

Sketch File No. 6

Carson Co.

- 1 Copy Judgment Court.
- 2 " Agreement filed in Court.
- 3 " " for Boundary Survey-
- 4 " Plat-

Filed Mar. 4<sup>th</sup> 1930

Sketch File No. 6

Carson County  
Concerns Certain Surveys in  
Blk. Y-2 - N.W. Cor. County.

Filed March 4 1930

J. H. Walker, Comm.

H. F. McDonald  
File Clerk

Descriptive: \_\_\_\_\_  
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Contents:

sk. File No. 6.

" " No. 6(a).

" " No. 6(b).

" " No. 6(c).

Carson 17358

d

J.M. POLING

-vs-

LEE BIVINS.

IN THE 84th JUDICIAL DISTRICT COURT  
OF CARSON COUNTY, TEXAS.

*February 14 - 1928*

BE IT REMEMBERED that on the 2nd day of February, 1928, came on to be heard the above numbered and entitled cause and the plaintiff, J.M. Poling, and the defendant, Lee Bivins, came in person and by their attorneys and announced ready for trial; and, thereupon, came a jury of twelve good and lawful men, to-wit: W.J. Conaway, and eleven others, who after being duly sworn and empaneled to try the above numbered and entitled cause, and who after hearing the pleadings read, evidence ad-duced, charge of the Court and argument of Counsel, retired in charge of a proper officer of the Court to consider of their verdict in answer to the special issues submitted to them by the Court in his general charge, which charge and special issues are as follows:

"J.M. POLING and  
E.S. POLING

vs. Nos. 12 & 14

LEE BIVINS.

IN THE DISTRICT COURT OF CARSON COUNTY,  
TEXAS, 84th JUDICIAL DISTRICT.

January Term, A.D., 1928.

CHARGE OF THE COURT.

Gentlemen of the Jury:

I.

This case will be submitted to you upon special issues and ques-tions which you will answer from the preponderance of the evidence, that is, from the greater degree and weight of the credible testimony before you, without reference to the effect that your answers may have upon the judgment that might be rendered in this case. It is not pro-per for the jury to discuss which side should win or what judgment should be rendered, but you are only to state the truth of the facts.

II.

You are the exclusive judges of the facts proven, the credi-bility of the witnesses and the weight to be given to their testimony, but you are required to receive the law from the Court as given you in this charge and be governed thereby.

### III.

I hand you herewith on a separate sheet of paper answers in blank corresponding in number to the questions propounded to you, in which you will write your answers. After you have answered the questions, have the same signed by your Foreman whom you will select from your number when you retire, and return into open court.

### IV.

Should any special requested issues be submitted to you, you will write your answers thereto on the same sheet of paper that the question is asked and have the signed by your Foreman.

### V.

By the term "title" is meant a regular chain of transfers from or under the State of Texas; and by "color of title" is meant a consecutive chain of such transfers down to the person in possession, although some of them may not be placed of record or may be awards of school land from the State.

### VI.

"Peaceable possession" is such as is continuous and not interrupted by adverse suit to recover the estate.

### VII.

"Adverse possession" is an actual and visible appropriation of the land commenced and continued under a claim of right inconsistent with and hostile to the claim of another; such possession may be by different persons provided there is a privity of estate between them, that is, that their titles and possessions are joined to each other without any substantial break or gap.

### QUESTION NUMBER I

There is testimony as to two piles of rock at the north end of the B.B. Wright surveys, these being 191 varas apart, east and west.

Do you find from the evidence that the west pile of rock above referred to is the original corner put in by John Summerfield in the year 1877 for the Southwest corner of survey 12 and the Northwest corner of survey 22, Block Y-2 as called for in the field notes of those surveys?

In this connection you are charged that the burden of proof is upon the plaintiffs J.M. Poling and E.S. Poling to establish the affirmative of the issue submitted above from a preponderance of the evidence. Answer "yes" or "no".

QUESTION NUMBER II

Do you find from the evidence that the pipe line corners made by Omohondro as defining the western boundary line of the I. & G.N. R.R. Co., surveys Numbers 100, 99, 78, 77, 56, 55, 34 and 33 are at the correct positions of the corners for said surveys as located from the original field notes as made by surveyor Hedrick in 1875? Answer this question yes or no.

In this connection you are charged that the burden of proof is upon the plaintiffs J.M. Poling and E.S. Poling to establish the affirmative of the issue above submitted by a preponderance of the evidence. Answer "yes" or "no".

QUESTION NUMBER III

Has the plaintiff J.M. Poling had peaceable, continuous and adverse possession under title or color of title from and under the State of Texas of the strip of land in controversy that is claimed by him for more than three years before the defendant entered into possession of said land in controversy?

You will answer this question "yes" or "no" as you may determine the fact to be.

QUESTION NUMBER IV

Has the plaintiff, J.M. Poling, had and held the strip of land in controversy as claimed by him in his peaceable and adverse possession, cultivating, using or enjoying the same, claiming under deeds duly registered or awards of school land from the State, and paying all taxes due thereon as the same accrued, for a period of five consecutive years before the defendant entered into possession of said land in controversy.

You will answer this question "yes" or "no" as you may determine the fact to be.

QUESTION NUMBER V

Has the Plaintiff, J.M. Poling, had and held peaceable and adverse possession as said terms have been heretofore defined of the strip of land in controversy, claimed by him, cultivating, using or enjoying the same for a period of ten consecutive years prior to the time the defendant entered into possession of said land, having and holding the same under fence or fences enclosing said tract during said period of time in an enclosure of less than 5,000 acres?

Let your answer be "yes" or "no" according to your findings from the preponderance of the evidence.

QUESTION NUMBER VI

Has the Plaintiff, E.S. Poling, had peaceable, continuous and adverse possession under title or color of title from and under the State of Texas of the strip of land in controversy that is claimed by him for more than three years before the defendant entered into possession of said land in controversy?

You will answer this question "yes" or "no" as you may determine the fact to be.

QUESTION NUMBER VII

Has the Plaintiff, E.S. Poling, had and held the strip of land in controversy as claimed by him in his peaceable and adverse possession, cultivating, using or enjoying the same, claiming under deeds duly registered or awards of school land from the State, and paying all taxes due thereon as the same accrued, for a period of five consecutive years before the defendant entered into possession of said land in controversy?

You will answer this question "Yes" or "no" as you may determine the fact to be.

QUESTION NUMBER VIII

Has the Plaintiff, E.S. Poling, had and held peaceable and adverse possession as said terms have been heretofore defined of the strip of land in controversy, claimed by him, cultivating, using or enjoying the same for a period of ten consecutive years prior to the time the defendant entered into possession of said land, having and holding the

same under fence or fences enclosing said tract during said period of time in an enclosure of less than 5,000 acres?

Let your answer be "yes" or "no" according to your findings from the preponderance of the evidence.

VIII.

If you find from the evidence that the plaintiff J.M. Poling at the time of the survey and award of the B.B. Wright surveys or at any time thereafter recognized or acknowledged the existence of a strip of land not owned by him and within his enclosure as belonging to B.B. Wright, or his assigns, and located at the west of the surveys in Block Y-2 owned by him, you are charged that possession of such lands after such recognition or acknowledgment would not be the adverse possession as the term is used in this charge to you.

IX.

If you find from the evidence that the plaintiff E.S. Poling at the time of the survey and award of the B.B. Wright surveys or at any time thereafter recognized or acknowledged the existence of a strip of land not owned by him and within his enclosure, and located at the west of the surveys in Block Y-2, owned by him, you are charged that possession of such lands after such recognition or acknowledgment would not be the adverse possession as the terms is used in this charge to you.

QUESTION NUMBER IX.

What is the rental value, if any, of the portion of the lands in controversy that was occupied or used, if any was so occupied and used, by the defendant Lee Bivins? In answering this question, specify separately the amount that would be due to J.M. Poling, if you find any amount, and the amount that would be due to E.S. Poling, if you find any amount.

X.

The burden of proof is upon the plaintiffs, J.M. Poling and E.S. Poling, to establish by a preponderance of the evidence the affirmative of each of the issues herein submitted to you on the questions of limitation of three, five and ten years.

(signed) Newton P. Willis, District Judge  
84th Judicial District.  
Counter 17363

That afterwards, to-wit, on the 7th day of February, 1928,  
the jury, through their foreman, returned a verdict in answer to the  
special issues submitted to them by the Court, as follows:

"

ANSWER TO QUESTION NUMBER I

Yes

ANSWER TO QUESTION NUMBER II

Yes

ANSWER TO QUESTION NUMBER III

Yes

ANSWER TO QUESTION NUMBER IV

Yes

ANSWER TO QUESTION NUMBER V

Yes

ANSWER TO QUESTION NUMBER VI

Yes

ANSWER TO QUESTION NUMBER VII

Yes

ANSWER TO QUESTION NUMBER VIII

Yes

ANSWER TO QUESTION NUMBER IX

\$314 Dollars 25 Cents due to J.M. Poling;

and \$235 Dollars 75 Cents due to E.S.

Poling.

(signed) W.J. Conaway  
Foreman of the Jury. "

That thereupon the Court received the verdict of the jury, which  
was in response to the issues submitted to them by the Court and ordered  
the same to be filed and announced that he would enter a judgment in  
keeping with the verdict of the jury for the plaintiff and against the  
defendant.

The Court, in deference to and in keeping with the verdict of the jury, finds as follows:

(a) That there is not now, nor has there ever been any vacant land lying between surveys Numbers 22, 24, 26, 27, 28, 29, 30, 31 and 32 in Block Y-2, and surveys Numbers 42, 43, 44, 45 and 46 in Block M-20, and Surveys Numbers 5, 4, and 1 in Block 22.

(b) That the Southwest corner of Survey Number 12 in Block Y-2 and the Northwest corner of Survey Number 22 in Block Y-2, as established by Summerfield in January, 1877, is now and has been located upon the ground since said survey was made by Summerfield at a point 2083 varas west of the southeast corner of survey Number 12 in Block Y-2, which is also the Northeast corner of Survey Number 22 in Block Y-2, and the Southwest corner of Survey Number 21 in Block Y-2, and the Northwest corner of Survey Number 23 in Block Y-2.

(c) That in running a line south from the true southwest corner of survey Number 12, Block Y-2, which is also the Northwest corner of Survey Number 22 in Block Y-2 south to the Northwest corner of Survey Number 1 of the Beatty, Seale & Forwood surveys, as established by Surveyor Hedrick in 1875, that the true west line of surveys Numbers 22, 24, 26, 27, 28, 29, 30, 31 and 32 in Block Y-2 would be established, which line would coincide with the east lines of Surveys Numbers 42, 43, 44, 45 and 46, Block M-20, and the east lines of Surveys Numbers 5, 4, and 1 in Block 22, and that the northeast corner of Survey Number 1 of the Beatty, Seale & Forwood Surveys, as aforesaid, could be established from the known and original southwest corner of Block Number 5 of the I. & G.N. Ry. Company surveys as established by surveyor, Hedrick, in 1875, by beginning at said corner and running west for a distance of 11498 varas, said distance being in excess of 98 varas in all of said sections which, apportioned between them, locates the point from which surveyor Hedrick ran North 1 mile and established the Southeast corner of Survey Number 1 of the Beatty, Seale & Forwood Surveys. Thence north 1 mile for the beginning corner of

Survey Number 1 of the Beatty, Seale & Forwood surveys, and thereby the Southeast corner of survey Number 1 of the Beatty, Seale & Forwood Surveys could be established.

(d) That the Southwest corner of Survey Number 12, Block Y-2, which is the Northwest corner of Survey Number 22, Block Y-2, as found by the jury as established by surveyor Summerfield in January, 1877, was called for by surveyor McLean in surveying the surveys in Block M-20 in the field notes of Survey Number 42 said block, and that the southeast corner of survey Number 42, which is the northeast corner of Survey Number 43 in Block M-20, and the Southwest corner of Survey Number 22 and the Northwest corner of Survey Number 24 in Block Y-2, is a common corner.

(e) That the Southeast corner of Survey Number 43, the Northeast corner of Survey Number 44 in Block M-20, and the Southwest corner of Survey Number 24 and the Northwest Corner of Survey Number 26 in Block Y-2 is and constitutes a common corner between said surveys.

(f) That the Southeast corner of Survey Number 44 and the Northeast corner of Survey Number 45 in Block M-20, and the Southwest corner of Survey Number 26, and the Northwest corner of Survey Number 27 in Block Y-2 constitutes a common corner.

(g) That the Northeast corner of Survey Number 46 in Block M-20 and the Southwest corner of survey Number 28, and the Northwest corner of Survey Number 29 in Block Y-2, constitutes a common corner.

(h) That the southeast corner of survey Number 46 in Block M-20, and the Northeast corner of Survey Number 5 in Block 22, and the Southwest corner of Survey Number 29 and the Northwest corner of Survey Number 30 in Block Y-2, constitutes a common corner.

(i) That the Southeast corner of survey Number 5 and the Northeast corner of survey Number 4 in Block M-22, and the Southwest corner of Survey Number 30, and the Northwest corner of Survey Number 31 in Block Y-2, constitutes a common corner.

(j) That the Southeast corner of Survey Number 4 in Block Number 22 and the Northeast corner of Survey Number 1 same block, and the Southwest corner of Survey Number 31 and the Northwest corner of

survey Number 32 in Block Y-2 constitutes the same corner.

(k) That the Southeast corner of Survey Number 1, Block 22, and the Northeast corner of Survey Number 2, Beatty, Selae & Forwood Surveys, the Southwest corner of Survey Number 32, Block Y-2, and the Northwest Corner of Survey Number 1, Beatty, Seale & Forwood Surveys constitutes one and the same corner.

(l) That there does not now, nor has there ever existed any lands located between surveys Numbers 22, 24, 26, 27, 28, 29, 30, 31 and 32, Block Y-2, on the West and surveys Numbers 42, 43, 44, 45 and 46 in Block M-20, and Surveys Numbers 5,4, and 1 in Block Number 22.

)m) That the re-survey of the west boundary line of block Number 5, I. & G.N. Ry. Company as made by surveyor Omohondro in 1888, and the pipes therein established at the Northwest corner of survey Number 122, same block, which is the northeast corner of survey Number 1 in Block Number 3; at the Southwest corner of Survey Number 122, Block Number 5, which is the Northwest corner of survey Number 121 same block; the Southeast corner of Survey Number 1 and the Northeast corner of survey Number 6, Block Number 3; at the Southwest corner of survey Number 121 and the Northwest corner of survey Number 100, Block Number 5, which is the southeast corner of survey Number 6 and the Northeast corner of survey Number 7, Block Number 3; at the Southwest corner of Survey Number 100 and the Northwest corner of survey Number 99 in Block Number 5; and the Southeast corner of survey Number 7 and the Northeast corner of survey Number 11, Block Number 5; and the Southwest corner of survey Number 99 and the Northwest corner of Survey Number 78, Block Number 5; and the Southeast corner of survey Number 11 and the Northeast corner of survey Number 12, Block Number 3; the Southwest corner of Survey Number 78 and the Northwest corner of Survey Number 77, Block Number 5; the Southeast corner of Survey Number 12, and the Northeast corner of Survey Number 17, Block Number 3; the Southwest corner of survey Number 77 and the Northwest corner of Survey Number 56, Block Number 5; the Southeast corner of survey Number 17 and the Northeast corner of survey Number 18 in Block Number 3; the Southwest Corner of Survey Number 56 and the Northwest corner of Survey Number 55 in Block Number 5; the Southeast corner of survey

Number 18 in Block Number 3 and the Northeast corner of survey Number 5 in Block S; the Southwest corner of Survey Number 55 and the Northwest corner of Survey Number 34, Block Number 5; the Southeast corner of Survey Number 5 and the Northeast corner of Survey Number 4, Block S; the Southwest corner of Survey Number 34 and the Northwest corner of Survey Number 33, in Block Number 5; the Southeast corner of Survey Number 4 and the Northeast corner of Survey Number 3, Block S; the Southwest corner of survey Number 33 and the Northwest corner of Survey Number 12, Block 5; the Southeast corner of Survey Number 3, and the Northeast corner of Survey Number 2, Block S; the Southwest corner of Survey Number 12 and the Northwest corner of survey Number 11, Block Number 5; the Southeast corner of Survey Number 2 and the Northeast corner of Survey Number 1, Block S; the Southwest corner of survey Number 11, Block Number 5, and the Southeast corner of survey Number 1, Block S, are the true corners of said surveys as located by surveyor Hedrick in 1875, and as re-surveyed by surveyor Omohondro in 1888, at which corners iron pipes were placed and are now established upon the ground; that said line as re-established by Omohondro from the Northwest corner of Block Number 5, I. & G.N. Ry. Company to the Southwest corner of Survey Number 5 same block, is the true and correct line as made by surveyor Hedrick in 1875.

(n) That beginning at a point on the west line of Block Number 5, I. & G.N. Ry. Company lands as made by Hedrick in 1875, and re-established by Omohondro in 1888, and running west for a distance of six miles apportioning the excess between said surveys in said distance, you would reach the west line of the surveys in Block Y-2, and the east line of the surveys in Block M-20 and Block 22.

(o) That upon a correct survey beginning at the true southwest corner of survey Number 12, which is the northwest corner of survey Number 22, Block Y-2, as established by the jury, surveying out sections numbers 22, 24, 26, 27, 28, 29, 30, 31 and 32, Block Y-2, no vacant land would exist between said surveys and surveys Numbers 42, 43, 44, 45 and 46 in Block M-20 and surveys Numbers 5, 4, and 1 in Block Number 22.

(p) That the plaintiff, J.M. Poling, is entitled to recover of and from the defendant the lands and premises mentioned and described in plaintiff's amended petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, J.M. Poling, do have and recover of and from the defendant, Lee Bivins, the title and possession of the following described lands, to-wit:

FIRST TRACT:

Section Number Twenty-eight (28) in Block Y-2, located by virtue of Certificate Number 1063, and described by metes and bounds as follows:  
BEGINNING at a mound the Southwest corner of Survey Number 27, Block Y-2, which, when properly located, would be at a point in the east line of survey Number 45, Block M-20;  
THENCE South 950 varas to a pile of rock, which point, when properly located, would be the Southeast corner of Survey Number 45, and the Northeast corner of Survey Number 46 in Block M-20;  
THENCE East 1900 or more varas to the Northwest corner of Survey Number 7, which is the Southwest corner of Survey Number 6 in Block Number Five (5);  
THENCE North 950 varas a mound, the southeast corner of survey Number 27, Block Y-2;  
THENCE West 1900 varas or more to the place of beginning.

SECOND TRACT:

Survey Number Twenty-nine (29) in Block Y-2, located by virtue of Certificate Number 1064, and described by metes and bounds as follows:  
BEGINNING at the Southwest corner of Survey Number 28 above described, which point is also the Southeast corner of Survey Number 45 and the Northeast corner of Survey Number 46 in Block M-20;  
THENCE South with the east line of Survey Number 46 in Block M-20 to a point the Northeast corner of Survey Number 5 in Block Number 22, which is also the Southeast corner of Survey Number 46, Block M-20;  
THENCE East 1900 or more varas to the Northwest corner of Survey Number 8, which is the Southwest corner of Survey Number 7 in Block Number 5;  
THENCE North 1900 varas to the Northwest corner of Survey Number 7, which is the Southwest corner of Survey Number 6 in Block Number 5, and the Southeast corner of Survey Number 28 above described;  
THENCE West 1900 or more varas to the place of beginning.

THIRD TRACT:

Survey Number Thirty (30) in Block Y-2, located by virtue of Certificate Number 1064, and described by metes and bounds as follows:  
BEGINNING at the Southwest corner of Survey Number 29, same block, which is also the Southeast corner of Survey Number 46 in Block M-20, and the Northeast corner of Survey Number 5 in Block Number 22;  
THENCE South 1900 varas to a point, which is the Southeast corner of Survey Number 5 and the Northeast corner of Survey Number 4, Block Number 22;  
THENCE East 1900 or more varas to the Northwest corner of Survey Number 25, Block S, which is also the Southwest corner of Survey Number 8, Block Number 5;

THENCE North 1900 varas to the Northwest corner of Survey Number 8 and the Southwest corner of Survey Number 7 in Block Number 5, and the Southeast corner of Survey Number 29 in Block Y-2;  
THENCE West 1900 or more varas to the place of beginning.

FOURTH TRACT:

Survey Number Thirty-one (31) in Block Y-2, located by virtue of Certificate Number 76 and described by metes and bounds as follows:  
BEGINNING at the Southwest corner of Survey Number 30 same block, which point is the Southeast corner of Survey Number 5 and the Northeast corner of Survey Number 4, Block Number 22;  
THENCE South 1900 varas to the Southeast corner of Survey Number 4, Block Number 22, which is the Northeast corner of Survey Number 1 of Block Number 22;  
THENCE East 1900 or more varas to the Northwest corner of Survey Number 24, which is the Southwest corner of Survey Number 25 in Block S;  
THENCE North 1900 varas to the Northwest corner of Survey Number 25, which point is the Southwest corner of Survey Number 8, Block Number 5, and the Southeast corner of Survey Number 30, Block Y-2;  
THENCE West 1900 or more varas to the place of beginning.

FIFTH TRACT:

Survey Number Thirty-two (32) in Block Y-2, located by virtue of Certificate Number 76, and described by metes and bounds as follows:  
BEGINNING at the Southwest corner of Survey Number 31, same block, which point is also the Southeast corner of Survey Number 4, Block Number 22, and the Northeast corner of Survey Number 1, Block Number 22;  
THENCE South 1900 varas to the Southeast corner of Survey Number 1, Block Number 22, which point is also the Northwest corner of Survey Number 1, Beatty, Seale & Forwood surveys, and the Northeast corner of Survey Number 2 of the Beatty, Selae & Forwood Surveys;  
THENCE East 1900 or more varas to the Northwest corner of Survey Number 22, which is also the Southwest corner of Survey Number 24 in Block S;  
THENCE North 1900 varas to the Northwest corner of Survey Number 24 and the Southwest corner of Survey Number 25, Block S, and the Southeast corner of Survey Number 31 in Block Y-2;  
THENCE West 1900 or more varas to the place of beginning.

It is further ordered, adjudged and decreed by the Court that the plaintiff, J.M. Poling, do have and recover of and from the defendant, Lee Bivins, the rental value of said lands and premises, to-wit: the sum of \$314.25, with interest thereon from this date at the rate of six per cent per annum.

It is further ordered, adjudged and decreed by the Court that the plaintiff, J.M. Poling, do have and recover of and from the

defendant, Lee Bivins, all costs in this behalf expended.

It is further ordered, adjudged and decreed by the Court that all necessary writs, including a writ of possession, restitution and execution, issue in favor of the plaintiff, J.M. Poling, and against the defendant, Lee Bivins, for the enforcement of each and all of the terms of this judgment.

Newton P. Willis  
DISTRICT JUDGE.

The State of Texas, |

County of Carson, | I, C.L. Upham Clerk of the District Court in  
and for Carson County, Texas, do hereby certify that the above and  
foregoing is a true and correct copy of the original Judgment in cause  
No. 12 & 14 styled J.M. Poling and E S Poling Vs. Lee Bivins as the  
same appears of record in the District Court Minutes Book 1, pages  
135 to 142 of the Records of Carson County, Texas.

Witness my hand and the seal of the District Court at office in  
Panhandle Texas, this the 28th day of October, A D 1929.

L. C. Upham  
District Clerk.

1-135-42

No call for SW Cas  
Summation

*Constructive*

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defendant, Lee Bivins, all costs in this behalf expended.  
It is further ordered, assigned and decreed by the Court that  
all necessary writs, including a writ of possession, restitution and  
execution, issue in favor of the plaintiff, J.M. Poling, and against  
the defendant, Lee Bivins, for the enforcement of each and all of the  
terms of this judgment.

Newton P. Willis  
DISTRICT JUDGE

8b

The State of Texas, County of Carson, I, C.L. Upham Clerk of the District Court in  
and for Carson County, Texas, do hereby certify that the above and  
foregoing is a true and correct copy of the original judgment in cause  
No. 12 & 14 styled J.M. Poling and E S Poling Vs. Lee Bivins as the  
same appears of record in the District Court Minutes Book, pages  
138 to 142 of the Records of Carson County, Texas.  
Witness my hand and the seal of the District Court as of this  
Panhandle Texas, this 28th day of October, A.D. 1928.  
District Clerk

*[Signature]*  
District Clerk

10/28/28

File No. 6.

Carson County

Count Dues

J.M. Polling vs. ~~Lee~~ Bivins

Filed Mar 4- 1930

J.H. Walker, Com'r.

W.F. McDonald  
Clerk

Surveys in Blk. Y-2.

N.W. Corner County.

Counter 17373