

Galveston, Texas, May 5, 1899.

To the Hon. Commissioner of the General Land Office
of the State of Texas, Austin, Texas.

Dear Sir:-

Referring to the application of the East End Pier, Wharf, Dock, Shipping and Terminal Railroad Company to purchase from the State of Texas under the provisions of Art. 726, et. seq., Ch. 15, Title 21, Revised Statutes of Texas, certain land on the East end of Galveston Island, alleged to be flats, I beg leave to advise that the Galveston City Company, the assignee of Michael B. Menard, claims to be the owner of the land sought to be obtained from the State, and hereby protests against the issuance of any patent therefor, and respectfully shows:

1. Attached hereto and marked "Exhibit A." for identification is a blue print of a map of the East End of Galveston Island made in 1891 from a careful and actual survey by the United States Engineers at Galveston, showing the several locations on the East End of the Island. By reference thereto in connection with the field notes recently submitted by the East End Pier, Wharf, Dock, Shipping and Terminal Railroad Company, a copy of which is hereto annexed and marked "Exhibit B.," it will be observed that the land sought to be purchased by within the lines indicated by the letters "A." "B." "C." "D." said East End, etc., Co. is that embraced, that is to say, the land bounded as follows: On the North by the Southerly line of the Government Reserve; on the East by the South Jetty; on the South by the property owned by the Gulf, Colorado & Santa Fe Railway Company, and on the West ~~Northward~~ ^{a line parallel to the South Jetty a short distance South} by the channel of Galveston Bay, the Southerly edge of said channel being indicated by the white, broken line upon which is written the words, "12ft. curve of depth." It will be observed, therefore, that the whole of the land sought to be obtained is in conflict with the claim of the Galveston City Company, and a part thereof is

embraced in the tract of 102.34 acres surveyed May 15, 1890, under Certificate issued to W. A. A. Wallace.

2. On December 9, 1836, the Congress of the Republic of Texas passed an act relinquishing to Michael B. Menard and his associates all the right, title and interest of the Government of Texas in one league and labor of land lying on and including the East end of Galveston Island, and vesting the title of the Republic in Menard and such associates as he might thereafter include. Menard was to pay \$50,000.00 for the land and when this should be done, the President was to issue to the grantees a quitclaim title to the land. The words of the grant to Menard, referred to in the Act approved December 9, 1836, are as follows:

"Sec. 1. That all the right, title and claim which the government of Texas has to one league and one labor of land, lying and situate on, and including the east end of Galveston Island, be, and the same is hereby relinquished, in favor of Michael B. Menard and such associates, etc., etc.

Sec. 5. That the government of Texas reserves to itself all that tract of land from the extreme east end of the island of Galveston, running west on the north side of the island until it strikes a bayou, a short distance above the present fort, thence up said bayou to its source, thence on a straight line across the island to the Gulf, containing fifteen acres, more or less, etc., etc."

Menard having paid the \$50,000.00, the President issued a quitclaim, or patent, to him and his future associates, for the league and labor of land, on January 25, 1838. The patent describes the land granted as follows:

"Beginning at the northeast corner of lot number ten in section number one, as represented in the plat of survey of the Island of Galveston, made by R. C. Trimble and William Lindsay under direction of the Secretary of the Treasury, and running thence due north one hundred and fifty varas to a stake.

Thence eastwardly with the channel of the harbor in the Bay of Galveston, and with the general course of said Island, at the distance of at least one hundred and fifty varas from the shore, to a stake, one hundred and fifty varas from the extreme eastern point of said Island. Thence south to the Gulf of Mexico. Thence, with the meanders of the gulf, to the southeast corner of lot number one in said plat of survey. Thence northwardly across the Island with the eastern boundary of lots numbers one, two, three, four, five, six, seven, eight, nine and ten, to the beginning; except the reservation expressed in the fifth section of the act of Congress aforesaid."

This description is more specific than that contained in the Act, but in the case of the City of Galveston vs. Menard, 23 Tex., 349, our Supreme Court held that the patent conformed to the act in making the description and that the patentees were entitled to all the territory embraced within the bounds set forth in the patent.

Menard associated several other persons with himself in the ownership of the land and they were incorporated in 1841 under the style of the "Galveston City Company," and in 1842 Menard executed a deed to the Galveston City Company, which placed all the title conveyed to Menard and his associates by the Act of Congress and the patent of the President, as well as all the title acquired by Menard under a deed from J. N. Seguin, who claimed under a grant from the State of Coahuila and Texas, made in 1834.

In the above cited case, the question came up and was the main question decided by the Court, viz: "Does this act confer the right to the shore and flats lying South of the channel of the bay?" 23rd Tex., 394. The Supreme Court answered this question by saying: "We are satisfied that this legislative grant was intended by the contracting parties to include the flats so as to build a city upon Galveston Island, with streets and lots running up to and bordering on the channel of the Bay. It was a specific grant directly made by the Government for a

specific object and it must be understood and construed, with reference to such object." (P. 397.) And again, as to this object: "The grant was made large enough to include that part of the island nearest to bar where it was practicable to build a town of any considerable size and where the channel of the bay approached nearest the edge of tide water." (P. 398)

"It was doubtless contemplated at first and so understood by the President that these shallow flats would here, as elsewhere, be filled up, out to or near the channel, and become a part of the town with streets and blocks of lots as other parts of the town. Hence the right was conveyed by him out to the channel, so that the whole plan of the town might be laid off, with reference to its present wants and future development."

Confirmatory of the opinion of the Supreme Court of Texas, in the case above cited, that the right of Menard and his assigns extended to the channel of Galveston Bay, attached hereto and marked "Exhibit C.," is a copy of the opinion of the Hon. T. S. Smith, Attorney General of Texas, written April 29, 1899, to Gov. Sayers, with respect to certain property recently purchased by Collis P. Huntington from the Galveston City Company, lying in the Western part of the City, and a part of the league and labor originally granted to said Menard.

3. Having thus shown that the right of Menard and his assigns on the bay side extended to the channel along the whole front of the City League, in order to ascertain whether the property sought to be obtained by the East End Pier, etc., Company lies within the Menard Grant, it is necessary to determine how far towards the extreme East end of the island does the Menard Grant extend. The Southerly and Westerly boundary line of the Government Reserve, as defined in Sec. 5., Act of December 9, 1836, above referred to, by the survey of John D. Groesbeck, made in 1838, (the year in which the patent issued) was fixed as shown by the broken line on the accompanying blue print, marked "A.," indicated as follows, "True bearing 98° 00' South 82° E. Southern boundary of Gov't. Reserve." The United States

Engineers at Galveston also have fixed said ~~street~~^{straight} line as the Southerly and ~~Westerly~~ boundary of the Government Reserve and the Northerly and ~~Easterly~~ boundary line of the said Menard League and Labor, and the same is the boundary as has also been fixed by other eminent engineers and surveyors. It is true that certain parties interested in making locations on the East end of Galveston Island, under a certificate issued to W. A. A. Wallace, fixed by a survey of May 15, 1890, as the Northern boundary of the Menard Grant the Southern boundary line of the said 102.34 acres surveyed May 15, 1890, as shown on the attached map, but the correctness of this line has ever been disputed by the Galveston City Company and there is now pending in the District Court of Galveston County, Texas, a suit in which the City Company is plaintiff and the holders under the said Wallace Certificate are defendants, in which the City Company is seeking to establish its title to that portion of all of said Wallace Locations ^{which} ~~that~~ lie South of the line as fixed by the Groesbeck Survey and the United States Engineers, and by this Company, as first above described.

4. The boundaries of the Menard Grant, as defined in the patent, have been repeatedly recognized and confirmed by the State of Texas ~~and~~ by various legislative enactments and judicial decisions, and to show that there is no excess of land covered by the grant, reference is respectfully made to the case of the State of Texas vs. the Galveston City Company, reported in 38th Tex., on page 12. For a better understanding of the matters in controversy in this case, attached hereto, marked "Exhibit ^D B.," is a copy of the petition of the State of Texas in said case, as well as a copy of the final judgment of the District Court of Galveston County, marked "Exhibit E."

5. Assuming that there ~~was~~ vacant land on the East end of Galveston Island, which is denied, the said East End Pier, etc., Company could not locate thereon, for the reason that it has long been settled that islands on the coast of Texas are not subject to location. See Joint Resolution of the Congress of

Texas, approved December 10, 1836, "authorizing the President to negotiate a loan for \$20,000.00." "Sec. 3. And be it resolved that all islands belonging to this Republic shall be and are hereby reserved for the Government use, except the President be authorized specially by Congress to sell them."

Laws of First Congress, p. 76.

"An Act to dispose of Galveston and other islands of the Republic of Texas." Approved June 12, 1837.

Laws of First Congress, page 267, Sec. 1, authorizes and requires the Secretary of the Treasury to cause the island of Galveston, except the league and labor sold to M. B. Menard and associates, and all other islands within this Republic, to be surveyed in lots not less than ten and exceeding 40 acres each, and to cause the same to be sold at auction to the highest bidder on the second Monday in November next at the State House in the City of Houston.

See Sec. 2 of "An Act to adopt the common law of England, approved January 20, 1840, (Laws of Fourth Congress, pages 3 and 4) which reads as follows: "That all laws in force in this Republic prior to the 1st of September, one thousand eight hundred and thirty-six (except the laws of the Consultation and Provisional Government, now in force, and except such laws as relate exclusively to grants and the colonization of land in the State of Coahuila and Texas, and also such laws as relate to the reservation of islands and lands, and also of sale lakes, licks and salt springs, mines and minerals of every description, made by the General and State Government) be, and the same are hereby repealed."

State vs. Delesdenier, 7 Tex., 76.

Franklin vs. Tiernan, 56 Tex., 618.

Franklin vs. Kesler, 25 Tex., 142.

6. Admitting for the sake of argument that until the passage of the Act of 1891, p. 166, (incorporated in the Revised

Statutes of Texas, ^{as} Art. 726, et seq., Ch. 17, Title 21, under the provisions of which the East End Pier, etc., Company is seeking to purchase the premises referred to) that islands on the coast of Texas were segregated from the public domain and that the passage of said act was an express repeal of the reservation theretofore existing, with respect to islands, then the said Company would not be authorized to purchase the land sought, for the reason that the consideration for the sale of such land or flats at the nominal sum of \$2.00 per acre could not be offered or performed by the ^{said} ~~City~~ Company, for the reason that the Federal Government had long prior to the passage of said Act of 1891 undertook the improvement of Galveston harbor and the digging and maintenance of a navigable channel, leading to and across the bar of Galveston harbor, and at and before the incorporation of said Company had secured and was maintaining a channel of over 26 feet in depth from the bar between the Gulf of Mexico and Galveston harbor.

We respectfully submit that there is no land or flats on the East end of Galveston Island subject to location or purchase under any law of this state, and that the application of the East End Pier, Wharf, Dock, Shipping and Terminal Railroad Company to purchase the land or flats described above should be refused and declined.

E. A. Hawthorn, Jr.

Agent, Galveston City Company.

Galveston County .

Surveyor's Record of Field Notes. Filed 4/17/99.

State of Texas, County of Galveston.

Office of the East End Pier, Wharf, Dock Shipping and Terminal Railroad Company.

Galveston, Texas, 4/6/99.

To C. A. Sias

County Surveyor, Galveston County.

Dear Sir:

In accordance with the act of Congress entitled Deep Water Corporation, Art. 726, et seq, page 182 Revised Statutes, we respectfully apply to you as County Surveyor Galveston County, Texas, to file for our corporation, and when surveyed, for us and in our name, the vacant and unlocated flats within the lines of our proposed improvements in Galveston Harbor, Galveston Bay Texas, amount of acreage shown by plats in the U. S. Engineer's Office (Acreage 37 12/100 of flats).

Please have the same surveyed and field notes returned to Austin, Texas, to the Commissioner of General Land Office at once, after having filed and recorded same in the books of your office accompanied by your seal and certificate, or you can kindly adopt the field notes hereto attached, after having recorded the same in accordance with law.

These field notes having been passed upon at the Land Office as correct in every particular, but it needs your approval as County Surveyor.

By attending to this promptly you will confer a favor upon.

Yours truly,

(Signed) S. T. Fontaine
Vice President, Acting President.

Counter 23406

Exhibit A

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P. S.

Please send certified copies of this application to the Commissioner of the General Land office by letter endorsing same, with the field notes.

S. T. Fontaine.

County 23409

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Texas,
County Surveyor Galveston Co.

C. A. Sles

Texas.

84 of the County Surveyor's Record of Galveston County,
correct, and they are recorded in my office Book "H" page
1122ed to me by Mr. E. A. Hensoldt and found them to be
correct and I have made the following field notes and
certificates for release from the foregoing field notes and

This is to certify that I have made the cal-
culations for release from the foregoing field notes and
certificates for release from the foregoing field notes and
Galveston County, Texas.

Office of the County Surveyor.

(Signed) E. A. Hensoldt.

Galveston April 7, 1899

area required of 37.13 of flats.

along the West side of South Jetty which makes the total
acres being the area of a strip of Right of Way 25feet wide
described 39.41 acres there are to be deducted 2 28/100
part of South Jetty and piece of beginning from the above
with the S. boundary U. S. Military Reservation to the cen-

Galveston Co. sk. File 27 A
Extract from the
Records of the County
Surveyor of
Galveston County.

Exhibit "B"

U. S. Military Reservation, Thence S. 83 degrees E 495 feet
to a point, Thence S 84 1/2 degrees E 435 feet to a point in the South boundary
of the South Jetty 3390 feet to a point, Thence North 8 deg-
rees 43', W 1150 feet to a point, Thence North 8 deg-
rees 43', thence South 8 degrees 37', W with the center
of the East End of Galveston Island) with the center of
the section of the South boundary U. S. Military Reservation
to a point 39, 41/100 acres of flats to begin at the in-
tersection of the South boundary U. S. Military Reservation
with the East End of Galveston Island, being more particularly described as follows
at West side of the South Jetty, on the East End of Gal-
veston Island, being more particularly described as follows
Field notes of 39 41/100 acres of flats on

County of Galveston,
State of Texas

4/11/99.

Book H.

Page 84.