

F. H. Perkins

no. 96 U.S.

Sept 2 1899.

J. F. Newman et al

Judgment

This day, this cause came on regularly for trial, when came both plaintiff and defendants by their respective attorneys and the defendants J. F. Newman and A. J. Long in person and announced ready for trial, when came a jury of twelve good and law ful men, to wit, S. Patton and eleven others and the jury having heard the pleadings of the parties and the evidence adduced received the charge of the Court and in charge of the proper Officer retired to consider of their verdict and afterwards on the same day returned into open court and in response to the following special issue numbered one in the charge of the court given them viz. "Is the boundary line between the Bastrop League no. 323 and the Thomas Ayers survey no 324 in Fisher County Texas as originally located by J. G. McDonald in 1852 at the same place as the line run for the boundary line of said surveys by Martin Duval and where is now located the fence of Defendant A. J. Long" their verdict was and is as follows viz. "To the first question we answer, yes S. Patton for and in which verdict was by the court received and ordered filed. It is accordingly ordered, adjudged, and decreed by the court upon said verdict of the jury that the plaintiff F. H. Perkins do have and recover of and from the defendants J. F. Newman and M. Newman the following described land to wit, The West half (w<sup>2</sup>) of Thomas Ayers survey of one third of a league of land being survey no. 324 Patton no 680 described by metes and bounds as follows, beginning at stake on South bank of the Clear Fork of the Brazos river in Fisher County the North west corner of said Ayers survey and the North east corner of Bastrop County School land league no 323 as located by Martin Duval in his resurvey of said Bastrop County School land league from which a China sewer



inches in diameter bears North  $25\frac{1}{2}^{\circ}$  East  $2\frac{2}{3}$  varas  
 a hachberry six inches in diameter bears North  $10\frac{1}{4}^{\circ}$   
 West 5 varas. Then South  $15^{\circ}$  East 6038 varas to the  
 South west corner of said Ayers survey. Thence North  
 $75^{\circ}$  East 706 varas to a stake, Thence North  $15^{\circ}$  West  
 parallel to the East and West lines of said Ayers survey  
 to the South bank of the Clear Fork of the Brazos river,  
 Thence up said river with its meanders to the place of  
 beginning for which plaintiff may have her writ of pro-  
 ceSSION and for all costs of suit for which plaintiff  
 may have her ~~writ~~ execution it is further ordered,  
 adjudged, and decreed by the court that the defendants  
 A. D. Long go hence with out day with his costs in this  
 behalf incurred for which he may have his execution  
 It is further ordered by the court that the fees of Bred  
 love and M<sup>c</sup>Elrath surveyors appointed by the Court be  
 taxed as costs against defendants J. F. Newman and  
 M. Newman.

The State of Texas  
 County of Fisher I D. T. Bulloch Clerk of the  
 District Court in and for Fisher County, Texas,  
 do hereby certify that the above and foregoing  
 is a true and correct copy of the original  
 judgment in the case of T. H. Perkins vs. J. F.  
 Newman et al, No. 96, rendered at the Aug.  
 Term 1899 of said Court, as the same  
 appears of record in my office, in Vol.  
 One pages 484 & 485 Minutes of the Dist.  
 Court of Fisher County Texas.

Given under my hand and official seal  
 at office in Roby Texas, this 28th day  
 December A. D. 1901

D. T. Bulloch Clerk  
 By J. M. Whiter Deputy

Fisher Co. S.K. File. 190

- Army 15/02  
 me by G. M. Williams  
 Com.





Shel Co. Sketch File  
Decree Court - 19<sup>th</sup>

F. H. Perkins vs.  
Newman et al.

Establishing N. E. Cor. Bar-  
trop Co. School Land. 323

Filed in Genl. Tol. Of-  
fice 1/15/02

John Perrell  
Sylvester  
Perrell

Dated June 30. 1898-

Newman et al.  
Establishing N. E. Cor.  
Barthrop Co. School Land  
as Martin Durak 323  
Listed same

SK File N<sup>o</sup> 3  
Filed May 15/93

county 20597

100



Order Appointing Surveyors.

F. H. Perkins }  
No 96 vs } Suit pending in the District Court of Fisher County  
Newman et al } Texas, June 30, 1898.

Now at this time J. A. McElrath and W. C. Breedlove are appointed as Surveyors upon the written application of Deft. James Newman, heretofore filed and granted, to locate survey and determine the boundary lines of the land herein sued for and claimed by the plaintiff adversely to the Deft. and to fix and settle the original corners of said survey on the west and to make report thereof under oath as required by law at the next term of the District Court of Fisher County, Texas.

(Signed) Ed J. Hamner,  
Judge 39th Jud. Dist. of Texas

Indorsed:

No. 96 F.H. Perkins vs Newman et al. Order appointing surveyors  
Filed July 4th, 1898.

D.T. Bullock, Clerk District Court  
Fisher County, Texas.

M. Duvall's Deposition.

F. H. Perkins )  
vs ) In the District Court Fisher County, Texas.  
J. F. Newman et al )

Answers of Martin Duvall to the accompanying interrogatories propounded to him in the above entitled and numbered cause taken before W. P. Allen, Notary Public in and for Kaufman County, Texas in accordance with the accompanying commission to the Ints. he answers as follow  
Ans. to Int. No. 1.

My name is Martin Duvall, my age is 50 years, my residence is Terrall Kaufman Co. Texas. My business is surveyor and civil engineer.

I formerly resided in Jones County, Texas for 1880 to 1893. My leading or principal business from 1880 to 1893 was surveying. Since 1893 it has been Civils Engineering with such surveying connected as has been necessary to determine boundaries of lands through which the Texas Midland Railroad was built.

Ans. to Int. No. 2.

My earliest experience in land surveying began in 1869 in Missouri retracing lines of land surveyed under the United States system of surveys. In 1872 I had my first experience in surveying Texas Lands, this was connecting land lines with the T. & P. Railroad Co. survey xx through Cass County, Texas for right of way purposes. In 1874 I settled in Comanche Co., Texas and from that time until 1893 I was engaged almost continually in resurveying the old surveys of the state and



locating such vacant land as remained unappropriated. I worked during that time as Deputy County Surveyor of Commanche Co. Deputy District Surveyor of the Palo Pinto Land District County Surveyor of Jones Co. State Surveyor and Classifier and private surveyor. My actual experience in active work wasnearly all that could be crowded in to that period of time. It was the most active period in land business and I was almost continually employed.

Ans. to Int. NO 3.

I am acquainted with Mr. Newman and also with Mr. Breedlove. I know both of the gentlemen very well in a social secse,we were easy and sociable with each other when we met,but I knew nothing of them beyond this. I am the Martin Duvall who surveyed the Bastrop Co. School Land for Bastrop Co. including leagues 322 & 323. I was employed by the County Judge of Bastrop Co.,but do not remember his name.The survey was made in the spring of 1884.

Ans. to Int. No. 4

I began at N.W. corner of Gillespie school land survey No. 319. This corner was identified by occupying a closely corresponding position by course and distance from the S.W. corner of survey No. 239 on Sweetwater,also by its witnesses which were standing and were plainly marked and also by calls for a creek or hollow. In 1881 I retraced the surveys up Sweetwater from the corner of the Edward Miles Survey and found the S.W. corner of No. 239 and from that corner ran N 15 W the distance shown by old field notes and found this corner,but found the distance to be excessive. At that time I carried the work farther north to verify this corner and to reach a convenient point to run a connection to the surveys fronting on Clear Fork farther to the east. The name of the original surveyor, as I learned from records was ~~xx~~ McDonald.

Ans. to Int. No. 5.

Mr. McDonald seems from records to have located all of the old surveys fronting on both sides of Clear Fork and Sweetwater from the upper corner of the Halfpenny survey 2 or 3 miles above Phantom Hill up to and including No. 239. He then left Sweetwater and ran a block of surveys N 15 W/ locating some surveys that have been floated out and Nos. 304-319-305-318-306-317-307-316 of the surveys that yet remain on the map 312-313-314-315. Beginning again at the N.E. corner of 315 he again established a system of surveys fronting on the Clear Fork and extended these surveys down the stream locating Nos. 321-322-323 and 3 surveys below them on both sides of the creek and opposire them on the north side of the creek. He did not run all lines nor establish all corners on surveys located by him,but established corners on the streamers that his surveys fronted, and corners on ~~xxx~~ a base line only when establishing surveys that did not front on the streams.

Ans. to Int. No. 6.

There was a continuous connection from the surveys in the land district



east of the Bexar District just above Phantom Hill up Clear Fork and Sweetwater and across from Sweetwater to Clear Fork and again down Clear Fork to the lower line of survey No. 326 but this connection was not carried down the stream to a connection again with the surveys near the mouth of Sweetwater. Theoretically the boundaries of the surveys located down Clear Fork from the west ought to be found by working up from the east, but practically they cannot be located in this way with the class of work done in locating the old surveys of this state, errors in work gives lines on the ground different positions from what they should occupy. I made an attempt in the fall of 1880 to locate a vacancy that appeared on the map to exist between the H.T & B. Surveys and the river surveys by working up from the east. I located the east line of the vacancy alright and assumed that error in surveys going west and coming back east ought to balance and locate several parties on the supposed vacancy, Turnbough, Clayton, Parker & Hughes, I think were the names. I did this without taking the time at that time to find the base of the surveys to the west and bringing then back east as ~~xx~~ should have been done and which I did later. The result was that when I made the test of the position of the surveys on the west I found that I had located the settlers in conflict. I acknowledged the error refunded money paid me and paid them damages.

Ans. to Int. No. 7.

In the resurvey of <sup>the</sup> Bastrop Co. lands I found an old witness tree standing at the lower corner of the Hibbett survey upper corner of the Lawrence this was opposite and controlled and fixed the position of the dividing river corners of the Bastrop Co. lands on the opposite side of the creek. Working up the river giving the distance noted on sketch accompanying and marked "Exhibit A" instead of distances given in original field notes the northing of creek shown in field notes correspond in both surveys within a reasonable limit of error. From the old established corner referred to measuring down stream or eastward it requires 2790 vrs to get the southering of 3969 vrs shown in field notes and at the same time not across a bend of the creek to get it again see sketch. The work was done down the north side of the river this line must ~~have~~ been run to have crossed the creek twice would have been an inconsistency that no one would have indulged in, hence I reached the conclusion that the surveyor made an error in the width of the survey and located his line there. This position was strengthened somewhat by finding two trees of the kind of timber called for ~~about~~ and about the right size in corresponding positions, but I could not identify them by marks.

Ans. to Int. no 8.

My opinion as a surveyor is that the lower corner of survey No. 323 is practically in the position given it in the original survey. To locate the corner further up the river would destroy the original field notes by abandoning the great southing that is not claimed for it and all



meaning would be taken from river front field notes.

Ans. to Int: No 9

My experience is that 99 per cent of the old surveys are excessive in all of my experience I have not found more than 4 or 5 that were deficient. Excess in the old surveys are to be accounted for in several ways. Supposing the surveyor to have been conscientious. The old time surveyors chain was composed of links and rings, surveyors were often out for many months without means of testing chains. There was a constant wear going on in every bearing, rings would become elongated and the chain would be lengthened several inches. Another source of error comes in rapid chaining the front chainman will generally throw the point of his marking pin forward and pull the rear chainman a little past. Both of these sources make what we would call a running error which will give an approximately uniform excess that will run through all of the surveyors work increasing somewhat the longer he uses his chain, but there is another source of honest error. Surveyors keep count of the chains run in tallies of ten, a failure to note a tally makes them run one tally too far, which with a 20 vara chain makes 200vr An error of this description would be discovered in closing if all lines were run but this was seldom done and hundreds of errors were left behind and never known to the surveyor who made them. It may be that some surveyors systematically made surveys too large through generosity. There is nothing remarkable about the excess in 323 it can be accounted for in regular or running excess and the loss of one tally There is abundant evidence of carelessness in all of McDonald's work. There is an error on leagues 313 & 314 that is very large and also in the length of 315. These errors approach this very close in magnitude and go to show that they may be expected anywhere on this man's work.

Ans. to Int. No. 10

My opinion as to the position of these surveys could not be changed except by the finding of witness trees at other corners and I feel confident that there is none standing. I surveyed the two Cosby tracts and the Hibbett & Lawrence surveys for Judge Rector. I presume he was well pleased. He sent considerable work to me after that through his friends and I heard of favorable expressions through men building his fences. I think he purchased before the survey was made. There was a suit in the District Court of Travis Co? between the H. & T. C. R.R. Co. and Judge Breedlove or Bastrop Co. in which the excess in leagues 313 & 314 as shown by my resurvey was called in question. My survey was sustained in that case.

Ans to Int. No. 11.

I know of nothing further that bears directly on this location except the fact that with little excesses the Ayers, Crowles and McMicken surveys correspond very nicely with the southing of the creek as given in their original field, locating them from my lower Bastrop County corner.



Ans. to Cross Int. No. 1

Both witness trees were standing at N.W. corner of No. 319 it also corresponded closely with the distance it should have been from Sweet-water and with other corners and land marks to the north. I found this corner first in the Spring of 1881.

Ans. to Cross Int. No. 2.

I ran the base line of this block of surveys between Nos. 305 & 318-306 & 317-307 & 316 and as far as the N.W. corner of 315 at this time, but in 1884 I continued that line to the N.W. corner of 313 and resurveyed 313 & 314. After leaving N.W. 319 I found two marked line trees online between 305 & 306 also one marked line tree on the west line of 315 and one witness tree at the N.W. corner of No. 315. In my resurvey of 314 & 313 in 1884 I found the N.W. corner of 313 identified by both witnesses also the S.E. corner of the Chumley survey.

The object of my run in 1881 was to determine the position of surveys fronting on Clear Fork having their beginning on the east line of 315 in that survey I found no evidence of the position of these surveys except the northing and southing of the creek but gave them position by that which approached closely to the position given them in a survey for Judge Rector in 1883 in which I found the upper corner of the Lawrence survey by one old witness.

Ans. to Cross Int. No. 3.

I know that these surveys were located by working along the stream only from the fact that no marks are ever found on lines running back from the stream, and no back corners are found established in the original surveys fronting on the stream and no witness trees are called for at such corners while on the stream such corners are called for and can often be found. The rule seems to have been to work on one side of the stream only and call for the same tree for corner on the opposite side calculating course and distance, but in a few instances I have found witnesses on both sides. The meanders of the stream was not run in making the original survey I know from the fact that the course and distance of meanders were not given in the field notes they were not used in calculating the areas, the calculations all show a mean between the length of the two lines running back from the river and surveys of equal width are always notes as having equal areas when frequently the bends of the stream fall deep into one survey and take a large amount from its area which is added to the other by the stream receding from the supposed average straight line frequently making a difference of several hundred acres in large surveys.

Ans. to Cross Int. No. 4

The system of location without meanders referred to in Ans. No. 3 is directly responsible for the shortage in No. 322 (see sketch "Exhibit A") The bends of the river cuts more out of the survey than the excess adds to it, while the Hibbett on the opposite side is correspondingly larger. In No. 323 the meanders of the stream follow more nearly an average



straight line and the survey gets nearer the full benefit of the excessive width. To locate without meanders is a mistake within itself I also do the locator the credit to believe the excessive width was a mistake.

Ans. to Cross Int.No. 5.

*Chumley  
Corner.*  
I found this corner first in 1883 from actual field work. In 1884 E.A. Williams, a surveyor operating in Fisher Co. at that time came to me on the river and went with me to the corner hoping to give me some assistance. I, however, knew where it was. He had cut away some wood that was forming over the marks and left them very plainly exposed while they were partially concealed when I looked at them a year before I considered it an assistance that he had started <sup>from the same</sup> place and worked to the same conclusion that I had. We compared notes at that time and we agreed as to the location of the entire block.

Witness my hand at Terrèll, Texas this 11th day of March A.D. 1898.  
Subscribed and sworn to before me this 11th day of March A.D. 1898.  
(Signed) W.P. Allen

Notary Public in and for  
Kaufman Co. Texas.

Seal.

State of Texas

Kaufman County.

I, W. P. Allen, Noatry Public in and for Kaufman County, Texas, do hereby certify that the foregoing answers of Martin Duvall, a witness before named were made before me and were sworn to and subscribed to before me by the said witness on the 11th day of March A. D. 1898

W. P. Allen

Seal

Notary Public Kaufman Co. Texas.



## C. R. Breedlove's Deposition.

State of Missouri )  
 County of Barton ) I Schuyler Andrews a Notary Public in and for  
 said County and State do hereby certify that C. R. Breedlove a resident  
 of said State and County come before me at my office in Larnar in the  
 County and State aforesaid and after being by me duly sworn on his  
 oath answered the foregoing and annexed interrogatories in their order  
 thus:-

Answer to Interrogatory first:

My name is Charles R. Breedlove, aged sixty six. Residence Barton Co.  
 In the State of Missouri. Business, lawyer and have resided in said  
 Barton County nearly one year.

Answer to Interrogatory Second:-

I resided in Washington Co. Texas for over thirty years, my business  
 there was (1) farmer, (2) student & (3) lawyer. Yes I also resided in  
 Fisher County Texas for about five years. While there I was farming and  
 raising horses and raising and trading in cattle and practiced law a  
 little and I was ~~ma~~ member of the firm of Breedlove Norton & Co. said  
 firm was organized about the year 1883 (exact date not remembered) in  
 Washington Co. Texas but its place of business was ranching; raising  
 cattle & horses (the former mostly) & dealing in cattle. The firm owned a  
 ranch in Fisher Co. Texas on the Clear Fork of the Brazos River  
 comprising over ~~none~~ thousand acres of land with several thousand head  
 of cattle on it & a sufficient number of horses to properly run the  
 ranch.

Answer to Interrogatory Three:

The ranch referred to contained leagues Nos. 322 & 323 of the Bastrop  
 Co. School Land lying on the south side of the Clear Fork of the  
 Brazos River and about one hundred and sixty acres out of the G.W.  
 Lawrence league of land on the north side of said Clear Fork and out  
 of the southeast corner of said Lawrence league; and the ranch is about  
 five or six miles down the river, and east from the town of Roby in said  
 Fisher County, Texas. Breedlove, Norton & Co. purchased said leagues Nos  
 322 & 323 from Bastrop County one of the political subdivisions of the  
 State of Texas; I myself negotiated the purchase of said leagues of land  
 and the price paid therefore was two dollars per acre. The acreage  
 thereof was ascertained by actual measurement by Martin Duvall as  
 skillful & reputable surveyor who then resided in Jones County, Texas  
 This was one of the stipulations in the purchase from Bastrop Co.  
 Bastrop County bound itself to have both of said leagues resurveyed by  
 Martin Duvall, and to have the boundaries marked and to ascertain the  
 exact number of acres; and Breedlove, Norton & Co. paid for all the  
 acres included in said Martin Duvall survey. Martin Duvall did make such  
 survey and plainly marked the boundaries according to the rules of  
 surveyors in Texas. I did not assist in making said survey; but, I



followed the footsteps of the said surveyor soon after he made the survey and saw his marks along the lines.

Answer to Interrogatory four:

I have been acquainted with Mrs. Fannie H. Perkins since her childhood; have known J. F. Newman, A. J. Long and Martin Newman for about ten or twelve years. I have no knoweldge as to the boundary lines of the G. W. Crowles survey;but I do know the west boundary line of the Thos. Ayres survey and also the boundary lines of league No. 323 of the Bastrop County School Lands. I traced the lines of said league & saw all of the old corners & bearing trees that could be found. That land was located in 1852 and if freely marked when located many of the marks had disappeared, but the bearing trees called for at the northeast corner on the bank of the Clear<sup>l</sup>Fork were there, & were found and identified by Martin Duvall and those with him; and some of them at least were still standing there as late as 1891, when I last saw them.

Answer to Interrogatory five:

C.R. Breedlove, E.H. Norton, G.R. West, Thomas Crenshaw & E.F. Ewing all then of Washington County comprised the firm of Breedlove, Norton & Co. and carried cattle to Fisher Co. and established a ranch on the Clear Fork; and in A.D. 1884 they bought from Bastrop County its two lower leagues Nos. 322 & 323 of County School Lands. They required Bastrop County to resurvey said lands and to plainly mark the boundaries there of; and they fenced said two leagues of land by the boundaries and so marked. Said lands were enclosed in the year A.D. 1885 with cedar posts and glidden barbed wire. G. R. West was manager of the ranch; and he had the said lands enclosed; but E.H. Norton & Tom Crenshaw were on the assisting West and the hands employed. Mr. Norton, Mr. West & Tom Crenshaw were on said ranch during all the time that the same was being enclosed. Martin Duvall had resurveyed said lands and plainly marked the east line of said league No. 323 which is also the dividing line between said league No 323 and the Thomas Ayres survey; and West, Norton & Crenshaw acting for said firm of Breedlove, Norton & Co. made the fence along the said dividing line right along the line as run and marked by said Martin Duvall; and said fence as so erected was standing on said dividing line when I sold said lands to said A.J.J. Long.

Answer to Interrogatory Six:

The first change the took place was, that I bought Tom Crenshaw's one fifth interest in the ranch lands & personal property of the firm of firm of Breedlove, Norton & Co. in Fisher Co.. I cannot recall the date, but the deed of conveyance from Crenshaw to me is of record in the proper record book of said County, to which I here refer.

Afterwards about March A.D. 1888, I bought the interest of E.H. Norton in all of the property of said firm:- Afterwards about Oct. A.D 1890, I bought the interest of G. R. West in all of the property of said firm:- Afterwards about May A.D 1891 I bought the interest of E. F. Ewing in said form. E.F. Ewing had died intestate. His will was duly



probated in Washington Co. and by its provision all of his property was bequeathed to his widow, I.M. Ewing, and she was made sole executrix without bond & with plenary powers; and I bought said last named interest in said property from Mrs. I.M. Ewing. All of said deeds of conveyance are of record in the proper books in Fisher County and I here refer to same, but I was constantly in possession of said ranch, lands & personal property from the date when Bastorp Co. conveyed the same to Breedlove Norton & Co. until I sold said ranch lands to said A. J. Long about July A.D. 1891 and my possession was in exact accordance with the lines of said lands as run and marked by said Martin Duvall.

Answers to Interrogatory Seven:

A post and wire fence was erected by Breedlove, Norton & Co. around said lands including said leagues soon after their purchase of the same from Bastorp County enclosing all of said lands in one enclosure by the very lines as run and marked by said Martin Duvall; said fence following the outside boundaries; and said fence was maintained continuously from the year A.D. 1885 by said firm and in its imitations and by myself after buying all other shares until I sold & conveyed the ranch to said A. J. Long about July A.D. 1891. Said fence was kept on said outside boundary lines from the time of its erection and was so standing when I sold out to Long.

Answers to Interrogatory Eight:-

I cannot state the month, but it was in the year 1884 that I first saw the place where was the N.E. corner of said league No. 323. The corner was in the river, but I saw bearing trees on the bank of the river corresponding to those called for in the original survey of said lands. I cannot with accuracy give the size of said witness trees, but they were large trees standing well up on the bank of the river. They were then in a good state of preservation. Afterwards they were tampered with by some one, for what purpose I know not. I saw them quite often, and they were the witness trees identified by Martin Duvall as the original bearing trees of said N.E. corner of said league No. 323 and this is the corner from which the fence runs South along the dividing line between said league No. 323 and the Thos Ayres survey and this was and is the fence originally erected by Breedlove, Norton & Co. along said dividing line and kept up continuously by them & by C. R. Breedlove for himself after he bought out his said partners and up to the time when he sold out the said lands to said A. J. Long in 1891.

Answers to interrogatory nine:-

Martin Newman enclosed the Ayres survey. It was done in this way. In the early part of 1888, Polk Kyle having bought the east half or lower half of the Thos Ayres survey (and Mrs. F.H. Perkins the west or upper half) was about to settle on his half. J.F. Newman had a ranch still east and lower down the river including (I think) the G.W. Crowles survey. Mr. Kyle and J.F. Newman had hot words and Martin Newman was anxious about it. Martin Newman approached me as a friend of Mr. Kyle and as the agent of Mrs. Perkins and got my consent to get Mr. Kyle &



Mrs. Perkins both to sell out to ~~them~~ him and he would fence and join to Breedlove, Norton & Co. as his west line. Mr. West as manager and myself agreed to fence joining. Mr. ~~Kyle~~ Kyle agreed to sell out to Martin Newman on condition that Breedlove, Norton & Co. would sell to him five hundred acres and take also sixty acres which he got from Judge Rector off the Lawrence league. All this was done & Kyle sold to Martin Newman the east of lower half of the Ayres survey and I prepared a deed in accordance with my agreement with Martin Newman and sent it to Arizona where Mrs. Perkins then was and she executed it and returned it to me. I offered to turn it over to Martin Newman and receive the purchase money and he backed out. There had been a good deal of delay in getting the deed ready for delivery. The grounds (as alleged) on which Martin Newman backed out were that a note that had been executed in Jackson Co. in part payment for the purchase money for the land was not shown to him and no trace of it was on the Fisher County record. But he got W.C. Breedlove (as he told me) to go and survey the Ayres ~~ex~~ tract and after the said survey I met him in Sweetwater and he said, "Well Col, I got Willie Breedlove to go down with me and run around the Ayres survey and it is all there, my 738 acres, Mrs. Perkins 738 acres is there and it don't touch a foot of the Bastrop lands" I said, "then you are satisfied?" He said "Yes, and I've got sense enough to know if it wasn't, that you can't push that block of surveys up the river." I had previously told him that if Mrs. Perkins did not want to use her land that he could enclose it and pay to her one dollar a year as rental. He replied, "I will never claim Mrs. Perkins land, I have plenty of my own, you tell her so." We let him join to our pasture as a favor and as Mrs. Perkins agent I let him join and stay so as a favor. These conversations occurred in the town of Sweetwater in the Spring and during the Spring and Summer of 1888.

I had one conversation with J. F. Newman about the east line of league No. 323 of the Bastrop Co. School Lands. It was pretty soon after we erected the fence around both leagues. Under the advice of a surveyor named Bagley, Jack Raspberry & one or two others wanted to settle along the east line of said league No. 323 claiming that it was "Public Domain" and liable to settlement by pre-emption; and one or more of them hauled lumber and dumped it off along the east line & south ~~x~~ ~~xxxx~~ of the river inside of our pasture. Mr. West informed me of that condition of things and I went from Washington Co. where I then lived, up to Fisher Co. to settle it. Court was in session in Roby and I heard that J. F. Newman was encouraging the parties to settle in our pasture, so I invited J. F. Newman to be present at an interview for which I had arranged and hear what I would say. He did so, and I told him and Jack Raspberry (and one of the others) that I was informed that Raspberry & others, were preparing to settle in our pasture (The Breedlove, Norton & Co. Pasture) Raspberry said it was so. Newman said he had heard it. I replied in substance that I would not allow that to be done



That Breedlove, Norton & Co. had bought the two leagues in good faith at \$2.00 per acre and had required Bastrop County to resurvey it and remark the lines and that we had fenced by those lines; and that we had warranty of title from Bastrop Co. as to the quantity and by those lines and that nobody should take a foot of the land except by law.

J. F. Newman spoke up and said "Boys that ought to satisfy you; the Col. offers fair" and that ended all efforts to settle anybody in our pasture. Jack Raspberry said that he knew the line run by Duvall and that he helped Mr. West to erect the fence right along that line.

J. F. Newman replied that that the league was too big, but that we were not to blame as we paid for it by the acre all of it.. This ended the interview and I never heard of any claim of either Martin Newman or Jim to any of said Bastrop lands prior to my sale to A.J. Long.

⑩ Answer to Interrogatory Ten:

These surveys of land are part of a block of surveys made in A.D. 1852 by Moses Evans a locator assisted by one McDonald surveyor for Bexar Land District. The beginning corner is about ten miles Northward from Sweetwater and run thence N.15 W. to the N.W. corner of League No 313 Bastrop County Lands which is the S.W. corner of the John Chumley league and is 26,000 varas N.15 W of the initial corner, south of league 313 is Bastrop School league 314. South of this is the Thomas H. Cosby league ~~314~~ South of this is El Paso Co. School league 316. At the S.E. Cor of Bastrop school league No. 314 & the N.E. Cor of the Cosby league is the N.W. corner of the Cosby 1920 acres survey No. 321. East of this & down the river is Bastrop league No. 322, next Bastrop League No. 323.

Then Thomas Ayres survey No. 324; then Geo. W. Crowls No. 325. East of it is the last of the block McMicken No. 326. You then cross the river & the numbers go one by one on to 332 back to the Bastrop School lands.

It is a perfect block and fits in size & by number. The location of Bastrop School league No. 313 was judicially ascertained in the suit of "The H. & T. C. R.R. Co. vs J. W. Halse et al" brought in Fisher Co. with change of venure to Tarvis Co. and tried there October 18th, 1888, and this established the whole block of surveys. Coming down the river you first locate Thos. H. Cosby 1920 acre survey. I have seen its initial corner. Then the N.W. Corner of Lower Bastrop school league No. 322. I have seen this corner. Martin Duvall found it and we built our pasture fence south. beginning at this corner, south on the west line of Bastrop league 322 (& E. line of Cosby 1920) as surveyed & marked by Martin Duvall. The league No. 322 is short a few acres.

The league No 323 is long considerably, but every survey in the whole block is long excepting league 322. This was the rule in surveys made by the early locators all over Texas. I speak advisedly for I had some field experience and have witnessed a great many trials of land cases in the courts of Texas.

(Signed) C.R. Breedlove.

Counter 22608



Answers of the said witness to the annexed cross interrogatories

1. Answers to the first Interrogatory:-

I am well acquainted with Mrs. F. H. Perkins, having known her from her childhood. I represented her in her capacity as administratrix of her deceased husband's estate in the Probate Court of Washington Co.. This was about 1884 to 1887 up to and including A.D. 1890. I was also her agent in Fisher County, Texas. Yes, as such agent I represented Mrs. F. Perkins in her purchase and management of the West half (or upper half) of the Thos. Ayres survey of land in Fisher Co. This was during the year A.D. 1887-1888-9 & '90. I had all the powers and authority of a general agent and in addition was specially directed to buy the west half of said Thos. Ayres survey of land.

2. Answers to second Interrogatory:-

I paid no special attention to any of the corners of said Ayres survey excepting the N. W. corner of the same. I was well acquainted with the location of the N.W. corner as it was the N.E. corner of league No. 323 Bastrop Co. School land owned and fenced by Breedlove, Norton & Co. of which I was a member.

3. Answers to third Interrogatory:-

It is a fact, that as agent for Mrs. F.H.Perkins, I sold the West (or Upper) half of the Thos. Ayres survey (738 acres) to Martin Newman and I prepared a deed to said land and sent it to Arizona (where Mrs Perkins then was, with a daughter) for execution by Mrs. Perkins, whereby for a cash consideration she conveyed the land to said Martin Newman. She executed the deed and returned it to me for delivery to said Newman on his payment to me of the purchase price for the land. On receipt of the deed I went from Fisher County down to Sweetwater to see Martin Newman. He then declined to pay the agreed on purchase money for the land and to take the deed on the pretext that a purchase money note that had been given for part of the purchase money of the same land some twenty or more years prior to that time was unaccounted for and no release of its vendor's lien was recorded in Fisher County. ~~###~~ Martin Newman had already, however, begun to erect a fence around the whole of the Ayres survey under his purchase of the east half of said Ayres survey and by the consent of G.R. West and myself representing Breedlove, Norton & Co?'. I do not know when his fence was completed; but I do know that at the time he declined to pay for said west half of said Ayres survey the joining of his fence to the east line fence of Breedlove, Norton & Co. was discussed between us and acting for Mrs. F. H. Perkins and as her agent I agreed to let him fence her half of the ayres survey and graze it as her tenant unless she revoked my authority I informed her of all of these facts and she replied to me to use my discretion. I told Martin Newman that he should pay a nominal rental, say a dollar or so, annually so that there could be no mistake as to his occupancy of the land. He replied, "Col., I will never claim Mrs. Perkins land; assure her of that." Neither Martin Newman or J.F. Newman ever laid any claim to the ~~land~~ upper or west half of said Ayres



survey while I was Mrs. F. H. Perkins agent. I was frequently in Washington CO. while I was acting as such agent and often met Mrs. Perkins. On several occasions she and I talked about said land. I told her that Martin Newman had the land enclosed with fences joining the Breedlove, Norton & Co. their east fence being on her west line and made her a plat of the land as it was fenced and that Mr. Martin Newman was a man of wealth & standing and would never claim her land. I also told her that Martin Newman had told me (which he had done) that he had made a survey (W.C. Breedlove being the surveyor) of the Ayres survey and that the whole 1476 acres were found to be there without any conflict with the Bastrop County School lands, and that he would remove his fence whenever she said so. She said alright I will act on what he says. As her agent I paid taxes on her 738 acres of of said Ayres survey for the years 1888 & 1889 & 1890. Mrs. Perkins then wrote to me that she would pay her own taxes and not trouble me about it any longer. I sent her all of her title papers including an abstract of title and the deed that she had executed in favor of Martin Newman and which he declined to take. I bought said 738 acres for Mrs. F.H. Perkins about April 1888 as I now remember.

C.R. Breedlove.

And I do further hereby certify that the above and foregoing and annexed answers & depositions of said C.R. Breedlove the witness before named to the foregoing and annexed direct & cross Interrogatories in the above styled and numbered cause were made before me and were sworn to and subscribed before me by the said witness on this the 18th day of February A.D. 1898.

My term of office expires Nov. 23rd, 1899.

Schuyler Andrews

Seal

Notary Public in and for Barton County  
State of Missouri with the impress of  
my official seal attached.

Fee Bill

|   |        |
|---|--------|
| To writing testimony 3855 words and figures at 15 cents per | \$5.75 |
| Swearing witness  | 25     |
| Certifying depositions                                      | 50     |
|   | \$6.50 |

Answers to C.R. Breedlove to Cross interrogatories propounded by Deft. Martin Newman in the case of F.H. Perkins vs. J. F. Newman et al in District Court of Fisher County Texas, NO/ 96 propounded March 20th 1899

To the first of said cross int. witness answers:

These are the surveys I have been referring to and the lines I saw were ~~the~~ the lines run & Marked anew as I understood it by Martin Duvall. I had never seen these boundaries before Martin Duvall traced them.

To the second of said cross int. witness answers:



I do not know who first surveyed and marked those boundaries. When Breedlove, Norton & Co. bought those two lower leagues of land it was part of the bargain that Bastrop County as vendor should have said two leagues of land resurveyed & the boundaries thereof accurately marked & defined. Bastrop County by the concurrence of said Breedlove, Norton & Co. selected Martin Duvall to go upon the ground, resurvey and mark the boundary lines of said two leagues of land and, it is to the boundaries as settled on by Duvall that I refer to. I never saw any other and never refer to no others.

To the third Cross int. witness answers:-

I do not know anything about the lines run by McDonald, if such lines differ from those run by Duvall, I understood that Duvall followed McDonald's footsteps and run the same lines.

To the fourth cross int witness answers:-

I never discussed the matter of said boundaries of said lands with Martin Newman and we had no agreement about such boundaries; and we had no agreement about the boundaries other than is shown by the deed from Polk Kyle to said Newman and that the other deed executed by F.H. Perkins to said Newman, which latter deed was not delivered to him because he alleged that he might have litigation caused by a flaw as he contended in one of the conveyances some twenty five years old excepting when he made a request of us to let him join to our east line of fence and then no specific boundaries were agreed on because there was no dispute about any of the lines of those lower two leagues.

To the fifth of such Cross int. the witness answers as follows hereafter

It is my recollection that I wrote the deed executed by Polk Kyle to Martin Newman and that I also delivered it to said Newman, but I was agent for neither of them. Martin Newman had asked me as a friend to intercede with Polk Kyle and to try to get him to sell his half of the Ayres survey. I complied with the request, told Mr. Kyle all that Mr. Newman had said. The sale was the result. I was agent for neither of them and got no pay from either & what I did was purely disinterested.

To the sixth cross Int. the said witness answers:

I have no recollection about it. I cannot say "yea" nor "nay".

To the Seventh of said cross int witness answers:-

Of my own knowledge I cannot reply to this question, but it was my understanding that Martin Newman could neither read nor write.

To the eighth cross int. said witness answers:-

At the time that West & myself gave to Martin Newman consent for him to join to our east fence, I supposed that Ayres survey all in fact belonged to Martin Newman. He had Kyle's deed to one half of it and I had sold to him Mrs. Perkins one half. Of course I was acting for Mrs. Perkins in law, but I thought I was acting (with G.R. West) as owner and agent for Breedlove, Norton & Co. and at that time I thought the east fence of Breedlove, Norton & Co. was the west line of the Thos. Ayres survey. I will add that I bought one half of said survey as agent for



F. H. Perkins and continued to act as her agent in and about said land until (I think) sometime in A. D. 1890

C. R. Breedlove.

State of Texas )  
 County of Fisher ) I, D. T. Bullock District in and for said County  
 and State do hereby certify that the foregoing answers of the witness,  
 C. R. Breedlove to the annexed cross interrogatories in said above  
 styled cause were made by said witness and were subscribed and sworn  
 to by said witness C. R. Breedlove before me on this the 20th of March  
 1899.

Witness my hand and seal of office this the day and date last writ-  
 ten.

D. T. Bullock Clerk District Court

Seal

Fisher County, Texas.

Charge of the Court.

F. H. Perkins )  
 #96 vs. ) In the District Court Fisher County Texas  
 J. F. Newman et al )

Gentlemen of the Jury.

This cause is submitted to you upon the following special issues and you will determine from the evidence in this cause that issues herein submitted under instructions herein given you.

1. Is the boundary line between the Bastrop League No. 323 and the Thos. Ayres Survey No 324 in Fisher County Texas as originally located by J. G. McDonald in 1852 at the same place as the line run for the boundary line of said surveys by Martin Duvall in 1884, and where is now located the fence of Deft. A. J. Long.
2. Did Martin Newman when he purchase the east half of the Thos. Ayres or since recognize and acquiesce in the line run by Martin Duvall as the east boundary line of said Bastrop County and recognize and acquiesce in said Duvall line as being the west boundary line of said Thos? Ayres survey.
3. If the west boundary line of the Thos? Ayres survey is west of the line run by Martin Duvall as the east boundary line of the Bastrop league #323 & west of Deft A. J. Long's fence then ~~ya~~ can you determine how far west of said fence & the said Duvall line the original boundary line of said Ayres Survey as located by J. G. McDonald is located.
4. How far west of the Martin Duvall line and the A. J. Long fence is the original west boundary line of the Thos. Ayres Survey as located by J. G. McDonald.



5. Has the Deft A. J. Long and his vendors had continuous peaceable and adverse possession of the land described in deed from Bastrop CO. Texas to Breedlove, Norton & Co. dated June 2nd 1884 cultivating using or enjoying the same and paying taxes thereon and claiming under a deed or deeds duly registered for a period of five years prior to February 19th 1897 the date of the filing of this suit.

You are further instructed that the answers to the 1st, 2nd, 3rd & 5th questions should be answered as follows: To the first question we answer "yes", or to the 1st question we answer "No" as the case may be and so on as to the 2nd 3rd & 5th questions and the 4th question if answered at all should be answered as follows. To the 4th question we answer \_\_\_\_\_ varas filling the number of varas west west of the Duvall line if any that you find the original west boundary line of said Ayres survey is located if you find it <sup>is</sup> located west of said ~~xxx~~ Duvall line. If you answer the 1st question in the affirmative then you will not consider any other questions submitted to you. If you answer the 1st question in the negative then you will determine the 2nd question & if you answer the 2nd question in the affirmative you will consider no other question. If the 2nd question if answered in the negative then you will determine the third question and if you answer it in the negative then you will proceed no further but return your verdict accordingly but in case you answer the 3rd question in the affirmative then you will proceed to consider and answer the 4th question then you will proceed and answer the 5th question.

In determining the true location of the original boundary line between the Bastrop Sur. No. 323 and the Thos. Ayres Sur. No. 324 as originally surveyed by J. G. McDonald you are instructed that you should as far as you can follow the original footsteps of the said McDonald in locating said survey.

The burden of proof is upon the plttf. to establish by a preponderance of evidence the affirmative of the 1st 2nd 3rd & 4th questions and upon the deft. A. J. Long to establish by a preponderance of evidence the affirmative of the 5th question preponderated to you.

The Jury are the exclusive Judge of the credibility of the witnesses & the wright to be given to their testimony but must receive the law from the Court and be governed thereby.

J.M. Wagstaff  
Special Judge presiding.

Indorsed:-

To the first question we answer "Yes".

S. Patton  
foreman.

F. H. Perkins #96 vs J.F.Newman et al. Charge of the Court.

Filed Sept. 2, 1899

D. T. Bullock, Clerk Dist. Court, Fisher Co. Texas.



Judgement

F. H. Perkins )  
 No? 96 vs. ) September the 2nd, 1899  
 J.F.Newman st al )

This day this cause come on regularly for trial when came both Plaintiff and Defendants by their respective attorneys and the Defts. J. F. Newman and A. J. Long in person and announced ready for trial when came Jury of twelve good and lawful men to-wit:- S. Patton and eleven others and the Jury having heard the pleadings of the parties and their evidence adduced received the charge of the Court and in charge of the proper officer retired to consider their verdict and afterwards on the same day returned into open Court and in response to the following special issue numbered one in the charge of the Court given ~~xxxx~~ them viz:- "Is the boundary line between the Bastrop League No. 323 and the Thos. Ayres survey No. 324 in Fisher County, Texas, as originally located by J. G. McDonald in 1852 at the same place as the line run for the boundary line of said survey by Martin Duvall and where is now located the fence of Deft A. J. Long" Their verdict was and is as follows viz: "To the first question we answer yes" S. Patton foreman, which verdict was by the Court received and ordered filed. It is accordingly ordered adjudged and decreed by the Court upon said verdict of the Jury that the Pltff. F. H. Perkins do have and recover from the Defts. J. F. Newman and M. Newman the following ~~xxxx~~ described land to-wit:- The West half (W. 1/2) of the Thos. Ayres Sur. of one-third of a league of land being survey No. 324, Patent No. 680 described by metes and bounds as follows: Beginning at a stake on South bank of Clear Fork of the Brazos River in Fisher County the N.W. corner of said Ayres survey and the N.E. Corner of Bastrop County School land league No. 323 as located by Martin Duvall in his survey of said Bastrop County School Land league from which a china 7 inches in diameter brs. N. 25 1/2 E 2 1/3 vrs a hackberry 6 inches in diameter brs. 10 1/4 W. 5 vrs. Thence S. 15 E 6038 vrs to the S. W. corner of said Ayres survey. Thence N. 75 E 706 vrs to stake. Thence N. 15 W parallel to the east and west lines of said Ayres survey to the South bank of the Clear Fork of the Brazos river. Thence up said river with its meanders to the place of beginning for which Pltff may have her writ of possession and for all costs of suit for which Pltff may have her execution. It is further ordered adjudged and decreed by the Court that the Deft. A. J. Long go hence without day with his costs in this behalf incurred for which he may have his execution. It is further ordered by the Court that the fees of Breedlove and McElrath surveyors appointed by the Court be taxed as costs against Deft. J.F.Newman & M. Newman.



Clerks Certificate.

The State of Texas     )  
 County of Fisher        ) I, D. T. Bullock, Clerk of the District Court

in and for Fisher County, Texas do hereby certify that the above and foregoing 69 pages of transcript contain true and correct copies of the Plaintiff's 2nd Amended Original Petition, Defts. J. F. and M. Newman's Amended Original Answer, Deft A. J. Long's Orihinal 1st Amended and Supplemental answer, Order of Court appointing Surveyors, Charge of the Court, Depositions of Martin Duvall and C. R. Breedlove in the case of F. H. Perkins vs J. F. Newman et al No. 96 as the same appears on file in said Court and the judgement rendered in said cause at Aug. Term 1899 of said Court as the same appears of record in my office in Vol 1 at Page 484 & 485 minutes of said court.

Given under my hand and seal of said Court at office in Roby, Texas, this 23rd day of September A.D. 1901.

D. T. Bullock Clerk Dist. Court  
 Fisher Co. Texas, by J. McWhirter, Deputy.