

File ~~26~~<sup>20</sup>

Decree of Court.

Coliad County.

Filed April 28<sup>th</sup> 1887.

R. H. Sherry

Chief Clerk

Patrick Shelly

vs

A. West, et al.

Counter 21265

The State of Texas,

County of Refugio. Field Notes of a tract of land surveyed for Patrick Shelly, by order of the District Court of Refugio County in cause No. 379 entitled P. Shelly vs A. J. West and others. Said land lies on the Sarco Creek, partly in Goliad County and partly in Refugio County, about 9 miles from the town of Refugio, and the lines herein described have been run in accordance with Brays map and the old marks found on the ground.

Beginning at a stake on the E. bank of the Sarco Creek, from which the mouth of the same bears S. 15 W. 290 varas and running thence N. 82 $\frac{1}{2}$  E. passing through Thomas M'Guills field, at 350 varas, entered timber and followed old marks, at 6827 varas passed Dog Creek, at 7000 varas entered a gully, at 7530 left gully, at 8707 varas left timber at 9387 varas passed Goliad Road, at 9887 varas passed West pasture fence at 10620 varas the S.E. corner in prairie Thence N. 4 W. 2460 varas to N.E. corner in prairie (rock) Thence S. 82 $\frac{1}{2}$  W. 11214 varas to the N.W. corner on the Sarco Creek, a stake, at this point the old line and a new line run by Allen, differ, There are old marked trees for a short distance back in the timber, but Allens line runs further S. and he has placed a rock for the upper corner of this survey about 70 varas distant from the old marked line. The old marked line just before reaching the creek passed close to the Southern edge of a mott of Anaquas and Hackberry trees. Thence down the Sarco creek with its meanders, S. 6 W. 225 varas, S. 8 E. 520 varas, S. 21 E. 440 varas, to a road crossing the creek, S. 10 W. 740 varas, S. 35 E.

440 varas, S.18 E.120 varas, S.1 $\frac{1}{2}$  E.41 varas to the place of beginning, estimated to contain 4600 acres of land, including 473 acres inside of Wests fence.

Stephen M' Carty- Chain

David

- carriers

Var.9 $\frac{1}{2}$  F.

I, J.J.Cocke surveyor hereby certify that the foregoing survey was made according to law, and that the boundaries and corners with the marks both natural and artificial are truly described in the foregoing Field Notes.

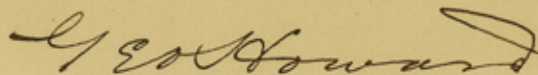
Given under my hand at Refugio Texas this 4th day of January A.D.1883.

(signed) J.J.Cocke  
Surveyor

The State of Texas,

County of Refugio. I, Geo.Howard, clerk of the District Court in and for Refugio County, Texas, do hereby certify that the foregoing is a true and correct copy of the original Field-Notes of a survey made by J.J.Cocke, now on file in my office

Given under my hand and seal of office ,  
at Refugio, Texas, this 22nd. day of April  
A.D.1887.



Clerk

District Court, Refugio County, Texas.



The State of Texas,

County of Refugio. In District Court March Term 1883.

Patrick Shelly

No. 379. vs

A. J. West, et als.

To Hon. H. Clay Pleasants

Judge of 23rd. Judcl. District.

In the above styled cause the undersigned Surveyor appointed at the last term of the court to make a survey of the lands in controversy begs leave to report as follows.

That after consulting with the attorneys on both sides I came to the Town of Refugio on the 7th. day of December A. D. 1882, and commenced work by examining the records of the clerks office, I also applied to the County Surveyor for his records but was told that there were none, that they had been destroyed by fire. The only map of the County that I could find was a mutilated one in the clerks office, which from its condition could not be relied on, I wrote to the General Land Office for a map and certain field notes, The Commissioner sent me the field notes of one tract, the M'Guill and Redmond, but no map. I made an examination of the records of the Colonial grants of 1834, and of such as were not of record in the county I used certified copies from the General Land Office in the possession of different parties, I also used a map called Brays map, certified from the General Land Office, which was shown me by Mr. P. Shelly, and a map made by Mr. L. H. Ward, County Surveyor of Refugio County, <sup>in</sup> 187 which was shown me by Mr. B. F. West, This map contains the locations of late date

made by A.J. & B.P. West, which locations are patented and recorded, and consequently these maps are of equal value as far as the authority of the General Land Office is concerned. But the two maps do not agree at all. The Bray map gives no variation of the needle, but runs magnetic courses, it shows the lines of the tracts of land of the Colony of Power & Hewetson, which front on the Blanco and Sarco Creek from the town of Refugio up to the M. O'Donnell survey as running at a course of N. 73. E. magnetic (on an average) for one boundary and N. 17. W. (average) for the other boundary. The Bray map also fails to lay down the town tract of Refugio with sufficient completeness to enable one to determine exactly where the lines lay on the ground. The Ward map puts down all the Colonial surveys as if run on magnetic courses North, South, East and West. It is

made on the theory that the town tract is four square leagues with the center of the public square for the center of the tract, and measuring from that point 5000 varas N. magnetic to the North boundary of the town tract. The town tract appears to have been surveyed several times, and the map made by F. S. Winsor for the Corporation of Refugio shows considerably more than four square leagues in the town tract and the public square not exactly in the center.

The lands in controversy in this cause lie about nine miles N.W. from the town of Refugio, but in order to survey them it was necessary to begin at the center of the town, because there were no regular field notes to be found and no accurate description, but simply boundaries and fronts on the creek, with distances to run back. There is not a corner marked or

described in all the original surveys, and only two stones called for in the later surveys, one of which could not be found. In addition to the above I observed that the old map in the clerks office shows a conflict between the town tract and the first tract north of it being the Isabella O'Brien league and runs the lines of said O'Brien league at about  $N.80\frac{1}{2} E.$  magnetic— that the Bray map makes the Northern boundary of the town tract and the Southern boundary of the O'Brien league identical, and makes the course about  $N.76\frac{1}{2} E.$  magnetic, and that Wards map makes all lines to run on courses corresponding to the original magnetic courses, and puts the O'Brien league with its full width on the North of the town tract, and 5000 varas from the center. With this scant array of facts and conflicting maps I determined to make the surveys from the town center Northward until the lands sued for were reached and then to survey back towards the town searching for evidences and examining witnesses on the ground. I therefore set my Compass by the streets of the town which are considered to run North and South, East and West, magnetic at the time of laying out, I found that the streets run  $N.10 E.$  and  $N.80 W.$  using a variation of  $9\frac{1}{2} E.$  and these courses I have used through out my work to correspond with magnetic courses of the original surveyors. These courses also follow the lines as run by Ward and some other surveyors, probably Lea and Snively. I began at the center of the public square, East of the Court House in the town of Refugio and ran  $N.10 E. 5000$  varas, and thence  $S.80 E. 2440$  varas to the Melon Creek at the mouth of a gully passing between J. O'Briens stable and the gully, at this point I

was shown the town boundary by Thomas O'Connor and M. Whalen, they agreed that the line passed between said stable and gully but differed as to the course, and I have found no one who claims that the town line passes at any other point, but great difference of opinion as to the place of the N.W. corner of said town tract. From a point near O'Briens stable and on my line, I measured N.10 E. 2376 varas to a mott on W. bank of Melon creek, which was pointed out to me by Danl. Fox and John O'Brien as the N.E. corner of the O'Brien league, my measurement made the distance about 60 varas more which is not as great as the distance between O'Briens stable and the gully, and therefore I used the point shown me as a starting point for the N. line of the O'Brien league, thence I ran N.80 W. 9530 varas to the bank of the Blanco creek, where I found marks on some trees, apparently made at different times. This point was said to be the S.W. corner of the John Scott league as surveyed by Ward and others, and the North boundary fence of O'Briens pasture was about on that line most of the way. Thence I measured N.10 E. 3326 varas to cross the John Scott league and an additional 594 varas to the N. line of the Thos. Scott quarter league, where I found a plank fence and a marked line, this line had evidently been run over several times, as there were marks of two different surveys made at different times and at some places a third mark older than the others. From this point I ran S.80 E. following the marks as far as the end of the timber, and continued a sufficient distance to reach a stone called for in Wests location at the N.E. corner of the Thomas Scott quarter, but I could not find the stone,

though aided in the search by Mr. B. F. West and Mr. James Fox and others. I then returned to the place where I struck the fence. Thence I ran N. 80 W. 3400 varas following the marks all the way to the Blanco creek where I found a stone, which James Fox told me was put there by the surveyor Lea, for the N.W. corner of the Scott league, and is a little above James Fox's house and about N.W. from it. Thence I ran N. 10 E. at 1213 varas I found an old marked line and a wire fence near it, I stopped to examine it and found that it ran about N. 73 E. from true meridian, not agreeing with any map or field notes, I passed it without going to its end, and at 1280 varas I stopped and made offset to the West on account of the fence. Thence I ran N. 80 W. passing a line supposed to be Goliad County line at 800 varas, and at 3660 varas made another turn on upper side of Wolf Prairie. Thence I ran N. 10 E. 502 varas which added to the 1280 varas previously run makes 1782 varas which would bring me to the South boundary of the John Coughlin survey, according to Wards map. I then ran N. 80 W. 2870 varas to the Sarco creek at a road crossing, I then was told by Mr. Shelly that I was on his land, that is the land in controversy, but according to Wards map I was about two miles below it. From said crossing I then ran down the creek about 1400 varas to a point which P. Shelly claims as his lower corner, about 300 varas above the mouth of the Sarco creek, there was no mark at the creek but by running <sup>a course</sup> back to the timber N. 82½ E. (equivalent to N. 73 E. magnetic) I found a marked line, with two sets of marks made at different times. I then went back to the crossing and measured up the Sarco about 1250 varas to a point



shown by P. Shelly as the division line between the league of his father John Shelly and his own quarter league where I found a few trees with old marks running N.  $82\frac{1}{2}$  E. and also new marks, I did not follow this line far, but measured up the creek and across the land claimed by Shelly as his quarter league about 600 varas to a Black Jack with a cross on it. This Black Jack was declared by David O'Donnell to be the lower corner of the M. O'Donnell league as shown him by his father the original grantee. Here I found old marks for a line running N.  $82\frac{1}{2}$  E. like Shellys. I then returned to the S.W. corner of the John Shelly league as pointed out by P. Shelly and measured what would be the width of the next tract to the South, made in the name of M'Guill and Redmond, on reaching the distance 1088 varas I found no marks but a little farther on I found marks which Thos. M'Guill said was his S. line, but there were two marked lines both newer than the Shelly and O'Donnell lines, and on reaching a distance of 1280 varas from the Shelly corner I found an old marked tree which Shelly said was shown him for the North line of the John Coughlin league adjoining the M'Guill and Redmond, I followed the same course N.  $82\frac{1}{2}$  E. starting from the old marked tree last named, but could find no marks, for a long distance, I therefore returned to the S. line of the John Shelly league as pointed out by P. Shelly and followed his marks, finding double marks all along until I came to the Goliad road outside of the timber, I here determined to measure back to the town tract on the courses claimed by Shelly as shown by Brays maps. I therefore started from the point where Shelly claims his South line crosses the

Goliad road and ran  $S. 7\frac{1}{2} E.$  (equivalent to  $S. 17 E.$  magnetic) 3464 varas being the width of the M'Guill and Redmond surveys and the John Coughlin survey added, and set a small stake to mark the S. boundary of the Coughlin according to this theory. From this point I went into the Blanco creek on a course of  $S. 82- W.$  to find a marked corner pointed out by P. Shelly, I found the L.O. which Shelly said was the S.W. corner of the Coughlin survey but could find no other marked trees, the Live Oak had some old marks on it and would be about one hundred varas North of the place where my course would strike the creek, this would not be a very great error considering the careless methods of the early surveyors. I returned then to the marked point on the S. line of the Coughlin and ran on same course I started  $S. 7\frac{1}{2} E.$  1782 varas (being 594 varas each for the three quarter league surveys) to the N. line of the Thomas Scott quarter league according to Bray. I then ran with said N. line  $S. 82\frac{1}{2} W.$  916 varas and set a stake for the N. line of the Thos Scott quarter league, I then ran  $S. 7\frac{1}{2} E.$  594 varas for the width of the Thos Scott, and continuing same course, counting from said last stake, at 2226 varas crossed O'Briens fence, and at 3920 varas set a stake for the S. line of the John Scott. I then made an offset of 70 varas  $S. 82\frac{1}{2} W.$  and ran 2376 varas the width of the O'Brien league, on a course of  $S. 7\frac{1}{2} E.$  and set a stake about 150 varas N. of the Joe. Doughty house. This stake I found to be about 137 varas West of the Western boundary of the town tract, at a point about 1480 varas  $S. 10 W.$  from the N.W. corner, supposing that the town tract is a square and each side 5000 varas from the center.

Form this stake I ran a course N.  $76\frac{1}{2}$  E. magnetic but without chaining, and found that it would pass very near to O'Briens stable, the place where all agree is the N. line of the town tract. I will also observe that N.  $87\frac{1}{2}$  E. on true course would pass directly over the point shown me by Mr. Whalen as on the N. boundary of the town, and close to said stable. This last line would cut off about one thousand acres from the town tract. I have prepared a Map, which is herewith filed and made a part of this report, upon which map I have accurately plotted all the hereinbefore mentioned as well as the boundary lines of the tracts from the town to the O'Donnell survey. they are platted in two ways, the black lines show the tracts laid down on magnetic courses like Wards map, and the red lines show the same platted according to Brays map. I also file another map on paper showing these lands and other lands in controversy in <sup>the</sup> other suits which may be used in those suits. These maps show the conflicts better than any explanation, and it can be readily seen that which ever lines may be adopted, difficulties will arise with adjoining surveys. People have been living on the various tracts for many years and claiming their lines in different directions. There are a number of marked lines indicating that the surveys run in different directions. Some of the marks on these diverging lines are very old. I have not found a single corner marked sufficiently to fix it absolutely, the point between O'Briens stable and the gully, and the point shown by David O'Donnell come nearer being reliable starting points than any others that I have found. The original grants do not give courses but say simply

"bounded on the South by" an "fronting on the Sarco" so many varas. Therefore in the absence both of courses and corners in the original grants, I am unable to decide which system of surveys is correct.

I also file with this report the field notes of the John Shell grant as claimed by Mr. P. Shelly.

My charge for this work one hundred and sixty nine dollars and fifty cents, which has been paid by Mr. B. F. West.

Respectfully submitted

Refugio Texas, Jany. 4th. 1883. (signed) J. J. Cocke

Surveyor

The State of Texas,

County of Refugio. I, Geo. Howard, clerk of the District Court in and for Refugio County, Texas, do hereby certify that the foregoing is a true and correct copy of the original report of J. J. Cocke, surveyor, in cause No. 379, entitled Patrick Shelly -vs- A. J. West et als. now on file in my office.

Given under my hand and seal of office, at office in Refugio, this 22nd. day of April, A. D. 1887.



*Geo Howard* Clerk  
District Court, Refugio County, Texas.

Plaintiff then introduced Patrick Shelly who testified as follows- I am the Son and sole surviving heir of John Shelly, decd. to whom the land in controversy was originally granted In Dec. 1835 my father who was serving in the army under Capt. Dimmitt, came home on a weeks furlough and while at home took my brother John and myself out to the land claimed by him, for the purpose of showing us the corners of same, saying that it was war times and that he might not live to return home and that he wanted us to know where the land was. He showed us the lower or S.W. corner of the John Shelly league which was on the east side of the Sarco creek, but was marked by a Cotton-wood tree on the west side of the Sarco creek and between said creek and the Blanco and a short distance above the junction of the two creeks. He also showed us a small tree that hung over the west bank of the Sarco, and he told us that the lower line of the John Shelly league was in a line with the said Cotton-wood tree which was marked and the small tree hanging over the bank. My father in this way pointed out to us the line between the John Shelly and the Redmon<sup>d</sup> and M'Guill grant, and my father told us that this lower line of the John Shelly league was marked through the timber, but being late we did not follow the line, nor go to the upper corner of the survey. But he told us where we could find the upper corner. He said it was near three small motts which were on my quarter league. In 1836 myself, my father and Coughlin left the state. My father never returned having died in Louisiana in 1842. I returned to Texas in 1846, Coughlin who was then in Louisiana came to Refugio in 1848 on a visit, and as Coughlin wished

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to see his land again, he, Redmond, Michael Fox and myself went to the S.W. corner of the John Shelly league and Coughlin and Fox then and there showed and pointed<sup>d</sup> out the same Cotton-wood tree as indicating the lower corner of the John Shelly league which had been pointed out to me by my father in 1835, and we then went on the line through the timber and found the trees marked as my father had previously told me and my brother John. On our return Coughlin found and pointed out his upper line. In 1834, I went to school to Bray, and in that year I saw him in company with my father, O'Donnell, Coughlin, Fox, Redmond and others grantees of the lands on the Sarco creek go out to make the original surveys, and they took men with them to mark the corners. When we went out in 1848 as before stated I found only the Cotton-wood standing. John Redmond, James M'Guill and Thomas M'Guill by permission from me enclosed some of the John Shelly land and were in possession for many years, until a few years ago when the fencing was all washed away and has not been rebuilt on the Shelly land. The O'Donnell line above and the M'Guill and Redmond line below correspond with the Shelly lines as shown to me by my father. I do not know of my own knowledge the course these lines were run. I pointed out to J.J.Cocke the lower line and corner of the John Shelly league. They are the same corner and line pointed out by my father. The old line is marked through the timber and is the same line that we found in 1848 as before stated. In 1835 the grantees St. John and Coughlin lived and had improvements on their respective grants as delineated and shown by the Bray map now in evidence. Mike Fox and Coughlin were the chain carriers for

Bray when he made the original surveys. Fox, Coughlin, Bray  
Bray and Redmond died many years ago.

The State of Texas,

County of Refugio. I, Geo. Howard, clerk of the District Court  
in and for Refugio County, Texas, do hereby certify that the  
foregoing is a true and correct copy of the testimony of  
Patrick Shelly, in a suit entitled Patrick Shelly vs A. J. West,  
et als. tried in said court at the March 1884 term thereof,  
as shown by the agreed and approved statement of facts now on  
file in my office.

Given under my hand and seal of office ,  
at Refugio, Texas, this 22nd. day of April  
A. D. 1887.

  
*Geo Howard*

Clerk

District Court, Refugio County, Texas.

Patrick Shelly

vs

No. 379. 7th day of March A.D. 1884.

A.J. West et als.

This cause being called for trial came the parties by their attorneys and waiving a jury submitted all matters both of law and fact to the Court and the Court having heard the evidence and argument of counsel, and duly considered the same, because it seems to the Court that the law is for the plaintiff it is ordered adjudged and decreed that the plaintiff Patrick Shelly, do have and recover of and from the defendants A.J. West, B.F. West, T.H. West, R.L. West, and Abel West, the land sued for and described as follows, A league and labor of land originally granted to John Shelly, as a colonist in the colony of Power & Hewetson, lying partly in Refugio and partly in Goliad counties, fronting on the Agua Sarca, which is more particularly described by metes and bounds as follows, to wit: Beginning at a stake in the East bank of the Sarca creek from which the mouth of the same bears S. 15' W. 290 vrs. and running thence N. 82' E. passing through Thomas M'Guills field, at 350 vrs. entered timber and followed old marks, at 6827 vrs. passed Dog creek, at 7000 vrs. entered a gully, at 7530 vrs. left gully, at 8707 vrs. left timber, at 9387 vrs. passed Goliad road, at 9887 vrs. passed West pasture fence, at 10620 vrs. the South East corner in prairie, thence N. 4' W. 2460 vrs. to the N.E. corner in prairie (a rock), thence S. 82' W. 11214 vrs. to the N.W. corner on the Sarca creek, a stake, thence down the Sarca creek with its meanders S. 6' W. 225 vrs. S. 8' E. 520 vrs. S. 21' E. 440 vrs. to a road crossing the creek,



S.10'W.740 vrs. S.35'E.440 vrs. S.18'E.120vrs. S.1-'E.41 vrs.  
to the place of beginning. And that he have his writ of possession for the said land and that he also have and recover of and from the defendants One cent damages and all costs in this behalf expended for which execution may issue. To which said judgment of the Court the said defendants except and give notice of appeal.

The State of Texas,

County of Refugio. I, Geo. Howard, clerk of the District Court in and for Refugio County, Texas, do hereby certify that the foregoing is a true and correct copy of the final judgment rendered in said court, in said cause, at the March Term, 1884 as the same appears on page 177 of Vol. D, Minutes of the said court.

Given under my hand and seal of office at office in Refugio, this 25th. day of April A. D. 1887.



*Geo. Howard*

Clerk

District Court, Refugio County, Texas.

**Be it Remembered:**

That at a Term of the Hon. Supreme Court of the State of Texas, begun and holden at Galveston,

on the 5 day of Jan A. D. 1885, present **Hon. A. H. WILLIE**, Chief

Justice, and Associate Justices **J. W. STAYTON** and **C. S. WEST**, in the cause

A J West et al

No. \_\_\_\_\_ vs. \_\_\_\_\_

Patrick Shelly

the following orders were made:

June 19, 1886

This Cause having been referred to the Commissioners of Appeals for their examination, and said Commissioners have reported that there was no error in the judgment and that the same ought to be affirmed, and said report having been considered and the opinion adopted, it is considered, adjudged, and ordered that the judgment of the Court below be in all things affirmed; that the Appellee Patrick Shelly recover of the Appellants A J - B A - Abel - N H + R B West, and their Sureties N B Heard + Daniel Hox, the amount adjudged below, to-giv with all costs in this behalf expended, and that this decision be certified below for observance.

I, DAN'L D. ATCHISON, Clerk of the Supreme Court of Texas, at the City of Galveston, hereby certify that the foregoing is a correct copy of all the orders made by this Court in the above entitled and numbered cause at this place.

In Witness Whereof, I hereunto set my hand and affix the Seal of said Court at Galveston, this 20 day

of July A. D. 1886

Daniel Atchison

CLERK.

DEPUTY.

counter 24282



T116

No. \_\_\_\_\_

**COPY OF ORDERS.**

In Supreme Court,  
AT GALVESTON.

*A J West et al*  
vs.

*Patrick Shelly*

Filed \_\_\_\_\_ 188

CLERK.

Clarke & Courts, Stationers and Printers, Galveston.



Galveston Co. Ct. File #20

County 29283 i.

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