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THE MATADOR LAND & CATTLE COMPANY LIMITED)

-vs-

L. S. KINDER ET AL.)

On this the 6th day of October, 1903, personally appeared before the undersigned authority, Jasper Hays, who being duly sworn stated the following:

I am in a general way acquainted with the nature of the above suit and controversy thereunder with reference to the location of the lands involved.

In May 1876 acting for Geo. Spiller, District Surveyor of the Young Land District, I as a practical surveyor surveyed and located a body of land in Dickens County, Texas, for E. O. Tarrant, White Monica and Middleton Bros. ^{and others} After the work was done I compiled a map from my work on the ground. Quite a number of surveys contained in this body of land had field notes calling for Abbie's Peak.

I am informed that there is a contention made by the defendants in the above suit as to which peak I named and called Abbie's peak. I will state that the peak referred to and called Abbie's peak is located in the west edge of a wide valley just west of a high range of hills and there is a small dry creek close to the east base of the peak.

I am informed that Sam L. Chalk and other defendants in the above case contend that the peak now known as Mackenzie's peak was the mountain which I designated Abbie's peak in my field notes. This is wholly and absolutely untrue. I remember distinctly the location of the peak now known as Mackenzie's peak, and its relation to the Abbie's peak called for in my field notes. It is about 4 miles west of Abbie's peak as called for in my field notes.

W. H. Middleton, one of the Middleton Bros. referred to above was with me when I made this survey. He and myself have in the last few days gone to Dickens County for the purpose of pointing out the peak which I named Abbie's peak, in my own field notes, and for the purpose of showing the location of the lines which I surveyed.

Mr. R. M. Kenney accompanied us. Mr. Middleton and myself had no difficulty whatever in pointing out the Abbie's peak called for in my field notes located as above described.

I remember with great distinctness the general topography of the country in that section, and there is no sort of question whatever as to the location of the peak called Abbie's peak in my field notes.

On this trip Mr. Middleton and I went to Abbie's peak and Mackenzie's peak, and I remember the two peaks very distinctly. The field notes which I returned of this survey nowhere called for the peak known as Mackenzie's peak, and which I understand Mr. Chalk claims to be the peak which I designated as Abbie's peak.

I have examined the blue print map prepared by Mr. Kenney as state surveyor and approved by Chas. Rogan, Commissioner of the General Land Office, October 20th, 1902, and I find that his contention and report as to the lines surveyed by me is practically correct. I have gone over the lines surveyed by him and indicated upon said map and I find the said lines are delineated upon said map with great correctness, and Mr. Kenney in his work has followed my footsteps with great precision, and there is no question at all that Mr. Kenney is correct about the location of Abbie's peak.

Both Mr. Middleton and myself just the other day readily located Abbie's peak called for in my field notes; also the corners found and reported by Mr. Kenney and which were located by me; the creek running along near the foot of the peak and running on in an easterly direction. It was along the north side of this creek that I ran the base line of my survey from the east. I at once recognized the high range of hills west and north of Abbie's peak, and the valley which we at that time called the

Sunflower Valley. This valley is north and east of Abbie's peak.

I find that Mr. Kenney has followed up my work on the ground and that he has relocated the corners surveyed by me correctly.

I state positively that the peak now known as Mackenzie's peak is not Abbie's peak as called for in my field notes, and I state with equal positiveness that the peak 4 miles east of Mackenzie's peak is the true Abbie's peak called for in my field notes. As stated before, when I got upon the ground I remembered very distinctly the appearance of the country, its topography and its condition and these different peaks and there can be absolutely no doubt whatever of the true location of Abbie's peak as called for in my field notes.

I made out ~~my~~ field notes to the Rusk Transportation Co. survey No. 1 in Dickens County, which read as follows:

"Beginning at a stake and mound, the same being 950 vrs. South and 1000 vrs. West from the South West corner of Survey 241, etc."

I understand that said field notes have been changed to read as follows:

"Beginning at a stake and mound, the same being 950 vrs. South and 4 miles West from the S.W. Corner of Survey 241, etc."

I never heard of such change in said field notes until within the last few weeks. I have no knowledge as to how such change came to be made, nor by what authority it was made.

Jasper Hays

Subscribed and sworn to before the undersigned authority by Jasper Hays, this the 6th day of October, 1903.

Clifford Beckham

Notary Public in and for Tarrant County, Texas.

State of Texas,)
County of Tarrant.)

Before the undersigned authority on this day personally appeared W. H. Middleton, who being by me first duly sworn on oath says, that in the Spring of 1876 Jasper Hays located some lands in Dickens County, Texas for E. O. Tarrant, Whit Monica and Middleton Bros. and others. That he was along with the party when the survey was made. That in the western part of this Block, the field notes of a good many of these surveys called for a large rocky mound which Mr. Hays named Abbie's peak. That he remembers very distinctly the location of the peak and the general appearance of the country surrounding this peak, it being in the west edge of a rick valley which was then covered with rosin weeds or what is commonly known as sunflowers, and we named the valley then and there Sun Flower Valley. That very recently he went with Mr. Jasper Hays, upon the ground and readily recognized the peak and its surroundings, and that he also examined a peak situated about four miles west of Abbie's peak, located on a high prairie country, that he is most positive that the western peak or the one which is now known as Mackenzie's peak is not the Abbie's peak called for in the field notes. That he remembers the creek running near the base of the peak and the high range of hills just west and north of the peak. That he remembers while camped close at a water hole on the creek near the peak, that the boys killed a large buffalo.

W. H. Middleton

Subscribed and sworn to before the undersigned authority, by W. H. Middleton, this 7th day of October, 1903.

Clifford Beckham
Notary Public in and for Tarrant
County, Texas.