

The judgment of the district court is reversed, and the court here proceeding to render such judgment as should have been entered in the court below, it is ordered, adjudged and decreed, that the appellee, as executor of Stephen F. Austin, deceased, do have and recover, for the balance of the premium lands to which the deceased was entitled on the contracts embraced in this suit, the following described lands, according to the surveys of the same appended as exhibits to the petition, viz.: one league of land south of Jesse Grimes, and east of Fulton; two leagues of land on the east side of the river Brazos and on the Navosoto, known on the plot as leagues Nos. 9 and 10, south and adjoining lands of Moses Bane and G. H. Coleman; three leagues of land on the east side of Davidson's creek, known on the plot as Nos. 8, 9 and 10, and which, when connected with No. 11 claimed in the petition, but not granted in this decree, are described in the petition as bounded on the east by John Bird, James Perry and James Foster; on the south by Samuel Swearingen, the field-notes of the said leagues being numbered in the list of exhibits as 1, 2, 3, 4, 5, 6. One league of land situated on the east bank of the Colorado river, above and adjoining the town tract of the town of Bastrop; a tract of land, supposed to contain four or five labors, situated on the east side of the Brazos river, below San Felipe de Austin, bounded on the north by Johnson Hunter's labor, on the east by Spring or Irons' creek, on the south by the Brazos river, and on the west by labors Nos. 9 and 21; and also four other labors situated above the town of San Felipe, on the west side of the Brazos, known on the plot of [56] labors as Nos. 4, 8, 11 and 16. For a more full and perfect description of the said lands, reference is made to the field-notes filed as exhibits to the said petition, and which will be copied at length in our judgment on the minutes. And all the title of the state of Texas to the said lands is divested out of said state and vested in the appellee, as executor of the said Stephen F. Austin, deceased, to be held by said appellee, as executor as aforesaid, on the conditions prescribed by the colonization law of 24th March, 1825; and the injunction heretofore granted, so far as it restrained all persons from en-

tering or surveying any of the lands described in this decree, and the commissioner of the general land office from issuing patents on the same, is hereby made perpetual; and so far as the said injunction embraced and affected other lands, the same is hereby dissolved.

And it is further ordered that all the locations and surveys confirmed by the judgment of the court below, but not allowed in this decree, be and the same are hereby declared void, and the lands embraced therein, vacant and belonging to the public domain.

[57] JOSEPH F. SMITH VS. JAMES POWER — Appeal from Travis County.

Upon an application for a *writ* it is the duty of the plaintiff to summon, by proper process, all the parties who are interested, if known, to come in and defend their interests. [5 Tex. 484; 10 Tex. 375; 29 Tex. 509.]

If persons interested in the subject matter in controversy have not been summoned by the plaintiff, still, if they have a knowledge of the proceeding, it is their duty to come in and defend their interests; failing to do this they have no right to bring a separate action to litigate the same matter in another suit. Such separate action is but a multiplication of suits and of the vexation of litigation. [6 Tex. 185.]

When a separate action is improper no injunction to restrain the proceedings in the original suit for causes alleged in that separate action should be granted, and when granted should be dissolved on motion.

When the time limited by an injunction for restraining proceedings has expired previous to the hearing of the cause in the appellate court, that court may order the injunction to be dissolved although the time had not expired when the motion to dissolve was heard and decided in the lower court, and the expiration of the time was not made a ground in the lower court for dissolution.

"Where the answer denies all the circumstances upon which the equity is founded, the injunction will be dissolved as a matter of course; otherwise it will be continued to the hearing." In this case, "the allegations of the answers do not severally, or taken altogether, present any clear ground for the dissolution of the injunction before the hearing."

The plaintiff in error, Joseph F. Smith, for himself, and as agent for others, instituted suits in the district court of Travis county, praying for a peremptory *writ* against the commissioner of the general land office, to compel him to issue

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Leagues 8, 9 and 10

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