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Bee Co. Sk File 33

GEORGE CANNON
ATTORNEY AT LAW
ALAMO NATIONAL BUILDING
SAN ANTONIO, TEXAS

RECEIVED

JUL 28 1944

July 27, 1944

REFERRED TO MAP

In re: HOLZMARK LANDS, BEE COUNTY, TEXAS.

Hon. Bascom Giles,
Commissioner of the General Land Office,
Austin, Texas.

Dear Sir:

Pursuant to conferences with Mr. Sheriff, I herewith file a plat prepared by Roy Fenner, County Surveyor of Bee County, Texas, on the 21st day of November, 1930, showing portions of the following surveys:

Samuel May, Abstract 230, File 215
D. F. Waymouth, Abstract 330, File 51
T. P. Rhodes, Abstract 397, File 174
Morgan O'Brien, Abstract 443, File 708 (Portion)
Richard Jones, Abstract 373, File 171
Patrick Martin, Abstract 559, File 478
Patrick Martin, Abstract 568, File 3631
all in BEE COUNTY, TEXAS.

The General Land Office map discloses an apparent conflict between the Samuel May Survey with the Richard Jones and Mary Keeler Survey. The plat submitted does not cover the Mary Keeler Survey but it lies immediately east of the Richard Jones Survey and has a common boundary line with the Samuel May. Such boundary being a continuation of the common boundary of the Samuel May and Richard Jones Surveys. This plat correctly reflects the true south boundary line of the Samuel May and the true North boundary of the Richard Jones.

I have personally made an inspection of the records in Bee County, Texas, and have examined the original field notes in the General Land Office of all of the above mentioned surveys.

In Cause No. 203 in the District Court of Bee County, Texas, entitled Carter vs. Martin, in the nature of a trespass to try title suit, but in reality a boundary suit, I found that the jacket containing the original papers was missing. In the Minutes of the District Court, however, I found that this cause involved the ownership between Martin and Carter of a tract of land located between the Rhodes Survey and the Waymouth Survey. The State of Texas was ^{not} a party to the suit and it appears that Patrick Martin

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had applied to purchase certain State lands as represented by the field notes in the Patent which issued to him, Abstract 559. Since Martin prevailed and the judgment of the court was that plaintiff take nothing, by implication the north boundary line of the Waymouth Survey was dropped a sufficient distance to the south to allow the Patrick Martin Survey, Abstract 559, to be placed on the ground between the T. P. Rhodes and the Waymouth Surveys. Based upon the judgment in this cause, the State of Texas issued patent to Patrick Martin covering Abstract 559.

The true history of this set-up is as follows:

The Waymouth Survey, File 51, was located on the ground by S. Addison White, Surveyor, on June 12, 1839. It calls for its commencing point the southeast corner of a survey for S. Winship which is also the northwest corner of a survey for S. M. Rogers. The old original Land Office maps disclose four surveys:

- (1) The D. F. Waymouth;
- (2) The Winship, which is now the T. P. Rhodes, Morgan O'Brien and other surveys;
- (3) The Rogers, which is now the Richard Jones, Mary Keeler and other surveys; and
- (4) What is now the Samuel May Survey, all having a common corner.

The Field Notes of the Waymouth Survey call for this common corner a stake from which a mesquite marked "H" bears north 23 east 10 varas.

The Samuel May Survey, File 215, San Patricio County, 1st Class, was surveyed by S. Addison White February 1, 1839, and certified to in July, 1839, by Grammond, County Surveyor of San Patricio County. The southwest corner of this survey is located as follows:

*****to the S.W. corner a stake bearing from mesquite marked H, N 25 E distant 10 varas*****

The Morgan O'Brien, File 708, San Patricio, 1st Class, was surveyed December 4, 1878, and corrected September 17, 1879, by J. F. Fenner, County Surveyor Bee County. Two calls contained in this survey are as follows:

From the northeast corner of said Rhodes Survey "Thence S 20 E 950 vas. to Rhodes S.E. cor. -- Thence N 70 E vas. 76 vas.

3 - Commissioner of General Land Office,
Austin, Texas

7/27/44

to the S.W. cor. of Sam May's Sur. ****

The Thos. P. Rhodes Survey, File 174, San Patricio Preemption, was surveyed by J. B. Atkins September 10, 1874. The first call is:

"Beginning at a stake which is S 70 W 70 varas from the N.E. corner of a survey in the name of D. F. Waymouth ---". The last call of the survey from its northeast corner is: "Thence S 20 E 950.4 vs. to a stone set in the north boundary of said Waymouth Survey, Thence N 70 E along the line of said survey 950.4 vs. to the place of beginning."

You will note that the first part of these last two calls is identical with call in the Morgan O'Brien Survey.

The Richard Jones Survey, File 171, San Patricio Preemption, was surveyed by J. B. Atkins September 21, 1874. The first call is:

"Beginning at the N.E. cor. of a survey in the name of D. F. Waymouth whence a L.O. 14 in. dia. mkd X bs. S 3^o, E 26 vs. ---"

You will note that this is the same witness tree called for in the Thos. P. Rhodes Survey as a call for the N.E. corner of the Waymouth. Returning to the Jones Survey, after a call continuing down the east line of the Waymouth Survey as its west line to its southwest corner, and then a call and distance to its southeast corner, the next call in the Richard Jones Survey is as follows:

"Thence N 20 W at 513 vs. the west cor. of a preemption filed by Phillip Martin at 1188 a stake in the S line of a survey in the name of S. May, decd. whence a L.O. mkd H bs. N 79 W 3 vs - Thence S 70 W 763 to the place of beginning".

You will notice on the inclosed plat the lone oak (L.O.), being the northeast corner of the Richard Jones Survey, being located in the south line of the Samuel May Survey. You will further note that the call from the L.O. to the place of beginning of this survey is south 70 west. On the plat you will notice that the call is south 70 deg. 45 min. west.

In the Mary Keeler survey the beginning point is the northeast corner of the Richard Jones Survey. Also, the south boundary line of the Samuel May Survey, and the same L.O. witness tree is called for.

I went on the ground and found a well defined "sendero" along the south line of the Samuel May Survey as delineated by the attached plat prepared by Fenner. The fence line was in the "sendero" and where the fence stopped the "sendero" continued to the southwest corner of the May Survey as delineated by the plat. In the vicinity of the southwest corner of the May's as shown by the plat and the southeast corner

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4 - Commissioner of General Land Office,
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of the Morgan O'Brien. I found evidence at approximately the proper place of a dead mesquite from which several sprouts had grown, and these sprouts in turn had died. It is impossible to state if this was the original southwest corner witness tree called for in the May field notes. It is located at the correct place, however, to be such witness tree.

I then went to the present northeast corner of the Waymouth Survey and could find no evidence of any kind of a mesquite tree which could be the witness tree called for as witnessing the northeast corner of the Waymouth and the southwest corner of the May.

My curiosity having been aroused, I proceeded to check the original papers in Cause No. 203 in the District Court of Bee County, Texas, styled Carter vs. Martin.

The Courthouse of Bee County burned in the neighborhood of the year 1909. The jackets containing the original papers in the original suits up to approximately 100 are present in the Courthouse. There is a skip, however, of several jackets among which is the jacket containing the original papers in Cause No. 203. The Minutes of the Court disclose that on two different occasions the Court ordered, first the Surveyor of San Patricio County, to make a survey on the ground and file his report with the court, and second that the Surveyor of Goliad County make a survey on the ground and file his report with the court. No mention is made in the Minutes of the findings of such surveyors. Judgment, as disclosed, by the Minutes does not delineate either the surveys by field notes but amounts to merely a judgment that plaintiff take nothing.

The judgment has either been corrected to make it more legible or has been altered, because a part of it is written in a heavier ink with a wider pen than the original shows to be. Whether this was done at the time of the entry of the judgment in the Minute Book cannot now be determined.

After a careful analysis, it is my opinion that the inclosed plat correctly delineated the position of the Samuel May, the Richard Jones, the Morgan O'Brien and the Thos. P. Rhodes Surveys on the ground.

The State having issued the Patrick Martin Survey based upon a judgment between the parties in possession, those now presently in possession cannot complain as to the true location of the north line of the Waymouth Survey on the ground.

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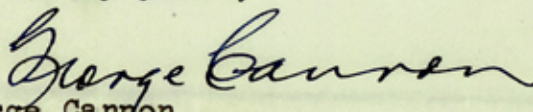
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However, the General Land Office should not allow the hiatus created by the Patrick Martin Survey, Abstract 559, to create confusion as to the actual location on the ground of the south boundary line of the Samuel May Survey.

The Samuel May Survey and the Richard Jones Survey are owned by the same people. The Samuel May Survey and the Mary Keeler Survey are not so owned, but the parties in possession of the Mary Keeler Survey and the parties in possession of the Samuel May Survey have recognized the line of such surveys to be as delineated by the plat and a fence is on the ground separating the May and the Keeler surveys. The fence is apparently more than thirty (30) years old and for more than thirty years the parties in possession of the Mary Keeler and the Samuel May Surveys have recognized this fence as delineated by the plat to be the true boundary line of their respective tracts of land.

I respectfully request that this letter, the field notes and the plat be filed, and that on the records of the General Land Office there be noted this information so that when a new Land Office map is prepared the correct delineation of the Samuel May, Richard Jones and Mary Keeler Surveys will be properly shown.

Very truly yours,


George Cannon

GC/fb

Enclosures:

1. Plat of part of Holzmark lands, Bee County, Texas, made by Roy Fenner, Nov. 21, 1930.
2. Field Notes A & M Holzmark 159.46 acres, Bee County.
3. Field Notes A & M. Holzmark 171 acres, Bee County.

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STATE OF TEXAS)
(
COUNTY OF BEE)

Field notes of a survey of 171 acres of land made for A & M Holzmark:

Being out of the eastern part of a tract calling for 808 3/10 acres of land which was conveyed with several other tracts of land in one deed by A. J. Barber to A. and M. Holzmark by deed dated May 16, 1910, of record in Volume 48, pages 427 - 28 - 29, of the deed records of Bee County, Texas, and also being out of the southeastern part of 1/3 league survey in the name of Samuel May, Abstract No. 230.

Said survey of 171 acres of land is situated in Bee County, Texas, about 10 miles N 50 W from the town of Beeville and is described by the following metes and bounds:

Beginning at the southwest corner of this survey in the southern boundary of said Samuel May Survey, from when a pile of stones for the northeast corner of a pre - emption survey of 160 acres for Richard Jones, abstract No. 373, bears S 70 33' W 765.9 va varas and from said stone pile an old oak tree, dead and lying on the ground, bears S 79 W 3 varas (this is no doubt the original bearing tree for the northeast corner of said Richard Jones Survey).

Thence N 70 33' E with a fence line for the south boundary of said Samuel May survey at 582.9 varas the southeast corner of this survey and the southwest corner of 200 acres on which an oil and gas lease was assigned by M. M. Bergen to the Texas Company. Said 200 acres being the east part of said 808 3/10 acres.

Thence N 19 45' W 1661.8 varas to the northeast corner of this survey and the northwest corner of said 200 acres in a fence line between the Voss pasture on the north and the Holzmark pasture on the south;

Thence S 69 20' W. following the general course of said fence line 582.9 varas to the northwest corner of this survey;

Thence S 19 45' W 1649.4 varas to the place of beginning. Containing 171 acres with in the above metes and bounds.

Roy Fenner
Licensed State Land Surveyor.

rec. 83/534

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STATE OF TEXAS (
COUNTY OF BEE (

Field notes of a survey of 159.46 acres of land made for A & M. HOLZMARK:

Being out of a large tract of land conveyed by A. J. Barber to A. and M. Holzmark by deed dated May 16, 1910, of record in Volume 48, pages 427 - 28 and 29 of the deed records of Bee County, Texas, and also being all of a 160 acre pre - emption survey in the name of Richard Jones, Abstract No. 373.

Said survey of 159.46 acres of land is situated in Bee County, Texas, about 10 miles N 60 W from the town of Beeville and is described by the following metes and bounds:

Beginning at a pile of stones from whence an old oak tree dead and lying on the ground bears S 79 W 3 varas, for the northeast corner of said 160 acres in the south boundary of a 1/3 league survey in the name of Samuel May, Abstract No. 230.

Thence S 70 45' W with the south boundary of said May Survey, at 771.6 varas the northwest corner of this survey

Thence S 20 E 1174 varas to the southwest corner of this survey and the southwest corner of said 160 acres;

Thence N 70 14' E 766.6 varas to the southeast corner of this survey;

Thence N 19 45' W 1167 varas to the place of beginning, containing 159.46 acres within the above metes and bounds.

Variation N 10 E. H. N. Whalen) Chain Carriers
Albert McCoy)

Roy Fenner
Licensed State Land Surveyor

Surveyed Nov. 1930

I, Roy Fenner, Surveyor of Bee County, Texas, do hereby certify that the foregoing survey was made by me on the ground and 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 just as I found them on the ground and they are recorded in my office in Volume (3) Three, Pages 9 and 10.
This 21 day of November, 1930.

Roy Fenner, County Surveyor,
Bee County, Texas.

The foregoing 3 pages, including this page containing Field Notes made by the Surveyor of Bee County, Texas, were filed for record on Nov. 21, 1930. rec. 83/534

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STATE OF TEXAS
COUNTY OF BEE

Field notes of a survey of 171 acres of land
made for A & M Holmark:

Being out of the eastern part of a tract calling for

808 3/10 acres of land which was conveyed with several other

tracts of land in one deed by A. J. Barber to A. and M. Holmark

by deed dated May 16, 1910, of record in Volume 48, pages 427 - 28 -

29, of the deed records of Bee County, Texas, and also being out

of the southeastern part of 1/3 league survey in the name of

Samuel May, Abstract No. 230.

Said survey of 171 acres of land is situated in Bee County,

Texas, about 10 miles N 50 W from the town of Beville and is

described by the following metes and bounds:

Beginning at the southwest corner of this survey in the

southern boundary of said Samuel May Survey, from when a pile of

stones for the northeast corner of a pre-emption survey of 160

acres for Richard Jones, Abstract No. 273, bears S 70 33' W 762.9 va

riases and from said stone to a pile of oak tree, dead and lying on the

ground, bears S 79 W 3 1/2 vases. This no doubt the original bearing

tree for the northeast corner of said Richard Jones Survey).

Thence N 70 25' E to the fence line for the south boundary

of said Samuel May survey at 582.9 vases the southeast corner of

this survey and the southwest corner of 200 acres on which an oil

and gas lease was assigned by M. M. Bergen to the Texas Company.

Said 200 acres being the east part of said 808 3/10 acres.

Thence N 19 45' W 1661.8 vases to the northeast corner of

this survey and the northwest corner of said 200 acres in a fence

line between the Voss pasture on the north and the Holmark pasture

on the south;

Thence S 69 20' W. following the general course of said

fence line 582.9 vases to the northwest corner of this survey;

Thence S 19 45' W 1649.4 vases to the northeast corner of said

Containing 171 acres with in the above metes and bounds.

ROY TUNNEY
LICENSED STATE LAND SURVEYOR

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rec. 83/234

County 14354

Bee Co. St. File # 33

Bee County App. No. 33

STATE OF TEXAS
COUNTY OF BEE

Field notes of a survey of 159.46 acres of land made for A & M. HOLZMARK:
Being out of a large tract of land conveyed by A. J. Barber to A. and M. Holzmark by deed dated May 16, 1910, of record in Volume 48, pages 427 - 28 and 29 of the deed records of Bee County, Texas, and also being all of a 160 acre pre-emption survey in the name of Richard Jones, Abstract No. 373.

Said survey of 159.46 acres of land is situated in Bee County, Texas, about 10 miles N 60 W from the town of Beville and is described by the following metes and bounds:
Beginning at a pile of stones from whence an old oak tree dead and lying on the ground bears S 79 W 3/4 varies, for the northeast corner of said 160 acres in the south boundary of a 1/3 league survey in the name of Samuel May, Abstract No. 230.

Thence S 70 1/2 W with the south boundary of said May Survey, at 771.6 varies the northeast corner of this survey Thence 1/4 varies to the southwest corner of this survey and the southeast corner of said 160 acres; Thence S 14 1/2 W 166.6 varies to the southeast corner of this survey; Thence N 19 1/2 W 1167 varies to the place of beginning, containing 159.46 acres within the above metes and bounds.

OFFICE OF THE COUNTY CLERK
SAN ANTONIO, TEXAS
JUL 27 1944

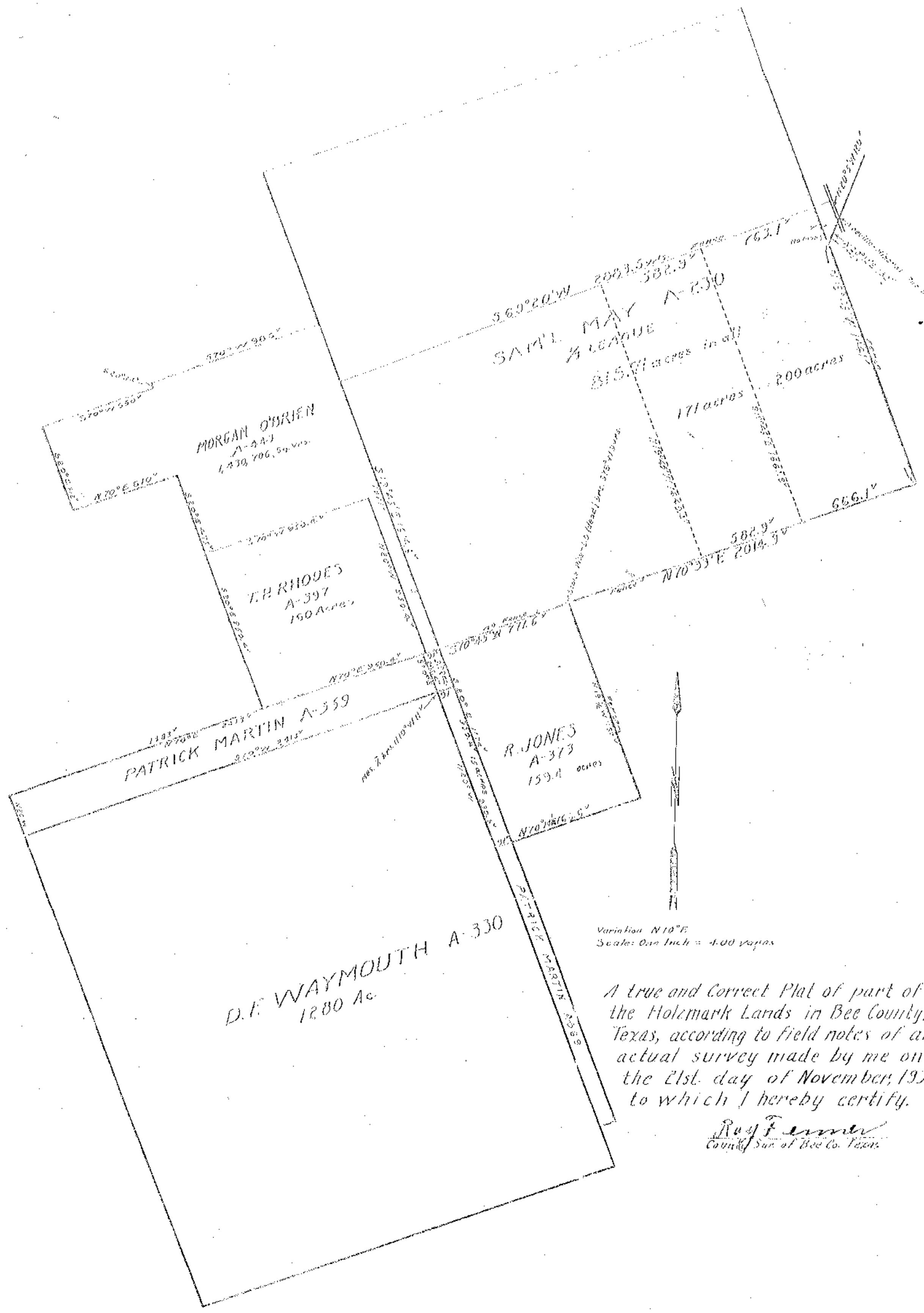
Variation N 10 E.
H. N. Whalen)
Albert McCoy)
Chain Carriers
Roy Fenner
Licensed State Land Surveyor

Surveyed Nov. 1930
I, Roy Fenner, Surveyor of Bee County, Texas, do hereby certify that the foregoing survey was made by me on the ground and 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 just as I found them on the ground and they are recorded in my office in Volume (3) Three, Pages 9 and 10. This 21 day of November, 1930.
Roy Fenner, County Surveyor,
Bee County, Texas.

The foregoing 3 pages, including this page containing field notes made by the surveyor of Bee County, Texas, were filed in my office on Nov. 21, 1930. rec. 83/534

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Count # 98874



Variation N 10° E
 Scale: One Inch = 400 yards

A true and Correct Plat of part of
 the Holmark Lands in Bee County,
 Texas, according to field notes of an
 actual survey made by me on
 the 21st. day of November, 1930,
 to which I hereby certify.

Rufus F. ...
 County Sur. of Bee Co. Texas

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BEE COUNTY SKETCH FILE
No. 33

Plat by Roy Fenner of survey made
Nov. 1930 showing the relation
of the Samuel May, D. F. Waymouth,
R. Jones & T. P. Rhodes Surveys,
one to the other, and a statement
by Geo. Cannon, Attorney,
relative to same.

Filed: July 28, 1944.

Bascom Giles, Commissioner

By *George Cannon*
G. C.

JUL 27 1944
SAN ANTONIO, TEXAS
ALAMO NATIONAL BUILDING
GEORGE CANNON
LAW OFFICE

COUNTER # 78875

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SKETCH