

No 20.

Fisher

Sundry instruments:

Deposition of Martin Dural in the
case of H & T C Ry Co. vs J W Hulse et al.
Cause No 8425, Dist. Ct. Travis Co

B^a cert. SK by Geo. M. Williams.
B^e Explanation by do do.

B^e Letter of Explanation by Geo. M. Williams.
B^e H & T C Ry Co vs. J W Hulse, et al.

All filed January 15, 1902.

GENERAL LAND OFFICE
AUSTIN, TEXAS

counter 22614

I N D I S T R I C T C O U R T , T R A V I S C O U N T Y , T E X A S .

December 17th, 1888.

H. a n d T. C. R. R. C o.

8425. vs.

J. W. H u l s e , e t a l.

This the 17th day of December, A. D. 1888, came on to be heard the motion of the defendants to reform the judgment heretofore entered in this case and the exceptions of plaintiff and its answer thereto and the Court after hearing the same and the argument of Counsel pro. and con reforms the judgment heretofore entered in this case so that the same shall read as follows:

The H. & T. C. R. R. Co.) This day come the parties by their attornies
8425. vs.) plaintiff having dismissed as to J. W.
J. W. Hulse, et als.) Hulse not served and a Jury not having
been demanded submit the matters of fact as well as of law to the Court
and the Court after hearing the pleadings and evidence of the parties
and the argument of Counsel finds.

1st. That Bastrop County School League of land No. 313 in Fisher County, Texas, begins at a point 26,000 varas north 15 west from the S. W. corner of Gillespie County School League of land No. 319. Thence north 75 E. crossing the creek or river three times at 10,000 varas to a corner. Thence S. 15 E. 2710 varas to a stake for corner. Thence S. 75 W. crossing a creek 10,000 varas a stake for corner. Thence N. 15 W. 2710 varas to the place of beginning.

2nd. That said School league is an older Survey than said land claimed by plaintiff.

3rd. That the land claimed by plaintiff H. & T. C. R. R. Survey No. 5 conflicts in part with the land claimed by defendants.

4th. That all the land claimed by defendants in this case is on said League No. 313 Bastrop County School Land and that its North boundary line as hereby established is the South boundary line of Survey No. 5, Block 2, H. & T. C. Ry. Co. sued for by plaintiff.

IT IS THEREFORE ordered, adjudged and decreed by the Court that the plaintiff recover of defendants so much of said survey No. 5 in Block No. two (2) sued for by it in this case as lies North of the North boundary line of said Bastrop County School League No. 313 as herein established and which is by metes and bounds described as follows: Field notes of North part of Survey No. five (5) Block No. two (2) Fisher County, Texas. Beginning at N. W. cor. of Survey No. four (4) mound and 4 puts. Thence S. 15° E. 522 vrs. to N. line of Bastrop County School League No. 313 as established in suit. Thence S. 75° W. 885 vrs. with line of Bastrop Co. School League. Thence N. 15 W. 3001 varas. Thence N. 75 E. 885 vrs. Thence S. 15° E. 2479 vrs. to beginning, containing four hundred and seventy one & 30/100 acres of land, and that said plaintiff have its writ of possession.

IT IS FURTHER ordered that plaintiff recover of defendants viz: E. D. Strong, C. Cleetig, Henry Cleetig, Wm. Cleetig, John Graham, J. W. Barnett, J. W. Wright, Guy Jones, J. C. Patterson, J. E. Patterson, Jackson Phillips, W. P. Richardson, Dixon English, Polk Boyce, A. J. Youngblood, The County of Bastrop, C. R. Breedlove and N. J. Judah, all costs in this behalf expended (except as against J. W. Hulse alone) for which let execution issue.

IT IS FURTHER ordered by the Court that as to that part of the land sued for by plaintiff as being a part of its said Survey No. five (5) Block No. two (2) which lies South of the North line of Bastrop County School League No. 313 as herein established by the Court the metes and bounds of which is as follows: Beginning in established N. line of Bastrop County School Land at S. E. cor. of above Survey decreed to plaintiff; Thence S. 15° E. 953 vrs. to point original S. E. cor. No. five (5). Thence S. 75° 40' W. 885 vrs. Thence N. 15° W. 953 vrs. to N. line of Bastrop County School

League No. 313. Thence N. 75° E. 885 yds. to beginning, and that the defendant recover the same as herein shown established being within the said boundary line of said League No. 313 and be quieted in their title and possession of the same, but are adjudged to pay all the costs of suit as above except that it is adjudged that defendant J. W. Hulse recover of plaintiff his costs in this behalf expended by him for which let execution issue, to which Judgment debts. except and in open Court give notice of an appeal to the Supreme Court.

THE STATE OF TEXAS,)
COUNTY OF TRAVIS.)

I, J A S. P. H A R T, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the Reformed Judgment in cause No. 8425, of H. and T. C. R. R. Company vs. J. W. Hulse, et al., as the same appears of record in this office in Minute Book "S" on pages 232--234.



Given under my hand and seal of office,
at Austin, Texas, this the 5th.
day of October, A. D. 1901.

J. A. S. P. Hart

Clerk of the District Court, Travis County,
Texas.

The H. & T. C. R'y Co.,)	
)	
vs.,)	No. 9, suit pending in the District Court
)	
J. W. Halse, et al.,)	of Fisher Co., Texas.

Answers and depositions of Martin Duval, a resident citizen of Jones Co. Texas, but who is temporarily in Travis Co. Texas, to the accompanying interrogatories propounded to him in the above entitled cause, taken before Jas. P. Hart, Clerk of the District Court of Travis Co. Texas, at Austin, in accordance with the agreement attached to the interrogatories.

Ans. 1st Int.

I am forty years old, my place of residence is Anson, Jones Co. Texas. At this date I am in Austin. I have resided at my present home since 1879, or a little more than eight years.

Ans. Int. 2nd.

My occupation is Civil Engineer and Surveyor. I have been actively engaged in one or the other calling, for 19 years. I have, however, followed land surveying, exclusively, for the first 12 years. I am now engaged under Com'r of Gen'l Land Office, Hon. R. M. Hall, in classifying the public free school lands of the State, the service I am expected to perform is to find the land in the field, or, in other words, identify the land, as to the position given it in the original survey, carefully examine, describe and classify each tract, and give my estimate of value. I have held the official position of District Surveyor of the Palo Pinto Land District two years, also County Surveyor of Jones Co., one term; was re-elected; served about half of the term and resigned.

Ans. Int. 3rd.

I have during my term of service as Deputy Surveyor Palo Pinto Land District, and since, in the capacity of a private Surveyor; done considerable work on, and around the surveys named in this Int. attach hereto a plat as requested, and will in answer to Int. 4th, state: that up to the Spring of 1881, the true position of the base line from which this block of surveys was locatedxxxx seems to have been unknown; the T. & R. R. Co's Land Surveyor's failed to find it and gave it a position from course and distance, which proved to be nearly 400 varas South and as I remember it, about 200 varas West of the actual position on the

ground, as evidenced by remaining land marks of the original survey. I found the S. W corner of league No. 319, Gillespie County School Land, in the Spring of 1881, by working up the surveys fronting on Sweetwater, or Little Elm Creek, to a point that should have been, and proved to be the point from which said corner was originally established. I then run a line N 15 W, as was done in the original survey, and found said corner but further north by about 400 varas than it should have been by course and distance; in this survey I did not find any other marks, but ran N 15 W 10,000 varas. Thence N 75 E to the East line of this block of surveys some 12 miles East of this base line, and proceeded to search Big Elm Creek for witness trees, by which I could determine the position of the Ayers and other surveys fronting on the Creek. I, however, failed to find any, and also failed to make the water front surveys fit the calls in the field notes, even approximately, which is all Surveyor's expect in old surveys. The next work done by me on this base line was in April, 1883, was employed by Judge Rector, of Austin, to identify and re-survey the T. H. Casby league, and G. W. Lawrence survey. I made my beginning on that occasion at the S. W corner of 319, found in my survey in 1881. I run N 15 W allowing a variation for the magnetic needle, of $9^{\circ} 18'$ E. At 5040 varas I found the original N. W corner of No 319, which said corner was identified by its witnesses standing, but they are not as shown by original field notes, but a double mesquite, and there is but 1 degrees' difference in their course, while the original notes shows them 111 apart, or in different quadrants from this corner found. I continued the same course N 15 W at 582 varas I found an old line tree, at 875 varas I found another old line tree, but found no corner at the N. W corner of No. 318, but continued the same course (N 15 W) and crossed Cottonwood Creek at 8695 varas from N. W corner of Ny. 319, and re-crossed at 8912 varas, and again at 9530 varas. The original field notes would have given the calls if calculated from N. W corner of 319 as 8600 varas, and 9760 varas, omitting the second crossing of the Creek. At the N. W corner of No 317 I failed to find any corner, but continued the same course (N 15 W) for 2500 varas more, and failed to find any corner at N. W 317, but continued same course and at 410 varas, or 12910 varas from the N. W corner of 319, 17950 varas from S. W corner of 319 I found a small dead mesquite stump with 3 old hacks, the

stump stood 13 varas East of my line. At the N. W corner of the T. H. Cosby Survey, by course and distance (15,000 varas N 15 W from the N. W corner of No. 319). I again failed to find any corner, but continued the same course (N 15 W) and at 540 varas, or 15,540 varas from the N. W corner of No. 319, 20,580 varas from S. W corner of 319. I found one old witness tree, a dead mesquite, plainly marked. From this corner found, and which is beyond doubt the N. W corner of the Cosby survey, I run the North line of the Cosby Survey No. 315 N 75 E. The 10,000 varas called for in the original field notes, but failed to cross Big Elm, as called for in the original field notes. I then continued the same course (N 75 E) 380 varas further and crossed the Creek to a point 145 varas N 15 W from the Creek, as the Eastv line of the Cosby would run (the original field notes call for this distance 145 varas) this corner is the beginning of the surveys fronting on Big Elm, and to stop South and West of the Creek would destroy that beginning. From this point I run down the Creek and could fit the surveys to the Creek by the calls in the original field notes very satisfactorily, but always had to make the surveys excessive in width and the long lines of the surveys were generally somewhat longer than given in the original field notes; the greatest difference being 161 varas. I found no marked trees, but had to be governed by calls from the Creek in locating the surveys fronting on the Creek. In the Spring of 1884 I was employed by the County Judge of Bastrop County, to re-survey the Bastrop School lands, and again searched dilligently for additional evidence on the old base line, but found none South of the South-west corner of No. 314. I run N 15 W from said corner and made diligent search for the N. W corner of 314 but found nothing. I then continued the same course (N 15 W) 2500 varas move to N. W corner of 313 by course and distance, but failed to find any marks. I then, in the hope that I might locate the North line of 313 by the crossings of Clear Fork noted in original field notes, run N 75 E 300 varas, but found that at a point considerably N of this, the stream had made a sharp Easting, and that a distance of nearly, or quite a mile would be required to cross it on this line, which was run N 75 E from the point given by course and distance, as the N. W course of 313. I again run N 15 W, and at 420 varas found that a line run N 75 E would cross the Creek three times, but would not fit the calls in the field notes, but

believed it to be about the line. I therefore run N 75 E to test the crossings, and just East of the last crossing, found an old marked tree, the Creek crossings and old trees convinced me that I was on the old line. I then proceeded to run Westward to intersect my line from the south, which said intersection would have been within a few varas of the old corner. E. A. Williams, Dist. Dep't Surveyor for Fisher County, who had been following and watching me for nearly a half a day, here came forward and said that I had found the line and that he would show me the corner and save me the time required to run a half of a mile of line. I went with him and was shown the corner, but would have run almost directly to it myself, so I consider that I practically found the corner myself, as my investigation would have led me directly to it. The old witnesses had been broken down, but were plainly marked and were laying where they had fell, and their positions could be clearly identified and corresponded with the positions given in the field notes. From this corner I went back and brought up my line from the South and found that there was 420 varas of excess between this old corner and the old corner found at the S. W corner of No. 314, or a total distance of 5420 varas, or a total distance of 26,000 varas from the S. W corner of No. 319. From this corner, the N. W of 313, I run N 75 E and at 715 varas crossed Clear Fork, the first time, at 1070 crossed it the second time, and at 1300 crossed it the third time, at 3070 varas I found one of the old witness trees at the S. E corner of the Chumley survey, it had fallen, but was plainly marked, it was the witness noted as N 27 E from the corner (the distance 3070 is the corner as located from the old witnesses). I found no other land marks on this line and gave the survey No. 313 only course and distance on this line. In re-establishing 314, I again investigated its South line, which is the North line of the Cosby and found it excessive by 380 varas, as found in the previous survey. I then run the surveys down the river to establish the lower leagues of Bastrop Co. School land and found two mesquite trees in corresponding positions for witness trees, to the lower corner of Burdett survey, and also for witness trees of N. W corner of Bastrop Co. League No. 322, making Burdett & Cosby surveys excessive in width, but fit the Creek calls reasonably close. I could not identify the trees by any marks, but continued down the river a distance equal to 2630 varas for width of No. 322, and was shown by Mr. Williams one old witness tree at the

upper corner of the Lawrence Survey, which is opposite the lower corner of No. 322. From here I again trusted mainly to calls for the Creek to locate No. 323. This I believe, embraces the greater part of the surveying done by me on this block of land.

Ans. to Int. No. 5.--

I surveyed league No. 313 in the Spring of 1884. The purpose of the survey was to ascertain its true position on the ground according to remaining evidence, and establish its lines in accordance with said evidence and ascertain the number of acres in the survey, by actual measurement. I done the work at the instance of the County Judge of Bastrop County.

Ans. to Int No. 6.

I found the N. W corner of No. 313, as stated in answer to No. 4. The corner was marked by the remains of its witness trees, they were both fallen, but the marks were plain on them. One was 5 or 6 inches in diameter, the other 6 or 8 inches; the stumps indicated their positions which fit the original notes.

Ans. to Int. No. 7.--

I understand the John Chumley Survey to be adjoining the Bastrop Co., survey No. 313 on the North, and that its N. W corner and the S. W corner of the Chumley are common to each other. I saw them both at the same time- Spring of 1884. Its witnesses were two fallen dead mesquites, plainly marked, one 5 or 6 inches in diameter, one 6 Or 8. Their positions indicated by the stumps, and corresponding with old field notes. One of the witnesses in Chumley field notes is described as 18" probably intended for 8", as described in No. 313 and as found on the ground.

Ans. to Int. No. 8.

The records how that the work was done in the year 1853 by J. C Mc Donald, Deputy Surveyor of the Bexar Land District.

Ans. to Int No. 9.

The plainly marked witness trees locating the corner of the Base line run from the South, which had been unquestionably identified, and the fact that a line run Eastward at a right angle to said line, crossed the Creek three times, which could not be done South of this, and the fact that the S. E corner of the Chumley was found on said line, were the evidences that convinced me that this was the true corner.

Ans. to Int. No. 10.

I did run the North line of No. 313, the evidence that I found that I was on the true line, was first the original corner identified at the West end of the line. Secondly, the line crosses the Creek three times which the old line evidently did. Third: An old marked tree, and Fourth: An old witness tree at the S. E corner of the Chumley Survey, which was according to the map, located on this line. Fifth: The great improbability that another line could have been found in all the surveying ever done that would have fit all calls and descriptions of this line as well as the position does.

Ans. to Int. 11.

The line mentioned does cross Big Elm Creek, as named in the field notes (which is named by the people here, Clear Fork). The line crosses said stream in running North 75 East from the N. W corner of No. 313, the first time by actual measurement, at 715 varas from said corner, the second time at 1070 varas, and the third time at 1300 varas. The additional evidence that I had was an old marked tree a few varas North of the line which I took to be a side mark for the line, and an old witness tree at the S. E corner of the Chumley Survey, which located the corner on this line when measured from said old witness in accordance with the old field notes, or nearly so.

Ans. to Int. 12.

E. A. Williams told me that he had surveyed the North line of said survey. I also saw points that were established by him on said line. Our work practically corresponds. My measurements were a few varas longer to each governing point than his; (this I gather from his sketch in the Land Office); there is no other difference of consequence.

Ans. to Int. 13.

Messrs. Williams and Bagley were present when I was working on the North line of League No. 313. I cannot name the day of the month, it was in April, 1884. Mr. Williams seemed to be familiar with the position of the N. W corner of No. 313, also its North line and the S. E corner of the Chumley survey on said line. I heard nothing from Mr. Bagley that led me to believe that he knew anything about the surveys on the ground.

Ans. to Int. 14.

The witness trees at the E. W corner of No. 313 were two

dead mesquites, one 5 or 6 inches in diameter and one 6 or 8, they were plainly marked; they had fallen and were laying on the ground where I saw them; the stumps or remains in the ground marked their positions, and they corresponded with old field notes. The marks were old, about the age of marks found thereabout the country on work that was done in the same year as near as my experience enables me to judge. I found a tree a few varas North of the North line in running North 75 E. This tree was also a dead mesquite 6 or 8 inches in diameter; it was standing and the marks were evidently the same age as those at the corner. I also saw one old witness tree, a dead mesquite 6 or 8 inches in diameter, with marks corresponding with the other marks mentioned for age. It is hard to say certainly about the position of a witness tree corresponding, where there is but one and no other evidence of the original position of the corner. My recollection is that this witness tree put the corner practically on the line that I was running.

Ans. to Int. 15.

I run a course N 75 E assuming the variation used in the original survey to be correct. I do not think the original field notes gave the course of the stream at any of the three crossings of this line, the line crossed the stream three times. I saw an old marked mesquite tree standing a few varas North of the line which I took to be an old side mark, and which assisted me in locating this line before I had seen the corner, and which I depended on to find the corner, and I also further to the East saw the old marked tree before mentioned as a witness at the S. E corner of the Chumley survey.

Ans. to Int. 16.

I started from the N. W corner of No. 313; Iran N 75 E; it took me across Big Elm Creek or Clear Fork. I crossed it three times, first crossing 715 varas; Second, crossing 1070 varas.; Third, crossing 1300 varas, the crossings do not fit the original field notes.

Ans. to Int. 17.

I did not test the stream North of this line; there is no other place South of this line where the stream approaches as near to the base line as here, so I will answer: there is no place South of this where the stream could be crossed three times near the base line, if the line was run N 75 E.

Ans. to Int. 18.

I have seen the S. W and S. E corners of the John Chumley Survey, the S. W corner where I saw it, was marked by two old marked witness trees that had fallen. Their positions corresponding with the field notes, the S. E was marked by one old marked witness tree which had also fallen.

Ans. to Int. 19.

I have run the South line of the Chumley Survey. In some particulars, or more properly in a general way the line corresponds with its field notes, the course of the line was the same. The field notes call for crossing a Creek three times; this line crosses a Creek three times; the middle crossing is nearly right for distance; the difference may have been made in the points to which measurements were taken in my survey and Mc Donald's. There is evidence found of an old corner at the end of the line about as near as the true distance as Mc Donald's corners are usually found in other parts of the Country.

A Ans. to Int. 20.

I have seen the map of Fisher County made at the General Land Office. I have also seen a sketch made by E. A. Williams. I have often seen the County map; have seen it several times within the last month. I saw Williams sketch in the Spring of 1884 while I was making the survey for Bastrop Co. I have seen a sketch of the same work within the past ten days by Williams. His sketch corresponds very closely with my work, but differs as noted on my sketch that accompanies these interrogatories. The County map differs, from the fact that it was plotted without any knowledge of the excessiveness of the surveys, so the position of all work on the ground is somewhat farther North than shown by said map. A map by M. O. Hall is much the same, but he uses less variation than was used in old surveys and fell farther to the East as he run Northward.

Ans. to Int. 21.

I believe I have stated all land marks found or seen by me on this immediate block of surveys; they were on old corners at the S. W corner of No. 319, marked by both of the original witnesses. An old corner at the N. W corner of same survey also marks by both of the original witnesses, but both in the same quadrant and within one degree of each other, instead of being in opposite quadrants, as shown by the original notes. I also found two line trees on the West line of No. 318. I also

found an old marked stump, the remains of a line tree, or possibly one of the witness trees near the S. W corner of the T. H. Cosby survey No. 15. I found one witness tree at the S. W corner of No. 314, and both original witness trees at the N. W corner of No. 313, and one old marked tree near the North line of said No. 313, and one old marked witness tree at the S. E corner of the Chumley survey; was unable to locate the S. E corner of No. 314 by course from its S. W corner (which was found) terminating in a point that corresponds with the natural calls in the T. H. Cosby No. 15 field notes, and also saw one old witness tree at the upper corner of the Lawrence survey. Taking the initial point on Sweetwater, they correspond with position that they should occupy. All surveys on Clear Fork and Sweetwater, and wherever Mr. Mc Donald has done work in this County, Jones or Taylor, and any traces of his surveys can be found, are excessive, this block is also, of course, excess carried for a long distance changes the position from a given fixed point, as Phantom Hill all of the surveys are a little farther from Phantom Hill than shown by the field notes, and this block is all a little farther North from Sweetwater Creek than shown in the field notes.

Ans. to Int. 22.

There is found in all of Mc Donald's surveying in the Counties of Taylor, Jones, and Fisher, something like a regular excess; sometimes it is a little more and sometimes a little less, but it may be safely assumed that one vara of his claim was about $1 \frac{1}{25}$ varas true measure; this is a natural consequence from long use and increases the longer the chain is used without adjusting, besides the regular excess from long chain. Mr. Mc Donald's chainmen would doubtless fail to agree as to the number of tallies run at times (this is the case with all chainmen I have ever known). Anyone retracing Mr. Mc Donald's work over a large extent of territory would arrive at the conclusion that where a doubt arose about this, that he did not re-chain, but simply put in another tally; chances are equal under this rule to make the work right or give one tally (200 varas if a 20 vara chain) too much distance. Nearly all of the serious errors in his work runs to this error, 200 varas over the regular excess, and I have no doubt that just such an error was made on the West line of 314 or 313. My means of knowledge as to how errors generally arise in surveying, is 19 years practice, myself. My means of knowledge as to how Mr. Mc Donald's work runs, is that I have retraced

all of his work in Jones County, and known all of his remaining corners,
also considerable of his work in Taylor Co. and have found many of his
errors there. I have kept close notes of his errors and from them have
arrived at the conclusions stated above.

(signed) Martin Duval.

Sworn to and subscribed before me, this 7th day of Sep't, 1887.

(signed) Jas. P. Hart,
C. D. C. T. C. T.

To cross interrogatories the witness answers:

Ans. to X Int. 1st.

I became acquainted with the surveys mentioned, in making a re-survey of the Bastrop County School Lands for Bastrop County, in the Spring of 1884. I did not hold any official position at that time.

Ans. X Int. 2nd.

I have surveyed the lines mentioned, except the West line of the Chumley survey No. 312. I found the S. W corner of No. 319, Gillespie County School Lands, also the N. W corner of the same survey, and the S. W corner of survey No. 314, Bastrop County School Land, from which I run N 15 W, the distance called for in field notes (5,000 varas) for the N. W corner of No. 313, and had found no corner at the S. W corner of No. 313. I then run East, or rather N 75 E, the distance called for in the original field notes for the first crossing of Big Elm Creek (or Clear Fork) but found that at a point considerably North of this, the Creek had made a sharp Easting and could not be reached here, or at any point South. I therefore run N 15 W again 420 varas more, and found that a line run N 75 E would cross the Creek three times. I took this for a clue to the true line, and in searching for evidence found an old marked tree; from this I set my instrument to run S 75 W and intersect the base line, but E. A. Williams, at that time Special Dep't Surveyor for Fisher County, said that I was on the line, and that he would save me a run of a half mile, by showing the witnesses; my two lines would have intersected within a few varas of the corner, so practically, I found this corner, also as I had made investigations and accepted evidence that would have led directly to it. I did not run any farther North than this corner.

Ans. to X Int. 3.

I found the S. W corner of Gillespie Co School Land No. 319. I found the N. W corner of 319, which is the S. W corner of 318, the N. E. corner of 304, and S. E corner of 305. The witness trees at this corner are near each other, being really a forked mesquite, each prong ~~is~~ about 6" diameter, one bears N 55 W 40 varas, the other N 56 W 40 varas; the old field notes placed them at different quadrants but gave both distances as 40 varas; it was by my measurement 5040 varas from the S. W corner of No. 319.

Ans. to X Int. 4.

I did not find any of the corners of No's 316 and 317, El Paso County School Lands. I found, after leaving the S. W corner of No. 319, in running N 15 W, the N. W corner of said No. 319, the S. W corner of No. 314 and the N. W corner of No. 313, as stated in answer to X Int. No. 3. The N. W of 319 was 5040 varas from its S. W corner; the S. W corner of 314 was 20,580 varas from the S. W corner of No. 319, and the N. W corner of 313 was 26,000 varas from said S. W corner of No. 319.

Ans. to X Int. 5.

I have never run in the West line of the Chumley. I cannot answer.

Ans. to X Int. 6.

The North line of survey No. 313 crosses the Clear Fork the first time at 715 varas N 75 E from the N. W corner, by my measurement, it crosses the second time at 1070 varas, and the third time at 1300 varas.

Ans. to X Int. 7.

It is true that the line mentioned is excessive; I found them excessive in length, or too much distance between each set of old corners; there was an excess between the S. W corner of No. 319 and its N. W corner; there was an excess again between the S. W corner of 318 and the S. W corner of 314; there was an excess between the S. W corner of No. 314 and the N. W corner of No. 313. I left all excesses South of the S. W corner of No. 314, without distribution. I divided the excess between the S. W corner of No. 314 and the N. W corner of No. 313, equally between the two surveys. The authority that I divided the excess on, was an original corner at the S. W corner of No. 314, and an original corner at the N. W corner of No. 313, and nothing from between to show how much belonged to each; the rule for this distribution is laid down in all works on surveying that I have seen, that speak of it at all; also by rulings of the Com'r of the General Land Office of the United States in the excesses or deficiencies found in Government lands, and as far as I know is the practice of all Texas Surveyors that have had any considerable amount of practice; this is the rule recognized by Hon. Wm. C. Walsh, late Com'r of the General Land Office of Texas.

Ans. to X Int. 8.

The line mentioned crosses Clear Fork at 715 varas from the N.

W. corner of No. 313 and again at 1070 varas, and again at 1300 varas. The crossings do not agree with the original field notes; the original were 300 varas, 1000 varas, and 1500 varas wide, differences, but clearly to an investigator on the ground, errors in writing the original field notes.

Ans. to X Int. 9.

The distance from the S. W corner of No. 319 to the S. W corner of No. 314 is 20,580 varas from the S. W corner of No. 314; to the N. W corner of No. 313 is 5420 varas, by my measurement. There is an excess in distance between the S. W corner of 319 and S. W corner of No. 314 of 580 varas, and an excess of 420 varas between the S. W corner of No. 314, and N. W corner of No. 313, as compared with the calls in the original field notes.

Ans. to X Int. 10.

There is 4796.7 acres within the boundaries of survey No. 313, as established by me. Williams did not assist me; there is an excess over the original call of 368 acres; the excess in acres was occasioned by the excess in the East and West lines of the survey, required to reach the original N. W corner, which was then easily identified on the ground by its witnesses, and the position corroborated by the North line crossing Clear Fork three times; there was no excess given the survey East and West.

Ans. to X Int. 11.

The several surveys mentioned call for one league each in the original field notes. The length of the West lines No's 319, 318 and 317, as called for in the original field notes was 5000 varas each, while 316, 315 and 314, and 313 were each 2500 varas, according to original field notes. The total excess from the S. W corner of No. 319 to the N. W corner of 313, is 1000 varas between the S. W corner of 318 and the S. W corner of 314 should be distributed according to length of lines in original notes; calls for creek or other natural objects might change the plan of distribution, but on the supposition that it would be equal 318 and 317 would be entitled to 180 varas each, and 316 and 315 would be entitled to 90 varas each. The proportionate number of acres under this distribution of excess would be 159 for each of the surveys No's 318, 317, 316 and 315, while 319 would have an excess of only 35 acres. Survey No. 313 as re-surveyed by me would have 209 acres

more of land than either of the surveys named above.

Ans. to X Int. 12.

I got my beginning on the S. W corner of survey No. 319, which I had found myself, in a run from the old surveys on Sweetwater Creek, with other land, including the S. W corner of No. 314, before Williams began operations in Fisher County, probably before he was ever in Fisher County. Williams done nothing to encourage me, and but little to assist me in making this survey; the pointing out the old corners after I had as good as found it, was the only thing that I call to mind. The North line of the Bastrop Co. Land Survey No. 313, and the South line of the Chumley Survey, as far as it extends East, are the same as understood by me.

Ans. to X Int. 13.

I retraced the old base line from which this block of surveys was established from Sweetwater to this point, at different times, beginning on this occasion at the S. W corner of No. 319. I found several line trees and three other corners, besides natural calls that convinced me that I was on the true line. The fortunate call ~~mk~~ for a triple crossing of the Creek, although erroneous as to distances, enabled me to place myself on the North line of the survey, and the intersection of the two lines would have given me the corner, and the witnesses were there to attest to its position. While Williams did assist me as stated above, it done nothing but save me the time required to run a half mile of line. The corner would have been found and the line located where it now is, if Williams had not been present.

Ans. to X Int. 14.

I made my beginning for the North line of survey 313 at the original N. W corner of said survey, found as described in my answer to No. 3.

Ans. to X Int. 15.

Of course work could not correspond unless the initial point was common, and practical correspondence in our lines doubtless sprang from both Williams and myself basing our work on the original work, and investigating the same line, which with the amount of evidence then on the ground, could not fail to lead any two Surveyors to the same conclusion, if they had anything like due respect for old evidence in its proper order, first: natural landmarks; second: artificial landmarks;

14.

third; course, fourth: distance; distances the test to be considered, was the only evidence against us. Williams did not influence me in any way; my conclusions were arrived at from investigation.

Ans. to X Int. 16.

Mr. Bagley, I suppose is one of the Surveyors alluded to. I have never met him since, and could not have re-called his name until these interrogatories were propounded. I have remembered that there was a young man with Williams (seemingly a guest) that I understood either from him or Williams, to be a Surveyor from Nolan County- probably Surveyor of Nolan County; I am not certain about that. I do not re-call any statements made by him; there was nothing passed that led me to suppose he had ever been on the ground before. I remember him simply asking the question, if I thought the surveys would hold the excess, and I think he asked my opinion as to how the error was made in distances from Creek crossings on the North line; he offered no advice, and expressed no doubt in my presence, about that being the true corner and line, as originally located; nor do I remember that he expressed an opinion that it was; he was present or near; I do not know about his being with the chain and seeing the measurement; he could have done so if he desired. He doubtless knew the measurement; I spoke of it freely in his and Williams presence, and also in the presence of the men assisting me. I have no recollection of his inspecting my field notes; don't think he expressed any desire to do so; if he did I showed them to him; if he did not he never saw them while in my possession. I do not think he ever talked to me about Williams corners. I found from general conversation that he placed great stress upon true distance and concluded that he would give himself but little trouble to find corners that had been established out of position, but would be content with putting them where they should have been correctly established in the original. All this, however, was drawn from conversing in a general way about surveying, and not from direct statements, or from conversation about any particular work. The fact that the distances did not correspond with the original, was freely spoken of, and comments indulged in by all. I suppose Mr. Bagley with us, but he certainly did not point it out as something not known, nor did he suggest any remedy or other solution of the true position. He did not tell me there was another place that a line run N 75 E would have crossed the Creek three times, and correspond with

field notes. I had just investigated the base line from the South, and would have known that there was no such place South of this near the base line, and the old marked corner would have forbidden my going farther North. I applied every test known to me as gathered from a long practice to fix the North line of this survey, and as explained in direct Int. No. 4 did fix said line by said tests, without assistance, and nothing done here was based on any information given by Williams or any other person. My own work was carefully corrected and all conclusions based on it. You give Mr. Bagley and Mr. Williams credit for interest here in opposite directions that was never manifested.

(signed) Martin Duval.

Sworn to and subscribed ~~to~~ before me this the 7th day of Sept. 1887.

(signed) Jas. P. Hart,

C. D. C. T. C. T.

The State of Texas,)
County of Travis.)

I, Jas. P. Hart, Cl'k of the District Court

within and for said County and State, do hereby certify that the foregoing answers of Martin Duval, the witness before named, were made before me, and were sworn to and subscribed before me by said witness.

Given under my hand and official seal this the 8th day of Sep't, 1887, A. D.,

(signed) Jas. P. Hart,

C. D. C. T. C. T.

Fee \$12.65

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Fisher Co. Sketches ^B
Filed in Gen. Ld. Office
Jan'y 15th 1902 F.C. 10 in

Depositions of Martin
Duval in the case
of H & T C. R.R. Co.
vs J. W. Hulser et al
Fisher County

Cause No 8425 Travis
County District
Court

Decree of Court
was in Oct 1888

Fisher Co

(9)
Hon Charles ^{Proffers} Commissioner of the
Gen. Land Office
Austin Tex

Dear Sir:-

Having made a resurvey of the
Houston & Texas Central R.R. Co. Lands
in conflict with League No 307 El Paso
Co. School Land and League No. 313
Bastrop County School Land, ^{in Fisher County} I beg to
report as follows, to wit:-
I made a careful investigation on the
ground of what is called the base
line of Mc Donald's work, from S.W.
Corner of League No. 319 Gillespie County
School Land to the S.W. corner of the
John Chimby league & the N.W. corner
of League No 313 Bastrop County
School Land. The sketch which accom-
panies this report, marked "Sketch
A." "B" Fisher County, shows these leagues
as they were resurveyed and as they
are established & claimed on the
ground at this time.

The four Leagues nos. 304, 305, 318 & 319
Gillespie County School Land were
resurveyed & subdivided in July & August
1891 by W.C. Breedlove Co. Surveyor of
Fisher County and Harry Sappington
representing Gillespie County.
Leagues Nos 306, 307, 316 & 317 El Paso
County, were resurveyed and subdivided

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by W. C. Breedlove, Co. Surveyor of Fisher County and F. A. Parker, Co. Surveyor of El Paso County, July 1892. The J. S. Cosby league was resurveyed by Martin Duval also Leagues Nos 313 & 314 were resurveyed by Martin Duval in spring of 1884 for County Judge of Bastrop County.

League No. 313 was established by decree of Court in the case H & T. C. R. R. Co. v. J. W. Hulse et al. Fisher County, Cause No 8425 Travis County District Court On Oct 24th 1888 the Court gave judgment against the H & T. C. Ry Co.

placing the N. line of League No 313 in the position shown on sketch A. The S.W. corner of said league is placed 2710 ^{is} S 15° E of its N.W. corner midway between S.W. Cor. 314 & N.W. Cor. 313. This decision was ^{evidently} based on the depositions of Martin Duval, which set forth that he, Duval, had identified the original N.W. Cor. of No 313 and original S.W. Cor. of No 314.

I send you herewith a copy of Duval's Depositions, as they have an important bearing in connection with these leagues in that his (Duval's) investigations were made before all the land marks had become obliterated. Generally speaking nearly all mesquite trees that were large enough to

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mark, fifty years ago, are now dead or have been dead for many years hence it is very difficult to find old land marks made by M^r. Donald in 1852. Fifteen or twenty years ago there was many dead Mesquites standing, that have since fallen and decayed or were cut for fire wood, and in some instances not even the stumps remain.

At S.W. corner of League No 319 & S.E. cor. No. 304 Gillespie County, School Land. I find the stumps of the old bearings, New trees have grown up from same roots and have been marked ^{stumps} as witnesses for many years. The stumps show that the dead trees were cut a few years ago. They bear as follows; Mesq. stump 10' & Clump of new growth brs N50°W 50' vs. a Mesq. stump 10' & Clump of new growth brs N35°W 46½ vs. This is the corner identified by Martin Duval in 1881; at that time the trees were dead, but plainly marked, says Duval in his sworn deposition. This is also the corner ^{cor.} recognized by Breedlove and Sappington in 1891 when they resurveyed Leagues Nos 304 & 319.

Beginning at the above mentioned corner I ran a random to N.W. cor. of No 319 & N.E. cor. 304. and found said corner. which is a pile of stone from which a double Mesq.

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stump one prong brs N55°W 40 is the other brs N56°W 40 is. I found some old marks on a dead fragment of one of the trunks but not enough to be able to say that it ~~is~~ was marked as "bearing". This N.W. cor. of No 319 is the corner recognized by Breedlove and Sappington and is evidently the same corner that Martin Duval found in 1881 when both dead trees were plainly marked (according to his statement) A. line connecting the S.W. corner of No 319 & N.W. cor. said Sec. 319 is shown on sketch A. and field notes are as follows. Beginning at S.W. cor. No 319. Thence N15°W needle line at va. 8°35' E at 21 is. center of a branch. at 265° or 75° is. same branch ^{at 1926 is a branch} at 435° is. a branch in all 5°049 is to a pile of stone at the N.W. corner of No. 319. old stumps bear as given above. Made new bearings as follows: Merq. 10" brs. N18½ E 35°. 8 is. 3 Merqs. from same ^{3 4 6} root, br. S7½ E 15° is. both used & No 305 calls for a Merq. 6" brs. N55°W 40 is. a Merq. 6" brs. N56°W 40 is. The trees found by Duval were a ^{single} Merq. one degree apart, that fit the calls of No 305 for this corner but No 319 & No 304 & No 318 put the trees in a different quadrant. This corner is 700 is. N. of a creek, which satisfies the calls of the original field notes of No 319

at 1184 is. N56°W from S.W. cor. 319. line passes 8½ is. to right of a dead Merq. 6" used is. on E. side and at 260 is. passes, 18½ is. to right of a dead Merq. swing. used is. on E. side. both old line trees counter 22640

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I consider this corner identified as the original corner and have so marked it on said sketch A. Field notes of a line connecting SW. cor. No 318 and SW. cor. league No 317. Beginning at a st. Md. at SW. corner of No 318 & NW. cor. No 319. Thence N 15° W needle line at a va. of 8° 43' E. at 587 1/2 passed 1/4 va. to right of a Mesq. of several prongs, a dead prong of which is marked \equiv on E. side (old marks) at 881 1/2 passed 2 1/2 to Right of a Large Mesq. with several prongs one prong dead & broken off is marked \equiv on E. side (old) marks. These are the two trees mentioned in Duval's depositions. in all 5209 1/2 to a Mesq. Post set by Breed line and Sappington for NW. cor. 318 & N.E. cor. 305 Gillespie County School Land. Field notes of a line connecting the NW. corner of No 318 and NW. cor. No 317. Beginning at the NW. cor. of No 318 a Mesq. Post set by W.C. Breed line and Harry Sappington for NW. cor. No 318 Thence N 15° W. needle line at Va. 8° 50' E - at 3564 1/2 crosses Cottonwood creek at 3776 1/2. x said creek again at 3881 1/2. passes 19 1/2 to Left of a 12" Mesq. marked \equiv on W. side very old marks. (old side line tree) at 4388 1/2. x said Cottonwood creek again at 4638 1/2. a small drain. in all 5224 1/2 to a Mesq. Post set by W.C. Breed line. Co. Surveyor of Fisher Co. & F. A. Parker

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County Surveyor of El Paso Co. July 1892.

Continued line from N.W. corner of No 317
N15°W 2611.8 ^{is} to a Mesq. Post set by
said Breedlove & Parker for N.E. cor. 307
& N.W. cor. 316 El Paso Co. School Land.

Thence N15°W (va. 8°50'E) at 1485.2 ^{is} passes
state in road at N.E. cor. #20 Block 2 N & T.C. Ry
Co. 2611 ^{is} to a point in ^{Lane} road uposite fence
running N75°E. said point is about the
S.W. corner of No 314 as established by Martin
Dunal in 1884 for judge of Bastrap County
All traces of a bearing tree here are now gone
and all we have is a fence claimed to have
been put on Dunal's line.

Thence N15°W (va. 8°50'E) at 1482 ^{is} a creek
at 5422 ^{is} the S.W. corner of the John
Chumley League and N.W. cor. of No 313.
Bastrap Co. School Land as identified by
Martin Dunal and confirmed by decree of Court
whence a Mesq. stump br. N48½°W 35 ^{is} fits
calls for one of the original bearings
could find no evidence of stump for the
corresponding bearing tree. There is no
visible corner at S.W. cor. No 313, except
a Mesq. pointer, marked several years
ago which indicates corner at point
midway between S.W. cor. 314 & N.W. cor.
313. which places said S.W. cor. 313 as
per decree of Court. The original calls
of No 314 on its W. line calls for
a creek at 1400 ^{is} N15°W from

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its S.W. I find said creek to be 1482
±. N15°W from said corner. which is
a fairly good fit for old work of
the character of Mc Donald's work
From N.W. corner of No 313 Bastrop Co. School Land
I ran N75°E on Duval's line, ^{on 830's} at 715 ±,
centre of Elm Fork of Clear, ^{Fork} of the Brazos
River at 810 ±, pt 110 ±. N15°W of extreme S.
point of bend of said stream at 1070 ±.
said stream again at 1200 ±, point 100
± S15°E from extreme N. end of bend
of said stream at 1315 ±. crosses said
stream again at 2887 ±, point at about
where the S.E. corner of the John Chumby
is established at 4283 ± passes a stone at
S.W. corner of No 4 H & T L R.R. Co. Block 2. said
stone being 496 ±. S15°E of S.W. cor. of No 6
as established by John Bayley. said Bayley's
work being at a variation of about 9°10'E
at 6567 ± a stake set by S.A. Lyon County
Surveyor of Fisher Co. for S.W. cor. of Sur.
3 H & T L. Ry Co. 5084 1/2 ±. S15°E of N.W. corner
of said Sur. 3. on S. line of Sur. No 2.
of said Block 2 - stopped line here
It is said that the tree found by Martin, ^{Duval} as
one of the original bearing trees for S.E. corner
of the Chumby league, was destroyed by
probably being carried off for fire, ^{wood} and
that it became a lost corner and that
later on W.C. Freed line, when he
resurveyed the Chumby league, he cut

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it down to course and distance from its S.W. corner and it is so recognized on the ground at this time by all interested parties. The Chumley and the other leagues are placed on the ground at about 20' less variation than the surrounding Bayley work. I next went to the S.W. corner of No 314 Bastraps Co. School Land and N.W. corner of the J.A. Cosby league as established by Martin Duval

Thence $N 75^{\circ} E$ or $S 50^{\circ} E$ at 760 is a drain at 5036 is Cottonwood creek at 10354 is crossed Elm Fork in all 10459 is to a stone known as the Duval N.E. corner of the J.A. Cosby league. Thence $S 15^{\circ} E$ 125 is to the N. bank of said Elm Fork.

Thence down Elm Fork with its meanders along N. bank as follows. $S 79^{\circ} E$ 100 v² $S 30^{\circ} E$ 102 is $S 43^{\circ} W$ 160 v² West 40 is $N 40^{\circ} W$ 75 v² $S 87^{\circ} W$ 172 is $S 51^{\circ} W$ 164 is $S 20^{\circ} W$ 19 is Thence $S 15^{\circ} E$ about 200 is to where said stream turns abruptly to the East.

Here my investigations as to the McDonald work stopped. After my retrace of the base line from the S.W. cor. of Sur 319 to S.E. corner of the Chumley league I have come to the following conclusions: -
First: - That in view of what evidence I find on the ground as to old ^{land} marks and calls for natural objects in shape of creeks, and the existence of stumps

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which are the remains of trees proven to have been dead back in the early eighties, with the old bearing marks on them: I therefore believe that the N.W. corner of No 313 Bastrop Co. School Land as found by Duval and others was the original corner. Also that the S.W. & N.W. corners of No 319 as identified by Duval were original corners: Also that S.W. cor. No 314 Bastrop Co. School Land & N.W. corner of the T.H. Cosby was an original corner:

Secondly. that it would be unwise to attempt to disturb these corners, simply because the bearing trees which were dead in 1884, are now gone and no evidence remains as to actual marks, they have the dignity of traditional corners and, I take it would be sustained by the Courts. Between the N.W. corner of 313 and S.W. corner of No. 314 I find a space of 54.22 is, which is substantially as found by Duval, which was divided equally between leagues Nos 313 & 314. in the decree of Court of Travis Co. in cause # 8425. H & T. C. Ry Co. vs. J.W. Hulse et al Fisher County. Now if the principle of distribution be carried out as laid down in this decision; we should distribute the excess between the S.W. cor. of No 313 and the S.W. corner

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of No 314 which is 655.8 \pm . By this method each league having a 5000 vara frontage on base line would have 218.6 \pm excess and each long league would have 109.3 \pm excess. By inspecting sketch A. you will see that this principle of distributing the excess was practically carried out in the resurvey of these leagues by Breedlove and others. No 318 gets 209 \pm . No 317, 224 \pm . No. 316, 111.8 \pm . No. 315, - 211 \pm . I believe that the Mesq. 12" dia. found by me and shown on sketch as being 3881 \pm . N15W of S.W. cor. of No. 317. is one of the original line trees and that the original line as run by Mr Donald crossed Cottonwood Creek 15 or 18 \pm further east than the line is now placed. and that Mr Donald struck the creek ~~in~~ at the point of bend 3600 \pm N15W of S.W. corner of 317. and that he only hit the creek twice which would satisfy the calls except as to distance to second call which is short. Hence we find that by distributing the excess we come more nearly fitting the calls for the creeks than by any other method. If we take the ratio of excess found between S.W. corner of No 314 and the S.W. cor. of 318 - which is 218.6 \pm to

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each league of 5000 ^{sq} and apply it to the S. line of Bustrap Co. School Land No 314, the said line would be 10437 ^{sq} long and would cross Elm Fork, but would not cross creek. at a distance of ¹⁶⁵ 152 when from corner as called for in the T.H. Cosby Sur. My experience with calls of old surveys for creeks, is that these calls rarely fit even when we know we have the original corners to work from. We will take No 319, which calls for creek at 50 N15W from its SW. cor. when as a matter of fact the creek is only 21 ^{sq} away. No 307 El Paso Co. School Land is shown on map as it exists on the ground and I have corrected the surveys in conflict as shown on said map. Also nos 314 147 T.C. Ry Co. Block 2 in conflict with No 313 Bustrap Co. School Land

I Geo. M. Williams, State Surveyor do hereby certify that the above and foregoing Report is true and correct Given under my hand at San Antonio Texas. this January 9th 1902

Geo. M. Williams

State Surveyor

B^c

Fisher Co Sketches
G M Williams
Filed in Genl. Land Office
Jan'y 15th 1902
L. C. Wise

Counter 22648

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