 vrs. cor. pile of stone; thence West crossing creek 1990 vrs. set a stake in prairie; thence North 1900 vrs. to the S. W. cor. of sur. No. 31; thence East 1900 vrs. on South line of same to the place of beginning.

T. R. GASSETT,  
BENJAMIN DICKERSON, Chainmen.

I do solemnly declare under my official oath that the survey, limits, bounds and corners, marks, natural and artificial are herein truly described and the survey made according to law on the 28th day of August, 1854. WILLIAM HOWETH,  
Dept. Surveyor of Cook Land Dist.

I hereby certify that I have examined the foregoing field notes and find them correct and the survey made according to law.

Given under my hand at Gainesville, this the 5th day of Oct., 1854. DANIEL MONTAGUE, D. S., C. L. D.

Transcribed from book A, page 10.

I, R. W. Watkins County Surveyor of Clay County do hereby certify that the foregoing field notes is a true copy of the records of my office now in use copied from book B, page 49.

Given under my hand at office this Apr. 25, 1890.

R. W. WATKINS, C. S., Clay Co., Texas.

does not specifically and with certainty inform the jury that before the calls in locating a grant can be reversed it must be definitely shown by testimony that the entire grant and all lines and corners thereof were actually located and established upon the ground by the original locating surveyor. The charge in controversy in a measure limits such original location on the ground to the beginning corner. Which objections were overruled by the court to which ruling the plaintiffs then and there excepted and now here in open court tenders this their bill of exceptions and pray that the same may be signed, allowed and ordered filed and made a part of the record in said cause.

Submitted.

STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, For Plaintiffs.

The foregoing Bill of Exceptions is hereby allowed.

Nov. 22nd, 1898.

EDWARD R. MEEK, Judge.

"EXHIBIT A."

Testimony of W. C. Twitty.

W. C. Twitty testifies that he was 71 years old. In 1854 before and after was Surveyor and Land Locator. He had done some locating and surveying in Archer County from 1854 to 1860, he could not remember the exact date. Witness with Howeth located the Brazos County School Land 4 leagues grant together with the other surveys. The Brazos County school Land was located on the ground. It was not an office survey. The North call of the West line of the Brazos County where it calls; thence North 4468 vrs. is a mistake. I intended in this call to run the full distance North. I did not intend to stop still before reaching the full course and distance as called for in this call. Where a bearing is called for and marked they were always made. Some of the corners might have been derived from some other surveys I had made.

Witness further testified that he could not state whether he found the bearings at the beginning corner or not but said that he must have located said School Land from its beginning corner as stated in the field notes. Witness was unable to say how the discrepancy in the field notes of the Brazos occurred. He only intended to give the Brazos County grant its quantity of 4 leagues of land and did not intend to give it any excess. Witness could not state who located the W. R. Griffin and Sarah Ursey lying West of the Brazos School land. Does not remember whether he intended to abut the School land survey

on them or not. Witness could not swear that he run all the lines and established all the corners called for in the field notes of said survey on the ground, will not swear that he ever located its most Northern West corner on the ground or not. He could not state whether he located that line or corner on the ground. Witness did not know whether or not he made the N. W. corner of the Brazos in the East line of No. 113. It is a fact that witness did not run the whole distance of the West line on the ground. It is a fact that he did not intend to locate the North line or the N. E. corner of said School land in conflict with No. 34 or 38 or any other survey. He did not intend to give the Brazos any excess. It is also a fact that he intended to run the North line due East from its N. W. corner allowing only about 10 degrees variation.

"EXHIBIT B."

State of Texas,

District of Cooke.

Plat and field notes of a survey for Brazos County of four leagues of land for school purposes by virtue of an act appropriating certain lands for a general system of education. Approved Jan. 26th, 1839. Situated on the waters of Little Wichita. Beginning at the most Eastern N. E. corner of No. 38, in the name of A. Sterne and Wm. Duckworth, thence W. 1900 vrs. to another N. E. cor. of same sur.; thence S. 950 vrs. to another N. E. cor. of said survey; thence W. 3618 vrs. to the N. W. cor. of said survey; thence S. 3534 vrs. to the N. E. cor. of No. 60; thence W. 1208 vrs. to the N. W. cor. of No. 60 at 4808, the N. W. cor. of No. 61; thence S. 800 vrs. the N. E. cor. of No. 65; thence W. 1980 vrs. the N. W. cor. of the same; thence N. 800 vrs. pass the S. E. cor. of No. 114; 4112 vrs. the N. E. cor. of No. 114; thence W. 7650 vrs. the N. W. cor. of No. 114; thence N. 4486 vrs. a cor. in the East line of No. 113; thence E. 20056 vrs. a cor. in the W. line of No. 34; thence S. 2396 vrs. to beginning. Surveyed Oct. 4th, 1854.

JAMES MANN,

JOHN A. KNIGHT, Chaimmen.

I, William C. Twitty, Dept. Surveyor for the Cook land District do hereby certify that the foregoing survey was made according to law and that its limits, boundaries and corners with the marks natural and artificial are truly described in the foregoing plat and field notes.

WILLIAM C. TWITTY, Dept. Sur. C. L. D.

I, Daniel Montague, District Surveyor for Cooke Land Dis-

I, L. B. White, Dist. Surveyor of Montague Land District do hereby certify that the foregoing survey is correct and made according to law, and that the lines, corners, with the marks natural and artificial are therein truly described and that they are recorded in location book A, page 267.

Given under my hand at Montague this April 23rd, 1869.

L. B. WHITE, Surveyor of Montague Land Dist.

Transcribed from book A, page 267.

I, R. W. Watkins, County Surveyor of Clay County, do hereby certify that the foregoing is a true and correct copy of the record of my office in book B, page 286 and 287.

Given under my hand at office this April 25th, 1890.

R. W. WATKINS, C. S., Clay County, Texas.

"EXHIBIT H."

The State of Texas,

Cook Land Dist.

Field notes of a survey No. 60 of 320 acres of land made for the heirs of John Huddleston, it being the land to which they are entitled by virtue of certificate No. 5000, issued to them by the commissioners of San Augustine County, Nov. 16, 1852; said survey is No. 60 situated in Cook Land District on the little Wichita about . . . miles N. E. from Ft. Belknap. Beginning at the S. W. cor. of sur. No. 38 made for Sterne & Buckworth asse. Thence West on the N. line of a 1/3 league survey made for John W. Rhine at 1208 vrs. his N. W. cor.; thence N. crossing Wichita at 1405 vrs. a stake the N. W. cor. of this survey and the N. E. cor. of No. 61; thence E. at 1208 vrs. in valley a stake and mound for the N. E. cor.; thence S. with the W. line of said No. 38 at 1495 vrs. the place of beginning. Surveyed April 20th, 1856.

J. L. MANN and

G. M. SMITH, Chaimmen.

I, William Howeth, Dept. Sur. for Cook Land Dist. do hereby certify that the foregoing sur. was made according to law and that the limits, boundaries and corners with the marks natural and artificial are truly described in the foregoing plat and field notes.

WILLIAM HOWETH,

Dept. Sur., Cook Land Dist.

I, Daniel Montague, Dist. Sur. for Cook Land Dist., do hereby certify that I have examined the foregoing plat and field notes and find them correct and that they are recorded in my office in book C, page 440 on the 17th day of July, 1856.

DANIEL MONTAGUE, Dist. Sur., Cook Land Dist.

Transcribed from book A, page 130.



I, R. W. Watkins, County Surveyor of Clay County, do hereby certify that the foregoing is a true and correct copy of the records of field notes now in use in my office in book B, page 170.

Given under my hand at office in the Town of Henrietta this Sept. 26th, 1889.

R. W. WATKINS,  
County Surveyor, Clay County, Texas.

"EXHIBIT I."

No. 57. Survey of one-third league of land made for John M. Rine by virtue of certificate No. 3242/3343, issued by the Com. of the General Land Office on the 13th day of Febry., 1854, situated in Cooke Clay County, on the little Wichita waters of Red River, about 39 miles N. 31 E. from Fort Belknap. Beginning at a stake in the S. line of a survey No. 38, 800 vrs. West of the S. E. cor. of same; thence S. 2886 vrs. cor. on msqt. blazed on 4 sides; thence W. crossing one fork Wichita 2886 vrs. stake from which a p. o. brs. E. 71 vrs.; thence N. crossing another fork of Wichita 2886 vrs. to cor. a stake; thence E. 1208 vrs. pass S. W. cor. of said No. 38, 2886 vrs. place of beginning.

JAMES MANN and  
JAS. V. ROSS, Chainmen.

I, William Howeth, Dept. Sur. for Cook Land Dist., do solemnly declare under the oath of my office that the foregoing field notes limits boundaries and corners with marks natural and artificial are herein truly described and the survey made according to law on the 4th day of Oct., 1854.

WILLIAM HOWETH, Dept. Sur., C. L. D.

I hereby certify that I have examined the foregoing field notes and find them correct and the survey made according to law and that the same is recorded in book B, page 116.

Given under my hand at Gainesville, Oct. 20th, 1854.

DANIEL MONTAGUE, D. S., C. L. D.

Cooke Co., 55 File, 525 Fannin 1st class field notes 1/3 league John M. Rine. Filed March 6, '55. Patented Dec. 6, 1858. Hurt.

C. C., Nov. 30, '55.

General Land Office, Austin, Texas, Feby. 28, 1888.

I, R. M. Hall, Commissioner of the General Land Office of the State of Texas, do hereby certify that the above and foregoing contains a true and correct copy of the original field notes and all indorsements thereon as the same now appears on file in this

"EXHIBIT E."

The State of Texas,  
County of Clay.

Plat and field notes of survey of 1280 acres of land for John Rogers Burnwell B. Bowling, assignee by virtue of bounty certificate No. 9893. Issued to him by the Sect. of War on the 1st day of Dec., 1841; said survey is situated on the little Wichita. Beginning at the N. E. cor. of sur. No. 33 in the name of . . . . . Thence East 950 vrs. a pile of stone in prairie; thence South 2688 vrs. a pile of stone a muskeet mkd. X vrs. N. 51½ E. 114 vrs.; thence W. 2418 vrs. a stake a mesqt. mkd. X brs. N. 26, E. 63 vrs.; thence No. 1432 vrs. a stake a pecan mkd. X brs. S. 62 E. 80 vrs.; thence W. 582 vrs. a pile of stone; thence N. 1250 vrs. a stake a hackberry mkd. X brs. S. 75 E. 7 vrs a do. mkd. X brs. S. 60 E. 7 vrs.; thence E. 150 vrs. S. W. cor. of survey No. 33 #2050 vrs. the beginning.

Surveyed 25th day of August, 1854.

T. R. GASSETT,  
BEN DICKSON, Chainmen.

Transcribed from Book A4, page 55, June 21st, 1887.

I, R. W. Watkins, County Surveyor of Clay County, do hereby certify that the above field notes is a true and correct copy of the record now in my office in book 1 page 19.

Given under my hand at office in the town of Henrietta, this the 26th day of Sept., 1899.

R. W. WATKINS,  
County Surveyor Clay Co., Texas.

"EXHIBIT F."

The State of Texas,  
Dist. of Cook.

Sur. No. 35 for William Spavin Burwell B. Bowling assignee of 640 acres by virtue of bounty certificate No. 787 issued to him on the 1st day of Dec., 1841, situated on the little Wichita waters of Red River. Beginning at a stake on the S. line of sur. No. 34, 518 vrs. West of the S. E. cor. of the same, from which a wild china mkd. brs. S. 74, E. 100 vrs.; thence S. 1900 vrs. set a stake from which a wild china mkd. X brs. S. 58 E. 197 vrs.; thence W. 1900 vrs. crossing Wichita Creek cor. from which a china mkd. X brs. N. 84 W. 80 vrs.; thence N. 1900 vrs. S., S. W. cor. of sur. No. 34; thence E. on the S. line of same 1900 vrs. to beginning.

T. B. GASSETT and  
BEN DICKSON, Chainmen.

I do solemnly declare under my official oath, that the survey,

limits, boundaries and corners, marks, natural and artificial are herein truly described and that the survey made according to law on the 28th day of August, 1854.

WILLIAM HOWETH, Dept. Sur. Cook Land Dist.

I hereby certify that I have examined the foregoing field notes and find them correct and according to law.

Given under my hand at Gainesville, on this the 6th day of Oct., 1854.

DANIEL MONTAGUE,  
Dist. Sur., C. Land Dist.

Transcribed from book A, page 13.

I, R. W. Watkins, County Surveyor of Clay County, do hereby certify that the foregoing is a true copy of the record of my office in book B, page 50.

Given under my hand at office this the 25th day of April, 1890.

R. W. WATKINS, C. S., Clay County, Texas.

"EXHIBIT G."

State of Texas,  
Clay County.

Plat and field notes of a corrected survey of one league and one labore of land by virtue of certificate No. 473 issued by the Board of Land Coms. of Nachedoches County on the 27th day of March, 1838, Adolphus Sterne and William Buckworth, assignee of Ignacie Sanches for one league and one labore of land said survey is situated in Clay County of the little Wichita, a tributary of Red River about 12 miles S W. from Henrietta and beginning 300 vrs. N. of the S. W. cor. of No. 35 made in the name of William Spavin for 640 acres of land from which a hackberry mkd. X brs. S. 39 E. 55 vrs. and a chittum brs S. 35 E. 55 vrs.; thence S. 300 vrs. to the N. W. cor. of No. 36 Edwin Morehouse for 960 acres and at 2550 vrs. the S. W. cor. of same 4550 vrs. a stake from which a msqt. mkd. X brs. S. 6, W. 36 vrs. do. mkd. X brs. S. 60, E. 87 vrs.; thence West 1900 vrs. a stake in the bottom; thence South 950 vrs. a stake in frog pond; thence West 950 vrs. a msqt. for line 1440 vrs. a stake from which an ash mkd. X brs. S. 2 vrs.; thence S. 500 vrs. a stake from which a msqt. mkd. X brs. S. 30, E. 3 vrs.; thence West 2178 vrs. crossing the little Wichita at 1250 a stake; thence North 5050 vrs. a stake in prairie; thence E. 3618 vrs. a stake in prairie; thence N. 950 vrs. a pile of stone; thence E. 1900 vrs. to place of beginning, bearings mkd. X seven labors arable the balance pasture land, survey corrected Apr. 21st, 1869.

T. R. GASSETT and  
BEN DICKSON, Chainmen.

State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the field notes and the indorsements thereon as now on file in this office In testimony whereof I have hereunto set my hand and affix the impress of the seal of this office this 28th day of Feb'ry, 1888.

R. M. HALL, Commissioner.

"EXHIBIT L."

Survey #66 of one league and one labore of land made for Geo. C. Bruner issued to him by the Board of Land Commissioners of Washington County on the 22nd day of March, 1838, situated on the little Wichita waters of Red River. Beginning at the S. W. cor. #65, thence S. 684 vrs. a stake; thence W. 1750 vrs. cor. a stake from which a pecan marked X brs. S. 3 E. 4 vrs.; thence S. 500 vrs. a cor. a stake from which a msqt. mkd. X brs. S. 4 vrs.; thence W 800 vrs. a pile of stone from which a msqt. mkd. X brs. N. 53 W. 23 vrs.; thence S. 400 vrs.; thence W. 3200 vrs. to a stake from which an Elm mk<sup>d</sup>. X brs. N. 83 E. 80 vrs. Thence N. crossing Wichita 4851 a pile of stone from which a wild china brs. S. 32 E. 30 vrs.; thence E. 5750 vrs. stake in prairie; thence S. 3267 vrs. to beginning.

JAS. MANN,  
RICHARD BUCKELSLY,

Chainmen.

I, William Howeth, dept. sur., do solemnly declare under the oath of my office that the field notes, limits and boundaries marks natural and artificial are herein truly described and the survey made according to law on the 5th day of Oct., 1854, 1/2 this survey arable the balance pasture land.

WILLIAM HOWETH, Dept. Sur. C. L. D.

I hereby certify that I have examine the foregoing field notes and find them correct and the survey made according to law.

Given under my hand at Gainesville this 26th day of Oct., 1854.

DANIEL MONTAGUE,

Dist. S. C. L. D.

The State of Texas, :  
County of Archer. :

I, J. P. Hart, county surveyor of Archer County and State of Texas, do hereby certify that the foregoing page contains a true and correct copy of the field notes of sur. #66 for G. C. Bruner as appears of record in Book C, page 75, of the records of my office.

Given under my hand this Sept. 13th, 1889.

J. P. HART, Surveyor Archer Co., Texas.

## "EXHIBIT M."

#114. Survey for one league of land for the County of Madison for school purposes, under an act, etc. Situated on the waters of little Wichita waters of Red River. Beginning at the N. E. cor. of sur. #66 of one league in the name of G. C. Bruner; thence north 3312 vrs. to a stake in prairie; thence west 7650 vrs. a stake; thence south 785 vrs. pass the N. E. cor. of #74, 3135 vrs. the N. W. cor. of #67 of 320 acres; thence east on the north line of same 1900 vrs. the N. E. cor.; thence S. 177 vrs. the N. W. cor. of #66; thence east 5750 vrs. to place of beginning.

R. BRACKELSBY,  
JAS. MANN,

Chainmen.

I, William Howeth, dept. sur., do solemnly declare under my oath of office that the foregoing field notes, limits and boundaries marks natural and artificial are herein truly described and the survey made according to law on the 5th day of Oct., 1854.

WILLIAM HOWETH,  
Dep. S. C. L. D.

I hereby certify that I have examined the foregoing field notes and find them correct and the survey made according to law.

Given under my hand at Gainesville this 26th day of Oct., 1854.  
DANIEL MONTAGUE, D. S. L. D.

State of Texas, :  
County of Archer. :

I, J. P. Hart, county surveyor of Archer County, Texas, do hereby certify that the foregoing page contains a true and correct copy of the field notes of survey #114 Madison County school land as appears of record in Book C, page 64, of the records of my office.

Given under my hand this 13th day of Sept., 1889.

J. P. HART,  
Surveyor Archer Co., Texas.

## "EXHIBIT N."

Survey #69 of 640 acres of land made for Edward Williams by virtue of certificate #481. Situated on the Wichita waters of Red River. Beginning at the S. W. cor. of #66; thence W. 1900 vrs. to a stake from which a msqt. mkd.

office in file No. 525, Fannin 1st class in the name of John M. Rine.

In testimony whereof, I hereunto set my hand and affix the impress of the seal of said office the date last above written.

R. M. HALL, Commissioner General Land Office.

## "EXHIBIT J."

The State of Texas,  
Cook Land Dist.

Field notes of a survey of 8,333,333 sq. vrs. of land made for Aaron T. Castleberry, it being the quantity of land to which he is entitled by virtue of duplicate cert. No. 3697/3798 issued by S. Crosby Coms, at Austin, Oct. 9th, 1854, said sur. No. 61 in Cook County situated on little Wichita a tributary of Red River about . . . miles N. W. of the Town of Gainesville. Beginning at the N. W. cor. of sur. No. 57 of 1/3 league of land in the name of John M. Rine; thence North 1495 vrs. crossing little Wichita to a stake and md. in South line of a 4-league sur. made for Brazos County; thence West with South line of same crossing large branch at 3700 vrs. a stake from which a msqt. brs. N. 10 E. 10 vrs.; thence S. crossing Wichita at 2225 vrs. a stake in valley; thence East 3700 vrs. to a stake in West line of said survey No. 57; thence North 760 vrs. the beginning. Surveyed April 15th, 1857.

JAMES MANN and  
GEO. STEWART, Chainmen.

I, William Howeth, Dept. Sur. for Cook Land Dist., do hereby certify that the foregoing sur. was made according to law and that the lines, boundaries and corners, marks, natural and artificial are truly described in the foregoing plat and field notes, and I further certify that the sur. contains three Labors pasture and the balance pasture land.

WILLIAM HOWETH, Dept. Sur. of Cook Land Dist.

I, James M. Pury, Dist. Sur. for Cook Land Dist., do hereby certify that I have examined the foregoing plat and field notes and find them correct and that they are recorded in my office in Book D, page 301.

Given under my hand at Gainesville, this 11th day of June, 1857. J. M. PURY, Dist. Sur. for Cook Land Dist.

Transcribed A 99 and 100.

I, R. W. Watkins, County Surveyor of Clay County, do hereby certify that the foregoing field notes is a true copy of the record now in use in my office copied out of book B, page 140.

Given under my hand at office, this April 25th, 1890.  
R. W. WATKINS, C. S., Clay County, Texas.

“EXHIBIT K.”

The State of Texas,  
Cook Land Dist.

Sur. No. 65. Field notes of a survey of 640 acres of land 3,613,440 sq. vrs. made for Penningto Linsey, it being the quantity of land to which he is entitled by virtue of unlocated balance of certificate No. 838/837 issued by Thos. Wm. Ward, Comr., Dec. 17, 1847, said sur. is #65 in Archer County, situated on the little Wichita, a tributary of Red River about  $38\frac{1}{4}$  miles N. 23 E. from Belknap. Beginning at the N. E. cor. of sur. #64 of one league of land made for Newton County; thence East 204 vrs. to stake; thence North at 400 vrs. pass the N. W. cor. of league sur. #62 continuing North crossing little Wichita at 182 vrs. to stake; thence West 1980 vrs. to stake in the East line of survey #66; thence South crossing Wichita and at 1825 vrs. to stake the one N. W. cor. of said sur. #64; thence East on said N. line at 1776 vrs. the beginning. Surveyed April 16th, 1857.

JAS. MANN and  
GEORGE STEWART, Chainmen.

I, William Howeth, Dept. Sur. for Cook Land Dist., do hereby certify that the foregoing survey was made according to law and that the limits, boundaries and corners with the marks natural and artificial are truly described in the foregoing plat and field notes, one Labore arable and the balance pasture land, and I further certify that said survey is entirely bounded by previous surveys.

WM. HOWETH, Dept. Sur., Cook Land Dist.

I, James M. Pury, Dist. Sur. of Cook Land Dist., do hereby certify that I have examined the foregoing plat and field notes and find them correct, and that they are recorded in my office in book D1, No. page 302.

Given under my hand at Gainesville, this 11th day of June, 1857.

J. M. PURY, Dist. Sur. of Cook Land Dist.

File 1003. Fannin 1st Class, Field Notes 3,613,440, Pennington Lindsey. Filed Aug. 12, '57, Corrected on Map in Archer County, Apr. 25, '60.

Patd May 23, '61.

C. C. April 23, '60.

J. M. HAYES,  
O. H. CALLEN  
and J. BROWN

General Land Office, Austin, Texas.

I, R. M. Hall, commissioner of the Gen. Land Office of the

X hrs. S. 55 W. 50 vrs.; thence N. 1900 vrs. to a stake the S. W. cor. of #68, from which an elm mkd. X hrs. W. 250 vrs.; thence east in the S. line of said #68, 1900 vrs. the S. E. cor. of the same; thence S. on the W. line of #66, 1900 vrs. the beginning.

RICHARD BRACKELSBY,  
JAMES MANN. Chainmen.

I, William Howeth, dept. sur. for the Dist. of Cooke do solemnly declare that the foregoing field notes, limits and bounds and corners with the marks natural and artificial are herein truly [described] and the same are made according to law on the 4th day of Oct., 1854.

WILLIAM HOWETH,  
Dept. Sur. C. L. D.

I hereby certify that I have examined the foregoing field notes and find them correct and the survey made according to law.

Given under my hand at Gainesville, this 26th day of Oct., 1854.

DANIEL MONTAGUE, D. S. C. L. D.

I, J. P. Hart, county surveyor of Archer County, do hereby certify that the foregoing page contains a true and correct copy of the field notes of survey #69 as appears of record in my office in Book C, page 78 of the records of my office.

Given under my hand this 25th day of April, 1890.

J. P. HART,  
Surveyor Archer County, Texas

“EXHIBIT O.”

Survey # 68 for H. S. Smith of 640 acres of land by virtue of his donation warrant #617 issued by James S. Gillett, adjutant general, on the 31st day of August, 1854. Situated on little Wichita. Beginning at the S. W. cor. of survey #67; thence S. 930 vrs. little Wichita 1900 vrs. a stake from which

=  
an elm X hrs. W. 250 vrs; thence E. 1900 vrs. to a stake in

=  
the W. line of #66; thence N. same 1900 vrs. the S. E. cor. of #67; thence W. of S. line of same 1900 vrs. to beginning.

JAMES MANN,  
RICHARD BRACKELSBY,  
Chainmen.

I, William Howeth, dept. surveyor for the Cook land district do solemnly declare that the foregoing field notes, limits and bounds marks natural and artificial are herein truly described and the survey made according to law on the 4th day of Oct., 1854.

WILLIAM HOWETH, Dist. S. C. L. D.

I hereby certify that I have examined the foregoing field notes and find them correct.

Given under my hand at Gainesville this 20th day of Oct., 1854. DANIEL MONTAGUE, Dist. S. C. L. D.

The State of Texas, :  
County of Archer. :

I, J. P. Hart, County Surveyor of Archer County, Texas, do hereby certify that the foregoing page contains a true and correct copy of the field notes of sur. #68 for H. S. Smith as shown on page 69 book C of the records of my office.

Given under my hand this 25th day of April, 1890.

J. P. HART, Surveyor,  
Archer County, Texas.

“EXHIBIT P.”

The State of Texas, :  
District of Cooke. :

Survey #69 of 320 acres of land made for John W. Snell by virtue of part certificate 172 issued in Shelby County on the 9th day of August #1843, situated on the waters of little Wichita. Beginning at the N. W. cor. #66, thence N. 177 vrs. stake from

which a msqt. X brs. N. 77 E. 78 vrs. Thence W. 1620 vrs.

branch C. S. 50 E. 1900 vrs. stake from which a cotton wood 24 in mkd. X brs. E. 280 vrs., thence S. 950 vrs. a stake from

which a msqt. X brs. S. 25 E. 12 vrs. also msqt. X N. 54 E. 15

vrs., thence E. 840 vrs. branch 1900 vrs. stake in W. line of #66 from which a msqt. X brs. N. 54 E. 25 vrs., thence North 773 vrs. to beg. JAMES MANN,

RICHARD BRACKELSBY,  
Chainmen.

I, William Howeth, Dept. Sur. of Cook Land Dist., do solemnly swear that the foregoing field notes limits, bounds and corners

marks natural and artificial are herein truly described and the survey made according to law on the 4th day of Oct. 1854.

WILLIAM HOWETH, Dept. Sur. C. L. D.

I, Daniel Montague, District Surveyor for Cooke Land District, hereby certify that I have examined the field notes and find them correct and that they are recorded in my office in Book B, page 361.

Given under my hand at Gainesville this the 1st day of Jan. 1855. DANIEL MONTAGUE,  
Dist. Surveyor C. L. D.

State of Texas, :  
County of Archer. :

I, J. P. Hart, County Surveyor of Archer County, do hereby certify that the foregoing page contains a true and correct copy of the field notes of survey #69 for J. W. Snell as shown on page 143 Book C, of the records of my office.

Given under my hand this 25th day of April 1890.

J. P. HART,  
Surveyor of Archer County, Texas.

“EXHIBIT Q.”

The State of Texas, :  
Cook Land District. :

#113 Survey for W. H. Griffin of 2/3 of a league of land by virtue of an order or decree of the District Court of Liberty County Approved by P. W. Gray, Judge of the 7th Judicial District, on the 15th day of Jan. 1855 for 2/3 of a league of Labor of land. Situated on the waters of Little Wichita about . . . . . miles N. E. from Ft. Belknap. Beginning at a stake the N. E. cor. of sur. #74 in the name of Sarah Usey of 1 L & 1 L of land from which a msqt. brs. N. 36 1/2 E. 20 vrs. and nsqt. brs. N. 85 W. 20 vrs. Thence North at 785 vrs. pass the N. W. cor. of a league survey of school land for Madison County at 5000 vrs. a mound in prairie. Thence W. 3333 vrs. cor. a mound, thence S. 5000 vrs. cor. a stake in North line of said survey #74, thence E. on said line 3333 vrs. the beginning. Surveyed July 29th 1855, bearing mkd. X.

JAMES MANN,  
R. BROCKELSBY,  
Chainmen.

5 Labor of arable the balance pasture land.

I, William Howeth, Dept. Sur. for Cooke Land District, do hereby certify that the foregoing survey was made according to

law and that the limits, boundaries and corners with the marks natural and artificial are truly described in the foregoing plat and field notes.

WM. HOWETH,  
Dept. Sur. C. L. D.

I, Daniel Montague, District Surveyor of Cooke Land District do hereby certify that I have examined the foregoing plat and field notes and find them correct and that they are recorded in my office in Book C, page 24. Given under my hand at Gainesville this 15th day of Sept. 1855.

DANIEL MONTAGUE,  
Dist. Sur. C. L. D.

I, J. M. Hughes, Surveyor of Jack County, Texas, do hereby certify that the above is a true and correct copy of the original now of record in my office in Book A, page 105 of Cooke Land District transcript.

In testimony whereof I hereto affix my official signature.  
This Sept. 20th, 1894. J. M. HUGHES, Surveyor,  
Jack County, Texas.

The foregoing Bill of Exception No. 2 is endorsed as follows, to-wit: No. 92. Mrs. Agnes Platt et al. vs. A. Vermillion et al. Plaintiff's Bill of Exceptions No. 2. Filed Nov. 23, 1898. J. H. Finks, Clerk; by Thomas P. Martin, Deputy.

### PLAINTIFF'S BILL OF EXCEPTION NO. 3.

Filed Nov. 23rd, 1898.

Circuit Court of the United States for the Northern District of Texas, at Fort Worth, October Term, 1898.

Mrs. Agnes Platt, et al.,  
vs. No. 92, Consolidated.  
A. Vermillion, et al.

Be it remembered that on the trial of the above styled cause the plaintiffs presented to the Court their special charges Nos. 5 and 10, made necessary by the field notes and testimony of T. M. Cecil and J. P. Hart, hereto attached as exhibits and requested that the same should be given to the jury as a part of the law of said cause which said special charge No. 5 was as follows:

### Special Charge No. 5 by Plaintiffs.

Mrs. Agnes Platt, et al.,  
vs. No. 92.  
A. Vermillion, et al.

You are further charged by the Court that when unmarked lines of adjacent surveys are called for by the field notes of contiguous surveys and such unmarked lines can from other calls be ascertained and located with certainty, such unmarked lines under such circumstances are given the dignity of an artificial object. Therefore, if you find from the evidence in this case that the north line of Brazos County school land survey can be located with certainty either from its own calls and corners or from the calls and corners of contiguous surveys, then such north line becomes an artificial object which will control course and distance, and if you find from the evidence that such line can be so established and that the surveys lying north of such line, to-wit: the John Minton, S. P. R. R. Co. sur., the H. H. Duff sur. No. 8; H. & T. C. R. R. Co. surs. Nos. 1, 2 and 3, calls for the north boundary line of said Brazos County school land survey at a common divisional line, then no vacancy can occur between such surveys and the Brazos County school land and you will find for the plaintiffs.

Submitted by Stanley, Spoons & Thompson and R. F. Arnold, for plaintiffs.

Refused by Edward R. Meek, Judge.

And Special Charge No. 10 was as follows, to-wit:

### Special Charge No. 10 for the Plaintiffs.

Mrs. Agnes Platt, et al.,  
vs.  
Andrew Vermillion, et al.

The testimony in this case shows that there was no vacancy existing north and adjoining the Brazos County school land at the time of the attempted appropriation of the land claimed by the defendants in this suit, because without reference to the true location of the north line of the Brazos County school land, the surveys north of there, to-wit: the John Minter, S. P. R. R. Company, H. H. Duff sur. No. 8, and H. & T. R. R. Co. surs. Nos. 1, 2 and 3, all call for the north boundary line of the Brazos County School land and excludes the existence of a vacancy and therefore your verdict will be for plaintiffs.

Submitted by Stanley, Spoonts and Thompson and R. F. Arnold, for plaintiffs.

Refused by Edward R. Meek, Judge.

Which said special charges Nos. 5 and 10 were refused by the Court, to which ruling the plaintiffs then and there excepted, and now here in open Court tenders this their bill of exceptions and pray that the same may be signed, filed and made a part of the records in said cause.

Submitted. STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plaintiffs.

The foregoing bill of exceptions is hereby allowed.  
Nov. 22nd, 1898.

EDWARD R. MEEK, Judge.

State of Texas, :  
County of Archer, :  
District of Jack. :

Plat and field notes of 640 acres of land for Sarah Jane Bullion, as located by virtue of land warrant No. 173, issued to John Menton for 640 acres of land for service rendered in the Republic of Texas.

(Copy of Facts.) John Menton having served faithfully in the army of the Republic of Texas, from the eighteenth day of April, 1836, until the 18th day of October, 1836, received an honorable discharge, is entitled to 640 acres of land bounty warrant, approved January 20th, 1855. Signed, Wm. S. Cook, Adj. Gen.

(Signed) JAMES G. GILLETT, Adj. Gen.

Dated 26th day of October, 1846.

Beginning at the N. W. cor. of the Brazos County school land, thence North 1900 vrs. a stake, thence East 1900 vrs. to stake, thence South 1900 vrs. to the N. B. line of Brazos County school land, thence West 1900 vrs. with the N. B. line of Brazos school land to the place of beginning.

Surveyed August 30th, 1870.

GEO. WADE,  
TOM G. BROWN,  
Chainmen.

I, M. D. Bullion, surveyor, hereby certify to the best of my knowledge is correct.

M. D. BULLION, Dept. Sur.

I, E. Boon, surveyor, certify that the above is correct and recorded in Book A, page 125, August 30th, 1870.

E. BOON, D. S. J. L. D.

I, J. P. Hart, County Surveyor of Archer County, Texas, do hereby certify that the foregoing page contains a true and correct copy of the field notes of the John Minton survey as appears of record in my office in Book B, page 111. Given under my hand this 29th day of April, 1890.

J. P. HART,  
Surveyor, Archer County, Texas.

State of Texas, :  
County of Archer. :

Field notes of a 1280 acre survey of land made for H. H. Duff, it being the quantity to which he is entitled by virtue of certificate Scrip No. 1166, issued to him Nov. 17, 1887, said survey is situated in the County of Archer and State of Texas, about 14 miles N. E. from Archer City. Beginning at the S. W. cor. of sur. No. 13, made for H. & T. C. R. R. Co. by virtue of certificate No. 32/3064; thence S. 3800 vrs. to the S. E. cor. of sur. No. 5, cert. No. 16/125, issued to the S. P. R. R. Co.; thence E. 1900 vrs. with the N. boundary line of the Brazos County school land to the S. W. cor. of sur. No. 1, cert. No. 35/3058; thence N. 3800 vrs. to the S. E. cor. of the aforementioned sur. No. 13; thence W. 1900 vrs. to the place of beginning. Surveyed July 7th, 1883.

J. P. HART, Surveyor.

I, J. P. Hart, County Surveyor of Archer County, do hereby certify that the foregoing survey was made by me on the ground according to law and that the limits, boundaries and corners are truly and correctly described and that it is recorded in my office in Book A, page 14.

Given under my hand, this July 8th, 1882.

J. P. HART,  
Surveyor Archer County, Texas.

I, J. P. Hart, County Surveyor of Archer County, Texas, do hereby certify that the foregoing page contains a true and correct copy of the field notes of the H. H. Duff survey as appears of record in my office in Book A, page 14.

Given under my hand, this April 27th, 1890.

J. P. HART,  
Surveyor Archer County, Texas.

State of Texas, :  
District of Jack. :

Survey No. 1. Field notes of a survey of 640 acres of land

made for the H. & T. C. R. R. Co., it being the quantity to which he is entitled by virtue of certificate No. 32/3058, issued by Jacob Kuechler, Com. General Land Office, July 1st, 1872; said survey is No. 1 in Archer County, situated on the waters of Holiday's Creek, a tributary of big Wichita river; beginning at the S. E. cor. of sur. No. 8, made for the S. P. R. R. Co. on the N. B. line of the Brazos County school land; thence N. 1900 vrs. a stake on the N. B. line of said Brazos County school land; thence W. 1900 vrs. to the place of beginning. Surveyed Oct. 11th, 1872.

LAND LEAKE,  
ED. LEAKE, Chainmen.

I, E. Boon, District Surveyor Jack District, do hereby certify that I have examined the foregoing plat and field notes and find them correct and that they are recorded in my office in Book B, No. 1, page 37.

Given under my hand at Jacksboro, this 24th day of October, 1872.

E. BOON,  
District Surveyor Jack District.

State of Texas, :  
County of Archer. :

I, J. P. Hart, County Surveyor of Archer County, Texas, do hereby certify that the above and foregoing page contains a true and correct copy of the field notes of survey No. 1, located by virtue of certificate No. 32/3058, issued to the H. & T. C. R. R. Co., as appears of record in my office in Book A, page 167.

Given under my hand, this Sept. 23rd, 1890.

J. P. HART,  
Surveyor Archer County, Texas.

The State of Texas, :  
District of Jack. :

Survey #2. Field notes of a survey of 640 acres of land made for the H. & T. C. R. R. Co., it being the quantity of land to which it is entitled to by virtue of certificate #3058 issued by Jacob Kuechler Com. Gen. Land Office, July 1st, 1872. Said survey is #2 in Archer County, Texas, situated on the waters of Holidays creek, a tributary of big Wichita river. Beginning at the S. E. cor of sur #1, thence N. 1900 vrs. to N. E. cor of same, thence E. 1900 vrs to stake in prairie, thence S. 1900 vrs. a stake in N. B. line of Brazos County School land, thence W. 1900 vrs. to beginning, bearing mrkd. surveyed Oct. 11th, '72.

SAMUEL LEAKE, Chainman.

I, E. Boon, District Surveyor Jack Dist., do hereby certify

that I have examined and found them correct and that they are recorded in my office in Book B #1 page 38. Given under my hand at Jacksboro, this 24th day of Oct., 1872.

E. BOON, District Surveyor Jack District.

I, J. P. Hart, County Surveyor of Archer County, do hereby certify that the foregoing page contains a true and correct copy of the field notes of survey #2 located by virtue of certificate #32/3058 issued to the H. & T. C. R. R. Co., as appears of record in Book A, page 168 of the records in my office the 27th day of April, 1890.

J. P. HART,  
Surveyor A. C. T.

The State of Texas, :  
District of Jack. :

Survey #3. Field notes of a 640 acre survey of land made for H. & T. C. R. R. Co., it being the quantity to which it is entitled by virtue of certificate #32/3059 issued by Jacob Kuechler Com. Gen. Land Office, July 1st, 1872, said survey is #3 in Archer County, situated on the waters of Holidays creek, a tributary of big Wichita river. Beginning at the S. E. cor. of sur. #2, thence N. 1900 vrs. N. E. cor. of same, thence E. 1900 vrs. a stake in prairie, thence S. 1900 vrs. a stake in N. B. line of Brazos County School land, thence W. 1900 vrs. to the place of beginning, bearing mkd. X, Surveyed Oct. 11th, 1872.

LAMB LEAKE,  
ED. LEAKE,  
Chainmen.



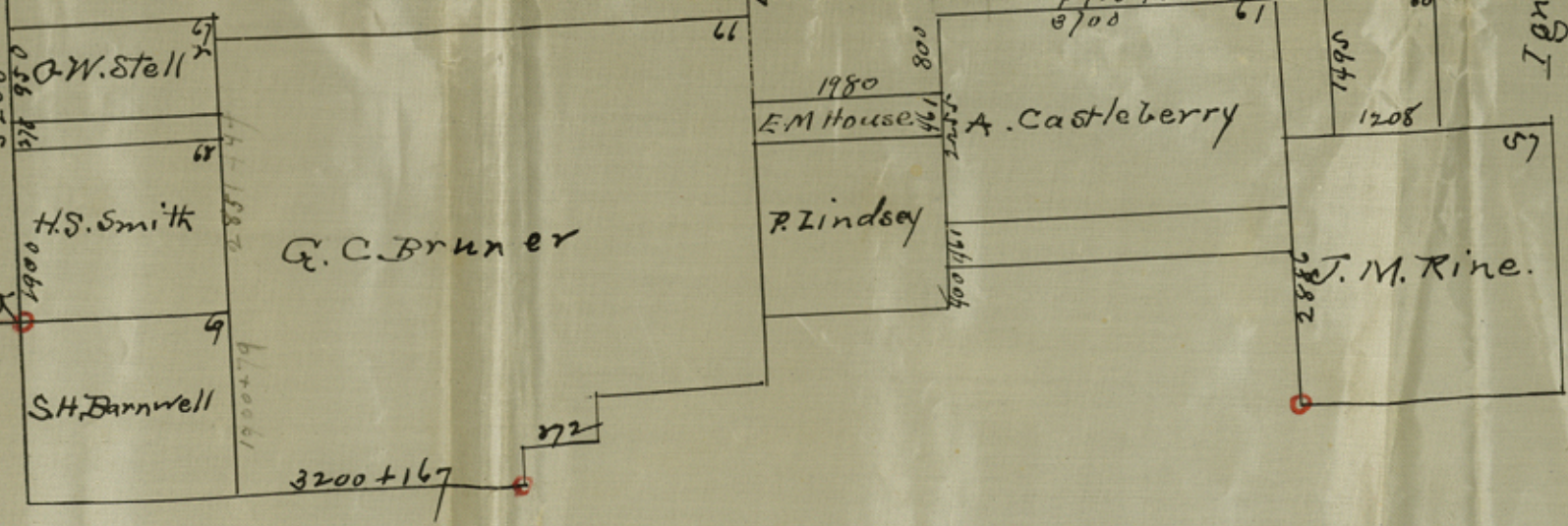


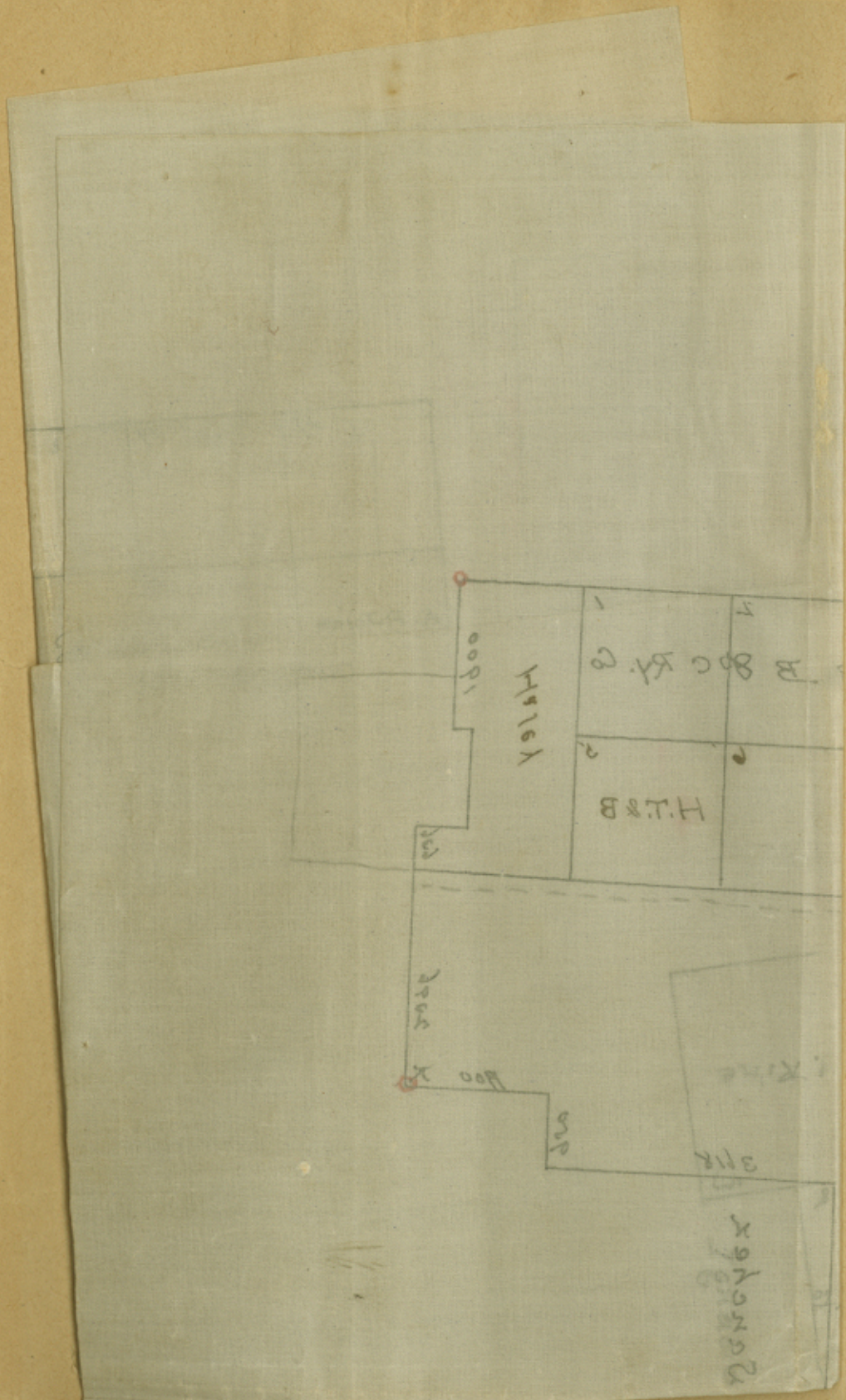
Brazos County School Land  
 Twitty Octo. 4. 54.

W. R. Griffin.

Sarah Ursey.

Madison Co. School Land  
 Howeth  
 Octo. 5. 54





I, E. Boon, District Surveyor Jack District, do hereby certify that I have examined the foregoing plat and field notes and find them correct and that they are recorded in my office in Book B #1, page 39.

Given under my hand at Jacksboro, this 24th day of Oct., 1872. E. BOON, District Surveyor, Jack District.

The State of Texas, :  
County of Archer. :

I, J. P. Hart, County Surveyor of Archer County, Texas, do hereby certify that the above and foregoing page contains a true and correct copy of the field notes of survey #3 made by virtue of certificate #32/3059, issued to the H. & T. C. R. R. Co., as appears of record in my office in Book A, page 169. Given under my hand this Sept. 23rd, 1890.

J. P. HART, Surveyor, Archer County, Texas.

T. M. Cecil, witness for plaintiff, testified that he was county surveyor of Archer County, Texas, which position he had held since 1890. That he had run the boundaries of the Brazos County School land. Witness now exhibited a sketch of said school land survey and the surs. contiguous thereto. The established and identified corners and land marks are marked in red thereon, and the length of the lines of the surveys are written thereon. Witness knew when the John Minter, H. H. Duff, S. P. R. R. Co., and H. & T. C. R. R. Co. surveys were claimed to be by defts. Defendants' foreman, W. M. Coleman, had shown witness certain stones placed for the South East and S. W. corners of each of said surveys. Mr. Henderson had run out or attempted to retrace said surveys and had placed the S. W. cor. of the Minter survey 10749 vrs. N. of the elm at the common cor. of the Smith and Ursey surveys. This witness showed that W. R. Griffin sur. #113 was made July 29th, 1855, the Sarah Ursey, the H. S. Smith #68, J. W. Snell Madison County School land #114, G. C. Bruner #66, P. Lindsey #65, A. T. Castleberry #61, John Huddleton #60, Ignacho Sanches, Newton County School land surveys were all old surveys located on the river in 1854 by W. C. Twitty and Wm. Howeth, and at the same time and by the same surveyors the Brazos County School land was located, none of these surveys called for the Brazos-Co. School land in their field notes, but the Brazos called in its field notes for all of said surveys by number. Witness testifies that he had calculated the quantity of land in the Brazos County School land grant by reference to the different phases in its location. If the said school land was allowed its long call over east and allowed to hold its calls on the south for other

surveys over its distance given in its patent, it would contain nearly 3400 acres excess in grant. If on the other hand it was held to its short call on the E. and the long call on the W. of 4486 vrs. was shortened to 3569 vrs. and the calls on the S. for other surveys were observed over its patented calls for distance, the survey would contain 4 acres over its patented quantity; again, if the survey was governed by its short call and it calls for other old surveys on the south rejected, it would be short in quantity 1200 acres. If the long call was made paramount, the call for the E. line of #13 would have to be disregarded and the Brazos survey would have to be located in conflict with #34 for John Rogers and a large number of surveys N. of that part of the Brazos County located in Clay County located from the cor. of B. B. B. & C. R. R. Co. sur. and the Walker survey cor. These corners (B. B. B. & C. R. R. Co. and Walker) are old corners well marked and apparently as old land marks as can be found in the country sur. #34, was made by Twitty, and the allowance of the long call would make Mr. Twittys' own work conflict with itself. Witness further identified the land described in plaintiff's petition and said that it would be embraced within the boundaries of the Brazos School land if its long call 4486 vrs. was permitted to govern the stones placed by plffs. for the S. W. and S. E. cors, of #1, 2 & 3 H. & T. C. R. R. Co., were N. of the land claimed by plaintiffs. If however, the H. & T. C. R. R. Co. sur. were located as testified to by J. P. Hart, they should properly be placed 278 vrs. further S. and diminish the strip claimed by defts. and make their N. line and S. line only 639 vrs. instead of 917, measuring from this point mkd. in red on S. line of the Bruner sur. to the S. W. cor. of the Burnwell sur., thence N. to the elm cor. (Smith sur.) he found that there was an excess over the patented distance of 78 vrs.; if this excess is deducted from the 278 vrs. which accumulates on the line of the Bruner sur., there would only be a strip on 200 vrs. to come off the N. end of the land claimed by defts.; the Brazos and the sur. for whose lines it called, were all prairie surs. and no original marks to indicate the N. line of said school land sur. The surs. N. of the Minter were not surveyed till 1872 to 1874, and then to fill up a vacancy between the system of surveys made in 1854 on Holiday creek and those of little Wichita, in putting those surs. in the name of German Emigration Co., and H. & T. C. R. R. Co. sur., there was a conflict of something over 200 vrs. In surveying around the Brazos County School land, I have always allowed the long call line so as to give room for the entire survey, but cannot say that I have recognized the long call if you give Brazos County land its long calls but

disregard its calls for other surs., it would have an excess of about 1900 acres in the 4 leagues, to give this survey its short calls and observe its calls for other surs., it would have an excess of 4 acres, but to disregard its calls for other surs. and give it its short calls, it would be short 1200 acres; most all the surs. around the Brazos sur. are excessive, about 70 vrs. to the mile; if you give the Brazos County School land its long call, the grant will include the land claimed by plaintiffs, or if the surs. on the N. of the Brazos County School land, which call for the N. line of said Brazos county grant should be brought S. with the N. line of the Brazos sur., then there would be no vacancy between them and the Brazos County School land, and in order to make room for plaintiffs, it's necessary to give the Brazos County the short call instead of the long one and then disregard the calls in the Minter and other surs. E. of it and N. of the Brazos County School land, wherein they call for the N. line of the Brazos County School land.

J. P. Hart, witness for plaintiffs, testifies that he was a land surveyor by profession and had followed that profession since 1857. He had been County Surveyor of Parker County, Texas, and in 1880 was elected County Surveyor of Archer County, Texas, which office he held continuously from that time until 1890. In 1868, witness went with a land surveying party from Weatherford to Archer County, Texas, with a view of locating vacant land for certain certificates which they had. M. D. Bullion was one of the party of surveyors. They with witness went to, found and identified the common S. W. cor. of the H. S. Smith sur. #68 and the S. E. cor. of for Sarah Ursey as fixed by a large elm bearing tree well marked which they found. From this corner witness set his compass and ran north 1900 vrs. for the H. S. Smith 950 vrs., for the John W. Snell 3135 vrs., for the Madison County School land and 4486 vrs. for the Brazos County School land, thus running straight north from the Smith corner 10471 vrs.; at this point witness surveyed on the ground the 640 acres now covered by the John Minter survey. He established the S. W. and S. E. corners of said Minter survey by driving a stake in the ground at each corner; at the same time, witness located the other surveys east of said Minter covering the same ground as now covered by survey #1, 2, & 3 in the name of H. & T. C. R. R. Co.

At that time the Minter survey and the entire tier of surveys immediately east of it, including said survey, were located by and with reference to the long call of the Brazos County School land, that is to say, allowing the call 4486 vrs. Witness and his party surveyed the land for scrip in the name of S. P. R. R.

Co., but subsequently the scrip was floated and the W. Minter, Duff and H. & T. C. R. R. Co. certificates were applied to said land surveyed. At the time of this survey, witness knew nothing of the short call on the east line of the Brazos School land, that is he did not know anything about any discrepancy in its lines.

Witness further testifies that he did not discover the discrepancy till 1884, at which time he was doing some surveying for the Wichita Land and Cattle Co., when he examined the field notes of said school land survey. Witness then told Allen Parmer, the manager of the company, about the difficulty, and Parmer told witness that the school land must be surveyed by and with reference to its long call, and witness was then surveying lands from the Brazos County School land for the Wichita Land and Cattle Co., or Defts. since 1884 had observed the long call. He could not say that it had been recognized by others. Witness testifies that the Sarah Ursey survey, whose S. E. cor. was mkd. by the elm tree still standing, was 5200 vrs. long, and the W. R. Griffin sur. #113 was 5000 vrs. long so that the distance from the S. E. cor. of the Ursey to the N. E. cor. of #113 was 10200 vrs. long. The N. W. cor. of the Brazos School land survey by the field note of that survey, called to be in the east line of #113.

As a matter of fact, the N. W. corner of the school land survey, if the long call is allowed, is 10749 vrs. North of the South Ursey or elm cor., and in order to make the N. W. cor of the Brazos in the E. line of #113, the short call would have to govern. If the long call prevails, the call for the cor. in the East line of #113 must be disregarded. If the short call of the Brazos governs in determining its boundaries and reference be had for its calls for other surveys, the survey will contain its full quantity, the shape of the survey, all of its calls for the lines of other surveys and the course called for in its field notes will all be preserved. On the other hand, if the survey was located by its long call or the 917 vrs. excess is allowed, the call for the East line of #113 and the course of the North line running East will have to be materially changed to make the survey close. Witness had run the line from beginning corner of the Brazos on survey #38 for Ignacho Sanchez to the N. W. cor. of #114 for Madison County, and found that it was 200,56 vrs. plus 535 vrs. plus 236, making a very material excess in westings.

In most of the old river surveys, there was an excess of 70 vrs. to the mile, but that was in Eastings and Westings; there was but little if any excess in Northings. The Jose Oston, a large river survey put in by W. C. Twitty in Oct. 1854, just above and south-west of the Brazos, was short in its measure-

ment and contained less than its patented quantity. Witness had calculated the quantity of land in the Brazos grant. If the short call prevailed and it was governed by its calls for the lines of other surveys, it would contain its full quantity of 4 leagues, but if given its patented calls without reference to its calls for other surveys, it will be short; if the long call prevailed, there would be an excess of between 3200 and 3400 acres; by giving the long call on the West and by extending its lines to corners called for in its notes, besides the survey would be in conflict with survey #34, surveyed originally by W. C. Twitty before he surveyed the school land, added to which there would be a conflict between the Brazos County grant and the surveys North of it, which were located from a corner of the B. B. B. & C. R. R. Co. survey about 2 or 3 miles North of said school land; but if the long call of 4486 vrs. was shortened to conform to the east line of said survey, there would be no conflict with any other survey.

Witness further testified the Brazos Co., Madison Co., Griffin, Minter and all other surveys joining the Brazos County School land on the west and north are prairie. There is one corner on the Brazos County School land to-wit, at the beginning cor. on the Sanchez, and this cor. has been recognized for years by all surveyors in the county.

The Brazos County School land can be located from this corner sur. #113 is all prairie, has no marked lines or corners to survey this survey, it is necessary to begin at the elm on the Smith survey and run course and distance for a beginning corner of #113. When I located the Minter and surveys lying east of it, I tied each and all of them to what I thought was the N. line of Brazos County School land, but did not know where that line was; but to establish it, I had run course and distance from the elm cor. on the Smith sur., that there were no corners or lines of any survey to be found north of the land in controversy till Holidays creeks surveys 10 miles N. were found. The H. & T. C. R. R. Co. surveys # from one to twenty were not put in till about 1872 or 74, and were located to fill up the vacant space between the little Wichita surveys on the south and the Holiday creeks surveys on the North. Witness testifies that the reason the Minter and the tier east of it called for the Brazos School land was because he supposed that he had arrived at the line of said school land. He did not know where the North line of said school land survey was, but having run 10471 vrs. North of the elm corner he supposed that he was on the Brazos line; this was an open line of the prairie. Witness located surveys #1, 2 & 3 for H. & T. C. R. R. Co. from and with reference to the Minter and the call for the North line was

based on the supposition that the work he did was exactly on that line. Witness testified that the Brazos school land and lands north of it were in the pasture first of the Wichita Land & Cattle Co., and then of defendants from the beginning cor. on the Sanchez, which can be found on the ground to the Rhine cor. on the South and from the Rhine corner to the elm cor. on the Smith survey west of the Brazos County school there is an excess averaging 70 vrs. to the mile. In establishing the beginning corner of the Minter sur., I ran course and distance from the elm corner and allowed no excess, although there is an excess of 278 vrs. in the Smith sur. and the Snell survey running North.

Endorsed: No. 92, Mrs. Agnes Platt et al., vs. A. Vermillion et al. Plffs. Bill of Exception #3. Filed Nov. 28, 1898. J. H. Finks, Clerk; by Thomas P. Martin, Deputy.

PLAINTIFFS BILL OF EXCEPTION NO. 4.

Filed Nov. 23rd, 1898.

Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Oct. Term, 1898.

Mrs. Agnes Platt, et al.,

vs.

A. Vermillion, et al.

No. 92.

Consolidated.

Be it remembered that on the trial of the above styled and numbered cause it having been agreed by counsel herein that the plaintiffs Mrs. Agnes Platt and Mrs. Lula P. Hunt were the owners in fee simple of the Brazos county school land, 4 league grant and the following surveys lying north thereof to-wit the John Minter 320 acres of the S. P. R. R. Co., surs. 1 and 3 and that if any vacancy existed between said Brazos county school land grant on the north and said surveys then such vacancy belongs to the defendants and was owned by them in fee simple under their homestead settlement and files. See Ex. A, hereto attached.

And the jury in said cause having found that there existed between such surveys a tract of land 717 vrs. wide north and south by 10,400 vrs. long east and west which said tract of land was by such verdict allowed to the defendants. Plaintiffs

filed and presented to the Court their written motion for a new trial (a copy of said motion being hereto attached, marked Ex. B) which was by the Court overruled, to which ruling the plaintiffs then and there excepted and now here in open Court tenders this their bill of exceptions and prays that the same may be allowed, signed, filed and made a part of the record in this cause.

Submitted.

STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plaintiffs.

The foregoing bill of exceptions is allowed.

Nov. 22, 1898. EDWARD R. MEEK, Judge.

“EXHIBIT A.”

In the Circuit Court of the United States for the Northern District, of Texas at Fort Worth.

Agnes Platt,  
vs. No. 276.  
Andrew Vermillion, et al.

Mrs. Agnes Platt, et al.,  
vs. No. 277.  
J. S. Splawn, et al.

In the above entitled and numbered causes for the purpose of saving costs and facilitating the trial of these causes and for the purpose of this case only it is hereby agreed:

1st. It is admitted by the defendants that plaintiffs are the owner of the following described land, viz.: The Brazos county school land sur., the John Minter survey, and the H. & T. C. R. R. Co. surveys Nos. 1 and 3 and that plaintiffs are the owners of said lands by title in fee simple.

2nd. It is admitted by plaintiffs that the defendants are the owners by title in fee simple of the several tracts of 160 acres and 80 acres claimed by them in their answers respectively unless the lands claimed by them are within the true boundaries of plaintiffs surveys.

3rd. The only issue in this cause is one of boundaries and res adjudicata and neither party shall be required to make out or offer any evidence in support of the paper title to the survey claimed by him.

Witness our hands this Nov. . . . . 1897.

F. E. DYCUS, Atty. for Defts.  
R. F. ARNOLD, Atty. for Pliffs.

“EXHIBIT B.”

Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Oct. Term, 1898.

Mrs. Agnes Platt, et al.,  
vs. No. 92.  
A. Vermillion, et al.

To the Circuit Court of the United States for the Northern District of Texas, at Fort Worth:

Now at this time comes the plaintiffs in the above styled cause and moves the Court to set aside the verdict of the jury rendered therein and grant them a new trial in said cause for the following reasons, to-wit:

1st. Because the Court erred in sustaining defendants exceptions to plaintiffs first supplemental petition setting out plaintiffs plea of res adjudicata.

2nd. Because the Court erred in giving to the jury special charge No. 2, requested by defendants, which special charge is as follows:

If you believe from the evidence in this cause that the beginning corner of the Brazos county school land was located upon the ground and that the lines and courses of said school land grant were actually surveyed by the locating surveyor and if you further believe from the evidence that the lines and boundaries of said school land survey can be more certainly and definitely ascertained by beginning at said beginning corner, thence running north 2396 vrs.; thence west to the east line of the Griffin survey; thence south of the east line thereof to the N. W. cor. of the Madison county school land and so on east and south and north to beginning according to calls in said grant then you are authorized to so locate said lines, if you believe from the evidence that all the land marks, courses and distances called for in such grant will be thereby observed the configuration of the survey preserved and the intent of the locating surveyor followed.”

Because said special charge not authorized by the evidence in this that the testimony of W. C. Twitty, the original locating surveyor, shows that all of the lines and corners of said Brazos county grant were not located and run upon the ground and because said special charge is misleading in this, that the jury could and did infer and conclude therefrom that they were thereby authorized to disregard the long call of the Brazos county on the west and thereby cut off a strip on the north thereof 717 vrs. wide north and south and because said charge au-

thorized the jury to consider the closing line established by course and distance to the absence of evidence that said line was marked on the ground or that any of the corners on the east line, north line or west line had been established or found by either natural or artificial objects and because the course and distance of said east line being the closing call given by the surveyor after establishing the west and north line by course and distance became immaterial, uncertain and could not control the course and distance of the north and west lines and because said special charge authorized the jury to disregard the certain calls for course and distance in the Brazos county grant and make such course and distance yield to an uncertain call for point in the E. B. line of No. 113.

3rd. Because the verdict rendered by the said jury is contrary to the law as given them by the Court and is contrary to the evidence in said cause and it is not supported by either in this.

The evidence shows that if the long call be given to the Brazos county field notes on the west and said survey be thus run that said Brazos county school land grant will embrace the land claimed by defendants and before the jury can render the verdict as herein given they must and did disregard this west or long call in said Brazos county field notes and did make this certain and definite call for course and distance yield to the uncertain and unreliable call in said field notes for a point in the E. B. line of survey, No. 113, which point can never be establish, located or found and which survey No. 113 was shown not to exist until long after the location of the Brazos county school land grant, and because the evidence of W. C. Twitty, the original locator of the Brazos county grant, showed that he did give such long call to said grant and that he intended to and did run such course and distance on the west line and because there is no testimony outside of the testimony of W. C. Twitty and the field note of said grant that the foot steps of said surveyor was anywhere else than along the full course and distance of this call.

4th. The verdict rendered by said jury shows that in arriving at their conclusion they reversed the calls of the Brazos county grant when the evidence shows that the lines and corners of said grant were not all run on the ground at its original location and therefore its calls could not be reversed thereby making the short call of the east control and disregarding in toto the long call on the west.

5th. Because if the long call on the west of said Brazos county grant is disregarded and the short call on the east is made the controlling call, then the Minter, S. P. R. R. Co. and

H. & T. C. R. R. Co. surs. on the north, all to be to the north line of said Brazos county grant on their south line and said survey will be pulled down to said Brazos north line and will not and cannot leave any vacancy between them.

6th. The verdict of said jury is contrary to law and evidence in this that there is no controversy about the three locations of the beginning corner of the Brazos county school land and the lines run and established there from south and west to its S. W. cor., to-wit, the N. W. cor. of the Madison county school land, from thence north with the west line of said grant there are neither natural nor artificial objects to limit the length of said line to less than the distance of 4486 vrs. and the end of such line north is certainly and definitely fixed by its calls and no other way. The call thence east is not fixed or limited by either natural or artificial objects and only by course and distance and the end of this line definitely fixed by such course and distance. The call thence south to the beginning corner is fixed and controlled by the beginning corner and not by course and distance, such being the mathematical result of the established lines and is controlled by them instead of their being controlled by it, and the construction of the area included within said grant in the absence of testimony that said lines were located elsewhere or otherwise than by course and distance is a question of law and not of fact.

Wherefore plaintiffs pray that a new trial be granted them.  
STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plaintiffs.

The foregoing bill of exceptions, No. 4, is indorsed as follows, to-wit:

No. 92. Mrs. Agnes Platt, et al., vs. A. Vermillion, et al.  
Plaintiffs bill of exceptions, No. 4. Filed Nov. 23, 1898, J. H. Finks, Clerk, By Thomas P. Martin, Deputy.

PLAINTIFFS ASSIGNMENT OF ERRORS.

Filed Nov. 23rd, 1898.

Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Oct. Term, 1898.

No. 92. Mrs. Agnes Platt, et al.,  
vs. A. Vermillion, et al. Consolidated.

Now at this time comes Mrs. Agnes Platt, et al., plaintiffs

Counter # 13621

in the above styled cause and plaintiffs in error therein and makes and submits the following assignments the errors committed by the Court below on the trial of said cause, to-wit:

First Assignment of Errors.

The Court below erred in sustaining the defendants demurrer to plaintiffs first supplemental petition wherein plaintiffs pleaded the former judgment rendered by the Circuit Court of the United States and by the State District and Court of Civil Appeals wherein the question of the vacancy of the land in controversy had been adjudicated between a part of these plaintiffs and other defendants such adjudication being *res adjudicata* as to matters involved in this action and as to all persons whether parties to such adjudication or not which is as follows:

And by way of replication to defendants original answer these plaintiffs that heretofore on the ..... day of ....., 1890, Mrs. Lula P. Hunt, then Mrs. Lula P. Dickey, was the sole owner and holder in fee simple of the lands and tenements set out and described in plaintiffs first amended original petition claiming and holding the same as a part of her four league grant in the name of Brazos county school land.

That on the day and date aforesaid Warren West, Polk West, D. T. Meredith and W. D. Youngblood filed upon said land claiming the same to be vacant and unappropriated public domain of the State of Texas and as such subject to their files and settlement under the homestead donation laws of the State of Texas. That the said Mrs. Lula P. Hunt, then Dickey, instituted her action of trespass to try title in the Circuit Court of the United States for the Northern District of Texas, at Graham, against said parties claiming the same land to be a part of her said Brazos county school land grant and as such not subject to the files and settlement of said parties.

That said parties answered in said cause and were represented therein by counsel. That said cause was styled on the docket of said Court as No. 179, Mrs. Lula P. Dickey vs. Warren West, et al. That on the 27th day of October, 1890, said cause was tried by said Court and judgment duly rendered therein in favor of the said Mrs. Lula P. Dickey.

That it was thereby determined and adjudged by said Circuit Court of the United States that said land was a part of the Brazos county school land and was not vacant and unappropriated public domain of said state and not subject to the files of said parties.

And these plaintiffs further aver and charge that on the ..... day of ....., 1890, Mrs. Lula P. Hunt, former-

ly Dickey, was the legal and equitable owner and holder in fee simple and in the peaceable possession of the lands set out and described in plaintiffs first amended original petition, filed herein. That on said day and date R. K. Dunlap, Mrs. Mary Woodard, J. B. Watson, G. W. Edgin, S. Kuykendall, G. L. Allen and J. T. S. Gant entered upon said land, claiming the same to be vacant and unappropriated public domain of said state and as such subject to their files and settlements under the homestead donation laws of said state.

That the said Mrs. Lula P. Dickey instituted suit in the Circuit Court of the United States for the Northern District of Texas, at Graham, against said parties. That said cause was styled on the docket of said Court as No. 178, Mrs. Lula P. Dickey, vs. Tully Wilburne, et al.

That on the 27th day of October, 1890, said cause was duly tried by said Court with plaintiffs and defendants therein being represented by counsel and judgment was rendered therein for Mrs. Lula P. Dickey, said Court holding that said land was a part of the Brazos county school land grant and was not a part of the vacant and unappropriated public domain of said state. Plaintiffs further aver that on the ..... day of ....., 1892, J. T. S. Gant and G. W. Edgin again entered upon said land claiming the same to be vacant and unappropriated public domain of said state and as such subject to their files and settlements under the homestead laws of said state that said parties instituted suit in the District Court of Archer County, Texas, each claiming 160 acres of the land hereinbefore set out, which said cause was consolidated and prosecuted under the style of J. T. S. Gant, et al., vs. W. M. Coleman, et al., No. 186.

That defendant, Mrs. Lula P. Hunt, then Dickey, and W. M. Coleman, her foreman, were defendants in said cause, that defendants therein, to-wit: Mrs. Lula P. Dickey and W. M. Coleman claimed said land as a part of the Brazos county school land grant and as such not subject to the files and settlements of said parties. That said cause was tried by said Court on the 4th day of March, 1892, all of said parties being present and represented by counsel. That said Court rendered judgment in said cause for Mrs. Lula P. Dickey and W. M. Coleman, for said land thereby holding and finding that said land was a part of the Brazos county school land grant and not vacant and unappropriated public domain and not subject to the files and settlement of said parties under the homestead donation laws of said state. That said cause after the rendition of said judgment as aforesaid was by the said Gant and Edgin appealed to the Court of Civil Appeals of said state sitting at Fort Worth,



Texas, which judgment and decree was by the Court of Civil Appeals in all things affirmed thereby holding that said lands was a part of the Brazos county school land grant as aforesaid. That all of said judgments were rendered by Court of competent jurisdiction and are in full force and effect and are unreversed.

Plaintiffs further aver and charge that on the ..... day of ....., 1894, Mrs. Lula P. Hunt, joined by her husband, Clyde D. V. Hunt, being the legal and equitable owner and holder in fee simple of the lands set out and described in her first amended original petition and being in the actual possession of the same in order and for the purpose of checking, restraining, preventing and avoiding the annoyance and heavy expense of continued litigation over said land with any and all persons who should settle upon said lands claiming the same as vacant, filed her bill in equity in the Circuit Court of the United States for the Northern District of Texas, at Graham, claiming said land as a part of the Brazos county school land grant in Archer county and alleging that said land was not vacant and unappropriated public domain and was not subject to settlement under the homestead laws of said state, and further alleging that one T. M. Cecil county surveyor of Archer county, Texas, had surveyed and was continually surveying and accepting files upon said land as vacant and unappropriated public domain under the statute regulating homestead donations.

That the said cause was determined and adjudicated by said court on the 18th day of October, 1894, and a decree rendered by the said court in favor of the said Mrs. Lula P. Hunt against the said T. M. Cecil, as such county surveyor of Archer County, Texas, adjudging said land to be a part of the Brazos County School land and not vacant land and forever and perpetually enjoining and restraining the said T. M. Cecil, as such county surveyor, his agents, deputies, assistants and attorneys from accepting any file or files upon said land from any one whomsoever and from furnishing any one with field notes to said land or any part thereof who might or desire to claim the same as vacant or public domain or subject to file or settlement under the homestead donation laws of said State. Plaintiffs further aver and charge that the defendants in this case claimed the land in controversy as vacant land under the homestead donation laws of said State, that said land is claimed by each of the defendants herein is a part of the land embraced in the decree hereinbefore set out. That the plaintiff herein Mrs. Lula P. Hunt was a party to all of said decrees that the land involved herein was involved in all of said causes that the law and facts are the same in this cause as in all of those hereinbefore set out.

That these defendants are urging the same defense and setting up the same claim from the same source as urged in all of said causes.

That the defendants knew of said decrees or could have known of the same by mere inquiry that they were notorious throughout Archer County.

Plaintiffs further aver and charge that by reason of the rendition of said decrees as aforesaid the fact that the land in controversy is a part of the Brazos County School land and that it is not vacant and unappropriated public domain and is not subject to file and settlement under the homestead donation laws of said State has become a settled and established fact and is now res adjudicata as to all persons so claiming the same.

Wherefore these plaintiffs say that defendants cannot be heard to assert such claims and that the decrees herein set out are a bar to defendant's claim. Wherefore they pray as in their original first amended original petition.

See Bill of Exceptions No. one.

#### 2nd Assignment of Errors.

The Court erred in giving the jury Special Charge No. 2 requested by defendants which was as follows:—

Gentlemen of the Jury:—If you believe from the evidence in this cause that the beginning corner of the Brazos County School land was located on the ground and that the lines and corners of said school land grant were actually surveyed by the locating surveyor and if you further believe from the evidence that the lines and boundaries of said school land survey can be more certainly and definitely ascertained by beginning at said beginning corner, thence running N. 2,396 vrs., thence W. to the E. line of the Griffin survey, thence S. on the E. line thereof to the N. W. corner of the Madison County School land and so on East and South and North to the beginning according to the call in said grant then you are authorized to so locate said lines if you believe from the evidence that all of the land, marks, courses and distances called for in said grant will be thereby observed the configuration of the survey preserved and the intent of the locating surveyor followed.

Because said Special Charge was not authorized by law the evidence in this that the testimony of W. C. Twitty, the surveyor, who originally located the Brazos County 4 league grant shows that all of the lines and corner of said grant were not at the time of such original location actually located and surveyed on the ground and in finding a location of a grant a reversal of

the calls is never permissible until it has been first shown that all of the lines and corners of such grant were originally located on the ground.

2nd.—Said Special Charge is misleading in this that the jury did and could infer and did conclude from such charge that they were authorized to disregard the long call of the Brazos County grant on the West and thereby cut off a strip on the North 717 wide North and South.

3rd.—Said Special Charge authorized the jury to disregard the certain call for course and distance in the Brazos County call on the West where it calls from the N. W. corner of the Madison County School land survey. Thence North 4,486 vrs. to a point in the E. B. line of No. 113 and makes such certain and definite calls for course and distances yield to an uncertain and indefinite call for a point in the E. line of No. 113 which cannot ever be found or established."

4th.—Said Special Charge does not specifically and with certainty inform the jury that before the calls in locating a grant can be reversed it must be definitely shown by testimony that the entire grant and all lines and corners thereof were actually located and established on the ground by the original locating surveyor. The charge in a measure limits such original location on the ground to the beginning corner.

See Bill of Exception No. 2.

### 3rd Assignment of Errors.

The court erred in refusing to give to the jury Special Charges Nos. 5 & 10 requested by plaintiffs, Charge No. 5 being as follows:—

You are further charged by the court that when unmarked lines of adjacent surveys are called for by the field notes of contiguous surveys and such unmarked lines can from other calls be ascertained and located with certainty such unmarked lines under such circumstances are given the dignity of an artificial object.

Therefore if you find from the evidence in this case that the N. line of the Brazos County School land survey can be located with certainty either from its own calls and corners or from the calls and corners of contiguous surveys then such N. line becomes an artificial object which will control course and distance and if you find from the evidence that such line can be so established and that the surveys lying N. of such line, to-wit, the John Minter, S. P. R. R. Co. survey, the H. H. Duff sur. No. 8, H. & T. C. R. R. Co. surs. Nos. 1, 2 & 3 call for the N. B. line of said Brazos County School land survey as a

common divisional line then no vacancy can occur between such survey and the Brazos County School land and you will find for the plaintiffs.

Submitted.

Special Charge No. 10 being as follows:—

The testimony in this case shows that there was no vacancy existing North of and adjoining the Brazos County School land at the time of the attempted appropriation of the land claimed by the defendants in this suit, because without reference to the true location of the N. line of the Brazos County School land the surs. North, to-wit, the John Minter, S. P. R. R. Co. sur., H. H. Duff sur. No. 8, H. & T. C. R. surs. 1, 2 & 3 all call for the North boundary line of the Brazos County School land and exclude the existence of a vacancy and therefore your verdict will be for the plaintiffs. Both of said charges being necessary from the field notes of the John Minter, H. H. Duff and H. & T. C. R. R. Co. sur. and the testimony of T. M. Cecil and J. P. Hart. Said field notes showing that these surveys were located from the North line of the Brazos County School land and each and all were tied to such north line as a common divisional line and could not be separated to admit of a vacancy between them.

See Bill of Exception No. 3.

### 4th Assignment of Errors.

The court erred in overruling the plaintiffs motion for a new trial for the reason therein set out and because the evidence shows that plaintiffs are the owners in fee simple of the Brazos County 4 league grant and the John Minter sur. 320 acres out of S. P. R. R. Co. survey and of H. & T. C. R. R. Co surveys 1 & 3 lying North and tied to said Brazos County School land. That such surveys cannot be separated and consequently no vacancy can exist between such surveys to be appropriated by defendants.

See Bill of Exception No. 4.

Wherefore plaintiffs in error pray that said cause may be reversed and remanded.

STANLEY, SPOONTS & THOMPSON,  
R. F. ARNOLD, for Plaintiffs in error.

The foregoing Assignment of Errors is endorsed as follows, to-wit: No. 92. Mrs. Agnes Platt et al. vs. A. Vermillion et al. Plaintiffs Assignment of Errors. Filed Nov. 23, 1898. J. H. Finks, Clerk. By Thomas P. Martin, Deputy.

## UNITED STATES OF AMERICA.

The President of the United States:

To the Honorable Judges of the Circuit Court of the United States, for the Northern District of Texas:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Circuit Court, before you and some of you, between Mrs. Agnes Platt and Mrs. Lula P. Hunt, plaintiffs, and J. S. Splawn, Mrs. S. J. Davis, A. Vermillion, J. D. Spencer, Greer Davidson, Jane McCall, J. S. Garner, J. W. Davis, William Huffman, W. T. Slaughter, John Slaughter, Albert Keen, Ed. Simmons, J. W. McCall, Walter Keen, J. S. Speers and J. W. Edgin, defendants, a manifest error has happened to the great damage of Mrs. Agnes Platt and Mrs. Lula P. Hunt, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties before named, in this behalf, do command you, if judgment be given therein, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Fifth Circuit, together with this writ, so that you can have the same at the City of New Orleans, Louisiana, within thirty days from the date hereof, in said United States Circuit Court of Appeals, to be then and there held, and the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, 25th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

J. H. FINKS, Clerk U. S. Circuit Court,  
N. D. Texas, at Fort Worth.

By THOMAS P. MARTIN, Deputy.

Allowed: EDWARD R. MEEK, Judge.

A copy of this writ of error is lodged this day in my office for the use of the defendants in error. January 25th, 1899.

J. H. FINKS, Clerk.

By THOMAS P. MARTIN, Deputy.

(Indorsed:) U. S. Circuit Court, Northern District of Texas. Mrs. Agnes Platt, et al., vs. J. S. Splawn, et al. Writ of Error. Filed Jan. 25, 1899. J. H. Finks, Clerk, by Thomas P. Martin, Deputy.

## UNITED STATES OF AMERICA.

The President of the United States:

To J. S. Splawn, Mrs. S. J. Davis, A. Vermillion, J. D. Spencer, Greer Davidson, Jane McCall, J. S. Garner, J. W. Davis, William Huffman, W. T. Slaughter, John Slaughter, Albert Keen, Ed. Simmons, J. W. McCall, Walter Keen, J. S. Speers and J. W. Edgin—Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at the City of New Orleans, in the State of Louisiana, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States, for the Northern District of Texas, at Fort Worth, wherein Mrs. Agnes Platt and Mrs. Lula P. Hunt are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered in the said case, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this January 25th, in the year of our Lord one thousand eight hundred and ninety-nine.  
EDWARD R. MEEK, Judge.

We accept services of the foregoing citation in error, January 26, 1899.  
F. E. DYCUS,

.....  
Attorneys for Defendants in Error.

(Indorsed:) No. 92. U. S. Circuit Court, Northern District of Texas. Mrs. Agnes Platt, et al., vs. J. S. Splawn, et al. Citation in Error. Filed Jan. 25, 1899. J. H. Finks, Clerk, by Thomas P. Martin, Deputy.

## CLERK'S CERTIFICATE.

I, J. H. Finks, Clerk of the Circuit Court of the United States, in the Fifth Circuit and Northern District of Texas, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, bills of exception, assignment of errors, and all proceedings in cause No. 92, wherein Mrs. Agnes Platt et al. are plaintiffs, and A. Vermillion et al. are defendants, and in cause No. 93, wherein Mrs. Agnes Platt et al. are plaintiffs, and J. S. Splawn et al. are defendants, which were consolidated in said court, and there tried, except that the original writ of error and original citation in error are included therein, instead of copies thereof, as fully as the same remains on file and of record in my office at Fort Worth, Texas.

Witness my hand officially, and the seal of the United States Circuit Court for the Northern District of Texas, at Fort Worth, this the 18th day of February, A. D., 1899.

[Seal]

J. H. FINKS, Clerk of said Court,  
By THOMAS P. MARTIN, Deputy.

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SK. File No. C.

Archer Co.  
Sketch files

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Archer Co. SK. File No. C.