

In Re: Application of Evans Angel for patent
on land.

To the Hon. J. T. Robison, Land Commissioner of the State of Texas:-

Now comes J. R. Castleberry, by attorney, and contests the application, if any has been filed, of Evans Angel to procure a patent on land in Gregg County he charges to lie South of the Benjamin N. Hampton and Benjamin P. Miller surveys, and North of Sabine River, for the following reasons, to-wit:

There is no vacant land South of the Hampton and Miller surveys North of Sabine River. On June 13, 1853, survey No. 26, the Hampton survey, was filed in your office, and the field notes show that when this land was surveyed the surveyor began at the Southeast corner of survey No. 245 made for Pleasant McAnelly, on the bank of the Sabine River. The second call is that the surveyor went from that point down said river with its meanders to Hagan's Ferry. The calls from that point on show that they are following the river bank, and when the surveyor got to a point that he intended to leave the River he said "Thence South at 300 vrs a stake on the bank of the Sabine". The next call is East at 1011 vrs to a stake on the West boundary line of survey No. 247, the Miller survey. He then goes North to the South boundary line of the Davis survey. Thence West with the Davis survey to the Southwest corner of the same. Thence North at 1400 vrs to the Northwest corner of the Davis survey on the South boundary of the Ruddle survey. Thence West at 1164 vrs to the McAnelly survey, No. 245. Thence South with the McAnelly survey to the place of beginning.

The way the River is shown on the map of Gregg County the calls, after leaving Hagan's Ferry, show conclusively that they were following the river, and this is more conclusively shown by the call that runs South 300 vrs a stake on the bank of the River. The South boundary of the Hampton survey then goes straight East from that point. Our surveyor says that the South line is only 800 vrs while the survey upon which the patent was issued says that it is 1011 vrs, but regardless of that difference in varas, it goes to the Miller survey.

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With reference to the Miller survey, and it is on this land that Angel is going to make his principal claim, we contend that the survey made by virtue of certificate No.300 and made by Thomas D.Brooks, deputy surveyor, shows conclusively that there is no vacant land between the Hampton survey and the River, but that it is all included in the Miller survey.

We will ask that you take the calls as made by survey No.247. The surveyor starts out by beginning at a stake on the line of 246, 330 vrs West of its South East corner (meaning West of the Southeast corner of No.246) on the bank of the River. The second call is "Thence South with the bank of the river 10990 vrs." The next call is "Thence East with the bank of the River 1470 vrs Cherokee Trace. The map of Gregg County shows this Cherokee crossing. The surveyor continues with the river to a final distance of 1747 feet on the bank of the River, and calls for a Sassafras tree. Our surveyor found this sassafras tree. The next call is straight North to the Southwest line of the Jacob Lagrone survey. Thence West with said line to the Southwest corner of the Lagrone. Thence South with the Davis East line to the ~~South~~east corner of the same. Thence West with the South corner of the Davis to the Hampton survey. Thence South with the Hampton survey to the Southeast corner of the same. Thence West with the South line of the Hampton survey to the place of beginning.

We beg to state to the Honorable Commissioner that these field notes show conclusively that the surveyor began on the bank of the river, and that every call was with the river until he got to a point East of Cherokee Trace, and that he then went North to Lagrone survey, thereby showing that the South boundary line of the Miller survey is the Sabine River, and that there is no vacant land between Sabine River and the Miller survey.

You will understand that the original surveys of these two tracts of land were made a number of years ago, and that it is most likely that the River has changed some since

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that time, and that might cause some discrepancy in the number of varas in the different calls, but when the surveyor begins at the River and follows the River, and goes to some certain point on the River, we know that he means to make the River the line.

While in the Miller survey the first call is that the surveyor began 330 vrs West of the Southeast corner of the Hampton survey, when he said he began on the bank of the River, the call for beginning on the bank of the river controls, whether a beginning place was 330 vrs West of the Southeast corner of the Hampton survey or not. The only thing to do is to find the Southeast corner of the Hampton survey and go West on the Hampton South line to the river and there begin.

We are herewith attaching the affidavit of Mr. E.W.Davis, a competent civil engineer and surveyor, who went on the ground and surveyed this land. He says that the bearing trees have all been cut, because the timber has been cut off of them, but he found the Southwest corner of the Hampton survey by going 210 feet up the River from Hagan's Ferry. The call in the Hampton survey is that it begins at the Southeast corner of the McAnelly survey and then goes down the river 210 vrs to Hagan's Ferry, and then goes down the river to the place where it starts off East. You will see that Mr.Davis has stated under oath that he has read the field notes issued from your office of these two surveys, and that it is his conclusion that the surveyor intended to bound these surveys by the river, and that there is no vacant land between the River and either survey.

A leading case on a question of this character is the one of Maddox Bros and Anderson vs. Fenner, 79 Tex.279. In that case Justice Henry said, quoting, "It has often been said by this court that the general rules are that the location should be governed by, first, by natural objects, or boundaries, such as rivers , lakes, creeks, etc., second, artificial marks, such as marked trees, lines, stakes, etc., and third, course and distance.

Of all these indicia of the locality of the true line as run by the surveyor, course and distance are regarded as the most unreliable". Justice Henry further said in the case, on page 291, that in the absence of evidence that the lines were not actually run, the court must indulge the presumption that the surveyor actually surveyed all the lines called for.

These surveys were made years ago, when the land was timbered, but the timber has since that time been cut off. It is no trouble to find the Southwest corner of the Hampton survey by going back 210 vrs from Hagan's Ferry. It is no trouble to find the Southeast corner of the Miller survey, because it is East of Cherokee trace, or crossing, a certain number of varas. All you have to do is to find the crossing and go the number of varas mentioned, and there you find the Sassafras tree.

We respectfully ask that you take this statement, together with the affidavit of Mr. E. W. Davis, surveyor, and the original surveys of these two tracts of land, and follow these surveys, with the map of Gregg county, and you will readily see that there is no vacant land between Sabine river and either the Miller or Hampton survey.

We respectfully ask that you do not issue Evans Angel any patent for any land in the territory given.

Young & Sturcheant
Attorneys for J. R. Castleberry.

I, E.W.DAVIS, A Civil Engineer and Surveyor, and at the present time being Civil Engineer for Gregg County and the City of Longview, state upon oath as follows:-

"On November 28 and 29, 1921, I made a survey of the Benjamin Hampton survey, in Gregg County, Texas, and began at the Southwest corner of said survey. I found this Southwest corner by finding Hagan's Ferry. I chained 210 vrs up the River to establish my beginning point. I then followed the meanders of the river and a course of N. 73 E. 210 vrs back to Hagan's Ferry, 300 vrs a station. I then chained S. 80 E. 110 vrs, which was the course of the river, thence S. 65 E. 407 vrs which was the course of the river, thence S. 20 E. 736 vrs to a deep cut, 750 vrs a station. I then went with the River S. 20 W. 400 vrs, thence South at 300 vrs to a point on the river. I then ran East 800 vrs to a point that I took to be the Southeast corner of the Hampton survey. I did not run the other lines of the Hampton survey, because I did not understand that they were in dispute.

With reference to the Miller survey, I went 200 vrs West of the Southeast corner of the Hampton survey to establish the beginning. If I had gone 330 vrs as given in the patent, and then gone South, it would have taken me across the river. From this point of 200 vrs West of the Southeast corner of the Hampton survey, I ran South 5 W. 750 vrs, which was the general course of the river, for a station, I then ran S. 40 W. 740 vrs, which was in the general course of the river, to a point on the bank of the river. I then ran in an Easterly direction, in the general course of the river, and found an old ford that I supposed to be the Cherokee Trace. I then ran Easterly with the River 280 vrs and found the Sassafras bearing tree that is called for in the patent. The tree was dead, but it had a cross mark on it, showing that it was a bearing tree for a corner. It was N.30 E. 3.2 vrs from the corner I established for the Southeast corner of the Miller survey. I did not actually run the East line of the Miller survey, but from figures given me by Mr.Castleberry I saw that they were about correct.

I have read the field notes of the Benjamin Hampton survey and the Benjamin Miller survey, as contained in the patent, and it is my conclusion that it was the intention of the surveyors in surveying off the Hampton survey to follow the river from the Southwest corner of the Hampton survey to where the line branches off from the river to go East. It is also my conclusion that the surveyors intended in the Benjamin Miller survey to take in all of the land South of the Hampton survey and South of the Davis and Lagrone surveys North of the river, and that there is no vacant land between Sabine river and the Benjamin Miller survey or between Sabine River and the Benjamin Hampton survey. I find that the Hampton survey overruns the number of acres given in the patent by about 50 acres but that the Miller survey is short by about 100 acres. "I followed the East line of the Hampton survey and South line of that survey as surveyor Choice followed it, and from the growth rings in the trees I know those lines were run not more than 21 years ago."

Edw W Davis

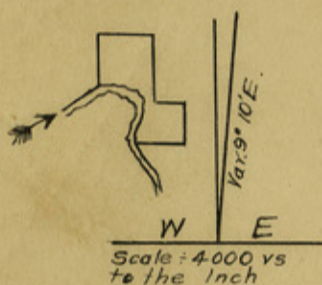
Sworn to and subscribed before me this the 14th day of December, A.D. 1921.

Alice Stovall
NOTARY PUBLIC, GREGG COUNTY, TEXAS.

The State of Texas | Survey No. 246
 County of Upshur | June 13th, 1853.

A, Survey of 362 $\frac{3}{4}$ acres of land made for Benjamin N. Hampton, it being a part of the land to which he is entitled by virtue of Certificate No. 66, 4th Class, issued by the Board of Land Commissioners for Harrison County on the 3rd day of October, A.D. 1842 for 640 acres of land.

Upshur County, 18
 Situated in, about $\frac{1}{2}$ miles S. 19° E from the Town of Gilmer and on the North bank of the Sabine River.



Beginning at the S.E. corner of Survey No. 245, made for on the Bank of the Sabine River Pleasant McAnnally, a stake from which an Elm bears N. 44 E. 1-2/10 vrs a Red Oak bears N. 27 $\frac{1}{2}$ W. 9 vrs.

Thence down said river with its meanders N. 73° E. 210 vrs, Hagan's Ferry, 300 vrs a station.

Thence S. 80° E. 110 vrs. Thence S. 65° E. 407 vrs. Thence S. 20° E. 386 vrs. deep cut 15 vrs wide, 416 vrs, station. Thence South at 300 vrs a stake on the bank of the Sabine from which a Birch bears S. 68 $\frac{1}{2}$ E. 2-2/10 vrs a Pecan bears S. 5 $\frac{1}{2}$ W. 4 vrs.

Thence East at 1011 vrs a stake on the west boundary line of survey No. 247 made for Benj. Miller, from which a Mulberry, bears N. 29 W. 3-7/10 vrs an Ironwood bears N. 65 $\frac{1}{2}$ E. 3-4/10 vrs.

Thence North with said line at 864 vrs the South boundary line of survey No. 186 made for Samuel S. Davis, a stake from which sweet gum bears N. 71 E. 10-4/10 vrs another sweet gum bears S. 46 $\frac{1}{2}$ E 14 vrs

Thence West with the line of Survey No. 186 at 615 vrs a stake at the S.W. corner of said survey from which a Black Gum bears N. 52 E. 15 vrs. a Sweet Gum bears N. 39 W. 4-6/10 vrs.

Thence North at 1400 vrs the N.W. corner of said Survey on the South boundary of Survey No. 1 made for John Ruddle, a stake from which a Black Oak bears S. 60 E. 20 vrs a Black Jack bears S. 7 E. 23 vrs

Thence West at 1164 vrs a corner of Survey No. 245 from which a Pine bears N. 50 W. 4 vrs. a Post Oak bears S. 46 W. 5 vrs.

Thence South with the line of said Survey at 1094 vrs the place of beginning.

A.B. Denton, | Chain
 Thomas Hagan | Men.

J.M. Glaseco, Cty Sur. U. C.

I, J. M. Glaseo, County Surveyor for Upshur County, do hereby solemnly swear under my official oath that the survey designated by the foregoing plot and field notes was made by me on the 13th day of June 1853 and that the lines boundaries and corners of the same together with the marks both natural and artificial are truly described therein.

Witness my hand this June 18th, 1853.

J. M. Glaseo, Cty. Sur. U. C.

I, J. M. Glaseo, County Surveyor for Upshur County, do hereby certify that I have examined the foregoing plot and field notes and find them correct and the survey made according to law, and that the said field notes are recorded in Book C pages 94 & 95.

Given under my hand this June 18th, day, 1853.

J. M. Glaseo.

Cty. Sur. U. C.

GENERAL LAND OFFICE, WASHINGTON, D. C.
I have examined the foregoing plot and field notes and find them correct and the survey made according to law, and that the said field notes are recorded in Book C pages 94 & 95.
Given under my hand this June 18th, day, 1853.
J. M. Glaseo.
Cty. Sur. U. C.

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counter 24560

Survey No. 246.

Benjamin N. Hampton,

362 3/4 acres

Filed in Office,

June 18th, 1853.

Recorded in Book

C pages 94 & 95.

*For certificate
see file 75
Macogdoches
Co. Tex.
I. M. T.*

1.

File 1632.

Macogdoches Co. Glass.

Field notes 362 3/4 acres

Benj. N. Hampton,

Filed July 6, 1853.

Patented March 18/54.

Thorn.

GENERAL LAND OFFICE, AUSTIN, TEXAS
Benjamin N. Hampton
Commissioner of the
General Land Office of the State of Texas, do hereby Certify that the above
and foregoing is a true and correct copy of this instrument now on file
in this office together with all endorsements thereon.
IN TESTIMONY WHEREOF, I hereunto
set my hand and affix the seal of said
office the date last above written.
Benjamin N. Hampton
Commissioner of General Land Office

County 24561
Gregg Co. St. File #2

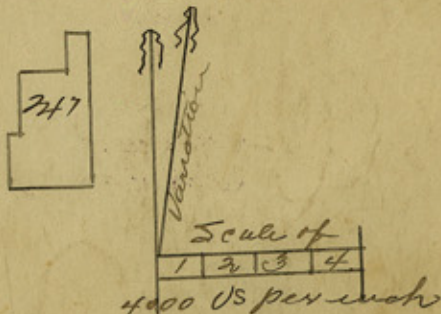
State of Texas | Survey of Seven Hundred and Sixty Two acres of land
 Upshur County | made for Benjamin P. Miller, by virtue of Certificate
 No. 300 Issued by the board of Land Comrs for the County of Shelby for
 twelve hundred and Eighty acres of land Situated in Upshur Co. on the
 North side of Sabine River at the Cherokee Trace.

Survey No. 247.

Beginning at a stake on the line of No. 246, 330 vs West
 of ^{its} ~~the~~ S.E. Corner on the bank of the River from which a Black Oak 36
 inches Diam Bears, N. 59 E. dist 11 vs. Thence South with the bank
 Cherokee Trace or
 of the River 1099 vs. Thence East with the Bank of the River 1470 vs
 Jonesborough road 1747 vs set stake on the bank of the River from which
 a Sassafras 10 inches diam bears N 30 E dist 3-2/10 vs a Red Oak 24
 inches diam bears S. 80 W. ^{dist} 2-2/10 . Thence North 1950 vs lake 30 vs
 3002 Hawkins creek 10 vs C SE 3208 set stake on the line of survey
 in the name of Jacob Lagrone.
 made by Harrison County Surveyor Thence West with said line 523
 vs S.E. corner of said survey marked J L from which a Black Oak 20
 inches diam bears N. 60 E. dist 8 vs a pine 24 inches diam bears N.
 35 E. dist 21-2/10. Thence South with the line of survey marked S D ^{in the name of S.S.}
 Davis.
 corner of said survey marked SD from which a pine 12 inches diam bears
 N 48 W dist 4-4/10 vs a sweet Gum 12 inches D bears North dist 8-2/10 vs.
 Thence West with said survey 894 vs set stake on the line of survey
 No. 246, from which a Sweet Gum 10 inches diam bears S. 46 1/2 E dist 14 vs
 a sweet Gum 8 inches diam bears N. 71 E. dist 10-4/10 vs. Thence South
 with the line of Survey No. 246, 1415 vs S.E. corner of 246 from which an
 over cup 36 inches diam bears N. 40 W. dist 11 vs an over cup 18 inches
 diam bears S. 67 E. dist 4-8/10 vs. Thence west with the line of No. 246
 330 vs place of Beginning. 762 acres of land Oak, Hickory and Pine
 timber surveyed 8th day of January, 1848.

William Yeary |
 | Ch
 George W. Hampton |

Thos D. Brooks
 Dep Surveyor.



NO. 24

Jan. 5. Miller,

Recorded,

Filed in office

March 1-1850.

D. S. D. M.

A. A. Nelson,

D. S. D. M.

Recs \$1.00

I, Thom. D. Brooks a Dep Surveyor for Upshur County

Nacogdoches District do hereby solemnly swear under my official oath that the survey designated by the foregoing plot and field notes was made by me on the 9th day of January 1848, and that the lines boundaries and corners of the same together with the marks natural and artificial are

truly described therein, Witness my hand this 10th day of Feb 1848,

Thos. D. Brooks,
Deputy Surveyor,
Nacogdoches District,

Dec 10 1848

Recorded

Filed in office

March 1-1850.

D. S. D. M.

A. A. Nelson,

I, A. A. Nelson, District Surveyor for the District of

Nacogdoches, do hereby certify that I have examined the foregoing plot and field notes and find them correct and the survey made according to law, and that the said field notes are recorded in Book J pages 172 & 173,

Given under my hand this 1st day of March A.D. 1850.

A. A. Nelson,
District Surveyor,
District of Nacogdoches.

GENERAL LAND OFFICE, TEXAS
I, the undersigned, Surveyor General of the State of Texas do hereby certify that the above is a true and correct copy of the original now on file in this office together with all endorsements thereon.
IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of this office the date last above written.

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Counter 24563

Camp
W.B. Patterson

No. 247

Benj. P. Miller,
762 acres.
Recorded,
Filed in office
March 1-1850.
A. A. Nelson,
D.S.D.N.

Fees \$1.00 paid.

I, Thom. D. Brooks & Deb Surveyor for Upshur County
Macogdoches District do hereby solemnly swear under my official oath that
the survey designated by the foregoing plot and field notes was made
by me on the 3th day of January 1848, and that the lines bounded and
corners of the same together with the marks marked and identified are

2.
File 290
Macogdoches 2d class.
Field notes 762 acres
Benj. P. Miller,
Patented Dec. 16/80
Haynie.

Thom. D. Brooks,
Deputy Surveyor,
Macogdoches District.

I, A. A. Nelson, District Surveyor for the District of
Macogdoches, do hereby certify that I have examined the foregoing
plot and field notes and find them correct and the survey made accord-
ing to law, and that the said field notes are recorded in Book 1
pages 843 & 844.

Given under my hand this 1st day of March A.D. 1850.

A. A. Nelson,
District Surveyor,
District of Macogdoches.

GENERAL LAND OFFICE, AUSTIN, TEXAS
I, W. A. Walker Chy. Clerk Nov 25 - 59
General Land Office of the State of Texas, do hereby Certify that the above
and foregoing is a true and correct copy of this instrument now on file
in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I hereunto
set my hand and affix the seal of said
office the date last above written.

W. A. Walker
Deputy Surveyor of General Land Office

Gregg Co. St. File #2

County 27564

Sketch File ~~11~~ #2

Gregg County

"Protest" -

Filed January 3^d 1922 -

J. T. Robison, Coun.
S. C. Clark -

"Protest" -

In Re Ewens
angel - appli-
cation for Patent

Contest of
J. R. Castleberry

countin 24565