

No 696
order of
court, on
motion for
Survey

Rhoda Herkins } Motion of Plaintiff
vs }
J. L. Pool } for order of Survey
granted and by afe
3-ment it is ordered

That such order of Survey be direct to
Samuel W. Bigham Bell county, Robert
Alexander of Falls county, James H. Colcord
of Robertson county and W. S. Hammett
of Falls county to Survey the land in contro-
versy and report to the next Term and
Cause continued

Filed 16th
 days Nov.
 1869
 S W. Eaton
 & Co.

Old River
 Gleason Creek or
 Flat Creek

Atanacio de Lasorda

Creek or Big Creek

Jose Maria Sanchez

Isaac's

Jose Pool

Stubbins

Jose Pool

Basques & Sanchez

Conflict

Old Colony Reserve Line

Gregoria Basques

Muscle Run

Big
 Green

County 22397

we the undersigned Surveyors and we do hereby certify that we have surveyed the land claimed by J. C. Pool Plaintiff and C. Jones Defendant conflicts and also the land claimed by Rhoda B. Newkins et al Plaintiffs conflicts if any with the land claimed by and in possession of J. C. Pool Defendant Said land Situated in Falls County on the East Margin of the Brazos River.

In accordance with Said order we the undersigned Surveyors and on the 11th day of November A.D. 1869 at West

County 22398

Report of
Surveyors
Filed Nov
10th 1869.
S M Patton
Dist. Clerk

The State of Texas } To the Honorable the
County of Falls } District Court in and
for the County of Falls,

In pursuance of an order made
at the last or full term of Said Court
A D 1869 directing the undersigned Sur-
veyors to proceed and run or make
any Survey necessary and show by rep-
ort to what extent if any the land claimed
by J C Pool Plaintiff and C Jones
Defendant conflicts and also the land
claimed by Rhoda B. Hawkins, et al Plain-
tiffs conflicts if any with the land claimed
by and in possession of J C Pool Def-
endant Said land Situated in Falls County
on the East Margin of the Brazos river.

In accordance with Said order we
the undersigned Surveyors and on the
11th day of November A D 1869 at that

(2)

is known as the Falls of the Proyas river
on the ^{East} Margin of Said Stream and all the
parties having been notified and being
present either by themselves or attor-
neys we ascertained by the calls of the
A De La Serda Grant and the field
notes of the Jose M. Sanchez Survey
together with a full and complete
examination of lines and natural
marks the precise locality of the South-
western line of the Said La Serda Grant
it being the northern line of the Said
Sanchez Survey and for a more partic-
ular description reference is hereby
made to our accompanying plat which
is made a part of this report.

We then proceed to ascertain the bound-
aries of the Gregorio Pasquero Grant
and find that the Surveyor of Austin
and Williams Colony located the
same on what is known as Austin
and Williams reserve line. After
searching we found marks correspond-
ing in age and course in Park oak
timber near the South end of what is known
as Hog Island after tracing said marks
about fifteen miles and finding the line
to run N 71 E running from the Proyas
river; and judging from the age of
the marks and courses of the line together
with the facts, that after it passed the Said

Rasgweye N.E corner it runs across
and without respect to all the known
Surveys of the Section where it passed and
there being no corner made on it we were
entirely Satisfied that we were on
Said reserve line. and then ran the
Northern boundary of the Praggwey
to the East bank of the Praggwey river
and found the following results, that all
the land claimed by Said J. C. Pooler
is included within the boundaries of the
Said Praggwey. and the Said Sucker
Survey as set forth in our accom-
panying plot of Said Survey, this
the 16th of November 1869. - Sam W.
Bigham. R. H. Alexander. W. S. Mum-
mucutt. J. H. Colcord.

The State of Texas & the undersigned
County of Falls & Surveyors certify that
the above plot is a true representation of
the Survey therein named as we find
the same in the field this the 16th day of No-
vember 1869.

Surveyors

Sam W. Bigham J. H. Colcord
R. H. Alexander W. S. Mumucutt

The State of Texas & personally appeared
County of Falls & before me the undersig-
ned Authority Sam W. Bigham. R.
H. Alexander W. S. Mumucutt and

(4)

J H Coe and whose names are Signed to
the foregoing report who after being
duly Sworn by me on oath declares
that Said report is true and correct
in the facts therein Stated that the work
Reported is correct and the correct-
ness arrived at is true and correct
according to their opinion as Scientific
-ic Surveyors - Do certify which I hereto
Sign my name and affix my Seal
of office this 16th day of November
1869 Saml M Dalton L. D. & C.

Mr Alcalde & Commissioners

The Lands which I have surveyed
in virtue of your foregoing order for the Atty
of Gregorio Pasquies Mr. Donatthay Payton
are situated upon this River of the Brazos
above the Bear Road & in the following
form that is to say seven Sitios upon
the left margin of said river adjoining
& above a tract of four Sitios which I
have surveyed for Jose Antonio Marchacca
of four Sitios upon the same margin
of the River about 4 leagues below the
first tract the limits land marks & Bounda-
ries of the first aforesaid tract of seven
Sitios are as follows commencing the
survey at the upper corner of the said
tract of Antonio Marchacca at a stake
upon the margin of the River from which
37 varas to the south $9\frac{1}{2}^{\circ}$ to the East there
is a Hackberry 12 in in diameter & $1\frac{8}{10}$ varas
to the north 29° E. there is a Hackberry 9 in
in diameter from this point run a
line to the North 62° E twenty one thousand
& seventy nine varas to a stake in the
Prairie for corner from this point to the
North 28° West 8750 varas to another stake
in the prairie thence South 02° N. 21179
varas to the margin of the river to
a stake from which $2\frac{8}{10}$ varas to the
N. 43° West there is a Willow 8 in in diameter
& $2\frac{4}{10}$ varas to the N. 8° N another willow

10 in in diameter from this Point
running down the River on the left margin
& with the meanders to the place of beginning
and comprehends a plain area of
seven sitios of land or that which
is Equal 175 000 000 of square varas
bounded by the river on the lower or South
east sides by the adjacent ^{of} Mauchacca
& on the remaining sides by vacant lands
& is composed according to the best of my
knowledge & belief of 21 250 000 ^{sq} varas or
that which is the same one & a fourth
sitios of land of the Temporal Class
& 143 750 000 square varas or that which
is equivalent five and three fourths of
a sitios of Land of the Temporal Class
& its configuration is that which is given
on the accompanying plan the second
Tracts of four sitios of land has the
situation limits boundaries & land marks
as follows viz situated upon the left
margin of the Brazos River & commencing
the survey at a stake upon said margin
marked P run a line course to the North
71° East at Ten Thousand two hundred
varas crossed a creek which is called
Osaces Creek & at Twenty Thousand
two hundred & twenty varas set a stake
for the second corner from this Point run
another line course to the South 19° East
five thousand varas & set another stake

for the third corner from this point run
another line to the South 71° to the west
Eighteen thousand & three hundred &
twenty varas crossing again the said
course to the Brazos River where set another
stake for the fourth corner from this
point running up the River to the
Place of Beginning and comprehends
a plain area of four sitios of land
or that which is equal 100 000 000 sq
varas bounded by the River & on the remain-
ing sides by vacant lands & is composed
to the best of my knowledge & belief of
18. 750. 000 square varas or that
which is equal three fourths of sitio
of the temporal class & 81.250. 000 sq
varas or that which is equal three
& one fourth sitio of land of the pasture
class & its configurations is that which
is given on the accompanying
duplicate map

F. W. Johnson

Rhoda B.
Huckens
Vs

The State of Texas } To the Honorable
County of Falls } The District Court
in and for the County of Falls.

D. C. Pool

In pursuance of an order made
at the last or Fall term of said Court

D. C. Pool
Vs

A. D. 1869 directing the undersigned
Surveyors to proceed & run or make
any survey necessary & show by

C. Jones

reports to what extent if any the
Land claimed by D. C. Pool Pltff

Filed 16 Nov 1869
S. M. Bolton

DC

& C. Jones Defs conflicts & also the
Land claimed by Rhoda B. Huckens

Surveyors =
Reports

ens. To also Plff. conflicts if any
with the land claimed by and

in possession of D. C. Pool Deft. said

lands situated in Falls County
on the East margin of the Brazos

River. In accordance with said
order we the undersigned surveyors

met on the 11 day of November A. D.
1869 at what is known as the Falls

of the Brazos River on the East margin
of said stream and all the parties having

been notified & being present either
by themselves or attorneys we

ascertained by the calls of the A de la
Sorda grant & the Field Notes of the

Jose M. Sanchez survey together with
a full and complete examination
of lines & natural marks the precise

locality of the southern line of the said La Sarda grant it being the northern line of the said Baiabes survey & for a more particular description reference is hereby made to our accompanying plot which is made a part of the report. We then proceeded to ascertain the boundaries of the Brazos-Basquez grant & finding that the survey of Austin and Williams colony located the same on what is known as Austin and Williams reserve line after searching we found marks corresponding in age & course & in Post Oak timber near the North end of what is known as Hog Island, after tracing said marks about fifteen miles & finding the line to run N. 71 E. running from the Brazos River & judging from the age of the marks & course of the line together with the facts that after it passed the said Basquez. St. & corner it run across and without respect to all the known surveys of the section it passed & there being no corners made on it, we were entirely satisfied that we were on said reserve line we then run the northern boundary of the Basquez. to the East Bank of the Brazos River & found the following results that all the lands claimed

by said J. B. Pool is included within
the boundaries of the said Pasquez
and the said Sanchez survey as
set forth in our accompanying
plot of said survey this the 16th of
November 1869.

J. W. Bigham
R. F. Alexander
W. B. Hummeltt
D. H. Ballards

State of Texas
County of Falls } Personally appeared
before the undersigned Authority
Sam W. Bigham R. F. Alexander
W. B. Hummeltt + D. H. Ballards
whose names are signed to the
foregoing report who after being
duly sworn by me on oath declare
that said report is true and correct in
the facts therein stated, and the
conclusion arrived at is true and
correct according to their opinion
as scientific Surveyors. To Certify
which I write sign my Name &
Affix my seal of Office on this 16 day
of November 1869

Samuel M Dutton
D Falls Co

The State of Texas }
County of Falls } We the undersigned
surveyors certify that the above
Plot is a true representation of the
Surveyors therein made as we
find the same in the Field this
16 day of November A.D. 1869

Sam W. Bigham
J. H. Colvard
R. F. Alexander
W. S. Hummick

Surveyors

Exhibit 2nd

Translation of the Field Notes of the Survey of one League & a quarter of Land taken from the title to Jose Maria Sauchis for five Leagues of Land

Translation of the Field Notes of the Survey of one League & a quarter of Land taken from Dr. La Serda the Land Boundaries & Land Marks are as follows to wit: Beginning the survey from the lower corner of the Lands of Atanacio de la Serda which is a Stake upon the left bank of the River from which at 15 Varas S. 47 $\frac{1}{2}$ W. there is a Hackberry 10 inches in Diameter & at 21 Varas S. 84 $\frac{1}{2}$ W. a line was run N. 62 E. 9280 Varas to a stake for the second corner thence S. 19 E. 4100 Varas to another stake thence S. 71 W. another line 10200 varas to the Bank of the River & set a stake for the lower corner from this point the River was followed upwards to the beginning point and comprehends a plain Area of 31,250,000 square varas or which is the same one League & a quarter bounded by the river & on the upper side by the land of Atanacio de la Serda and on the lower side by the Lands of Gregorio Basquez

Plaintiff proved by Francis V. Johnson's deposition that the Empresarios Austin & Williams in 183- gave permission to Jonathan C. Payton to locate the 4 leagues of Basquez Grant of 11 leagues within the Reserve & that the lines were run at the same degree & that there was no conflict & could be none between the Basquez & Sauchis grants that the occasion of the said permission extended by the Empresarios to said Payton to make said location within the reserve was to stop a quarrel that had sprung up between Payton & Barr the Attorney who located the ~~Wichita~~ 11 leagues & was to settle the difficulty which difficulty was about the rights of the parties to a selection of land for their respective grants that the Basquez 11 leagues was granted & actually surveyed that he was principal surveyor & Moore was his Deputy & did the field work that he himself ran off part of the Reserve which was to include five hundred & seventy six sections that he began at a point on the Brazos near the mouth of San Andrés or Little River ran S 71 W 12 miles thence N. 19 W 24 miles thence N. 71 E. to a point in Post Oak near the Brazos the work by me was in 1832 and 1833 and he did not survey the reserve

East of the River that he did not
know how Moore determined the Point
where the Reservoir line crossed the River
that Point he must have determined
before he made the Basquez Survey
He could have done so by measuring
the River from the beginning point of
the reservoir on the River below

A. G. Perry witness for Plaintiff testified that he came to Texas at an early day in 183- was secretary of the aguntion of Vices & member of the consattation in early times, that events happening at the Falls were numerous & talked of at San Felipe & were further like events of happening at home reports flew far & wide over the country that the difficulties between Barr & Payton about the location of their land & the manner of its settlement by permitting Payton to locate within the reserve was notoriously ^{known} & as with him a well remembered tradition that such a tradition has been well handed down & much talked of among old settlers & his understanding has always been that Basquey North line & the reserve north line was the same or coincident & that such has been the notorious claim ~~was~~ well understood in the community here now for many years past & acted upon by parties in possession & holding under the Basquey Grant. W. J. Hamnicutt who was also one of the surveyors swears that he had been in the country & had been a practical surveyor here about 20 years that he had always understood from old settlers that the Basquey grant was located within the reserve & that the reserve was where

his report placed it that an old Settler
Albert Golson told him while he was
looking once for the Basquez Grant that
he was on the reserve line & that the Basquez
lay in below it that Golson was living
in Texas at the time of the Grant & was
familiar with land matters in this
region of country in its earliest history
& witness stated further that there is
a line to correspond with the lower line
called for in the Basquez & League Survey
that is running the same degree & about
the right distance it ought to be 5000
Varas distant from the upper by the
calls but his measurement made it
fall short about one hundred and eighty
Varas it was usual for old surveys to
fall short that much in the system of
words of these old surveys as he had found
by a measurement of many it was his
opinion that the lower line found by him
was the lower line of the Basquez because
he had traced it & found it clearly marked
from the edge of the prairie in towards the
line finding marks through the Post Oak
timber and the Bottom timber some distance
even until it reached the scrub &
young growth that he knew all the
country where the report fixes the Basquez
& that there was originally no timber on
the corners either in prairie or on the margin of

of the River it was originally Ward
Prairie that he was of opinion that the
lines west of the River were run only part
of the way & that the river line east of the
River was run at a different time & that
the point the Surveyors started from
on the East side in running the reserve
was not obtained by tracing the line
to the River on the west side and crossing
straight over but that it was guessed at
rather & fell down several hundred Varas
on the East side below a straight line crossing
the River as the Field notes & Dyke plot of the
reserve would show it to be run it was he
thinks started on the east side from a point
reached by meandering the River from below
& that ground was lost in the measurement
so that the actual survey was not in
a square but on the East side, a drop down
of several hundred varas there is no other
line in the whole region to answer the reserve
except this one if it is attempted to find
it by extending the line from the west
directly across the river that no line is
found on the East side of the River to correspond
or show that any survey was made at all
& so he thinks the report has traced the true reserve
line & the only one that can be found on the
East side of the Brazos River. He also states
that the Sanchez survey on the East side
of the River is Wedged shaped that its upper
counter 22414

line as follows the course of the La Sorda & all the
11 League up the River & its lower line the course
of the orseron line & the Basquez line & there is
a bend in the River there & the course should
have been changed in making surveys
as they appear to be to conform to Law in their
Points & be in legal shape witness also stated
that the report puts the lines of surveys together
so that all the system of work from the
La Sorda corner up the river to the martinez
grant (a good distance several large grants
intervening) will harmonise & that the
lines & corners of surveys up the River & dependent
on the La Sorda corner just as the report fixes
it & that he knows this from having traced the
lines & boundaries, & corners of the surveys
situated above & all of the same system
of work that is the 11 League grant proper
Witness stated that he had never looked
carefully for any line lower down the
River than the Report fixes the Basquez
& could not be ^{found} there to correspond & that
Mr Pierson & Wright who had made
careful search before the war & who had
made contracts to locate certificates so
as to change these lines had told him they
were unable to find any such lines
for the Basquez lower down & that they
abandoned the idea after careful search
this was elicited on cross examination

From the Witness that is the statement
as what to Pierson Wright said Witness
stated that the Basquez North line as
reported crosses Isaacs. Course 1200 Yards
short of the distance called for in the
grant but that if the attempt to locate
it below were made as contended by Defendant
that the distance would vary still more
from the calls in the Field Notes & no
situation be found for the Grant
below that would not do like or make
violence to the Field Notes of the original
grant. Plaintiff then proves that Defendant
is possession of the land claimed by him
as Located by surveyors Report.

Plaintiff then introduced W. S. Munnicut
& a Patent dated in 1870 for land
to the heirs of Mrs B. H. Arroy &
Munnicut Proved that the Patent
which calls for the lower line of the
Basquez is for land located upon
and adjoining the lower line of the
Basquez as the Plaintiff claims it
and the Report of Surveyors fixes it.
The Plaintiff's Atty stating that the
object of the evidence was to show that
the commission of the General Land
Office is now extending Patents on
the hypothesis that the Basquez is
located as the Report fixes it.

No 696

Rhoda B. Buckins Et. al. }

vs

D. C. Pool }

Charge of the
Court

Filed March

25 1871

W. H. Curry

D. C. Pool

Continuum of the Jury

I charge you as follows

1st That the legal effect of the documentary evidence shows the plaintiffs claim of title to be a regular grant of Eleven Leagues of Land Valid in all respects by the Government of Coahuila & Texas to Don Juan G Payton atty of Georgia Basquez also a sale of the Land from Basquez to Hunt & Hunt to Payton & if you are satisfied with the proof of kinship of Angelina B. Oberly & Payton title & of that you are the Exclusive Judges there is also regular conveyance of title to James B Buckins & that completes the regular conveyance of Title to the plaintiffs in their suit to the Basquez land including the land in controversy provided you believe from the evidence that the land claimed by Pool is covered & included in your league Basquez grant

2nd The Patents introduced in evidence by the Defendants also a regular grant of the land described in them to the Defendant & valid in all respects to pass the title from the Government to Defendant to the land therein described provided it was vacant or unappropriated at the time of grant or date of the Patent

3rd If you believe from the Evidence that the Basquez grant is older than the Defendants Patents the same is a superior title to the Defendants title in so far as there is a conflict between them & if you believe from the evidence that the Land claimed by Defendants Pool is covered & included in the Basquez & League grant you will find for the Plaintiff

4th The Report of the surveyors offered in their case is to be taken by you as prima facie evidence of the true location of the Lands in controversy & to show the facts stated in it but is not conclusive you are instructed to look at all the Evidence advanced before you in this trial in fixing the location & if you find that other facts prove sufficient you that the said report is not true or that there is Error in the same you are at liberty to disregard it but

if the facts proved go to sustain the Report then you will be governed by it in fixing the true Location of the Land.

5th If you find the land for the Plaintiff you will then inquire how much the Rent, Use, and Occupation while defendant was in possession is worth & find that amount for the Plaintiff as her damages.

6th But Gentlemen if after a careful consideration of all the Evidence you are unable to say whose the 4 leagues Basquez survey is located or if you find where the 4 leagues is located but cannot say that the land claimed by defendant is included in the Basquez survey then you will find for the defendant Pool, the Plaintiff must recover upon the strength of his own title or not upon the weakness of the Defendants Title.

J. H. Oliver
Judge

State of Texas
Halls County

I James M. Hart
Clerk of the District Court of Halls
County Texas, do hereby certify that the
following, seventy four pages, contain
a true and correct copy as taken from
the transcript sent to the Supreme Court
in case of Rhoda R. Buckner et al vs
Johnathan L. Pool No. 696. of the follow
ing.

- 1 Order of Court on Motion for Survey.
- 2 Report of Surveyors with sketch
- 3 S. W. Johnson's Report of Survey
- 4 Surveyors' Report
- 5 Translation of field notes
- 6 Proof by S. W. Johnson's depositions
- 7 Winnicutt's testimony
- 8 Charge of the Court

Witness my hand and official seal of
said Court at Office in Marshall July

13 1894

James M. Hart
Clerk of Halls Co. Texas

No 21^a
F. T. O. 27.
H.

Falls co
Rhoda B. Hueston
Et als

u

J. L. Pool

Copy from. Manuscript

'filed' in Genl. Duffies
Aug. 21. 1876
J. H. Hueston
Clerk.