

## SURVEY REPORT

This is a report of a survey of the SE/4 of Section 32, G.C.&S.F. Ry. Co., Block G-14, Brewster County, Texas, about 70 miles South 57° East of Alpine, the County Seat. The survey was made at the request of Ronald Wooten, Rt. Box 374-C, Waller, Texas 78484. This report and survey was prepared by Elbert F. Bassham, Licensed State Land Surveyor.

## PROCEDURES

Government triangulation stations "Black", "Maravillas" and "Bullis Gap" were occupied and their coordinates in the South Central Zone of the Texas Coordinate System were utilized for the horizontal control of this survey. A combined distance reduction factor of 0.99975115 was incorporated into all distance measurements and acreages. Solor observations were taken at various points to verify angles.

## INFORMATION SOURCES

The records of the General Land Office, the Brewster County Courthouse and the Southwestern Reporter were consulted to compile survey and legal information needed for this survey. Three Court cases are significant to this survey.

These Court cases are styled as follows:

(1) Dick Williams, et al. vs. Asa Jones, et al., No 2006, Feb. 23, 1943 (Vol. 6, P. 223, District Court Records of Brewster County) [Exhibit "A"]

(2) State, et al. vs. Jones, et al., No. 4331, May 11, 1944 (184 SW 2nd 510, Court of Civil Appeals) [Exhibit "B"]

(3) F.M. Roark, et al. vs. H.D. Smith, et al., No. 1934, Nov. 1, 1947 (Vol. 7, P. 1, District Court Records of Brewster County) [Exhibit "C"]

Note: State vs. Jones was upheld by the Supreme Court.

## HISTORY

In May and June of 1881 John Gano surveyed the 200 sections in Block G-1, D.&W. Ry. Co. Apparently the only section he monumented on the ground was Section 1, calling for a rock mound, with bearing calls, at its Southwest corner.

In October of 1881 S.A. Thompson filed field notes on Sections in several T.&St.L. Ry. Co. Blocks adjoining said Block G-1 on the West. Mr. Thompson's field notes of Section 36, Block 237 read, in part:

"Beginning at a rock mound the N.E. corner of Survey No. 35 and S.W. corner of Survey No. 25 in this block for the N.W. corner of this survey.", etc...

"THENCE S.", etc...

"THENCE East 1900 vrs. to a rock mound established by J.T. Gano for the S.W. corner of Survey No. 1 in his block G-1, for the S.E. corner of this survey and block from whence Stairway Peak brs. S.19 1/2 Deg. W. 950 vrs.; and"...

In 1908, R.S. Hunnicutt, a Licensed State Land Surveyor, was sent by the Land Commissioner to locate the original Gano corner for the Southwest of Block G-1. He was instructed to mark it and destroy all other monuments in the vicinity. Hunnicutt established a monument with an unmistakable witness, a large boulder marked with an "X", at what is now known as the "Hunnicutt Corner", at his location of the Southwest corner of Block G-1. His field notes called for the Sections in the T.&St.L. Blocks to be 1671 varas East and West and 1910 varas North and South. (Exhibit "D" is an example of Hunnicutt's field notes in these blocks).

File No. Sketch File 36  
South Brewster County

Filed June 2 1986

By GARRY MAURO, Com'r  
H. Forbes

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File No. Sketch File 36  
South Brewster County

Filed June 2 1986

GARRY MAURO, Com'r

By H. Fisher

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# THE STATE OF TEXAS BREWSTER COUNTY

Section No. 34  
Block No. 235  
Garland, Tex. & St. L. Ry. Co.

FOR THAT  
OF THIS COUNTY  
GENERAL SURVEY  
WITH THESE WELLS  
SEVEN

Corrected Field Notes of a survey of  
Brewster County, Texas, made  
from Alpine, made

under the provisions of Chapter No. CXLVII of the Acts of the 50th Legislature, approved April 18, 1907.  
Said survey is Section No. 34, Block No. 235

No. 1111, Brewster, Tex. & St. L. Ry. Co.  
Beginning

at the south east corner of Section No. 34, to a pile of rock  
1/2 feet high on the south east side of a mountain, from which another  
pile of rock on top of the mountain bears N 190° west, a distance of 107-  
meters, bears N 82° 30' west, Stairway Peak, bears S 45° 30' E,  
fall mountain peak, bears S 62° 30' west, hence east 1070 yards to the  
top line of Block No. 235, hence east 1070 yards, to the south east  
corner of Section No. 34, hence north 1070 yards, to the south west cor-  
ner of Section No. 34, hence east 1070 yards to the place of beginning

The survey on the 1st day of July, 1907.  
Spiriano Gonzalez, Chain Carrier  
Victor Rice, Surveyor  
I, State Surveyor, do hereby certify that the foregoing  
is a true and correct copy of the field notes, and that the  
survey was made by me in the field in accordance with law, and that the  
boundaries and corners with the marks, natural and artificial, are truly and correctly described in the  
field notes and this book.

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In 1912, another surveyor, R.S. Dod, agreed with Hunnicutt. John Stovall, Brewster County Surveyor in the early 1940's also perpetuated this location.

In the 1930's, surveyors W.L. Rider and W.W. Barker disputed Hunnicutt's location of the Northwest and the Southwest corners of said Block G-1. W.L. Rider's location of the Northwest corner of this Block became known as the "Rider Corner" and will be mentioned later in this report.

The following is a brief summary of the facts and conclusions reached in each of the three Court cases mentioned that have bearing on the location of this survey.

Dick Williams, et al. vs. Asa Jones, et al.

Williams, et al. and the Intervenor, the State of Texas, as plaintiffs, presented evidence supporting the claim that the proper location of the Southwest corner of said Block G-1 was Hunnicutt's monument. This location created a conflict between Block G-1 and the T.&St.L. Blocks to the West. Three vacancies created by this location were claimed by the State.

The Court found for the defendants, Jones, et al., and declared that no vacancies existed and that the proper location of the Southwest corner of Block G-1 was a point "located 3198.4 varas East and 3396 varas South of said Hunnicutt Corner". The court also located the Northwest corner of Block G-1 by beginning at the Southwest corner of this Block and "extending north for an aggregate of 38,000 varas to a point for G-1's NW corner, which is 92.3 varas west and 78.7 varas north of W.L. Rider's NW corner of Survey 200, Block G-1,..." (the Rider Corner)

State, et al. vs. Jones, et al.

This case is the Court of Civil Appeals hearing of Williams vs. Jones after an appeal was made by the plaintiff, Williams, and the Intervenor, the State. The Southwestern Reporter published this case in 184 SW 2nd 510 and it contains more detail of the facts than the District Court Record of Williams vs. Jones. The opinion of the Court was that "there is no error in the judgement of the trial court and it is affirmed." The Supreme Court also upheld this decision.

F.M. Roark, et al. vs. H.D. Smith, et al.

This case also upheld the adjudicated locations of the Northwest and Southwest corners of Block G-1 and their relationship to the "Hunnicutt Corner" and the "Rider Corner". The Court further held, however, that the bearing of the line between the Southwest corner of Block G-1 and the Northwest corner was "one degree and eight minutes west of true north." The Court went on to define the location of all the Sections in Block G-1 and several Blocks of Surveys in the area. Block G-14, G.C.&S.F. Ry. Co. is one of these blocks. The Court calls for Block G-1 to be laid out parallel and perpendicular to its West line "giving to each Survey a distance east and west of 1900 varas and north and south 1900 varas, with the variation heretofore set out, so that the boundaries of Block G-1 and each of the Surveys therein will be consistent with the West line such block as heretofore defined."

Blocks G-13, G-14, G-15 and G-18 are all Blocks of Surveys that adjoin or, as with Block G-18, have a common corner with Block G-1. This Court case describes the construction of these Blocks as adjoining and being parallel and perpendicular to Block G-1.

In 1945, after the decisions rendered in Williams vs. Jones, Mr. J.A. Simpson, a Licensed State Land Surveyor, was requested by Asa Jones, and others, to locate on the ground the Northwest corner and the Southwest corner of Block G-1. Mr. Simpson monumented these corners, as well as the Northeast corner of Block G-1 (which is also the Northwest corner of Section 10, Block G-14) with iron pipes set in concrete and marked appropriately.

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In correspondence with the General Land Office in 1952, Mr. Simpson stated that he realized that his first location of the Southwest corner of Block G-1 was in error. (Exhibit "E") In this letter he stated that he wished to file a corrected location for this corner, and did so, setting a 1 1/2-inch pipe in concrete with several bearing calls to visible objects in the area. Mr. Simpson tied to Nick Thee's monument for the Southwest corner of Block G-1, a 3' high rock mound marked "SW G-1 SE 237". Mr. Simpson states in this letter: "The above described position for the corrected SW corner of Block G-1 is located at a right angle to the North line of Block G-1 as run by me and marked on the ground for Asa Jones et al. and upon which patents were issued." The Land Office responded, agreeing to Mr. Simpson's right to relocate this corner to it's proper position. (Exhibit "F")

The NE/4 and the NW/4 of this section were both patented in 1949, and the SW/4 in 1985, all using 950 varas on each side and N 1#179 08' E or N 88#179 52' W for the bearings in accordance with Roark vs. Smith.

FINDINGS

We found both the "Hunnicut Corner" and the "Rider Corner" as described in the court cases.

Mr. Simpson's monuments were found as he described them. As can be seen on the plat, Mr. Simpson's monuments for the Northwest, the Southwest and the Northeast corners of Block G-1 are, in fact, but one minute of angle from being perpendicular to each other. Also, Mr. Simpson's Northeast corner of Block G-1 is very close to the call distance from his (and the Court's) location of the Northwest of this Block.

Mr. Simpson's location of the Northwest corner of Block G-1 coincides very well with the Court's location in relation to the "Rider Corner". Although on the ground the "Rider Corner" is somewhat hard to pinpoint, a scattered rock mound at its described location can be found. The case of Roark vs. Smith gives a geodetic position, i.e. Latitude and Longitude, for the "Rider Corner". By converting these geodetic coordinates to State Plane Coordinates, the relationship to Mr. Simpson's monument for the Northwest of Block G-1 is found to be very close to the court call relationship of the two corners. (See sketch on plat)

Mr. Simpson's monument for the Southwest corner of Block G-1, however, is not so compatible with the Court's decisions. All three Court cases cited herein call for the Southwest corner of Block G-1 to be "3198.4 varas East and 3396 varas South of said Hunnicutt corner ." This position does not correspond on the ground to Mr. Simpson's or Mr. Thee's monuments. The relationship of the Court call position of the Southwest corner of Block G-1, as located from the "Hunnicut Corner", to the monuments of J.A. Simpson and Nick Thee are depicted on the plat.

The case of Roark vs. Smith points out that the true bearing between the adjudicated position of the Southwest corner of Block G-1 and the adjudicated position of the Northwest corner of this Block is North 1° 08' West. We find that the grid bearing between these two points is North 0° 43' 12" East. By subtracting the average theta angle, -1° 55' 51", a geodetic bearing of North 1° 12' 39" West is obtained. This bearing is 0° 04' 39" different from the Court call of North 1° 08' West.

CONCLUSIONS

Mr. Simpson' work was very precise for survey work done in the 1940's and 50's and a number of patents have been issued on it. Mr. Simpson located the North line of Block G-1 first, turned a "right angle" to this line and established the Southwest corner of Block G-1 twenty miles to the South instead of establishing this Southwest corner directly from of the Hunnicutt corner as per Court calls, turning a right angle to the West line of Block G-1 and establishing the Northeast corner of the Block at the appropriate distance from its Northwest corner.

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The Court decisions and resulting locative calls for the positions of the Northwest and Southwest corners of Block G-1 are unambiguous. The construction of the various Blocks of Surveys described in Roark vs. Smith is also quite clear. However, in accordance with other requests from the General Land Office, I located this survey by using Mr. Simpson's construction, and the surrounding patents. This location is reflected in the plat and field notes herein returned.

*Elbert F. Bassham*  
Elbert F. Bassham  
REGISTERED PUBLIC SURVEYOR No. 1951  
LICENSED STATE LAND SURVEYOR

23 May 1986

Filed for record in the Brewster County Survey Records the 29<sup>th</sup> day of May, 1986 in Book 11, Page 22.

*Stirling A. Scholl*  
County Clerk

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No. 2006

DICK WILLIAMS, ET AL  
VS.  
ASA A. JONES, ET AL

! : : !

IN THE 83RD DISTRICT COURT  
of  
BREWSTER COUNTY, TEXAS.

This the 6th day of March, 1943, the Court being in the midst of the actual trial of the above entitled and numbered cause, and the time for the expiration of the term having arrived, and for such reason, the undersigned judge presiding in and at the actual trial of such cause, deeming it expedient and it being necessary, it is ORDERED that the term of this Court be, and it is hereby extended until the conclusion of such pending trial, for the purpose of completing such trial and for no other purpose. This order is shown in the Minutes before they are signed by me.

H. O. Metcalfe

Judge 83rd District Court of  
Brewster County, Texas.

No. 2006

DICK WILLIAMS, ET AL  
VS.  
ASA A. JONES, ET AL

! : : !

IN THE DISTRICT COURT  
of  
BREWSTER COUNTY, TEXAS

On the 23rd day of February, 1943 came on to be heard the above entitled and numbered cause, and came plaintiffs, Dick Williams, Hugh Means and R. F. Rice, Independent Executors and Trustees of the Estate of Elizabeth M. Watkins, deceased, and their co-plaintiff, M. L. Hopson, in person and by attorneys, and came the following named defendants by attorneys: Clyde Higgins, Dorothy Gage Forker and husband Donald Forker, Roxanna Gage Catto and husband, John Catto, Jr., Tom Parsons, Sid E. Slaughter, Peyton Powers, William M. Light, W. E. Sims, John E. Eaton, Administrator of the Estate of Evelyn Wilcox, deceased, Big Bend Realty & Development Co., H. G. Towle, H. M. Mills, Roy Stillwell, C.B. Billington, Asa A. Jones, W. L. Council, Carl Steiner, Louis Rassieur and wife, Mrs. Louis Rassieur, Albert Chambers, Carrie M. Cegur, Rock Realty Co., Wendell R. Bosworth, Oliver D. Bowen, E. E. Shriver, representing the estate of Frank L. Shriver, deceased, Estate of Samuel Schwab, deceased, Reginald H. Johnson, Charles C. Schrimmer and wife, Ruth Schrimmer, John D. Woodfin and wife, Ruth Woodfin, Rena Lee Poague, Trustee and Executrix of the Estate of B. T. Barkley, deceased, Mrs. Florence Lewis, Otto Walker, Great Southern Life Insurance Company, John O'Brien, Anna L. Bird, Mittie Bird Rice, R. N. Gresham, Guardian of the Estate of E. M. Bacon, NCM, W. E. Pope, A. P. Powers, J. W. Gilmer, Elmer Gilmer, Blanche Martin, J. M. Lea, Maurice M. Brill, Aetna Life Insurance Company, E. T. Rose, S. G. Sample, Guy S. Combs, Great American Life Insurance Company, and Franklin Life Insurance Company.

And came the Intervenor, the State of Texas, appearing through the Attorney General; and came likewise all defendants cited by publication, except those who filed answers herein or disclaimers herein, who were made parties defendant on the intervention of the State of Texas, and who were made parties defendant by the plaintiffs, all of whom were duly served in the manner and form and for the length of time required by law, and for all of whom Alan R. Fraser, a practicing attorney of this bar, was duly appointed by the Court as attorney and who, as such attorney, filed an answer for said defendants, and made their appearance herein. That the said defendants so made parties and for whom said attorney appeared, upon intervention of the State of Texas, are as follows: (list of names left out)

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And the Court heard the pleadings and evidence, the taking of which continued until the 4th day of March, 1943, and thereupon heard the argument of counsel, which continued until this the 5th day of March, 1943, and thereafter on March 17th, 1943, a day during the extended term of this court, and upon consideration, ORDERS, ADJUDGES AND DECREES, as hereinafter set out.

It appearing to the Court that this suit involves, among other things, the true location on the ground of the Southwest corner, of what is known as Block G-1, D. & W Ry. Co. Survey, Brewster County, Texas, and the location of the several surveys therein from 1 to 200, and particularly those designated in the pleadings filed herein. And it further appearing to the Court that there is likewise involved herein the true location on the ground of the Southeast corner of Section 36, Block 237, Texas & St. Louis Railway Company Survey, Brewster County, Texas, said corner being the Southeast corner of what is known as the S. A. Thompson blocks, located in Powell & Gage File No. 2, known as Blocks 225 to 242, inclusive. And it further appearing to the Court that the plaintiffs and their co-plaintiff, M. L. Hopson, and the Intervenor, the State of Texas, contended that the true Southwest corner of said Block G-1 is located at what is known as the R. S. Hunnicutt corner, evidenced by a pile of rock in which there is a stone marked SW-G1, and located on the ground at a point latitude 29°33' 51.951 sec., longitude 102 deg. 57' 56.238 sec., and from which stone mound, the highest point on the north end of Stairway Mountain bears S. 19 deg. 30' W. 1230 varas; and from which X mark on top of imbedded boulder 12½ feet across the top and about 5 feet high bears S. 34 deg. 51' E. 32 varas, and based upon said contention sued for certain sections of land in said Block G-1, based upon the assumption that same are each located on the ground from said Hunnicutt corner as the true Southwest corner of said Block G-1. And the Court having heard evidence upon such finds that such corner is not the true Southwest corner of Block G-1, but finds that the true southwest corner of Block G-1 is located on the ground coincident with the S.E. corner of said Survey 36, Block 237, T. & St. L. Ry. Co. survey, which point is located 3198.4 varas East and 3396 varas south of said Hunnicutt corner. And it further appearing to the Court that in locating the several surveys within said Block G-1, the proper method of locating same is to give to each survey therein a distance east and west of 1900 varas and north and south of 1900 varas, based upon the beginning point as here fixed for the true location on the ground of the Southwest corner of said Block G-1 and to construct them numerically in the same manner as shown in the field notes of John T. Gano, each being tied into the preceding one in the manner set out in said field notes of said Gano.

And it further appearing to the Court that the plaintiffs, Dick Williams et al, and their co-plaintiff, M. L. Hopson, have in the pleadings set out so-called corrected field notes of the several surveys for which they sue, based upon survey made by John Stovell, under which an attempt is made to change the size of the surveys in said Block G-1, but that said attempted method of location was erroneous.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that the plaintiffs Dick Williams, Hugh Means and Raymond F. Rice, Independent Executors and Trustees of the Estate of Elizabeth M. Watkins, deceased, and the said co-plaintiff M. L. Hopson be and are hereby denied any right of recovery, based upon said corrected field notes; and that said plaintiffs and said co-plaintiff Hopson, and the State of Texas are denied any right of recovery to surveys in said Block G-1 based upon the location contended for by them from the said Hunnicutt corner.

It further appearing to the Court that all the surveys so located in said Block G-1 sued for by plaintiffs and their co-plaintiff Hopson are not patented, some being school

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sections on which there is a balance of the purchase price still due the State; and it further appearing that certain of the lands claimed by the defendants herein are unpatented; and it further appearing that all parties in open court agreed that as between the State of Texas and any party hereto as to any unpatented land, no attempt should be made to adjudicate the respective rights of the parties under any awards made to said respective unpatented surveys or parts thereof, except that this judgment shall be binding upon the questions of boundaries and locations.

IT IS, THEREFORE, ORDERED that as to the said respective rights of the State and the awardees, their heirs and assigns, of any of said unpatented lands, or the respective rights of lessor or lessee where the State has made surface leases shall not be affected by this judgment except as to locations and boundaries. And it is further ordered, adjudged and decreed by the Court that the plaintiffs, Dick Williams, Hugh Means and Raymond F. Rice, in their representative capacities aforesaid, and the co-plaintiff, M. L. Hopson, or the Intervenor, the State of Texas, are the record owners of the patented and unpatented surveys out of Block G-1 aforesaid, numbers of which are set out in the pleadings of said respective parties, and are entitled to recover said surveys, or portions thereof, described in said pleadings, (except the W 1/2 of the SW 1/4 of Section 129, Block G-1), based upon the construction of said surveys here made in accord with the Gano field notes and the location thereof from the true beginning point, namely, the S. W. corner of Section 1, Block G-1, as here fixed without adjudicating between themselves as to any patented or surface leased sections, the respective rights of said parties under the exceptions set out in the proceedings hereabove,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the State of Texas take nothing as against any party hereto, as to the three tracts of land described in the Second Amended Plea of Intervention and Cross-Action of the State of Texas alleged to be vacant, the first tract containing 12,820 acres, more or less, the second tract containing 112 acres, and the third tract containing 48.24 acres, provided, however, as between the defendants herein, no adjudication as to title is made. The Court in this connection finds and adjudges that none of said alleged vacant land is in fact vacant, but, on the contrary, finds and adjudges that the same is appropriated land, but does not undertake to find the particular section or sections covering the respective alleged vacant tracts.

And it further appearing to the Court that there has been filed in the General Land Office of the State of Texas a "Map showing reconstruction of conflicting areas in the northern part of Brewster County, Texas, based on connections made by M. P. Ball in December 1941 and January 1942", which purports to show a conflict between a portion of the surveys in Block G-1, D. & W. Ry. Co., with certain surveys out of the T & St L Ry Co. Blocks 228, 229, 236 and 237; and it further appearing that the defendant, the Great Southern Life Insurance Company, is the owner of the odd numbered sections of land in said Block 237, T & St. L. Ry.Co. and that the defendants, W. E. Fope and Albert Chambers, are the owners of certain sections in the T. & St. L. Blocks, and that the filing of such map showing such conflict operates to cloud the title of said defendants to said sections of land and particularly those so shown to be in conflict, and renders essential to fix the true dividing line between said D & W Ry.Co. Block G-1 and said T & St. L. Ry.Co. blocks; it is, therefore, ordered, adjudged, and decreed by the court that said map of said Ball which undertakes to show a conflict between said blocks of land is erroneous and that no conflict exists in fact, and that the true dividing line between said blocks is fixed by beginning at the point on the ground here established as the southeast corner of Section 36, Block 237, being coincident with the southwest corner of Section 1, Block G-1, thence extending north for an aggregate of 38,000 varas to a point for

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G-1's NW corner, which is 92.3 varas west and 78.7 varas north of W. L. Rider's NW corner of Survey 200, Block G-1, which Rider corner is defined as follows: Beginning at a fence corner and a large flat rock from which an NW peak, a double mountain bears S 77° 19' W, the W. pk. of Bullis Mt. brs. S 4° 54' W, sharp pk. between two mountains brs. N. 30°15' W. the S. point of Horseshoe Mt. brs N. 72° 54' E. and a dagger palm tree brs. S. 8°50' W. 24 vrs. ,

It further appearing to the Court that certain pleas of title by adverse possession were set up by some of the defendants herein, but that by agreement of all parties the question of boundary and title based upon the boundary was agreed to be tried and determined and the question of title by adverse possession left in abeyance for determination if necessary; and it further appearing to the Court that it is unnecessary to adjudicate titles by adverse possession and this judgment shall not operate as an adjudication upon such issue, and shall not operate as res adjudicata upon such issue. It is further ordered that as to the question of improvements in good faith, this judgment shall not operate as an adjudication, the Court finding that an adjudication thereon is unnecessary since boundaries have been fixed in the manner in which they are fixed in this judgment.

It appearing to the Court that certain cross-actions were filed herein by certain defendants upon matters other than those herein adjudicated, but that as to each of such cross-actions so asserted by each such defendant, such defendant took a non-suit and based upon such non-suit, no adjudication of such cross-actions is made; and said non-suits were allowed.

It further appearing to the Court that defendants, I. C. Roark, Sr., I. C. Roark, Jr., F. M. Roark, Clifton Roark and J. B. Catlett, filed herein a disclaimer as to the Second Amended Plea of Intervention and Cross-action of the State of Texas, that the Court on February 22, 1943, before the commencement of trial upon taking the testimony had said disclaimer called to its attention and sustained the same, and gave the same effect and ordered that no judgment of costs be adjudged against them, and that they be dismissed from this suit; accordingly, in accordance with said orders, it is decreed that each of said defendants be dismissed from this suit with their costs. And it is further decreed that no costs shall be collected against them or either of them.

And it further appearing that the First National Bank in Pleasanton, and Jim Featherstone each filed a disclaimer as to the relief prayed for by the State of Texas and by the plaintiff, and that Del Rio Wool and Mohair Company, Rosenberg State Bank, Mae M. Ament, Trustee for M. A. Baumgardner, filed disclaimers as to the relief prayed for by the State of Texas and the plaintiffs. It is ordered that each of said parties be discharged upon his disclaimer with his costs.

A description of the three tracts of land sued for by the State as vacant land is as follows:

Situated in the northeast portion of Brewster County, Texas, to-wit:

TRACT NO. 1:

BEGINNING at a point on the bank of the Rio Grande River about 300 varas below and N. E. of the mouth of Maravillas Creek; same being the N.E. and lower corner of Survey 21, Block B-1, G. C. & S. F.Ry.Co.

THENCE down the river with its meanders to the S. E. end upper corner of Survey 20, Block B-1.

THENCE West with south line Survey 20, Block B-1 4200 varas to a point in an east line, Survey 28, Block G-22.

THENCE South with east line survey 28, Block G-22, 270 varas to its most southern S. E. corner.

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THENCE West with south line Survey 28, Block G-22, 1296 varas to a point in east line survey 3, Block G-13, H. E. & W. T. Ry. Co.

THENCE South with east line survey 3 and 2, Block G-13, to S. E. corner, survey 2 and most southern S. E. corner, Block G-13; H. E. & W. T. Ry.Co.

THENCE West with south line of Blocks G-13, H.E. & W.T. Ry.Co. and G-1, D. & W. Ry.Co. 15 022 varas to a point in east line survey 24, Block 237, T. & St. Ry.Co.

THENCE south with east line of Block 237, 4050 varas to S.E. corner, Block 237, T & St. L. Ry.Co.

THENCE east with north line, Block G-9, H.E. & W.T. Ry.Co. and north line, Block G-23, C. T. & M.C. Ry.Co. 13,950 varas to a point in west line of Survey 25, Block B-1.

THENCE north with west line Survey 25, 300 varas to its N.W. corner and in south line survey 24, Block B-1.

THENCE west with south line survey 24, 1250 varas to its S. W. corner.

THENCE North with west line survey 24, 950 varas to its N. W. corner.

THENCE east with north line survey 24, 2800 varas to the S. W. corner survey 23, Block B-1, G. C. & S.F.Ry. Co.

THENCE North with west line survey 23, 950 varas to its N. W. corner.

THENCE east with north line survey 23, 120 varas to S. W. corner Survey 22, Block B-1, G. C. & S. F. Ry. Co.

THENCE North with west line survey 22, 950 varas to its N. W. corner.

THENCE east with north line Survey 22, 200 varas to S. W. corner, Survey 21, Block B-1, G. C. & S. F. Ry. Co.

THENCE north with west line Survey 21, 950 varas to its N. W. corner.

THENCE east with north line survey 21, 3900 varas to the place of beginning.

Containing 12,828 acres of land (more or less).

TRACT NO. 2:

BEGINNING at the N. W. corner Survey 18, Block B-1, G. C. & S. F. Ry. Co. and in the south line survey 17, Block B-1.

THENCE west with south line survey 17, 650 varas to a point in the east line survey 28, Block G-22.

THENCE south with east line Survey 28, 680 varas to an L-corner.

THENCE west with a south line of survey 28, 55 varas to an L-corner.

THENCE south with an east line of survey 28, 270 varas to a point in north line survey 19, Block B-1.

THENCE east with north line survey 19, 705 varas to S. W. corner, survey 18, Block B-1.

THENCE north 950 varas to the place of beginning, and containing 112 acres of land.

TRACT NO. 3:

BEGINNING at the S. W. corner of Survey 16, Block B-1, G.C. & S.F. Ry. Co.

THENCE north with west line survey 16, 950 varas to its N. W. corner.

THENCE east with north line survey 16, 100 varas to S. W. corner Survey 15, Block B-1

THENCE north with west line survey 15, 270 varas to a point in west line survey 15, and also a corner in survey 26, Block G-13, H.E. & W. T. Ry.Co.

THENCE west with a south line survey 26, 220 varas to a point in an east line survey 26.

THENCE south with east line survey 26, 950 varas to an L-corner survey 26.

THENCE West with a south line survey 26, 370 varas to another L-corner of survey 26.

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THENCE south with an east line Survey 26, 270 varas to the north line survey 17, block B-1.

THENCE east with north line Survey 17, 490 varas to the place of beginning, containing 48.4 acres of land.

That the numbered sections claimed by the State of Texas, or claimed by said State as covered only by awards or surface leases, are numbered as follows: the following even-numbered surveys in Block G-1, Dallas and Wichita Ry. Co. grantee in Brewster County, Texas, to wit:

"Unpatented surveys Numbers 2, 4, 6, 8, 12, 14, 16, 18, 24, 26, 28, 30, 32, 34, 36, 40, 42, 44, 46, 48, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 80, 82, 84, 86, 88, 92, 100, 102, 108, 110, 112, 114, 116, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200."

That the numbered sections of said Block G-1 claimed by the plaintiffs, Dick Williams, Hugh Means and Ramond F. Rice, in their representative capacities, are numbered as follows:

Sections 81, 83, 85, 87, 105, 107, 109, 111, 113, 115, 129, (except the W 1/2 of the SW 1/4) 131, 133, 135, 137, 139, 141, 155, 157, 159, 161, 163, 165, 167, 169, 183, 185, 191 and 193.

That the numbered sections of said Block G-1 claimed by the plaintiff, M. L. Hopson, are numbered as follows:

NE 1/4 136, 112, 192, 162, 184, 164, 166, 154, 156, 160, 138, 130, 132, 114, 116, 106, 80, 82 and 86.

And it further appearing to the Court that the following named persons were duly served with personal citation on the Intervenor's Second Amended Plea of Intervention and Cross-actions and have wholly made default, to wit: John Almond, Mrs. Mabel Madison Almond, Ed C. Daniel, H. D. Wilcox, Sanderson Wool Commission Company, a corporation, Walter Stansell, Clyde Young, Santa Fe Land Trust & Title Co., a corporation, Effie Lou Bennett, Independent Executrix and sole beneficiary under the last will and testament of F. C. Bennett, deceased, Vincent W. Borden, John M. Hefner, a resident of Dallas County, Texas, as agent for E. E. Shriver, Max Schwab, Samuel Schwab, Florence G. Lewis, Anna L. Bery, Willie Bery Rice and Mrs. Harry Higby, Mrs. Irene Peters, a resident of Brewster County, Texas, temporarily residing in Yavapai County, Prescott, Arizona, individually and as agent for Blanche Martin, Carl Steiner, Dr. F. N. McLauren, Carrie L. Segur, J.B. Garrett, Basworth & Bowen, F. M. and H. McWilliams, Mrs. Mabel I. Robinson, H. H. Hoffman, and W. E. Barkley Estate, Otis Turner, a resident of Brewster County, Texas, as agent for O. R. Adcock, Ella Bennett, Mrs. Dora L. Vance, Merian H. Vance, Albert Dammyer, Administrator of the Estate of H. A. Dammyer Estate, and J. B. Speed Estate, the Land Title Bank and Trust Company, as executor and trustee of the Estate of Henry Whelen, deceased, William S. Speed and Mrs. Ollie S. Sackett, a widow, and it appearing to the Court that all other parties named as parties defendant in any pleading herein other than those who appeared by answer or disclaimer were duly served with citation in the manner and form and for the length of time required by law, but wholly made default, and it is ordered as to said defendants that they be bound by this judgment.

The said Alan R. Fraser, Attorney for the defendants for whom he appeared herein, is here allowed a fee of \$250.00, one-half thereof to be taxed against the plaintiffs and the co-plaintiff, and one-half thereof against the State of Texas. It is further ordered that all costs herein incurred by plaintiffs and co-plaintiff are adjudged against them respectively, and all costs incurred herein by Intervenor, the State of Texas, are adjudged against it, and in addition all other costs herein incurred shall be taxed against the plaintiffs and co-plaintiff to the extent of one-half thereof and the balance thereof to be taxed against the

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Intervenor, the State of Texas.

All parties and all issues not hereinbefore disposed of are hereby dismissed.

To all of which judgment hereinbefore shown, the plaintiffs, Dick Williams, Hugh Means and Raymond F. Rice, in their representative capacities, and the co-plaintiff, M. L. Hopson, and the Intervenor, the State of Texas, each separately, in open court, duly excepted and gave notice of appeal to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, in El Paso, Texas. Intervenor State of Texas thereupon duly requested that the Court file Findings of Fact and Conclusions of law herein.

H. O. Metcalfe  
Judge Presiding.

OK AS TO FORM:

Fagen Dickson  
Assistant Attorney Gen.  
Attorney for Intervenor, The State of Texas.

C. W. Trueheart,  
Atty for Defts. H.G.Towle, Roy Stillwell, W.E. Sims

Scott Snodgrass, Atty for Deft. Asa A. Jones

Tarlton Morrow, Atty for Deft. Great Southern Life Ins. Co.

Hal Browne, Atty for deft. Guy S. Combs  
By C. W. Trueheart

Gordon Griffin, J. C. Epperson, for all Plaintiffs.

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No. 2006.

DICK WILLIAMS, ET AL

IN THE DISTRICT COURT

VS.

OF

ASA A. JONES ET AL

BREWSTER COUNTY, TEXAS.

Upon the suggestion and agreement of an extension of term, as made by all parties hereto actually appearing herein by attorneys of their own choice, the Honorable H. O. Metcalfe, being the judge presiding at the trial of the above numbered and entitled cause, came to consider said matter of extension of term:

And, it appearing that this present term of the 83rd District Court of Brewster County, Texas, will expire on tomorrow, March 6, 1943, and that though the evidence in said cause has been concluded and the Court has announced his decision, said Court is still in the midst of the trial of said cause in the sense that a long and detailed judgment, involving many parties and issue, has yet to be drafted and submitted to numerous and widely separated counsel, for the different parties actually participating in the trial;

And, it is therefore deemed to be expedient by the said judge presiding to extend the term of said Court, for the purpose of concluding such pending trial in the manner indicated, until March 20, 1943.

IT IS THEREFORE HEREBY ORDERED, that the present existing term of this Court be, and the same is hereby extended until March 20, 1943, such extension, however, being for the purpose of concluding the pending trial of the above styled and numbered cause, and for no other purpose.

H. O. Metcalfe  
Judge Presiding.

OK  
C.W. Trueheart

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# Exhibit "B"

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731; State v. Layton, Tex.Civ.App., 147 S.W.2d 515, 516; Southwestern Transportation Co. v. Medley, Tex.Civ.App., 71 S.W.2d 916; Coons v. Culp, Tex.Civ.App., 278 S.W. 914, 915; McKenzie v. Grant, Tex.Civ.App., 93 S.W.2d 1160, 1173; McIntosh v. Atchison, T. & S. F. Ry. Co., Tex.Civ.App., 192 S.W. 285, 286.

[3] Chisholm's testimony was sufficient to raise the issue of self defense. Stated as briefly as possible, Chisholm's testimony was in effect that McKelvey for several days had contended he had delivered a "church letter" to Mrs. Chisholm, which she denied receiving. That Chisholm had told McKelvey he didn't know anything about it and didn't want to discuss it. That on the day of the difficulty Mr. and Mrs. Chisholm had stopped at the post office and while Mr. Chisholm was inside Mr. McKelvey came to the car occupied by Mrs. Chisholm and insisted he had given her the letter. That when Chisholm came out of the post office and told his wife there was no mail she drove away. That when McKelvey saw Chisholm he approached Chisholm, who was starting across the street, and told Chisholm he was positive he had given the letter to Mrs. Chisholm. That Chisholm told McKelvey he didn't care to discuss it. McKelvey looked mad. Chisholm said, "didn't you tell Mr. Green you put it in the rostrum?" McKelvey replied he had not told Green anything. Chisholm said, "You or him lied." That McKelvey then reached in his pocket. That McKelvey said, "I will just fix you." That McKelvey "threw his left hand over his pocket with his right hand in it, and I hit him at that. I just really thought that he was getting his knife \* \* \*." Chisholm testified that he did not want to hurt McKelvey; that he struck him with his fist to protect himself because he thought McKelvey was "getting his knife." " \* \* \* He put his hand in his pocket and told me he was going to fix me. It was all done at one time." Chisholm said he was afraid McKelvey "was going to get me." "When I broke his jaw, I was protecting myself."

[4,5] The law is settled in Texas that with the exception of the rule of evidence which gives to the defendant in a criminal case the benefit of a reasonable doubt, the law of self-defense is the same in both civil and criminal cases. Fambrough v. Wagley, 140 Tex. 577, 169 S.W.2d 478,

479; March v. Walker, 48 Tex. 372, 377; 4 Tex.Jur. 984 et seq.; Pittman v. Stephens, Tex.Civ.App., 153 S.W.2d 314; St. Louis S. W. Ry. Co. v. Huddleston, Tex.Civ.App., 178 S.W. 704, 707 writ refused. In Dixon v. Samartino, Tex.Civ.App., 163 S.W.2d 739, 742, writ refused, it was held that the aggressor could not recover damages for an assault and battery. In Koons v. Rook, Tex.Com.App., 295 S.W. 592, 596, the court said: "Evidently, if the defendant acted in self-defense at the time he inflicted the injuries, he would not be liable for any damages on account of having inflicted such injuries \* \* \*." The evidence raised the issue of self-defense. The jury found that when Chisholm struck McKelvey that Chisholm was acting in self-defense. This finding required a judgment for defendant.

We have given all of appellant's contentions careful consideration and are of the opinion reversible error is not shown. The judgment is affirmed.



STATE et al. v. JONES et al.

No. 4331.

Court of Civil Appeals of Texas. El Paso.

May 11, 1944.

Rehearing Denied June 29, 1944.

1. Public lands  $\S$  175(5)

File laid on vacant land segregated area embraced therein from public domain for 12 months from date of filing, which segregation was perpetuated by survey and return of field notes made within the 12 month period, and any subsequent location or attempted location thereon was ineffective and nothing that subsequent surveyor surveying an adjoining file did or could do affected rights of locators under original file. Rev.St.1879, arts. 3896, 3897, 3902.

2. Public lands  $\S$  175(5)

A file covering vacant public land is merged in survey and in absence of evidence to the contrary, survey is presumed to be made in accordance with the file. Rev.St.1879, art. 3896.

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3. Boundaries ⇨54(6)

County surveyor, in laying out junior location as described in file covering a portion of public land, was presumed to have performed his duty to lay it out in such a way as not to encroach upon senior location. Rev.St.1879, arts. 3896, 3897, 3902.

4. Boundaries ⇨37(3)

In trespass to try title to determine which of two points constituted point of beginning of file originally laid out on public land, evidence authorized finding for defendant fixing point of location which did not encroach upon senior file. Rev.St. 1879, arts. 3896, 3897, 3902.

5. Boundaries ⇨3(1)

Court need not in all situations give preference to calls in order of dignity but in some circumstances may prefer those of less dignity when to do so would be to sacrifice to a rule the actual location of the land.

6. Boundaries ⇨3(1)

In trespass to try title to determine location of point of beginning of file laid out on public land, circumstances warranted court in giving preference to some calls of survey out of order of dignity.

7. Public lands ⇨175

That surveys of junior blocks were made by same surveyor during same year and referred to senior block laid out on public lands did not place surveys in category of a system of surveys so that calls for junior blocks would apply to senior block and could be looked to for its location, when applications and files were not laid on junior blocks until surveyor returned and filed his field notes for senior block.

Appeal from District Court, Brewster County; Hunter O. Metcalfe, Judge.

Trespass to try title by Dick Williams and two others as independent executors of the estate of Elizabeth M. Watkins, deceased, against Asa A. Jones and some two hundred and fifty other defendants to recover some 30 sections of land, wherein M. L. Hopson, named originally as a defendant, aligned himself with the plaintiffs and wherein the state intervened and brought in additional defendants. From a

judgment for defendants, intervenor and plaintiffs appeal.

Affirmed.

Gerald C. Mann, former Atty. Gen. of Texas, Grover Sellers, Atty. Gen. of Texas, and Geo. W. Barcus and Fagan Dickson, Asst. Attys. Gen., and Wilkinson, Johnson, Griffin & Bohannon, of Brownwood (Mae M. Ament and J. C. Epperson, both of Alpine, and Gordon Griffin, of Brownwood, of counsel), for appellants.

C. W. Truchart, Morriss & Morriss, Guy S. McFarland, and Lang, Byrd, Cross & Ladon, all of San Antonio, A. E. Owens, C. E. Patterson, Frank O. Ray, and Alan R. Fraser, all of Alpine, S. G. Sample, of Edna, Collins, Jackson, Snodgrass & Blanks, of San Angelo, Bill L. Holland, of Marfa, Vinson Elkins, Weems & Francis, of Houston, Phillip R. Overton and Ralph W. Yarborough, both of Austin, and W. E. Pope and Jack Pope, both of Corpus Christi (Scott Snodgrass, of San Angelo, and Tarlton Morrow, of Houston, of counsel), for appellees.

SUTTON, Justice.

This is an appeal from the judgment of the District Court of Brewster County.

The suit was instituted by Dick Williams and two others as independent executors of the estate of Elizabeth M. Watkins, deceased, against Asa A. Jones and some two hundred and fifty other defendants in trespass to try title and sought the recovery of some thirty sections of land in Block G-1, D. & W. R. R. Co., in Brewster County. M. L. Hopson, named originally as a defendant, on the trial aligned himself with the plaintiff and sought the recovery of certain sections of land in the same block. The State intervened, brought in a large number of additional defendants and owners of lands in the T. & St. L. Blocks to the west, because of an alleged conflict and vacancy in the area. The State sought to establish three separate vacancies in the vicinity.

The trial was to the court without a jury. Judgment was rendered in favor of the defendants and against the plaintiffs and the intervenor, the State, on all phases of the case, from which this appeal was prosecuted.

We take it the asserted claim to the vacancies has been abandoned, because there have been no assignments brought

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forward concerning them, nor any brief made thereon. In fact, the appellees asserted a waiver and abandonment and no question has been raised. In all events, our view of the case eliminates any question of vacancies.

The plaintiffs sought to recover on the basis of certain corrected field notes pleaded by them and based upon what is known in the case as the "Hunnicut Corner." The position of that corner and the west line of Block G-1 as contended for by the plaintiffs and the State is indicated in red on the plat inserted hereafter.<sup>1</sup>

1995 issued to the Galveston Harrisburg and San Antonio Railway Co.

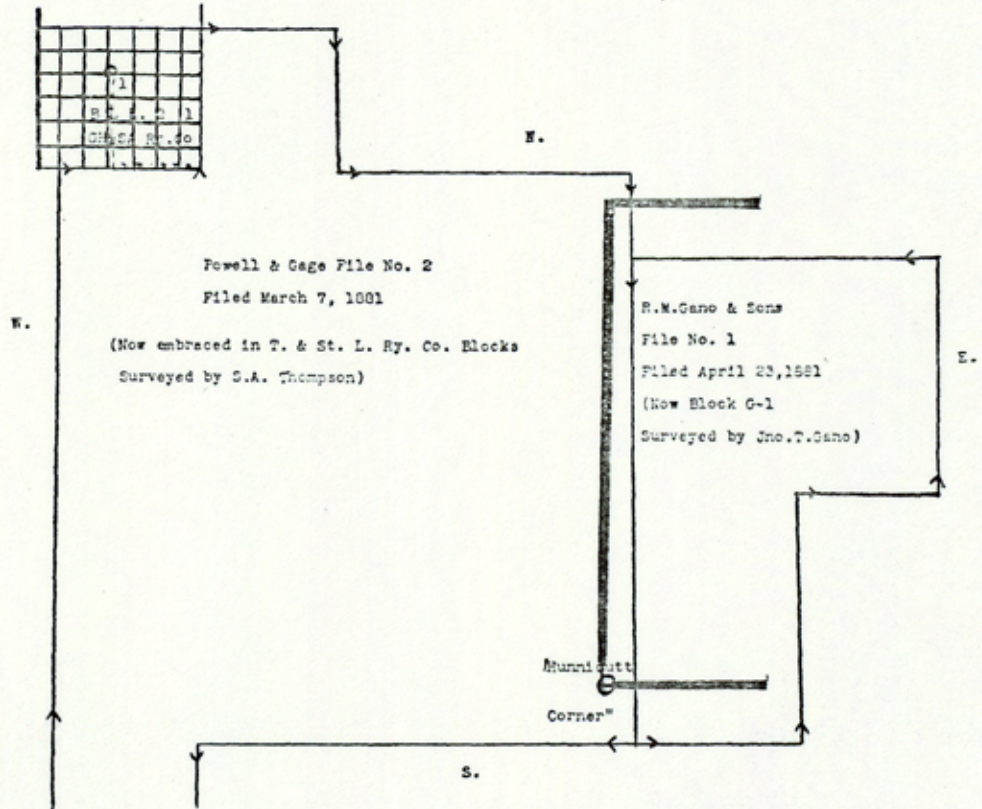
"Thence North 11,400 varas (6 miles)  
Thence East 11400 varas (6 miles)

"Thence South 11400 varas (6 miles)  
Thence East 22800 varas (12 miles)

"Thence South 45600 varas (24 miles)  
Thence West 34200 varas (18 miles)

"Thence South 11400 varas (6 miles)  
Thence West 11400 varas (6 miles)

"Thence North 57000 varas (30 miles)  
Thence East 11400 varas (6 miles) to the place of beginning."



[Ed. Note—Red line mentioned in opinion indicated by heavy black line].

At the times the files were laid, Powell & Gage File No. 2 and R. M. Gano & Sons, File No. 1, much of the southern part of the county was vacant, including nearly all the area touching the two files. As indicated on our plat, Powell & Gage No. 2 was filed March 7, 1881, Gano & Sons, April 23, 1881. File No. 2 was described as follows:

"Beginning 7600 varas South and 7600 varas East of the Northwest corner of Survey No. 1, Block No. 21, G. H. & S. A. R. R., made by virtue of Certificate No.

File No. 1 above was described:

"Beginning at a rock mound set for the S. E. corner of File No. 2 made by Powell & Gage March 7th, 1881, and recorded in Book A, page 168, file of Presidio County—said corner being 53200 vrs. (28 miles) south and 41800 vrs. (22 miles) East of the N. W. corner of Survey No. 1, Block 21 of G. H. & S. A. R. R. Co.'s surveys made by virtue of Certificate No. 1995 issued to said company;

"Thence East 13300 vrs. (7 miles)

<sup>1</sup>[Ed. Note.—Indicated on plat by heavy black line].

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"Thence North 19000 vrs. (10 miles)

"Thence East 11400 vrs. (6 miles)

"Thence North 19000 vrs. (10 miles)

"Thence West 24700 vrs. (13 miles)

"Thence South 38000 vrs. (20 miles) to the place of beginning containing Two Hundred Sections of land."

The rough plat in black is thought to represent approximately the locations of the pre-empted areas embraced in Files 2 and 1 according to their respective calls and Block 21 G. H. & S. A. Ry. Co. at the times the filings were made. As heretofore indicated, the red lines represent approximately the position Block G-1 takes under the contentions made by the plaintiffs and the State laid out from the Hunnicutt Corner.

The area embraced in File No. 1 was surveyed by John T. Gano in May and June, 1881. That embraced in File No. 2 was surveyed by S. A. Thompson in September, 1881. They each worked out of the same office under E. G. Gleim, the County Surveyor. Gano began his surveying with Section No. 1, Block G-1 at the southwest corner of the area and block, and the field notes for Survey One, which survey was the only one in the block surveyed on the ground and the only one that has calls for a marked corner, are as follows: "Beginning at a rock mound on the N. E. slope of the Rio Grande Range of mountains. The S. E. corner of File No. 2 made by Powell & Gage on March 7, 1881, and recorded in Application Book B, page 168, of Presidio County, Texas, from which Stairway Peak, the highest visible point of said Rio Grande Range bears S. 19½ deg. W. 950 vrs. and the top of Iron Mountain bears N. 1½ deg. E. about two miles. The N. W. corner of Survey No. 1, Block 21, by virtue of Certificate No. 1995 issued to the G. H. & S. A. Ry. Co., bears N. 38-1/6 W. 67,657 varas, and the mouth of Maravillas Creek bears S. 89-3/4 East 21,065 varas; Thence North 1900 varas" etc.

S. A. Thompson surveyed Section 36, Block 237, which section lies in the extreme southeast corner of the block and the area embraced in File No. 2 and the field notes for that survey read, in part:

"Beginnning at a rock mound the N. E. corner of Survey No. 35 & S. W. corner of Survey No. 25 in this block for the N. W. corner of this survey;

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"Thence S. etc.

"Thence East 1900 vrs. to a rock mound established by J. T. Gano for the S. W. corner of Survey No. 1 in his block G-1, for the S. E. corner of this survey & block from whence Stairway Peak brs. S. 19½ Deg. W. 950 vrs.; and the top of Iron Mountain bears N. 1½ deg. E. about 2 miles; this corner is situated on the N. E. slope of the Rio Grande Range;

"Thence N." etc.

There arose early some question about the exact location of the Gano Corner for his S. W. 1, Block G-1. Gano and Maddox Bros. & Anderson had some correspondence as early as the 5th day of December, 1888 with John T. Gano and with S. A. Thompson February 16, 1889, wherein Gano expressed a doubt as to Thompson having been to his corner. Thompson wrote the corner was well marked on the ground, indicating he was there.

In 1908 the Land Commissioner directed R. S. Hunnicutt, a licensed land surveyor, to go into the area and locate the original Gano Corner, mark it and destroy all other monuments and evidences of corners in the vicinity. He went, but there is no evidence he ran the Gano traverse from the N. W. corner of 1, Block 21, G. H. & S. A. Ry. Co. He marked it, and it has since been known as the Hunnicutt Corner. There has heretofore been considerable controversy over the identity of the Gano Corner and as to whether or not the Hunnicutt Corner is the same as the Gano original.

Plaintiffs and intervener assert and undertake to establish as a fact and as a matter of law that the Hunnicutt Corner is coincident with the original corner made by John T. Gano for the southwest corner of his Block G-1. For the identification thereof they rely upon the bearing calls found in the field notes. The plaintiffs in addition thereto rely upon certain ties and connections with subsequently surveyed G blocks made by the same surveyor for the same locators, R. M. Gano & Sons, which will be hereafter noticed. In this the State does not join.

In response to the request therefor the trial court filed findings and conclusions.

The suit is generally described as a boundary suit, but it more exactly involves the location of a point, to-wit, the Southeast Corner of File No. 2, Powell & Gage--

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the Southwest Corner of Block G-1, from which the boundaries may be laid out.

The trial court found contrary to the contentions of the plaintiffs and the State, and found the Southeast corner of File No. 2, now the Southeast Corner of Block 237, T. & St. L. Ry. Co., and the Southeast Corner of Survey 36 in said block, to be coincident with the Southwest Corner of Block G-1, and located "3198.4 varas E and 3396 varas S of what is known as the Hunnicutt Corner." The trial court found Gano did no actual ground work other than to run a traverse from the N. W. corner of Survey 1, Block 21, G. H. & S. A. Ry. Co. to ascertain the location on the ground of the S. E. Corner of File No. 2 and mark the spot as he did in his field notes for Survey 1, Block G-1. The court further found a construction of G-1 from the Hunnicutt Corner conflicts with the T. & St. L. Blocks substantially as indicated by the red lines on our sketch. He finds Stairway Mountain to be a long mountain, running generally northwest and southeast, and takes its name from a stairway formation at the extreme southeast end above which is a high point identified by the only old resident testifying on the question as "Stairway Peak"; that plaintiffs and the State take another point at the North end of the mountain as "Stairway Peak." This latter he finds visible from the Hunnicutt Corner and that at the other end visible from the point the court fixes for the S. W. Corner of G-1. He finds there are many iron colored mountains in the vicinity and no particular one known to the inhabitants as "Iron Mountain," and that the Iron Mountain bearing in the Gano field notes does not substantially fit the Hunnicutt Corner.

The court found Gano established his corner without reference to the call for the mouth of Maravillas Creek, because that traverse was subsequently run by Surveyor Glenn (this is the testimony of Gano found in his correspondence), and that the Maravillas call is impossible to run on the ground, a fact which we find to be established by most, if not all, of the testimony of the engineers testifying in the case.

The court found two evident errors in Gano's 18th traverse run from the N. W. Corner Survey 1, Block 21 for the purpose of locating the S. E. Corner of File No. 2, the call for 70 varas instead of 5470 and S. 51 E. instead of S. 57 E., which he finds necessary to give effect to the overall call

for the S. W. Corner of 1, Block G-1. (These errors are evident and apparent and are indicated by other evidence in the record and have been recognized by engineers testifying in this case as well as those who have previously surveyed in the area.)

[1] File No. 2 segregated the area embraced therein from the public domain for twelve months from the date of its filing, which was perpetuated by the survey and return of the field notes made within the twelve month period. Any subsequent location or attempted location thereon was of no force and effect. Nothing Gano did or could do affected the rights of the locators of File No. 2. Arts. 3897, 3902, R.S. 1879; Cassin v. O'Sullivan, 61 Tex. 594, and cases cited.

[2] The survey made by Thompson of File No. 2 was required to be "made by a copy of the entry or application, and strictly in accordance with the same," Art. 3896, R.S.1879. The file is merged in the survey, Forbis v. Withers, 71 Tex. 302, at page 306, 9 S.W. 154; and in the absence of evidence to the contrary, the survey is presumed to be made in accordance with the file. Texas & P. R. Co. v. Thompson, 65 Tex. 186, at page 191. It may be said, therefore, the S. E. Corner of Survey 36, Block 237, T. & St. L. Ry. Co., the S. E. Corner of said block, is coincident with the S. E. Corner of File No. 2.

[3] Gano was under the necessity when he went out to lay out the junior location No. 1 to respect No. 2, and to lay it out in such way as not to encroach upon No. 2. It is evident from his calls he did this and undertook to survey No. 1 outside No. 2 and it must be presumed he did his duty and thus surveyed Block G-1. The call for the S. E. Corner of No. 2 is locative and fixes the S. W. Corner of G-1 if that point was properly located.

The contention of plaintiffs and the State is the Hunnicutt Corner is the original Gano Corner for S. W. G-1 and accepted by Thompson as the S. E. Corner of his Block 237 and Survey 36 of that block. This on the part of the State, and on the part of the plaintiffs for the most part and aside from their "system theory" is based upon the bearing calls in the field notes of Survey 1, Block G-1. The trial court found against these calls. He found the call for Maravillas Creek to be a mistaken call and run by Glenn after Gano had established

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his S. W. G-1 and that it could not be run on the ground. The testimony amply supports this finding. Mr. Ball reversed the calls and by triangulation missed the Hunnicutt Corner by some 500 varas.

The record is neither of the engineers testifying in this case knew or had pointed out to him any mountain known as Iron Mountain. As recited by the court in his findings, there are many black or iron colored mountains in this immediate area and the only witness testifying on that subject was Tom Shackelford, 60 years of age and who had lived and ranched in the vicinity since 1901. He knew of no one mountain known as Iron Mountain. The engineers merely took a reading on a black mountain that fit the calls in Gano's field notes.

The same old-time resident, Tom Shackelford, and the engineer witnesses testify Stairway Mountain is from two and a half to three miles long. Shackelford, Ball and Simpson testify there is a stairstep formation at the south end of the mountain. Shackelford says that is known as Stairway Peak. Stovell testified this peak, nor the highest peak on the mountain, cannot be seen from the Hunnicutt Corner, but only the rim-rock and a crag on the rim-rock, and that he took his reading on the highest visible peak from the Hunnicutt Corner. The record thus supports the trial court's finding of the uncertainty of the Stairway Peak call.

If these be eliminated, as the trial court did eliminate them, then there is left the course and distance call from the N. W. Corner of Survey 1, Block 21, G. H. & S. A. Ry. Co. The trial court found that Gano ran on the ground the 18th traverse pictured on his map filed January 2, 1882, from the N. W. Corner of Survey 1, Block 21. This is, we think, evident. The record is if the traverse be retraced according to the calls thereon, or according to the so-called self-correcting errors (and the corrections have many times been made and seem to be necessary to reach the overall call "N. 38-1/6 W. 67,657 varas"), the Hunnicutt Corner will not be reached.

[4] It is conceded, we take it, this traverse, as found by the court, can be run on the ground. Stovell ran part of it. Simpson undertook to pick it up at what is described as the "Isolated Hill" and ran it to its southern extremity, and arrived at a point 312.3 varas distant from the corner

fixed by the trial court. The testifying engineers are in substantial, if not complete agreement as to the location of the S. E. Corner of Block 237, T. & St. L., located from ground work done by Thompson and corners identified by both Stovell and Simpson which still stand. It would serve no purpose to set out here at any considerable length the evidence upon which the location is based. It is proved in this case that Thompson began his work at the N. W. Corner of Survey 1, Block 21, G. H. & S. A. Ry. Co. His footsteps are followed on the ground from that point of beginning to a point known in this record as the "Cat Claw Corner" and shown on the several maps of the Surveyor as the N. W. Corner of Survey 1, Block 234, T. & St. L. Ry. Co. It is almost exactly 12 miles North and 13 miles West of the point fixed by the trial court as the S. W. Corner G-1 and S. E. Corner of 237. There are a number of interior Thompson Corners found and identified and much evidence of his footsteps. From Cat Claw Corner the engineers locate the S. E. Corner of 237 at about the exact spot the trial court fixes it. We, therefore, conclude if the trial court is not compelled to locate the common corner of G-1 and 237 (File No. 2) as he did, he was fully justified in so doing.

[5] Courts are not in all situations under the necessity of giving preference to calls in the order of dignity. In some circumstances those of less dignity will be preferred. *Stafford v. King*, 30 Tex. 257, 94 Am.Dec. 304. The rule laid down is repeated in *Huff v. Crawford*, 89 Tex. 214, at page 223, 34 S.W. 606. To the same effect is *Goodson v. Fitzgerald*, 40 Tex.Civ. App. 619, 90 S.W. 898, also *Lockett v. Scruggs*, 73 Tex. 519, 11 S.W. 529. Based upon texts and authorities of similar import, Judge Lewis in his *Lectures on Real Estate*, page 113, states the rule thus: "Courts will usually give preference to the calls in order of dignity and reliability, yet they will not do so when, in the light of all the evidence, to do so would be to sacrifice to a rule the actual location of the land."

[6] The record in this case is such as to justify the application of this rule, if not to compel it.

[7] The plaintiffs take the position all the G Blocks and M-2 surveyed by John T. Gano between May, 1881 and May, 1882, constitute a system and that the calls in the junior blocks apply to the senior block

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G-1, and may be looked to for its location. This cannot be sustained. The claim of a system is based upon the claim they constitute one continuous piece of work. G-1 was surveyed in May and June, 1881, and the field notes returned and filed in September of that year. The next blocks in point of time are G-13, 14 and 15. These were surveyed in November, 1881, and different chain carriers used than those that carried them for G-1. As said in one of the cases cited by the plaintiffs, *Brooks v. Slaughter*, Tex.Civ.App., 218 S.W. 632, at page 635, quoting from another cited case, it is not necessary to constitute a block of surveys a system that the work be done on the same date, but it is sufficient if it be continuous from day to day, and continued for many days, weeks or months. In *Hammann v. San Jacinto Rice Co.*, Tex.Civ.App., 229 S.W. 1008, at page 1013(3), it was held that surveys made by the same surveyor in the same month and that most of them call for each other, did not constitute a system. This is based in part at least upon a lack of continuity of work. When Gano made the survey of G-1, he could have hardly known he would be called upon to survey the junior blocks, because the applications and files were not laid on the first of them, G-13, 14 and 15, until September, 1881, the month Gano returned and filed his field notes for G-1.

We are of the opinion there is no error in the judgment of the trial court and it is affirmed.



**DENNIS et al. v. LITTLE.**  
No. 2473.

Court of Civil Appeals of Texas. Eastland.  
Oct. 13, 1944.

Rehearing Denied Dec. 29, 1944.

**1. Appeal and error ⇨301**

Alleged error in overruling a special exception to pleadings, which was not assigned as error in motion for new trial, was waived.

**2. Appeal and error ⇨1078(1)**

A point not briefed is waived as matter of law.

**3. Taxation ⇨788(5)**

The presumption is that deed for land sold to the state for taxes at tax lien foreclosure sale was not filed for record before deed was acknowledged by the sheriff so as to authorize its record. *Vernon's Ann.Civ.St. art. 7328.*

**4. Taxation ⇨746**

Where sheriff at tax lien foreclosure sale conveyed the land to the state by deed, state's quitclaim deed executed by county collector to person who redeemed the land, while constituting evidence of payment and time of payment, was not effective as a conveyance of any title to such land, since the only way the state could convey title to land would be by an act of the Legislature having in itself such effect, or authorizing one or more agents to make such conveyance for the state. *Vernon's Ann. Civ.St. arts. 7328, 7345b, § 9; Vernon's Ann.St.Const. art. 8, § 13, amended in 1932.*

**5. Trusts ⇨102(1)**

A person who acquired interest of tenant in common after the land had been sold to the state for taxes, who disavowed any purpose to redeem and sought to acquire title with knowledge of breach of trust by such transferor, and who acquired the land valued at \$11,837.50 from the state for \$2,965.09, was charged with a trust in favor of cotenants, since his transferor could not have acquired an outstanding encumbrance or title freed of a trust.

Appeal from District Court, Erath County; Ernest Belcher, Judge.

Suit by C. H. Little against H. D. Dennis and others in trespass to try title to land wherein certain parties intervened as defendants. From a judgment, defendants and interveners appeal.

Judgment reversed in part and judgment rendered against plaintiff, and remanded in part.

Chas. Nordyke, J. A. Johnson, and R. L. Thompson, all of Stephenville, for appellants.

C. O. McMillan, of Stephenville, for appellee.

FUNDERBURK, Justice.

In the court below C. H. Little was plaintiff and H. D. Dennis and others were

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F. M. ROARK, ET AL  
 VS.  
 H. D. SMITH, ET AL

# Exhibit "C"

IN THE 83RD DISTRICT COURT OF  
 BREWSTER COUNTY, TEXAS, SPECIAL  
 OCTOBER 1947 TERM.

In the above entitled and numbered cause the court heretofore, on the 1st day of September, A. D., 1947, as is in the Minutes of this court of record manifest, made and entered an order setting this cause down for trial at a special term to begin on the 27th day of October A. D. 1947, and, contemporaneously with the entry of said order, the court made and entered another order, severing all issues made by any and all pleadings at that time filed therein and confining the case to be tried to the issue of true and correct location on the ground of the boundaries of blocks of surveys and individual surveys as specified in the Third Amended Original Plea of Intervention filed herein by the State of Texas, as intervener, and directed that this cause should proceed to trial alone on the issues of true location and boundaries of the lands involved as made by said plea in intervention and the pleadings of the several parties in reply thereto, the State of Texas to be designated as plaintiff and all other parties as defendants, which said order was made without prejudice to any and all pleadings, right, interests, estates or causes of action alleged by the several parties pleading, answering or impleaded in said cause; and said order further provided that all issues then pending other than that of true location and boundary of the lands described in the pleadings of the State of Texas, should by said order of severance be set apart and designated for trial as a separate suit styled as hereinabove appears, and hereafter to be numbered as 1934-A.

And the court, on the 27th day of October A. D., 1947, did make and enter an order in conformity with the statutory provisions authorizing the same, convening this the Special October, A. D. 1947, Term of the District Court of Brewster County, Texas, and the court having been duly opened in the manner and form provided by law, this cause was called for trial.

Thereupon came the intervener, The State of Texas, hereinafter styled plaintiff, by its Attorney General, and also came the following Defendants who appeared either in person or by answer on file herein: J. T. ADAMS; AETNA LIFE INSURANCE COMPANY, a corporation; JOHN W. ALMOND and wife, MABEL MADISON ALMOND; MRS. EDNA WINN MADISON, a feme sole; AMERICAN NATIONAL INSURANCE COMPANY, a corporation; NEIL BUTLER, Trustee, E. M. BISLAND, W. R. CARTLEDGE; ROXANA GAGE CATTO, and husband JOHN CATTO, JR.; E. B. CHANDLER & CO., a partnership composed of GUS J. GROOS, E. C. TARRANT AND GUY S. McFARLAND; GUY S. COMBS; DAVID S. COMBS, Trustee; DOROTHY GAGE FORKER, and husband, DONALD E. FORKER; M. L. HOPSON; JAMES & CONNER, a partnership composed of THOMAS R. JAMES and GEORGE M. CONNER; ASA A. JONES; J. M. LEA; MORRIS U. LIVELY; NANA D NEWTON, a feme sole; PRESIDIO COUNTY TEXAS, a municipal corporation; F. M. ROARK; I. C. ROARK, SR.; J. C. ROARD; SID SLAUGHTER; DR. H. G. TOWLE; FRED G. TURNER; MRS. T. D. MCKINNEY, individually and as Agent; UNA IHN HARRISON and husband, ELDEN HARRISON; IDA MAE THURMAN; IVAN D. MCKINNEY; PARKER MCKINNEY; MRS. JOHNNIE GRIGSBY and husband, LEROY GRIGSBY; J. T. MCKINNEY; GERTRUDE ELLEN SMITH; LEWIS MILTON SMITH; W. R. MORGAN, Independent Executor of the Estate of H. D. SMITH, Deceased; FRED BASLER; BLANCHE MARTIN and E. R. COX, Agent of BLANCHE MARTIN; PETE BLAZIN and wife, MARY BLAZIN; C. J. DOMNICK and F. J. DOMNICK; EARL F. LIMBERT; JEANETTE EMPOR MAY, a feme sole; McNEAR NASH COMPANY, a partnership composed of HARRY McNEAR and E. BRAUM; MRS. LILLIE RASSIEUR and husband, LOUIS RASSIEUR; D. H. BLACK; A. C. HERZBERG; L. AUSTIN FONTENOT; MRS. A. A. FIELDING, Individually, joined pro forma by her husband, A. A. FIELDING; C. A. BRAZZIL; MRS. J. P. DUNCAN, joined pro forma by her husband, J. P. DUNCAN; GEORGIA BRAZZIL, a feme sole; MRS. W. C. LEWIS, joined pro forma by her husband, W. C. LEWIS; J. W. BRAZZIL, being all the heirs at law of J. W. BRAZZIL, Deceased; G. F. NOONAN, Individually and as Trustee, T. J. NOONAN; N. NOONAN; J. I. NOONAN; EARL STIRMAN; S. L. STUMBERG; and

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Tom Morino, Trustee for Alabama Oil Syndicate, Estate of W. C. Morris and J. J. Riley

Thereupon, all parties being before the court and no jury having been demanded, the several matters of fact as well as of law, were submitted to the court who, having read the pleadings and heard the evidence adduced in support thereof from day to day during the progress of the trial of this cause, on the 1st day of November A. D., 1947, rendered the following judgment, to-wit:

It appearing to the Court that this suit, after the severance of issues aforesaid, involves the location and boundaries of each of the following sections of land in Brewster County, Texas, to-wit: Sections 1-200 inclusive, of Block G-1, D. & W. Ry. Co.; Sections 1-54, inclusive, of Block G-15, G. C. & S. F. Ry. Co.; Sections 1-120, inclusive, of Block G-18, T. C. Ry. Co.; Sections 1-46, inclusive, of Block G-14, G. C. & S. F. Ry. Co.; Sections 1-20, inclusive, of Block G-20, Sections 1-7, inclusive, and odd numbered Sections 9-27, inclusive, of Block G-21 (there being no even numbered sections in said Block G-21, except Nos. 2, 4, and 6); Sections 1-12, inclusive, of Block G-24; Sections 1-28, inclusive, of Block M-2; Sections 8-28, inclusive, (all having even numbers), of Block G-22; Sections 1-44, inclusive, of Block B-1; Sections 1, 2, 12 and 13 and 20 of Block G-9,; Sections 1-32, inclusive, of Block G-13; H. E. & W. T. Railway Co., together with the matter of priorities between such sections of land in so far as they conflict with one another when properly located on the ground.

And the Court having heard and considered the testimony and the evidence, including the field notes of each of the surveys in the aforesaid blocks, as same were offered from the files of the General Land Office of the State of Texas, and/or the records of the Office of the County Surveyor of Brewster County, Texas, and having considered the various exhibits, including maps and plats, and all of the evidence, finds that the surveys in the blocks aforesaid can be located on the ground in accordance with the original and corrected field notes thereof now on file in the General Land Office of the State of Texas and the judgment of this Court in Cause No. 2006, styled Dick Williams, et al, v. Asa Jones, et al, in the manner hereinafter ordered.

The Court further finds that when such surveys are so located, some conflicts are found to exist, and that such conflicts arise because the original surveyor of all sections (except Sections 1-20 of Block B-1), one John T. Gano, was mistaken as to the relation of the corner he established for the southwest corner of Survey 1, Block G-1, D. & W. Ry. Co., with reference to the Rio Grande River, and because much of said Gano's work was by office survey, based on this mistaken relationship.

The Court further finds that the aforesaid blocks of surveys, though made by the same surveyor (except for the first twenty sections of Block B-1), do not constitute a system of blocks of surveys, but each block must be located independently and the surveys therein laid on the ground in the manner hereinafter set out.

The Court finds that the direction taken as true north by John T. Gano for his work in such surveys and by Archibald Bogle for his work in Block B-1 was one degree and eight minutes (1° 8') west of true north.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

I.

1. The aforesaid sections of land comprising Block G-1, D. & W. Ry. Co.; G-15, G. C. & S. F. Ry. Co.; G-18, T. C. Ry. Co.; G-14, G. C. & S. F. Ry. Co.; G-20, T. C. Ry. Co.; G-21; G-24; M-2; G-22; G-9; G-13, H. E. & W. T. Ry. Co., Block G-23 and B-1; all in Brewster County, Texas, be located on the ground in accordance with this judgment.

2. Each of the surveys be located by using as the north call of the field notes and of this judgment a course one degree and eight minutes (1° 8') west of true north, and with all

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3 other courses consistent therewith.

## II

With respect to Sections 1-200, inclusive, of Block G-1, D. & W. Ry. Co.;

1. The southwest corner of Section 1, said Block G-1, D. & W. Ry. Co., being also the southwest corner of such block, is located on the ground at a point 3198.4 varas east and 3396 varas south of what is known as the R. S. Hunnicutt corner (which latter corner is evidenced by a pile of rock in which there is a stone marked "SW-G-1" and located on the ground at a point latitude  $29^{\circ}33' 51.951''$ , longitude  $102^{\circ}57' 56.238''$ , and from which stone mound the highest point on the north end of Stairway Mountain bears south  $19^{\circ}30'$  west 1230 varas, and from which "X" mark on top of embedded boulder  $12\frac{1}{2}$  feet across the top and about 5 feet high bears south  $34^{\circ}51'$  east 32 varas; this being the location established for such southwest corner of Block G-1 by the judgment of this Court in Cause No. 2006, styled Dick Williams, et al v. Asa Jones, et al, which was affirmed by the Court of Civil Appeals in 184 S. W. (2) 510, with writ refused by the Supreme Court.

2. The northwest corner of said Block G-1, being the northwest corner of survey 200 of said Block is a point on the ground 92.3 varas west and 78.7 varas north of the W. L. Rider corner for the northwest corner of Section 200, said block which latter corner is located on the ground at latitude  $29^{\circ}49' 42.458''$ , longitude  $102^{\circ}56' 37.873''$  and is further defined as follows: Beginning at a fence corner and a large flat rock, from which a N. W. peak, a double mountain, bears south  $77^{\circ}19'$  west, the west peak of Bullis Mountain brs. south  $4^{\circ}54'$  west, sharp peak between two mountains bears north  $30^{\circ}15'$  west, the south point of Horseshoe Mountain bears N.  $72^{\circ}54'$  east, and a dagger palm tree bears south  $8^{\circ}50'$  west 24 vrs.; this being the location for the true northwest corner of Block G-1, established by this Court in the above styled and numbered cause, and affirmed as aforesaid.

3. The west line of said Block G-1 and of the western tier of sections therein is a line on the ground between the southwest corner of Survey 1 and the northwest corner of Survey 200, as hereinabove located, and such line has its proper variation of  $1^{\circ}8'$  west of true north, this being the line established for the west line of Block G-1, in the above styled and numbered cause.

4. The sections in said Block G-1, being numbered 1 to 200, inclusive, are located on the ground by beginning at the point heretofore defined for the southwest corner of Survey 1, Block G-1, locating each of said surveys in numerical order and in accordance with the original field notes prepared by John T. Gano and filed in the General Land Office, giving to each survey a distance east and west of 1900 varas and north and south 1900 varas, with the variation heretofore set out, so that the boundaries of Block G-1 and each of the surveys therein will be consistent with the west line of such block as heretofore defined.

5. The south line of said Block G-1 and of the southern tier of surveys therein, being surveys 1-7, inclusive, forms an extension of the south line of Block 237, T. & S. L. Ry. Co. and is the north line of Surveys 1, 2, 12, 13 and 20 of Block G-9, as well as the north line of Surveys 38 and 41, Block G-23, C. T. & M. C. Ry. Co., as said surveys are hereinafter located on the ground.

## III.

With respect to Sections 1-54, inclusive, of Block G-15, G. C. & S. F. Ry. Co.:

1. The south line of said Block G-15, G. C. & S. F. Ry. Co., being the south line of Sections 1-13, inclusive, thereof, is coincident with the north line of Block G-1, as hereinbefore located.

2. The southwest corner of Survey 1, Block G-15, is located on the ground coincident with the northwest corner of Survey 200, Block G-1, as such northwest corner has been located on

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the ground by this judgment.

3. The southeast corner of Survey 13, Block G-15, is coincident with the northeast corner of Survey 188, Block G-1, which corner is located at a point on the ground N. 88°52' E., 24,700 vrs. from the northwest corner of Survey 200, Block G-1.

4. The surveys in the south line of Block 334, T. C. R. Co. which block lies to the north of the aforesaid Block G-15, for the most part call for adjoinder to the north tier of surveys in said Block G-15.

5. The 54 surveys in Block G-15 are located on the ground by beginning at the southwest corner of Survey 1 of said block as such corner is hereinabove fixed, locating each survey in numerical order, giving each survey its field note distance as called for in the field notes of such surveys, filed by John T. Gano in the General Land Office of the State of Texas, using the course of such field notes with the variation hereinbefore established.

IV.

With respect to Sections 1-120, inclusive, of Block G-18, T. C. Ry. Co.:

1. The northwest corner of Survey 1, Block G-18, T. C. Ry. Co., is located on the ground at a point 7600 vrs. N. 1°8' west from the point hereinbefore fixed as the northeast corner of Section 188, Block G-1, and at a point on the ground coincident with the northeast corner of Survey 40, Block G-15, when such Survey 40 is located in accordance with Paragraph III of this judgment.

2. The surveys in Block G-18 from 1 through 68, are located on the ground by beginning with the northwest corner of Survey 1 as above fixed, and giving each survey the distance called for in its original field notes, as filed in the General Land Office by John T. Gano, and using the variation hereinbefore set out, constructing such surveys in numerical order from Survey 1 through Survey 68.

3. The west line of Block G-18, being the west lines of Surveys 1, 2, 3 and 4 of said block when located as above ordered, is coincident with the east line of Block G-15, being the east lines of Surveys 13, 14, 39 and 40, of said Block G-15.

4. The southwest corner of Block G-18, being the southwest corner of Section 4, of said block, is coincident with the northeast corner of Section 188, Block G-1, as such latter corner has been hereinbefore fixed on the ground.

5. Sections 69 to 120, inclusive, of Block G-18, are properly located on the ground from the point at the mouth of the San Francisco Creek called for in the original field notes of Section 95, of such block, said point being at a rock mound on the northwest bank of the Rio Grande River and on a high bluff just above the mouth of San Francisco Creek, set for the southeast corner of Presidio County and southwest corner of Pecos County (now, respectively, Brewster County and Terrell County).

6. Sections 69 to 95, inclusive, of said Block G-18, are located on the ground from the point at the mouth of San Francisco Creek by beginning with Section 95 and locating such sections in inverse numerical order, giving each survey the distance called for in its original field notes, as filed in the General Land Office by John T. Gano, and using the original courses with the variation herein ordered, giving effect to the calls in Surveys 69-95, inclusive, for adjoinder to each other.

7. Sections 96 through 120, inclusive, are located on the ground from the point at the mouth of San Francisco Creek called for in said Survey 95 by locating Section 96 in its proper relationship to Survey 95 as called for in the original field notes of said Section 96 as filed in the General Land Office by John T. Gano, and locating Surveys 96-120 in numerical order according to such original field notes with variation as hereinbefore ordered, giving effect to the called-for adjoinder, one to the other, of these Surveys 96 through 120, in-

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clusive, but giving no effect to adjointer calls to any surveys in any other block, nor to the calls in the original field notes for Surveys 69, 70, 71, 72 and 120 for adjointer to Surveys 65 to 68, inclusive.

8. The Court finds that Sections 1 through 68, inclusive, of Block G-18 are prior in time to Sections 69 through 120 of said block, and Sections 1 through 68 shall take precedence over Sections 69 through 120 to the extent of any conflict, when such sections are located on the ground in accordance herewith.

V.

With respect to Sections 1-20, inclusive, of Block G-20, T. C. Ry. Co.:

1. Section 1 of said Block G-20, T. C. Ry. Co., is located on the ground with its northeast corner, being also the northeast corner of said block, coincident with the southeast corner of Survey 68, Block G-18, as such survey has been heretofore located and at a point 32,300 vrs. N. 88°52' east of the northeast corner of Section 188, Block G-1, as such latter corner is hereinbefore fixed.

2. Sections 1-20, inclusive, of Block G-20 are located on the ground by beginning at such northeast corner of Survey 1 and locating each of the surveys in numerical order in accordance with the original field notes thereof filed by John T. Gano in the General Land Office of the State of Texas, using the variation heretofore ordered.

3. The north line of Block G-20, being the north lines of Surveys 1 through 10 of said block, is coincident with the south line of Sections 29, 36, 37, 44, 45, 52, 53, 60, 61 and 68 of Block G-18 as heretofore established.

4. The northwest corner of Section 10, Block G-20, being also the northwest corner of said block, is coincident with the southeast corner of Section 28, and the southwest corner of Section 29, Block G-18, and with the northeast corner of Survey 46, Block G-14, as such latter corner is located on the ground in the next succeeding section of this judgment.

VI.

With respect to Sections 1-46, inclusive, of Block G-14:

1. The southwest corner of Section 1 of said Block G-14, being also the southwest corner of said block, is located on the ground at a point coincident with the southeast corner of Section 83, Block G-1, as such section has been hereinbefore located, which point is 19,000 varas north and 24,700 varas east, according to the variation hereinbefore established, from the point heretofore defined as the southwest corner of Section 1, Block G-1.

2. The sections 1-46, inclusive, of Block G-14, are located on the ground by beginning at the point above fixed as the southwest corner of Section 1, said Block G-14, and locating each of such 46 sections in numerical order in accordance with the original field notes of such sections, giving each section its field note distance and using the courses prescribed in such field notes with the variation ordered in this judgment.

3. The west lines of Sections 1-10, inclusive, of Block G-14, being the west line of such block, are coincident with the east line of the most eastern tier of Sections in Block G-1.

4. The northwest corner of Survey 10, Block G-14, is located on the ground coincident with the northeast corner of Survey 188, Block G-1, as such corner is hereinbefore fixed, and said northwest corner of Section 10, Block G-14, is coincident with the southeastern corner of Section 13, Block G-15, and with the Southwestern corner of Section 4, Block G-18, as both sections are hereinbefore located.

5. The north lines of Sections 10, 11, 30, 31, 40, 41, and 46 of said Block G-14, being the north line of said block, are coincident with the south lines of Sections 4, 5, 12, 13,

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20, 21 and 28, respectively, in Block G-18.

6. The northeast corner of Section 46, Block G-14, is located on the ground coincident with the northwest corner of Section 10, Block G-20, as hereinbefore established, and the east line of Sections 45 and 46, Block G-14, is coincident with the west lines of Sections 11 and 10, respectively, Block G-20.

VII.

With respect to Sections 1-7, inclusive, and odd-numbered Sections 9-27, inclusive, of Block G-21 (there being no even-numbered sections in said Block G-21, except Nos. 2, 4 and 6):

1. The northwest corner of Section 27, said Block G-21, is located on the ground at a point coincident with the southwest corner of Section 11, Block G-20, and coincident with the northeast and southeast corners of Sections 44 and 45, respectively, of Block G-14, said point being 13,300 varas N. 88°52' E. and 3800 varas S. 1°08' E. of the point heretofore decreed as the northeast corner of Survey 188, Block G-1.

2. The Sections 1-7, inclusive, and odd numbered Sections 9-27, inclusive, of Block G-21, are located on the ground by beginning at the point above fixed as the northwest corner of Section 27 and locating each of such sections in inverse numerical order, according to the course and distance calls found in the original field notes of such sections filed in the General Land Office by John T. Gano, and with the variation decreed by this judgment.

3. The west line of Section 27, said Block G-21, is for part of its distance coincident with the east line of Section 44, Block G-14, as such section is located in accordance herewith.

4. The north lines of Sections 13, 15, 17, 19, 21, 23, 25, 27 and part of the north line of Section 11, said Block G-21, are coincident with the south lines of Sections 11-20, inclusive, of Block G-20.

5. The sections comprising this Block G-21 are properly located without reference to Block M-2, or the sections therein, or the Rio Grande River, and those sections in Block G-21 which fall across the Rio Grande River in whole or in part when located in accordance herewith are decreed ineffective in so far as, and only in so far as, they extend across said river and the surveys thereby made partially ineffective are hereby decreed to be valid surveys to the full extent remaining, and the Rio Grande River shall form the boundary in lieu of the boundaries which are found to lie on the Mexican side of such river.

VIII.

With respect to Sections 1-28, inclusive, of Block M-2:

1. The southwest corner of Section 1, said Block M-2, is at a point on the ground having a latitude of 29°43'45.378" and a longitude of 102°40' 56.698", said point being known as Reagan Canyon Corner and further described as follows:

An angle iron mkd. "N.E. 1 B-1 S and S. W. 1 M-2 C", set in concrete in an old stone mound on a rocky point on the bank of the Rio Grande River, on the lower side of the mouth of a canyon and 5 varas below a calvary watering trail which enters the Rio Grande Valley from a deep canyon, from which a bluff bears S. 30°50' W. Peak bears N. 65°45' W., Peak bears N. 14°59' W., and a 4"x 4" concrete post marked "S. W. 1 M-2" bears N. 14°37' E. 497.0 varas.

2. The northeast corner of Section 28, said block M-2, is located on the ground at a point coincident with the southeast corner of Section 102, Block G-18, when said Section 102 is located from the point at the mouth of San Francisco Creek, as hereinbefore directed.

3. The Northeast corner of Section 26, Block M-2, is located at a point on the Rio Grande River at a point which is coincident with the southeast corner of Survey No. 28 of the same block, and which point aforesaid is located west 375 varas and south 1344 varas from the

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northeast corner of Survey 28 of Block M-2 which is coincident with the southeast corner of Survey No. 102, Block G-18 when same is located on the ground as hereinabove provided. Said Survey 26, is then constructed by beginning at the northeast corner as above established; thence south 88 degrees 52' west 2021 varas to a rock mound in the east line of Survey No. 24, Block M-2; thence south 1 degree 8' E. 5395 varas, more or less, to the Rio Grande River for its southwest corner and being a point coincident with the southeast corner of Survey No. 24, Block M-2, which point is 7162 varas west and 14590 varas south of the rock mound for the northeast corner of Sur. No. 95, Block G-18, or the mouth of San Francisco Creek; thence down the Rio Grande River with its meanders to the place of beginning.

4. The ground distance between the southwest corner of Survey No. 1, Block M-2 (same being also the northeast corner of Survey No. 1 in Block B-1), as said corner is located in subdivision 1 of this section, and the southwest corner of Survey No. 26, Block M-2, as said corner is located in subdivision 3 of this section, is 33,834 varas and the field note distance between said two corners, as disclosed by the original field notes for Surveys Nos. 1 to 25, inclusive, and Survey No. 27, filed in the General Land Office by John T. Gano (the field notes for all of which said surveys call for a distance of 1344 varas for the north line) is 34,494 varas. There is, therefore, a deficiency in distance east between said two corners (the southwest corner of Survey No. 1, Block M-2 and the southwest corner of Survey No. 26, Block M-2) of 1110 varas, or when prorated equitably between said twenty-six sections of land a deficiency of 42.7 varas in the north line of each of said surveys Nos. 1 to 25, inclusive, and Survey No. 27, thereby leaving under the equitable proration here made, the north line of each of said surveys to be distant 1301.3 varas instead of the 1344 varas called for in the original Gano field notes hereinabove referred to.

5. Sections 1 to 25, inclusive, and Section 27 of said Block M-2, with the exception of Survey 2, are located as follows: BEGINNING at the point hereinbefore located for the southwest corner of Section 1, Block M-2, in subdivision 1 of this paragraph, and using the original field notes of such sections as filed in the General Land Office by John T. Gano and the variation hereinbefore decreed, locate the sections in the order called for in such original field notes, beginning each section on the Rio Grande River at the southeast corner of the preceding section, giving each section its field note distance north for its west line, thereby locating the northwest corner of each of said sections; thence on a course north 88 degrees 52' E. a distance of 1301.3 varas to a point which this judgment now here establishes as the northeast corner of each of said surveys respectively. The east line of each of said surveys respectively is then located on the ground by running a line from said northeast corner of each of said surveys located as aforesaid on a course south 1 degree 8' E. for the distance (more or less) called for in the original Gano field notes for the east line of each of said surveys, respectively, to the intersection of said line with the Rio Grande River. From that point of intersection of said east line of each of said surveys, respectively, with the Rio Grande River, the south line of each of said surveys, respectively, is located by following up said Rio Grande River with its meanders to the place of beginning for each of said surveys, respectively.

6. Survey 2 is located by beginning at a point on the Rio Grande river at its southwest corner which corner is coincident with the southeast corner of Survey 27 of this block when the latter is located as hereinabove provided; thence north 1 degree 8' west with the east line of Survey 27, passing its northeast corner for a distance of 6800 varas to a point for the northwest corner of this survey; thence north 88 degrees 52' E. a distance of 1301.3 varas for its northeast corner, which point is in the west line of Survey 4 of this block; thence south 1 degree 8' E. to the Rio Grande River; thence up the Rio Grande River with its

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meanders to a point south 1 degree 8' E. from the beginning point of this call; thence S. 1 degree 8' E. to the bank of the Rio Grande River for the S. E. corner of this survey; thence up the Rio Grande River with its meanders to the place of beginning.

7. The odd-numbered sections in Block M-2 are located consecutively, beginning at the southwest corner of section 1, said block as required by the original field notes thereof. The even-numbered sections of said block, from Sections 2 through 24, are located as required by their original field notes, consecutively, beginning Section 2, at the southeast corner of Section 27, said block, when Section 27 is located in accordance herewith, and the southeast corner of Section 24, said block, being coincident with the southwest corner of Section 26, as hereinbefore located.

8. Section 28 of said block is located by beginning at a point heretofore established for the northeast corner thereof, which point is coincident with the southeast corner of Survey 102, Block G-18, as aforesaid; thence South 88 degrees 52' west with the South line of Surveys 102 and 107 and a portion of the south line of Survey 114 of Block G-18, 5895 varas to the northwest corner of said survey 28; thence south 1 degree 8' E. 795.5 varas, more or less, to a rock mound in the north line of survey No. 20 of this block M-2; thence in an easterly direction with the north line of Survey 20 to the northeast corner thereof; thence in a southerly direction with the east line of Survey 20 to the northwest corner of Survey 22 of this block; thence in an easterly direction with the north line of Survey 22 to the northeast corner of said survey 22; thence in a northerly direction with the west line of survey 24 of this block to the northeast corner thereof; thence in an easterly direction with the north line of survey 24 to the northeast corner thereof; thence in a southerly direction with the east line of survey 24 to the northwest corner of survey 26 of this block; thence with the north line of survey 26 in an easterly direction to the Rio Grande River; thence down the river with its meanders to the place of beginning.

9. That area located between the east line of the lower part of Survey 2 and the Rio Grande River is not included within the boundaries of any survey of said Block M-2 and is, therefore, unsurveyed Public Domain.

10. No evidence having been offered in support of the contention of the State of Texas for the adoption of the location of certain surveys in Block M-2 as the same were located by D. B. Scott, such contention on the part of the State of Texas, is, therefore, hereby in all things refused and denied.

IX.

With respect to Sections 1-12, inclusive, of Block G-24, being all of the surveys in said Block:

1. The northeast corner of Section 1, Block G-24, is located on the ground at a point coincident with the southeast corner of Section 44, Block G-14, as said section is hereinabove located, said point being 13,300 varas north 88 degrees 52' E. and 5700 varas S. 1 degree 08' E. from the point hereinbefore decreed as the northeast corner of Survey 188, Block G-1. The north line of said Section 1, Block G-24, is coincident with the south lines of Sections 43 and 44, Block G-14, and the west line of said Section 1 is coincident with the east line of Section 37, Block G-14.

2. Sections 1-12, inclusive, of Block G-24, are located on the ground by beginning at the point above fixed as the northeast corner of Section 1, said block, and locating each of the twelve sections in numerical order in accordance with the original field notes thereof, filed in the General Land Office by John T. Gano, giving each section its field note distance and using the courses given in such field notes with the variation ordered in this judgment.

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3. The sections comprising this Block G-24 are properly located without reference to Block M-2, or the sections therein, or the Rio Grande River, and those sections in Block G-24 which fall across the Rio Grande River in whole or in part when located in accordance herewith are decreed ineffective in so far and only in so far as they extend across said river, and the surveys thereby made partially ineffective are hereby decreed to be valid surveys to the full extent remaining, and the Rio Grande River shall form the boundary thereof in lieu of the boundaries which are found to be on the Mexican side of such river.

X.

With respect to Sections 1-33, inclusive, of Block B-1:

1. The northeast corner of Section 1, Block B-1, is located on the ground at a point coincident with the southwest corner of Survey 1, Block M-2, as such corner has been hereinbefore located.

2. Sections 1-20, inclusive, are located on the ground by beginning at such northeast corner of Section 1, Block B-1, and using the original field notes of Archibald Bogle and the corrected field notes of John T. Gano, as filed in the General Land Office, locating such surveys in numerical order, giving each survey its called for distance for its north line and on the course called for, with the variation herein decreed, to establish the northwest corner of each survey; thence S. 1 degree 08' E. for the field/note distance plus 112.7 varas, being a 1/20th part of excess southing between the northeast corner of Survey 1, Block B-1, as hereinbefore located, and the stone mound on the bank of the Rio Grande River, about 300 varas below the mouth of Maravillas Creek, which is the southeast corner of Survey 20, this block, and the northeast corner of Survey 21, this block; said Maravillas Creek corner being described as follows: an angle iron mkd. S. E. 21 and N. E. 22 S. set in concrete, in an old stone mound, about 300 varas below and N. E. of the mouth of Maravillas Creek, from which a Peak brs. S. 27 degrees 38' E. another Peak brs. N. 20 degrees 30' E. and South side of bluff brs. N. 85 degrees 15' W.; thence on course N. 88 degrees 52' E. to the Rio Grande River; thence down said river with its meanders to the place of beginning for each section; the southeast corner of Section 20 being located at the stone mound aforesaid.

3. Sections 21-33, inclusive, are located in similar manner by beginning at the stone mound aforesaid, locating such surveys in numerical order, giving each of said surveys its full distance called for as its north line in the original and corrected field notes filed in the General Land Office by John T. Gano, and thereby establishing the northwest corner of each survey in turn; thence S. 1 degree 08' E. for the field note distance plus 23.2 varas, being a 1/13th part of the excess southing between the northeast corner of Survey 21, this block, and the point at the mouth of Irwin's Canyon, which is the southeast corner of Section 33, which is more particularly described as follows: an angle iron mkd. S. E. 33 and N. E. 34 S. set in concrete, at the mouth of Irwin's Canyon, thereby establishing the southwest corner of each section; thence N. 88 degrees 52' E. to the Rio Grande River; thence down said river to the place of beginning for each section; the southeast corner of Section 33, being located at the point at the mouth of Irwin's Canyon aforesaid.

4. The evidence before the Court is insufficient to locate the true position on the ground of Sections 34-44, inclusive, of Block B-1.

XI.

With respect to Sections Nos. 1 to 32, inclusive, of Block G-13, H. E. & W. T. Ry. Original Grantee:

1. The Southwest corner of Block G-13, being also the Southwest corner of Section 1, said Block G-13, is located at a point on the ground 13,300 varas north 88 degrees 52' E. of the

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southwest corner of Survey 1 in Block G-1 as said latter corner is hereinabove located on the ground. Said southwest corner of Block G-13 is a point coincident with the southeast corner of survey No. 7, Block G-1, when located on the ground as hereinabove directed.

2. The West line of said Block G-13, and of the Western tier of surveys in said block, to-wit: Surveys 1, 4, 5, 8, 9, 12, 13, 14, 15 and 16, is a line on the ground, beginning at the south east corner of said Survey No. 7, Block G-1, and coincides with the lower East line of said Block G-1 and the lower East tier of Surveys in said block, to-wit: Surveys Nos. 7, 8, 21, 22, 35, 36, 49, 50, 63 and 64, when said line is located on the ground in the manner and with the variations hereinabove established.

3. The northwest corner of Survey No. 16, which is also the northwest corner of this Block No. G-13 is coincident with the northeast corner of Survey No. 64, the southeast corner of Survey No. 77, and the southwest corner of Survey No. 78, all in said Block G-1, when said point is located on the ground in the manner and with the variations hereinabove established.

4. The north line of Block G-13 and the north tier of surveys in said block, to-wit: Surveys Nos. 16, 17, 24, 25 and 32, is coincident with a part of the upper south line of said Block G-1, said line being the south line of Surveys Nos. 78 to 82, inclusive, of said Block G-1, and the northeast corner of Survey No. 32, being the northeast corner of said Block G-13, is coincident with the southeast corner of Survey No. 82 and the southwest corner of Survey No. 83, said Block G-1.

5. The 32 surveys in said Block G-13 are located on the ground by beginning at the southwest corner of Survey No. 1 of said Block as such corner is hereinabove fixed, locating each survey in numerical order, giving each survey its field note distance as called for in the field notes of such survey as filed by John T. Gano in the General Land Office of the State of Texas, using the course of such field notes with the variations hereinbefore established.

6. With respect to Survey No. 2 and Survey No. 29, said Block G-13, part of each of which surveys falls across the Rio Grande River when located in accordance herewith, those parts are hereby decreed ineffective respectively in so far as, and only in so far as, said sections extend across said river, and said two surveys which are thereby made partially ineffective are hereby decreed to be valid surveys to the full extent remaining, and the Rio Grande River shall form the boundary for said two surveys in lieu of that part of the boundaries of said two surveys which is found to lie on the Mexican side of said river.

XII.

With respect to Block G-22:

1. The said Block contains eleven surveys only, being even numbered sections 8 to 28, inclusive (there being no odd numbered surveys in said block).

2. The northwest corner of Survey No. 8, said Block G-22, which is the northwest corner of said block, is located on the ground at the northeast corner of Block G-13, H. E. & W. T. Ry. Co., and is a point coincident with the northeast corner of Survey No. 32 in said Block G-13, the southeast corner of Survey No. 82 and the southwest corner of Survey No. 83, both in Block G-1, when said surveys No. 32 in Block G-13, and 82 and 83 in Block G-1, are located on the ground in accordance with the provisions of this judgment hereinabove appearing.

3. The upper north line of said Block G-22, being the north lines of Surveys Nos. 8, 10 and 12 in said block is coincident with the south line of Survey No. 83, Block G-1, and the south line of Survey No. 1, Block G-14, and with a portion of the south line of Survey No. 20, Block G-14.

4. The west line of said Survey No. 8, Block G-22, is coincident with the east line of Surveys Nos. 32 and 31, Block G-13, H. E. & W. T. Ry. Co., when said Block G-13 is located

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in accordance with the provisions of this decree hereinabove appearing.

5. The northwest corner of Survey No. 22, said Block G-22, which is also the lower northwest corner of said Block G-22, is coincident with the northeast corner of Survey No. 11 and the southeast corner of Survey No. 20 and the southwest corner of Survey No. 21, all in Block G-13, and the west line of said Survey No. 22, Block G-22, is coincident with the east lines of Surveys Nos. 11 and 10 in Block G-13, and the north line of said Survey No. 22, Block G-22, is coincident with the south line of Survey No. 21, Block G-13, when said surveys are located in accordance with the provisions of this judgment, hereinabove appearing.

6. The eleven surveys in said Block G-22 are located on the ground by beginning at the northwest corner of Survey No. 8 of said Block as such corner is hereinabove fixed, locating each survey in numerical order, giving each survey its field note distance as called for in the field notes of such surveys filed by John T. Gano in the General Land Office of the State of Texas, using the course of such field notes with the variation hereinabove established, without reference to the Rio Grande River and without reference to any calls for adjoiner to Block B-1, G. C. & S. F. Ry. Co., Original Grantee, and all parts of those sections in said Block G-22 which fall across the Rio Grande River, when located in accordance herewith, are decreed ineffective in so far as, and only in so far as, they extend across said river, and the surveys thereby made partially ineffective are hereby decreed to be valid surveys to the full extent remaining, and the Rio Grande river shall form the boundary in lieu of the boundaries which are found to lie on the Mexico side of such river.

### XIII.

With reference to Surveys 1 to 44, inclusive, in Block G-23, C. T. & M. C. Ry. Co., Grantee, being all of the surveys in said Block:

1. The northwest corner of Survey No. 38, said Block G-23 is at a point on the ground 9500 varas north 88 degrees 52' E. from the southwest corner of Survey No. 1, Block G-1, when said latter corner is located on the ground in conformity with the provisions of this judgment hereinabove appearing, and said point is coincident with the southeast corner of Survey No. 5 and the southwest corner of Survey No. 6, said Block G-1, and the northeast corner of Survey No. 2, Block G-9, H. E. & W. T. Ry. Co. The upper north line of said Block G-23, being the north line of Surveys Nos. 38, 41, 42 and 44, in said block, is a line coincident with the south lines of Surveys 6 and 7, Block G-1, and Surveys 1 and 2, of Block G-13 when the latter lines are located in accordance with the provisions of this judgment hereinabove contained.

2. The west lines of Surveys 38, 37, 36 and 35 of said Block G-23 is a line coincident with the East lines of Surveys 2, 3, 6, and 7 of Block G-9, H. E. & W. T. Ry. Co. Original Grantee, when said lines are located on the ground in conformity with the provisions of this judgment herein contained, and using the course hereinabove established.

3. The north lines of Surveys 32, 19, 18 and 1, of said Block G-23 is a line coincident with the south lines of Surveys 7, 8, 9 and 16, respectively, of Block G-9, H. E. & W. T. Ry. Co. when said lines are placed on the ground in conformity with the provisions of this judgment herein contained, and using the course and variations hereinabove established.

4. All other surveys in said block G-23 are to be constructed off of said surveys in said block as hereinabove located in their original relative positions and in accordance with the field notes for said surveys as filed by John T. Gano in the General Land Office of the State of Texas, giving each survey its calls for distance and using the course called for in said field notes with the variations hereinabove established.

5. The sections comprising this Block G-23 are properly located without reference to Block B-1, Block B-2 and Block M-1 or the sections in said blocks respectively, or without reference to the Rio Grande River; and those parts of Sections Nos. 43 and 44 of said Block

G-23 which fall across the Rio Grande River, when located in accordance herewith, are decreed ineffective in so far as, and only in so far as, said sections extend across the said river, and said two surveys thereby made partially ineffective are hereby decreed to be valid surveys to the full extent remaining, and the Rio Grande River shall form the boundary for said two surveys, in lieu of that part of the boundaries of said two surveys which is found to lie on the Mexican side of said river.

XIV.

With respect to the location on the ground of the several blocks and surveys, respectively, involved in this suit, IT IS ORDERED THAT:

1. Blocks D-10 and D-11, respectively, T. C. Ry. Co. Grantee, shall take precedence over and be prior in location to all lands in Block G-18 in conflict therewith.
2. Blocks G-15 and G-18, T. C. Ry. Co., respectively, shall take precedence over and be prior in location to all lands in Blocks 334, 336 and 343, T. C. Ry. Co., Grantee, respectively, and Presidio County School land in conflict therewith.
3. With respect to Block G-1, when same is located as hereinabove described, Surveys Nos. 83 and 84 in said Block G-1, will conflict to a certain extent with Surveys Nos. 4 and 5 in Block B-1, and to the extent of such conflict Surveys Nos. 83 and 84 in Block G-1 prevail.
4. With respect to Block G-18, when same is located as hereinabove directed, i. e., Surveys Nos. 1 to 68, inclusive, beginning at the N. E. corner of Survey No. 40 in Block G-15 and Surveys Nos. 69 to 120, both inclusive, when located in relation to the stone mound at the mouth of San Francisco Creek, as hereinabove directed, there will be certain conflicts within said Block, and to the extent of any such conflict said Surveys Nos. 1 to 68, both inclusive, prevail over Surveys Nos. 69 to 120, both inclusive,
5. With respect to Block G-20, when same is located as hereinabove directed, said Block will conflict to a certain extent with Surveys Nos. 2 to 16, both inclusive, in Block M-2, and to the extent of such conflict, said Block G-20 prevails in accordance with the provisions of the injunction hereinafter decreed in Paragraph XVI hereof.
6. With respect to Block G-14, when same is located as hereinabove directed, there will be conflicts in certain surveys in said block, with certain surveys in Blocks B-1 and M-2. Such conflicts shall be resolved as follows:
  - (a) To the extent of any conflicts in the boundaries of Surveys Nos. 3, 18 and 23, in Block G-14, with Survey No. 1, Block B-1, said Survey No. 1 in Block B-1, prevails.
  - (b) To the extent of any conflicts in the boundaries of Surveys Nos. 2, 3, 18, 19, 22 and 23, all in Block G-14, with Survey No. 2, Block B-1, said Surveys Nos. 2, 3, 18, 19, 22 and 23 in Block G-14 prevails in accordance with the provisions of the injunction hereinafter decreed in Paragraph XVI hereof.
  - (c) To the extent of any conflicts in the boundaries of Surveys Nos. 2, 19 and 22 in Block G-14, with Survey No. 3 in Block B-1, said Survey No. 3 in Block B-1 prevails.
  - (d) To the extent of any conflicts in the boundaries of Surveys Nos. 1, 2, 19, 20, 21 and 22, in said Block G-14 with Survey No. 4 in Block B-1, Surveys Nos. 2 and 20, said Block G-14, prevail, and Survey No. 4, said Block B-1, prevails as against Surveys Nos. 1, 19 and 21 and 22, Block G-14.
  - (e) To the extent of any conflict in the boundaries of Surveys Nos. 1 and 20, Block G-14, with Survey No. 5, Block B-1, said Survey No. 5, Block B-1, prevails.
  - (f) To the extent of any conflicts in the boundaries of Surveys Nos. 23, 24, 25, 26, 27, 34, 35 and 36 of Block G-14 with Surveys Nos. 1, 3, 5, and 7, in said Block M-2, said Surveys Nos. 23, 24, 25, 26, 27, 34, 35 and 36 in said Block G-14 prevail.

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7. With respect to Block G-21, when same is located as hereinabove directed, there will be conflicts in certain surveys in said blocks with certain surveys in Block M-2. Such conflicts are resolved as follows:

(a) To the extent of any conflict in the boundaries of Surveys Nos. 27, 25, 23, 21, 19 and 17 in said Block G-21, with parts of Surveys Nos. 13, 15, 17, 19, 21, 23, 25 and 27 in Block M-2, the aforesaid sections in said Block M-2, prevail.

(b) To the extent of any conflict in the boundaries of Surveys Nos. 17, 15, 13, 11, 9, 7, 5 and 3, in said Block G-21, with even numbered Surveys Nos. 2 to 28, inclusive, in said Block M-2, the aforesaid Surveys in said Block G-21 prevail in accordance with the provisions of the injunction hereinafter decreed in Paragraph XVI hereof.

8. With respect to Block G-24, when same is located as hereinabove directed, said Block will conflict, to a certain extent, with odd numbered Surveys Nos. 1 to 25, inclusive, in Block M-2, and to the extent of such conflict the aforesaid odd numbered surveys in Block M-2 prevail.

9. With respect to Block M-2, when same is located as hereinabove directed. The Surveys in said Block M-2 will conflict to a certain extent with various Surveys in Blocks G-20, G-14, G-21 and G-24, and to the extent of such conflicts, same are resolved as particularly provided in the foregoing paragraphs 8, 5, 6 and 7 of this section.

10. With respect to Block G-13, when same is located as hereinabove directed, Surveys Nos. 1 to 8, both inclusive, and Surveys Nos. 21, 27 to Survey No. 31, both inclusive, in said Block G-13, will conflict to a certain extent with Surveys Nos. 24, 23, 22, 21, 20, 19, 18, 17, 13, 12, 11, 10 and 9 in Block B-1, and to the extent of such conflict the aforesaid surveys in Block B-1 prevail.

11. With respect to Block G-22, when same is located as hereinabove directed, there will be conflicts in certain surveys in said Block with certain surveys in Block B-1, and to the extent of such conflicts, said Block B-1 prevails.

12. With respect to Block G-23, when same is located as hereinabove directed, Surveys Nos. 24 to 44, both inclusive, of said Block G-23, with the exception of Sur. No. 32, said Block, there will be conflicts to a certain extent with Surveys Nos. 24 to 44, both inclusive, in Block B-1, and to the extent of such conflict, the aforesaid Surveys in Block B-1 prevail.

13. With respect to Block B-1, when same is located as hereinabove directed, certain surveys in said Block B-1 will conflict to a certain extent with certain surveys in Blocks G-14, G-1, G-13, G-22 and G-23, and to the extent of such conflicts same are resolved as particularly provided in the foregoing paragraphs 6, 3, 10, 11 and 12 of this section.

XV.

In view of the conflicts between certain blocks and surveys when placed on the ground as hereinabove provided and giving effect to priority of surveys and resolving such conflicts as hereinabove ordered, the court further finds:

1. As to Block M-2, the acreage in the several surveys remaining out of the conflict is shown immediately hereunder, and any section in said block not hereinafter listed retains its full complement of field note acreage:

S. E. pt. Sect. 1.....	223 acres
South pt. Sect. 3.....	725 "
South pt. Sect. 5.....	844 "
South 2/3 and E. pt. of N. 1/3 Sect. 7.....	1045 "
Sect. 9.....	1240 "
Sect. 11.....	1240 "

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Sect. 13.....	1240 acres
Sect. 15.....	1240 "
Sect. 17.....	1240 "
Sect. 19.....	1240 "
Sect. 21.....	1240 "
Sect. 23.....	1240 "
Sect. 25.....	1240 "
Sect. 27.....	1240 "
South part Sect. 2 .....	548 "
Section 4.....	Gone
Section 6.....	Gone
South part Sect. 8.....	311 "
South part Sect. 10.....	515 "
South part Sect. 12.....	407 "
South and West part of South part of Sect. 14.....	381 "
N. E. pt. Sect. 16.....	90 "
N. pt. and S. E. Pt. Sect. 18.....	283 "
N. pt. and S. W. Pt., and S. E. Pt. Sect. 20.....	98 "
South part Sect. 2.....	139 "
N. pt. of E. pt. and South pt. of Sect. 24.....	189 "
N. pt. and S. W. part Sect. 26.....	1046 "
All of E. pt. and N. pt. of W. pt. Sect. 28.....	1145 "

2. As to Block G-21, the acreage in the several surveys remaining out of the conflict is shown immediately hereunder, and any section in said block not hereinafter listed retains its full complement of field note acreage:

Survey 1.....	Gone
Survey 2.....	"
W. pt. Survey 3.....	1034
Survey 4.....	Gone
Survey 5.....	1280
Survey 6.....	Gone
Survey 7.....	1280
N. Pt. Survey 9.....	1247
Survey 11.....	1280
Survey 13.....	1280
N. Pt. 15.....	1155
N. Pt. 17.....	1205
N. Pt. 19.....	654
N. Pt. 21.....	666
N. Pt. 23.....	158
N. Pt. 25.....	538
N. Pt. 27.....	778

3. As to Block G-24, the acreage in the several surveys remaining out of the conflict is shown immediately hereunder, and any section in said block not hereinafter listed retains its full complement of field note acreage:

W. 1/2 and N. Pt. E. 1/2 of Section 1.....	1024
N. Pt. of W. 1/2 of Section 2.....	92
Sections Nos. 3 to 12.....	Gone

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4. As to Block G-14, the acreage in the several surveys remaining out of the conflict is shown immediately hereunder, and any section in said block not hereinafter listed retains its full complement of field note acreage:

Survey 1.....	Gone
N. pt. and W. pt. and S. pt. Section 2.....	301 acres
W. pt. and N. pt. of E. pt., S. Pt. of E. Pt. of Section 3.....	442 "
No. pt. and So. pt. of Sec. 18.....	283 "
N. pt. Sec. 19.....	238 "
N. pt. Sec. 20.....	316 "
Section 21.....	Gone
N. W. pt. Section 22.....	20 "
N. pt. and S. pt. Sec. 23.....	126 "
N. W. pt. Sec. 24.....	592 "

5. As to Block G-22, the acreage in the several surveys remaining out of the conflict is shown immediately hereunder, and any section in said block not hereinafter listed retains its full complement of field note acres:

N. W. pt. Section 8.....	566 acres
Section 10.....	Gone
Section 12.....	"
Section 14.....	"
Section 16.....	"
N. W. Pt. Section 20.....	17 "
W. Pt. Section 22.....	1220 acres
W. Pt. of N. Pt. Section 24.....	110 "
Section 26.....	Gone
Section 28.....	"
Section 18.....	"

6. As to Block G-13, the acreage in the several surveys remaining out of the conflict is shown immediately hereunder, and any section in said block not hereinafter listed retains its full complement of field note acreage:

West pt. Section 1.....	322 acres
Section 2.....	Gone
Section 3.....	Gone
W. Pt. Section 4.....	320 "
N. Pt. and W. Pt. Section 5.....	576 "
N. W. Pt. Section 6.....	285 "
N. Pt. and S. W. Pt. Section 7.....	181 "
N. Pt. and S. Pt. and W. Mid. Pt. Section 21.....	579 "
N. W. Pt. Section 27.....	616 "
N. W. Pt. and S. W. Pt. Section 28.....	197 "
Section 29.....	Gone
N. W. Pt. Section 30.....	185 "
N. W. Pt. Section 31.....	559 "
Section 32.....	640 "
N. Pt. and S. Pt. and W. Mid. Pt. 8.....	478 "

7. As to Block G-23, the acreage in the several surveys remaining out of the conflict is shown immediately hereunder, and any section in said block not hereinafter listed retains its

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full complement of field note acreage:

Surveys Nos. 1 to 23, inclusive with full complement of acreage;	
N. Pt. S. Pt., W. Mid. Pt. Section 24.....	587 acres
Section 25 in State Park	
Section 26 in State Park	
N. W. Pt. and S. W. Pt. Section 27.....	159 "
N. Pt., S. Pt., and W. Mid. Pt. Section 28.....	382 "
W. Pt. Section 29.....	68 "
W. Pt. Section 30.....	350 "
N. W. Pt. Section 31.....	460 "
Section 32 - full complement of acreage	
N. W. Pt. Section 33.....	121 "
N. W. Pt. Section 34.....	7 "
W. Pt. Section 35.....	458 "
W. Pt. Section 36.....	478 "
W. Pt. Section 37.....	505 "
N. W. Pt. Section 38.....	639 "
Section 39.....	Gone
Section 40.....	Gone
N. W. Pt. Section 41.....	513 "
Section 42.....	Gone
Section 43.....	Gone
Section 44.....	Gone

8. As to Block B-1, the acreage in the several surveys remaining out of the conflict is shown immediately hereunder, and any section in said block not hereinafter listed retains its full complement of field note acreage:

Section 2.....	Gone
S. E. Pt. of W. Pt. and N. E. Pt. of E. Pt. of Section 4.....	365 acres
E. Pt. of Section 5.....	515 "

XVI.

With respect to the injunctive relief herein sought by the defendants, F. M. Roark, J.C. Roark, I. C. Roark, Sr., and by the defendant, Asa A. Jones, in his trial amendment, the court finds that all the even numbered sections in Block M-2, being Sections Nos. 2 to 28, inclusive, and Section No. 2 in Block B-1, are unsold lands belonging to the Public Free School Fund of the State of Texas, and all or certain parts of said surveys have been, by other provisions of this judgment, decreed to be in conflict with other surveys, all of which specifically and particularly is set forth in preceding sections hereof. In view of such adjudication of conflict, the court is of the opinion that said defendants are entitled to the equitable relief prayed for in so far, and only in so far, as by the provisions of this judgment all or parts or portions of said surveys have hereinabove been adjudged in conflict with other surveys of land.

IT IS, THEREFORE, FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff-intervener, the State of Texas, its officers, agents and employees, - be and each of them are hereby perpetually enjoined from selling or offering to sell any and all parts or portions of said even numbered surveys Nos. 2 to 28, inclusive, in said Block M-2, and Survey No. 2 in Block B-1, which by said other sections of this judgment have been adjudged and decreed in conflict with other surveys of land. This injunction does not apply and is not intended to

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apply to the State of Texas, its officers, agents or employees, selling or offering for sale any or all of said surveys or parts or portions of said even numbered surveys Nos. 2 to 28, inclusive, in Block M-2, and said Survey No. 2 in Block B-1, which by said other sections of this judgment have been found or established as not being in conflict with other surveys of land.

XVII.

IT IS FURTHER ORDERED that the Honorable Alan R. Fraser be and he hereby is allowed a fee of \$250.00 for representing the defendants cited in this cause by publication, the same to be taxed as costs of this case.

XVIII.

IT IS FURTHER ORDERED that all relief prayed for by any party hereto which is not hereinabove specifically granted, be and it hereby is in all things denied, and any and all defendants in this cause who have not hereinabove been specifically disposed of be and they are hereby dismissed with their costs.

XIX.

IT IS FURTHER ORDERED that \$1,000.00 of the costs of court incurred herein be and it is hereby taxed against the State of Texas, but said costs have been paid to the Clerk of this Court by the State. All other costs shall be and are hereby taxed as follows: one-third jointly against the defendants, F. M. Roark, J. C. Roark, and I. C. Roark, Sr., one-third against the defendant, Asa A. Jones, and one-third against the defendant, J. M. Lea, for the collection of which let execution issue; to which judgment/<sup>defendant</sup>J. M. Lea excepted & gave notice of appeal.

H. O. Metcalfe,  
Judge Presiding.

O.K. C. W. Trueheart  
Atty. for Asa Jones  
& Guy & David Combs

W. P. Wallace, Jr.,

Brian Montague

J. C. Epperson  
Attys. for I. C. Roark, Sr.,

F. M. Roark & J. C. Roark

Approved as to form:

The Attorney General of Texas

By Ben H. Rice, III,  
Assistant.

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# Exhibit "D"

## THE STATE OF TEXAS BREWSTER COUNTY

Section No. 34  
Block No. 235  
Grantee, Tex. & St. L. Ry. Co.

FOR PLAT  
OF THIS SURVEY  
SEE GENERAL PLAT FILED  
WITH THESE FIELD  
NOTES  
Variation.....E.

Corrected Field Notes of a re-survey of 565.3 acres of land situated in  
Brewster County, about 60 miles SW from Alpine, made

under the provisions of Chapter No. CXLVII of the Acts of the 30th Legislature, approved April 19, 1907.

Said survey is Section No. 34, Block No. 235, located by virtue of Certificate  
No. 1112, grantee Tex. & St. L. Ry. Co.

Beginning—

at the South East corner of Section No. 27, to a pile of Rock  
1/2 feet high on the South East side of a mountain, from which another  
pile of Rock on top of the Mountain bears N 190 varas, a bunch of Per-  
mian bushes, bears N 80 E, 34 varas, Stairway Peak, bears S 49 3/4 E,  
tall Mountain Peak, bears S 6 E, thence South 1910 varas to the  
South line of Block No. 235, Thence West 1671 varas, to the South East  
corner of Section No. 33, Thence North 1910 varas, to the South West cor-  
ner of Section No. 27, Thence East 1671 varas to the place of beginning

Re-surveyed on the 7th day of April, 1908.

Sipriano Gonzales,  
Victor Rios, } Chain Carriers.

I, R. S. Hunnicutt, State Surveyor, do hereby certify that the foregoing  
described re-survey is correct, and that it was made by me in the field in accordance with law, and that the  
limits, boundaries and corners, with the marks, natural and artificial, are truly and correctly described in the  
foregoing plat and field notes.

Approved R. S. Hunnicutt, 1908.

R. S. Hunnicutt  
State Surveyor.  
John Ferrell  
Commissioner Gen'l Land Office.

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# TOM GREEN COUNTY

## Exhibit "E"

General Land Commissioner  
Austin, Texas.

Re: Williams vs. Jones No. 2006  
Brewster County, Texas

Dear Sir:

Referring to my letter of July 24, 1945 to you concerning the placing of the S.W. and the N.W. corner of Block G 1, D. & W. Ry. Co., on the ground at the request of Asa Jones, Roy Stilwell and Dr. H.G. Towle.

I find after a careful check on the ground that the S.W. corner of Block G 1 as placed by me on the ground was erroneously placed and that it should be 151.1 yrs. South and 170.1 yrs. East of the first marked corner for the S.W. corner of Block G 1.

At the latter point I have placed a 1 1/2" C.I. Pipe marked S.E. 237, S.W. G-1-S, 4-30-52, in concrete in a mound of stone, from which a stone mound 3' high marked S.E. 237, S.W. G 1 (Thee) brs. South about 25 yrs. and West about 140 yrs., Hole in center Step of Stairway Mt. brs. N. 64°47'20" W., High Point of Rock Knob on South end of Range of Mts. to West (part of Stairway Mt.) brs. S. 6°07'20" E., about one mile, High Point of Peak brs. S. 11°25'20" E. one mile, and High Point of Distant Peak brs. N. 85°02'40" E.

The above described position for corrected S.W. corner of Block G 1 is located at a Right Angle to the North line of Block G 1 as run by me and marked on the ground for Asa Jones et al and upon which Patents were issued.

I would like to file the above correction for the S.W. corner of Block G 1 along with the Judgment in the above styled case which I believe you have in your office.

I am also enclosing letter from Stovall & Gibbs.

Sincerely yours

*W.H. Davidson*

Licensed State Land Surveyor  
San Angelo, Texas.

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REFERRED TO MAP

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LAW OFFICE  
STOVALL & GIBBS  
ATTORNEYS AT LAW  
S. A. 180 Bldg.  
SAN ANGELO, TEXAS

J. W. STOVALL  
CHARLES GIBBS

April 10, 1952.

### Exhibit "F"

Mr. J. A. Simpson  
County Surveyor  
Tom Green County, Texas  
San Angelo, Texas

Dear Mr. Simpson:

My understanding of the problem you have presented to me is that in July, 1945 you attempted to make a location on the ground of the Southwest corner of a certain block in Brewster County, in accordance with final judgment of the Supreme Court in a case tried in Brewster County, by setting such corner a distance South and East of the "Honeycutt" corner, but that you have since determined that errors were made in measuring the distance, and you now desire to correct such mistake by establishing the block corner in question at the correct location on the ground. You have asked us for advice concerning the procedure you should follow in making such correction.

We have not been able to find a decision of any court covering this situation, but from study of decisions concerning location of corners and boundaries and the many rules stated by the courts of this State we are convinced that you have an absolute right to do the job over and establish the corner at the proper location on the ground and make report of your work, in the nature of a supplement to the report heretofore made, to the Commissioner of the General Land Office, making it clear that your action has been to correct error made and the report filed in 1945. It might be well to state in such supplemental report that the corner set in 1945 has not been disturbed.

We believe in any event that you would have the right to correct your work in the manner above stated, but this is especially true since you have stated to us that you are certain that no lines have been run from the block corner as located by you in 1945.

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