

Shine & Associates

REGISTERED SURVEYORS TEXAS AND LOUISIANA
D. D. SHINE, RPS, LSLs, RLS

File No Sketch File 71 May 18, 1998
Hardin County
Report Accompanying Plat Sk. 24
7 miles N 24° E
Filed June 10 19 98
See Plat Sk. 24
GARRY MAURO, Com'r
Douglas Howard

Mr. Ben Thomson
Director of Surveying
Texas General Land Office
1700 N. Congress
Austin, Texas 78701-1495

Re: Scrap File 8644, George W. Eaton Survey, A. A. Burrell League, J. A. Vickers League, and surrounding surveys, Hardin County

Dear Ben:

Pursuant to our meeting with you in the GLO on April 22, 1997, where representatives of Temple Inland, you, and head GLO counsel M'Lou Bell met with me and Nedra Foster concerning these surveys, I am reporting to you the situations effecting the boundaries of the above mentioned surveys. I hereby refer you to my preliminary plat and report dated April 15, 1997, which was filed with you at the time of our meeting. This report and plat went into detailed history concerning the surveys in this area and especially that of S.F. 8644. As a result of this conference, you and Ms. Bell agreed with me that the George W. Eaton (S.F. 8644) is completely in conflict with the A. A. Burrell League. The lines and corners of the Burrell League being fixed in the Muldoon v. Sternberg litigation, 146 SW2d 254. (See page 5 of the 4/1997 report.)

I am enclosing herewith a resurvey plat made by me reflecting the proper position of these surveys. Again, I call your attention to page 4 of the 1997 report wherein Surveyors C. B. Lathy and Tom Hyde set concrete monuments extensively throughout this area at corners they identified from the original field notes.

I began surveying in this area in 1957 and recovered practically all of the monuments set by Lathy and Hyde. In many instances the original bearing trees or the remains thereof were still in evidence. We were fortunate that Lathy/Hyde not only found the original bearing trees, but marked and recorded others in order to perpetuate this work. In all of the instances where the original bearing trees have been obliterated, we found some of the additional trees marked by Lathy and Hyde in the 1930's. In the last couple of years, I have had occasion to return to practically all of the corners shown on our plat, revisiting many that I had incorporated in a survey in 1957. Many of these corners were tied into the State Plane Coordinate System in connection with the National Park Service survey of the Village Creek Corridor of the Big Thicket National Preserve which survey I performed. The

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Counter 25259

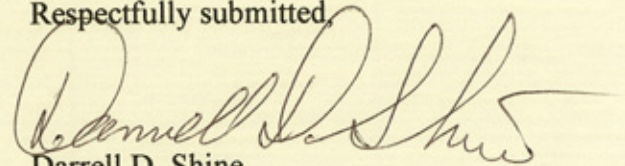
league corners on the Neches River (nearly ten miles east of our area of interest) were surveyed by me in 1976 and are also on the State Plane Coordinate System.

I would like to point out a couple of things to you; otherwise, I think the plat is self explanatory. First, all of the H.&T.C. Sections along the north line of the J. A. Vickers League are in conflict with the Vickers between 50 and 100 varas. All but the southeast corner of Section 183 were identified by J. N. Dark's bearing trees in his survey in 1868. This line is shown in conflict on the enclosed map, with the south corners of these sections being monumented on the north line of the Vickers. One other thing is the distance between the northwest corner of the Burrell and the southwest corner of the Vickers. This distance is 262.83 varas and is supported by all the survey records I have in connection with the Muldoon v. Sternenberg case as 262.8; however, when the judgment was printed, the distance was shown as 268.2 varas. This is obviously a transposition of numbers by the court reporter.

This should finally correct the files in your office and cause Scrap File 8644, the George W. Eaton Survey, to be removed from the state's inventory, and the current General Land Office map can be corrected to reflect this change.

Temple representatives, you, and I have a meeting scheduled for Wednesday, June 10, 1998, at 10:00 A.M. in your office. With copy of this report I am asking Mr. Spencer Reid to sit in on this meeting and hopefully this issue can be resolved at the time of our conference. I will bring a mylar tracing for filing when I come.

Respectfully submitted,



Darrell D. Shine
Licensed State Land Surveyor

cc: Mr. Spencer Reid
Mr. George Vorpahl
Mr. Karey Lee

Shine & Associates

REGISTERED SURVEYORS TEXAS AND LOUISIANA
D. D. SHINE, RPS, LSLs, RLS

File No Sketch File 71A April 15, 1997
Hardin County
Report Accompanying Rld. sk. 24
7 miles N 24° E
Filed June 10 19 98
By GARRY MAURO, Com'r
Douglas Howard

Mr. Ben Thomson
Director of Surveying
Texas General Land Office
1700 N. Congress
Austin, Texas

Re: Scrap File 8644, George W. Eaton Survey, A. A. Burrell League, J. A. Vickers League, and surrounding surveys, Hardin County

Dear Ben:

On behalf of my client, Temple Inland, I am reporting to you the situations effecting the boundaries of the above mentioned surveys.

This is a typical situation in Texas where surveys adjoin "river grants" that extend back considerable distances from the stream. Many times gaps, conflicts and ambiguities occur between these surveys. Our area is unique in the fact that it is the only area in Texas that I know of where there are back-to-back river leagues extending westward from the river, placing the west lines of the western leagues over ten miles from the river. One possible explanation for this configuration is that Beech and Village Creeks run through the western part of the western leagues. The river leagues were located in Lorenzo de Zavala's colony. These leagues were obviously surveyed simultaneously and alternately by two surveyors, John A. Veatch and David Brown.

On Exhibit 1, the O. C. Nelson League was surveyed by David Brown on August 17, 1835, and the George Brooks League was surveyed the next day by John A. Veatch. The John A. Vickers League was surveyed by Veatch on August 25, 1835, while the A. A. Burrell was surveyed by David Brown on August 27, 1835. This same situation holds true for more than thirty leagues located in Hardin, Jefferson, and Tyler Counties. Exhibit 1 is a working sketch plotted from the field notes filed in the General Land Office.

The next surveyor in the area adjoining these leagues was J. N. Dark in 1868 when he laid out six sections for the H. & T. C. Railroad block adjoining the north lines of the Nelson and Vickers Leagues. He began Section 184 at the southwest corner of the James Rafferty League on the north line of the O. C. Nelson and continued to lay out six 1900 vara sections westerly. (Actually, he laid out a number of sections in this block lying to the north and the west, but these six are the

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only ones we will be concerned with in this report.) The north line of the Nelson called to be 10,500 varas and the south line of the Rafferty was called 8,750 varas. The difference between these two distances is 1,750 varas which is the distance between the northwest corner of the Nelson and the southwest corner of the Rafferty. According to the field notes these sections occupy 9,650 varas of the north line of the Vickers beginning at its northeast corner. The Vickers north line is called 10,000 varas. Subtracting the combined length of the sections from the called north line length of 10,000 varas, the difference is 350 varas that the northwest corner of the Vickers would be west of the southwest corner of H.&T.C. RR Section 179. This 350 varas is the exact length that Elar Young found the northwest corner of the Vickers to be from the southwest corner of Section 179 in his field notes of the Hiram Barber in 1869. In a similar manner, the George Brooks League north line calls to be 10,600 varas and the south line of the O. C. Nelson calls to be 10,000 varas, placing the northwest corner of the George Brooks/northeast corner of the A. A. Burrell, 600 varas west of the southwest corner of the O. C. Nelson. In other words, since both the north line of the A. A. Burrell and the south line of the Vickers call to be 10,000 varas, the Burrell League would extend 600 varas west of the southwest corner of the Vickers. Likewise, Elar Young found the distance between the northwest corner of the Burrell and the southwest corner of the Vickers to be 600 varas. Young called in his field notes for the Hiram Barber to adjoin the west and north lines of both the Burrell and Vickers Leagues as well as the call for adjoiner for the west line of Section 179. The Hiram Barber also called its south line to be along the north bank of Village Creek.

The surveys lying on the south side of Village Creek make no calls to adjoin any of the leagues or surveys lying on the north side of the creek. However, it was found that in J. J. Copley's survey of the S. B. Cooper, his south bank meanders of Village Creek were identical to Elar Young's north bank meanders done twenty years earlier. Since there were no calls for adjoiner, we located the S. B. Cooper by fitting its meanders with those of the Hiram Barber. The surveys lying to the south of the S. B. Cooper do call to adjoin each other and the Cooper. This construction places the Lawrence & Creecy Survey by M. W. Bumstead in 1840 and the Joseph Landis No. 7 by O. H. Delano in 1840, in conflict with the A. A. Burrell.

Probably the next surveyor that located corners on these leagues was E. S. Pitts who did extensive work in this area in the 1850's. A. B. Doucette, a county surveyor of Hardin County, surveyed the Nelson, Brooks, Ellery, Elliott, and Vickers Leagues somewhere around the turn of the century. While I have not been able to find any of the Pitts field notes other than an individual survey or two, Doucette in his report and field notes said he found the northwest and southwest corner of the Brooks set by Pitts in 1859. Doucette stated he found the west line of the Vickers to be an old marked line and at the southwest corner found the corner established by Pitts in 1859. He also stated the Vickers League was 214 varas too long "but have followed the old lines and adopted the same." Doucette either found or marked corners for all five of the

above leagues. (The A. A. Burrell League was not owned by his client; therefore, he did not make a survey of the west line of the Burrell.)

In February of 1908, Carter Hart, County Surveyor of Hardin County, filed field notes (S.F. 8491) placing a vacancy he claimed to be lying between the west lines of the Vickers and Burrell Leagues and the east lines of the Hiram Barber, the Lawrence & Creecy Survey, and Joseph Landis No.7. This was a survey of 771.2 acres made for George W. Eaton and was on both sides of Village Creek. This survey was cancelled and the reason noted by Von Rosenberg (G.L.O. draftsman) on the jacket was that it crossed Village Creek. He said the field notes should be in the form of three separate tracts, two on the south side and one on the north side. Accordingly, Mr. Hart returned field notes for 631 acres of land (S.F. 8491) on June 13, 1908. This tract lies on the north side of Village Creek. On the same day he returned field notes for 110 acres of land (S.F. 8644) on the south side of Village Creek. Also on June 12, 1908, Mr. Hart returned field notes for 10 acres of land (S. F. 8643). All three tracts were in the name of G. W. Eaton. File 8643 (10 acres) was the only one of the three tracts that was patented. Patent was issued on this tract on July 12, 1910.

After the Scrap Acts of 1900 and immediate years following, there were filings on scraps of land all over Texas. Many times these were based on the discrepancies shown on the General Land Office maps. Where the plotting of field notes revealed gaps between surveys, vacancy hunters filed applications on these areas. In most cases the G.L.O. granted these vacancies without reliable surveys or supportive data. Generally, the G.L.O. based their decision on the discrepancies of distances only and disregarded calls for adjoiner. This was even true where surveys called to join a river and the called distances from the back lines failed to reach the river. The G.L.O. patented strips of land between the river meanders and the river simply based on a distance call. Many of these vacancies have been proven by resurvey and litigation to not exist or to be in conflict with senior surveys.

The George W. Eaton is a prime example of the above situation. Looking at the G.L.O. county maps of 1862, 1871, 1886, 1894, and 1902, reveal the location of the surveys in the same position as is shown by our Exhibit 1. Specifically, showing the Hiram Barber adjoining the north and west lines of the Vickers (the Barber called to adjoin the Vickers). Also these maps all show that the A. A. Burrell extends west 600 varas from the southwest corner of the Vickers, and the Hiram Barber adjoins the north and the west lines of the Burrell. (The Barber field notes call to adjoin the north and west line of the Burrell.) As mentioned above the surveys south of Village Creek make no calls for the leagues to the east and using the common meanders of the Barber/Cooper would place some of these surveys in conflict with the leagues. This situation is properly shown on the above five G.L.O. maps.

Now along came Mr. Carter Hart, County Surveyor of Hardin County, who apparently decided that all the surveyors before him were wrong, who disregarded calls for adjoiner, who placed the Eaton vacancy completely in conflict with the Vickers and Burrell Leagues. He based his construction entirely by placing the west line of the Burrell the call distance by Veatch and Brown of 19,290 varas (over ten miles) from the west bank of the Neches River. He disregarded all old marked lines and corners and made brand new west lines for the Vickers and Burrell Leagues. The only survey tie made was to the southeast corner of the H. R. Williams Survey. Neither the Williams nor any other surveys on the south side of the creek had a field note relation to the league surveys. On the original 771.2 acre vacancy, the only corner he marked was at his southwest corner of the Burrell.

Hart states in his report that he found both of the west corners of the Hiram Barber, and I think that he probably did go to these two corners and found the witness trees shown on his plat, but I do not believe that he did any measuring along the lines. All of the distances shown on the Barber Survey are those recited in the Barber field notes. Even Hart's meanders of Village Creek are identical to the meanders recited in the Barber field notes. Hart also stated that he found the southwest corner of H.&T.C. Section 179, and I think he did. Hart shows on his plat that there is a 200 vara strip of land lying between the east line of the Barber and the west line of H.&T.C. Section 179. I do not know the reason for Hart showing this 200 vara strip between the Barber and Section 179.

While working for Republic Production Company in the 1930's, Mr. C. B. Lathy did extensive surveying in this area which included a survey around virtually every survey in Hardin and Tyler Counties. Lathy's work included all of the river leagues as well as those leagues adjoining to the west and all of the surrounding surveys. The Lathy survey located many of the original corners marked by the locating surveyors. He monumented these corners with concrete monuments stamped with an H and an identifying number.

Along about the same time as the Lathy survey, Mr. Tom Hyde, a Licensed State Land Surveyor, did extensive surveying for the Olive Sternberg Lumber Company mostly on lands south and west of Village Creek. Mr. Hyde also found many of the original corners and monumented same by concrete monuments marked OSL and an identifying number. The Lathy survey included the Tom Hyde survey and is shown on the Lathy detail maps.

I was fortunate to have known Carter Hart, Tom Hyde, and C. B. 'Pop' Lathy. Mr. Hyde and Mr. Lathy were excellent surveyors. Mr. Hyde was a compass and chain surveyor who was meticulous and described his work in much detail. His corners are easily found today. Pop Lathy was well educated and settled in the Houston area from Illinois in the early 1900's. Pop and Stuart Boyles worked together during this time, and in my opinion, were of equal stature as

surveyors. Pop came to Hardin County in 1930, working on the vast holdings of the Republic Production Company and the Houston Oil Company (approximately 1,000,000 acres) and brought with him mechanical procedures for transit and chain surveys for which bearings and distances compare closely to modern day dimensions between common points.

Carter Hart was a noted bear hunter and woodsman of the Big Thicket area who came from a pioneer family in Hardin County. He and a counterpart, Pete Ellis, were alternately elected county surveyor in the early part of this century. I had occasion to visit with these men both in the field and in the office, and it is my opinion that their knowledge of surveying was very limited. Neither could calculate a closure or acreages. On several occasions, Mr. Hart got me to calculate his closures and acreages. I never did do any calculations for Mr. Pete Ellis, but Mr. T. M. Jordan, a long time Hardin County attorney, told me that he used to make all of the surveying calculations for both Hart and Ellis.

Exhibit 2 is a plat reflecting an actual survey of this area showing corners identified by solid circles and other corners as actually monumented on the ground. The survey dimensions are shown along with the call distances recited in the field notes.

In 1939 litigation was instigated styled Sternenberg v. Muldoon, No. 5689 in the District Court of Hardin County, Texas. The judgment of the District Court in favor of the Sternbergs was affirmed by the Court of Civil Appeals on June 20, 1940 (Muldoon v. Sternenberg, 146 SW2d 254), and in turn was affirmed by the Commission of Appeals and adopted by the Supreme Court (Muldoon v. Sternenberg, 161 SW2d 783). Although the 110 acre tract (S.F. 8644) was not a part of this lawsuit, the north and west boundary lines of the A. A. Burrell were fixed in the judgment and described by metes and bounds field notes. These judgments were made from the record developed in the case which included the Court's *Findings of Fact and Conclusions of Law*. Judge Thomas B. Coe states, "I find that the A. A. Burrell League can be located on the ground by the field notes contained in its grant and that the lines of that part of the A. A. Burrell in issue in this suit, as actually located on the ground, are described with reference to objects now upon the ground as follows, to wit: the north line of the A. A. Burrell League is coincident with the south line of the John A. Vickers League west of Beech Creek and continues on west of the southwest corner of the J. A. Vickers League as I have heretofore found same to be located 268.2 varas, at which point the northwest corner of the A. A. Burrell is located and which is also an interior corner of the Hiram Barber Survey.

~~"The west line of the A. A. Burrell League begins at such northwest corner of the Burrell League and runs thence south with old marked line and an eastern line of the Hiram Barber survey to Village Creek and continues south with said marked line and the east line of the Lawrence & Creecy Survey and the east line of the Joseph Landis Survey No. 7 to where such~~

old line intersects a marked line running east to the southeast corner of the George W. Brooks League and the northeast corner of the Joseph Ellery League. In connection with the location of the west line of said A. A. Burrell League as I have found it to be located, at the request of the attorneys for the cross-plaintiffs, I incorporate herein the following additional finding of fact, although same is not the only evidence of and supporting such found location of the west line of the Burrell League: At a point 20 varas south of the southeast corner of the Lawrence & Creecy Survey in such old line and in the east line of the Joseph Landis Survey No. 7 is a large beech tree which was marked with two sets of very old marks denoting that it was a line tree. Blocks were taken out of such old beech tree on the north and south side of same in the presence of T. M. Hyde, a licensed state land surveyor, C. B. Lathy, a surveyor for the Republic Production Company, Mr. Hugly, a surveyor for Houston Oil Company of Texas, and Mr. Cochran with the Houston Oil Company of Texas, and several others, which showed two sets of landmarks on the north and south side of such tree, which were landmarks, one set being 97 years old, another set being 104 years old and the oldest set has a blaze in the center with a hack above and below and was old enough to be the work of David Brown in locating the A. A. Burrell League in 1835, and the Surveyor Hyde testified that in 1835, in this part of the country judging by following the surveys of various surveyors working in this country at that time, that the Surveyor David Brown was the only surveyor using such a system of marking a line tree at that time, although it is very common practice today, although not universal. I find that such oldest set of marks on such beech tree are original landmarks placed thereon by David Brown in 1835 in running out such survey. I further find that the youngest set of marks thereon corresponds with the date of the survey of the Joseph Landis Survey No. 7."

The judgment of the Court of Civil Appeals stated, "A boundary tree of one of these surveys was found and identified as having been marked by Surveyor Brown; the mark was practically of the date of 1835. Measurements from this tree located the west boundary line of the Vickers as fixed by the Court in this judgment." This tree marked by Surveyor Brown was on the west line of the A. A. Burrell League. John A. Veatch surveyed the Vickers.

The Sternbergs were the owners of the Hiram Barber and the west end of the Vickers League. Muldoon was the owner of the George W. Eaton. The court held the G. W. Eaton Survey of 631 acres to be in conflict with the John Vickers League, the Hiram Barber Survey, and the A. A. Burrell League. Muldoon was the assignee of George W. Eaton. N. E. Laidacker acquired the 110 acres from Muldoon and was making payments to the state for this unpatented tract (S.F. 8644).

Following the Court's judgment, American Republic Corporation, Houston Oil Company, and Southwestern Settlement and Development Corporation, owners of the Vickers League, Burrell League, and the Hiram Barber Survey, through their surveyors, C. B. Lathy, Joseph W. Savage, and W. E. Weathersby, along with T. M. Hyde, Licensed State Land Surveyor

representing Olive Sternberg Lumber Company, filed field notes and plat in the General Land Office on May 31, 1950, describing the lines and corners as they were adjudicated. Following these actions N. E. Laidacker forfeited his interest in the George W. Eaton 110 acre survey. Since Laidacker failed to make an \$87 payment to keep his interest in this 110 acre tract, one must presume that he knew he was flogging a dead horse.

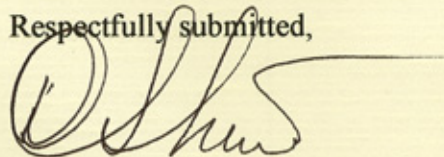
This is not a case of technical boundary location, as pointed out by the Court of Civil Appeals, but is a case of fact. The fact is the west line of the Burrell was located by the original marks of David Brown who surveyed same in 1835. The five G.L.O. maps mentioned above did not show any room or reason for placing a third survey between original surveys. Obviously, the maker of the current Land Office map had problems justifying the existence of the Eaton vacancy. He obviously shoved the leagues to the east by approximately 1,000 varas and consequently shows this much discrepancy at the southwest corners of the Rafferty, the Cox and the Fisher. The G.L.O. should never have allowed the Eaton vacancy. Carter Hart's field notes, report and map are full of discrepancies as well as the violation of the well established rule of adjoiner. For example, Hart said that he began on the west bank of the Neches River at the southeast corner of the Brooks League and the northeast corner of the Joseph Ellery which he said was established by Mr. A. B. Doucette, County Surveyor of Hardin County. He thence runs west with the line marked by Mr. Doucette "at 9,290 varas I passed Mr. Doucette's location for the southwest corner of the George Brooks League." I doubt that Mr. Hart ever ran this line for a couple of reasons. Number one, the 9,290 varas was not the dimension Doucette said he found this corner, but was the identical distance recorded by Veatch. It would be a minor miracle for two surveyors today to measure between two points and find the exact same distance. It would have been a miracle greater than the virgin birth for Hart seventy-three years after the Veatch survey to measure from a bank of a river to a corner five miles away and find the exact distance. Hart continues on west and in his report "at _____ varas I passed Mr. Doucette's location for the northwest corner of the Joseph Ellery League." Mr. Doucette's field notes do not reveal a distance between these corners. It can only be obtained mathematically from the field notes of several adjoining surveys; therefore, Mr. Hart was at a loss for this distance. (Another reason I do not believe he ran this line.) Hart managed to locate his west line of the Burrell, apparently from the creek crossing recited in Mr. Doucette's notes. According to Hart's plat, the west line of the Burrell was exactly 19,290 varas from the west bank of the Neches River, Veatch and Brown's call in 1835. Another reason I do not believe Hart was on the ground, except in the immediate vicinity of the Eaton vacancy, is that he testified that he had no field book of his work. Also he testified that a number of men were with him when he made an actual survey from the Neches River out in establishing the west line of the Burrell League, including J. B. Hooks. But Mr. Hooks said in his testimony that they spent one day surveying and were on the Kountze side of Village Creek that day. Going back to the Hart map and field notes, he shows three different distances between his southwest corner of the Eaton 110 acre tract and the southeast corner of the Lawrence & Creecy. By subtracting the distances he shows on his plat, he finds this distance to be 151.8. By subtracting his distance on the east line of the

Lawrence & Creecy and his west line of the Eaton, the distance is 161.1 and yet he calls in his field notes the same distance to be 261.1.

All of the G. W. Eaton 631 acre and 110 acre surveys, S.F. 8491 and S.F. 8644, are wholly in conflict with the Vickers and Burrell Leagues of which the Supreme Court said in its decision, 161 SW2d 784, "Of course, since the Eaton is a junior survey, if its field notes conflict with those of the Vickers League, the former must yield." Also there can be no doubt that if the George W. Eaton is in conflict with the Burrell League, the junior Eaton must yield to the Burrell.

We are attaching hereto a listing of the documents used in making this report.

Respectfully submitted,



Darrell D. Shine

Licensed State Land Surveyor



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SURVEY	DATE OF SURVEY	DATE OF TITLE/ PATENT	SURVEYOR	FILE NO.	DISPENSATION
James Rafferty	8/16/1835	8/18/1835	John A. Veatch	Title	
George W. Brooks	8/18/1835	8/22/1835	John A. Veatch	Title	
O. C. Nelson		8/18/1835	David Brown	Title	
John A. Vickers		8/25/1835	John A. Veatch	Title	
A. A. Burrell	8/27/1835	9/2/1835	David Brown	Title	
F. P. Elliott		8/27/1835	John A. Veatch	V23,P913	
Lawrence & Creecy	3/15/1840	4/4/1845	M. W. Bumstead	J.S.34	Patented
Lawrence & Creecy	3/16/1840	4/1/1845	M. W. Bumstead	J.S. 37	Patented
Louis Bouillet	8/1/1840		M. W. Bumstead	3-24	Patented
Joseph Landis #6	8/17/1840	4/7/1841	O. H. Delano	J.S. 45	Patented
Joseph Landis #7	8/17/1840	5/7/1841	O. H. Delano	41	Patented
Lawrence&Creecy	8/30/1840		M. W. Bumstead	J-S 36	Patented
Hiram Barber	3/8/1858		E. S. Pitts		Cancelled
BBB&C #28	8/22/1859		T. C. Turner	JS 61	Unmapped
George Kisner	3/7/1861		Wm. Word	2-114	Cancelled
Shadrick Gore	11/8/1861		Wm. Word	LS 262	Unmapped
E. Bynum	11/7/1862		Wm. Word	LS 376	Unmapped-
S. L. Davis	11/7/1862		Wm. Word	LS 374	Unmapped
Calvin Gore	11/12/1862		Wm. Word	LS 375	Unmapped
George Kisner	11/30/1863	12/3/1867	Wm. Word	2-114	Patented
Walter R. Whatley	6/2/1864		Wm. Word	LS 433	Unmapped
H.&T.C. Sec. 183	1/16,17/1868	1/26/1887	J. N. Dark	J.S. 249	Patented
H.&T.C. Sec. 184	1/17/1868		J. N. Dark	J.S. 249	
H.&T.C. Sec. 181	1/19/1868	1/26/1887	J. N. Dark	J.S.250	Patented
H.&T.C. Sec.182	1/19/1868	12/1/1898	J. N. Dark	3876	Patented
H.&T.C. Sec. 179	1/20/1868	1/20/1887	J. N. Dark	J.S. 251	Patented
H.&T.C. Sec. 180	1/20/1868		J. N. Dark	J.S.251	
Hiram Barber	12/27/1869	9/6/1870	Elar Young	Bounty 164	Patented
H. R. Williams	11/12/1872	8/4/1874	J. N. Dark	1-107	Patented
W. B. McCarty No.180	6/8/1880	11/8/1883	R.N.B.Tompkins	2915	Patented
P. S. Watts	7/17/1882	10/4/1882	W. B. Pedigo	S938½	Patented
S. B. Cooper	8/9/1889-filed		J. J. Copley	J.S.557	Cancelled
S. B. Cooper	2/13/1890	8/3/1908	J. J. Copley	100459	Patented
(Olive & Sternberg)				(J.S.557)	
G. W. Eaton #858	2/9/1908		Carter Hart	8491	Cancelled
G. W. Eaton	6/12/1908	7/12/1910	Carter Hart	8643	Patent-corrected fn's
G. W. Eaton#858#2	6/13/1908		Carter Hart`	8644	Corrected fn's
G. W. Eaton #858	6/13/1908	7/1/1908	Carter Hart	8491	corrected fn's
A. A. Burrell	4/20-21/1950		T. M. Hyde	122612	Filed for information
			C. B. Lathy		Only - west line
			J. W. Savage		
			W. E. Weathersby		

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MAPS and PERTINENT DOCUMENTS

Surveyor's sketch and certificate by William Word dated 6/18/1861 - Liberty Bounty File 164 - filed 8/29/1861
November 1886 General Land Office map
Jacket information for File 122611 Abst. 902 - N. E. Laidacker 631 (scratch through) 180.6 acres - SF8491
Jacket information for File 122612 Abst. 903 - N. E. Laidacker 110 Acres SF 8644

Surveyor's sketch by Carter Hart dated 2/18/1908 (File No. 8491)
Surveyor's report by Carter Hart dated 2/17/1908

File No. 122611 - Copy of sketch in S.F. 8481 showing area remaining in this file outlined in yellow. Filed October 23, 1943. Bascom Giles. Von Rosenberg. See court judgment in Parcel #22 this file for authority to reduce area.

Report and sketches by A. B. Doucette in connection with boundary lines and squatters living on lands acquired by Houston Oil Company from Texas Pineland Association in Hardin County. Work done in 1896 or 1897.

Legal Actions and Filings

8/15/1939 - No. 5689 - Sternenberg v. Muldoon v. N. E. Laidacker, Defendant in Cross-Action - "First Amended Original Answer of N. E. Laidacker, Defendant in Cross-action"

9/6/1939 - Judgment in No. 5689 - Sternenberg v. Muldoon by Thomas B. Coe, presiding judge. Filed 10/23/1943 under File No. 122611 in GLO.

9/12/1939 - Findings of fact and conclusions of law in No. 5689 - Mrs. Emma Sternenberg v. J. M. Muldoon by Thomas B. Coe, presiding judge.

6/20/1940 - Court of Civil Appeals - No. 8640 - June 20, 1940 - Muldoon v. Sternenberg 146 SW2d 254

4/1/1942 - Commission of Appeals of Texas - No. 2406-7834 - Muldoon v. Sternenberg 161 SW2d 783

7/27/1951 - Boundary Agreement, Hardin County V. 239, P. 373 between American Republics Corp., HOCO, Republic Production Co. and Southwestern Settlement and Development Corp. (as parties of the second part) and Sternenberg et al (as parties of the first part).

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MULDOON et al. v. STERNENBERG et al.
No. 3640.

Court of Civil Appeals of Texas. Beaumont.
June 20, 1940.

Rehearing Denied Dec. 11, 1940.

Boundaries ⇨37(3)

In boundary suit to try title to tract of land, which defendants claimed intervened between land owned by plaintiffs and situated in two separate surveys, evidence, including old land office maps and measurements made from boundary tree marked at time of original survey, held sufficient to sustain judgment for plaintiffs, finding a common boundary line for the surveys in which plaintiffs' lands were situated, with no third survey intervening.

Appeal from District Court, Hardin County; Thos. B. Coe, Judge.

Suit in trespass to try title to land by Mrs. Emma B. Sternenberg and others against J. M. Muldoon and others. From a judgment for plaintiffs, defendants appeal.

Affirmed.

H. C. Cunningham, A. M. Huffman, and Strong, Moore & Strong, all of Beaumont, for appellants.

James F. Parker, of Kountze, for appellees.

O'QUINN, Justice.

This is a boundary suit, in form of trespass to try title, by appellees, Mrs. Emma B. Sternenberg et al., against appellants, J. M. Muldoon et al., for title and possession of a tract of land on the west end of the John A. Vickers league in Hardin county, titled in 1835, bounded on the north and south by the original boundary lines of the league, on the east by Beech Creek, and on the west by the E/B line of the Hiram Barber survey. The Barber survey of 1,280 acres was patented in 1870 by field notes that call for its E/B line to be a common line with the Vickers' W/B line. The old land office map of Hardin county showed no vacancy between the Vickers and the Barber. Appellees owned all of the Vickers west of Beech Creek, and all of the Barber survey.

Appellants owned the George W. Eaton survey, patented on field notes made as of

June 8, 1908, and laid upon what appellants claim was a vacancy between the Barber on the west and the Vickers on the east.

The location on the ground of the E/B line of the Barber was established beyond question, and was conceded by appellants. The only point in issue is whether the Vickers extended west to adjoin the Barber survey. The issue was tried to the court without a jury, and found in favor of appellees. Judgment was entered fixing the W/B line of the Vickers as a common line with the established E/B line of the Barber, and in favor of appellees and against appellants for all of that part of the Eaton in conflict with the Vickers. Judgment was for appellants for that part of the Eaton not in conflict with the Vickers. Appellants have duly prosecuted their appeal to this court.

The issue in the lower court was simply one of fact. The Vickers lies immediately west of and adjoining the Nelson, which was also titled in 1835. The N/B line and the S/B line of the Vickers are merely extensions west of the N/B line and S/B line of the Nelson. The field notes of the Nelson and the Vickers call for their N/B line to be north 2,500 varas from their S/B line; this distance in fact was 2,556.7 varas. There was no controversy as to the location on the ground of the N/E corner and S/E corner of the Nelson. Extending west from these corners were two old lines, identified as the N/B line and S/B line of the Nelson, to the points located by the court on the ground as being the N/W corner and S/W corner of the Vickers, and as located and fixed by the court these corners are in the E/B line of the Barber. On these old lines were found line trees of an age practically with the original lines as located in 1835. The Vickers and the Nelson are parts of a block of league surveys made in 1835 by surveyors Veatch and Brown. A boundary tree of one of these surveys was found and identified as having been marked by surveyor Brown; the mark was practically of the date of 1835. Measurements from this tree located the west boundary line of the Vickers, as fixed by the court in this judgment. Many other facts and circumstances are in the record supporting the court's judgment, but it would serve no useful purpose to bring them forward as a part of our statement. It is sufficient to say that we have carefully examined the record, and the record supports the court's

By Douglas Howard
GARRY MAURO, Com'r

See Rld. Sk. 24

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judgment; the facts given above support the court's judgment. No point of technical boundary law is presented by the appeal.

The judgment of the lower court should be in all things affirmed, and it is accordingly so ordered.

Affirmed.



RICHARDSON et al. v. HUGHES.
No. 8939.

Court of Civil Appeals of Texas: Austin.
Nov. 27, 1940.

Rehearing Denied Dec. 31, 1940.

1. Limitation of actions ⇨143(6)

Where last recorded extension of vendor's lien notes showed the last note due to mature on January 1, 1927, but by deed, duly recorded, dated October 25, 1930, grantee assumed payment thereof, notes would not be barred by limitation until four years after assumption. Vernon's Ann.Civ.St. arts. 5520, 5522, 6627.

2. Executors and administrators ⇨122(1)

The statute providing that temporary administrators shall have only such rights and powers as are specifically expressed in the order of the court appointing them is to be strictly construed in limiting powers of temporary administrators. Vernon's Ann. Civ.St. art. 3379.

3. Executors and administrators ⇨122(1)
Limitation of actions ⇨142

An attempted renewal and extension of vendor's lien notes by a temporary administrator who was directed to bring suit on notes was void and did not toll running of statutes of limitation against notes, in absence of showing express authority of temporary administrator to make extension. Vernon's Ann.Civ.St. arts. 3373, 3379, 3432a, 5520, 5522, 6627.

4. Estoppel ⇨98(4)

Where attempted renewal and extension of vendor's lien notes by temporary administrator who was directed to bring suit on notes was void because of absence of express authority of temporary administrator to make extension, and did not toll running

of statutes of limitations against notes, holders of judgment against grantee who assumed payment of notes were not "estopped" to deny invalidity of such extension on ground that grantee, having made such agreement, would be "estopped" to deny it. Vernon's Ann.Civ.St. arts. 3373, 3379, 3432a, 5520, 5522, 6627.

See Words and Phrases, Permanent Edition, for all other definitions of "Estopped".

5. Contracts ⇨136

A void contract cannot be rendered enforceable by estoppel.

6. Vendor and purchaser ⇨229(5)

If a party claiming status of innocent purchaser against a prior unrecorded lien has knowledge of such facts as to put a person of ordinary prudence upon inquiry, which, if reasonably pursued, would disclose existence of the unrecorded encumbrance, he will be charged with notice.

7. Appeal and error ⇨1008(1)

Whether a party claiming status of innocent purchaser against a prior unrecorded lien has knowledge of such facts as to put a person of ordinary prudence upon inquiry, which, if reasonably pursued, would disclose existence of the unrecorded encumbrance, so as to be charged with notice, presents a question of fact for determination by trial court.

8. Execution ⇨274

Evidence supported finding that defendants' attorney, prior to levy of execution against property on a judgment against grantee who had assumed payment of vendor's lien notes, was apprised of sufficient facts relative to unrecorded extension of vendor's lien notes, to charge defendants with notice.

9. Appeal and error ⇨1177(6)

Where it appeared that case had not been fully developed in trial court, and judgment for plaintiff was not sustainable, cause would be reversed and remanded by Court of Civil Appeals, instead of rendered.

Appeal from District Court, Tom Green County; O. L. Parish, Judge.

Suit by Robert Hughes, independent executor of the estate of Mrs. Emma Cornell, deceased, against Mrs. Lela Viola Millsap Richardson and others, on certain vendor's lien notes and for foreclosure of such lien.

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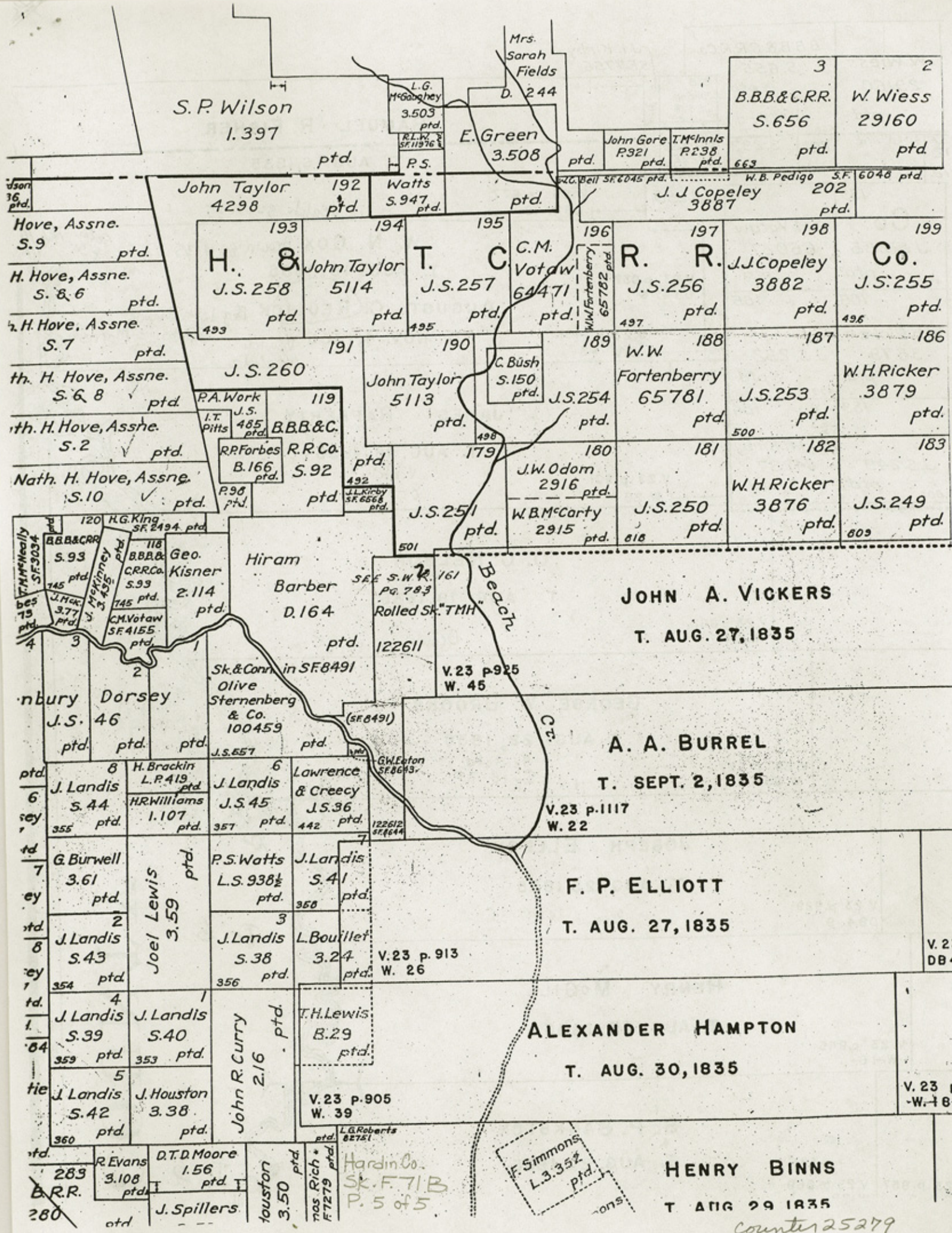
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S.P. Wilson
1.397

L.G. McGaughey
3.503
ptd.
R.L. R. SF 11976

E. Green
3.508

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John Taylor
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192
Watts
S. 947
ptd.

John Gore P. 321 ptd.
T.M. Innis P. 238 ptd.
J. J. Copeley
3887

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H. Hove, Assne.
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ptd.

h. H. Hove, Assne.
S. 7
ptd.

th. H. Hove, Assne.
S. & 8
ptd.

th. H. Hove, Assne.
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S. 10
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193
H. &
J.S. 258
ptd.

194
John Taylor
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T. C
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C.M. Votaw
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197
R. R.
J.S. 256
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J.J. Copeley
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J.S. 255
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191
J.S. 260

190
John Taylor
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ptd.

189
C. Bush
S. 150
ptd.

188
W.W. Fortenberry
65781
ptd.

187
J.S. 253
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186
W.H. Ricker
3879
ptd.

119
P.A. Work
J.S. 485
ptd.

B.B.B.&C.
R.R. Co.
S. 92
ptd.

179
J.S. 251
ptd.

180
J.W. Odom
2916
ptd.

181
W.H. Ricker
3876
ptd.

182
J.S. 250
ptd.

183
J.S. 249
ptd.

492
R.R. Forbes
B. 166
ptd.

498
J.L. Kirby
SF 6568
ptd.

501
J.S. 251
ptd.

180
W.B.McCarty
2915
ptd.

181
J.S. 250
ptd.

182
W.H. Ricker
3876
ptd.

183
J.S. 249
ptd.

120
H.G. King
SF 2494
ptd.

118
B.B.B.&C.R.R. Co.
S. 93
ptd.

Geo. Kisner
2.114
ptd.

Hiram Barber
D. 164
ptd.

SEE S.W. 1/4 Pg. 783
Rolled Sk. TMH

JOHN A. VICKERS
T. AUG. 27, 1835

120
H.G. King
SF 2494
ptd.

118
B.B.B.&C.R.R. Co.
S. 93
ptd.

Geo. Kisner
2.114
ptd.

Hiram Barber
D. 164
ptd.

SEE S.W. 1/4 Pg. 783
Rolled Sk. TMH

JOHN A. VICKERS
T. AUG. 27, 1835

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H.G. King
SF 2494
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D. 164
ptd.

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Rolled Sk. TMH

JOHN A. VICKERS
T. AUG. 27, 1835

8
H. Brackin
L.P. 419
ptd.

6
Lawrence & Creecy
J.S. 36
442 ptd.

6
Lawrence & Creecy
J.S. 36
442 ptd.

6
Lawrence & Creecy
J.S. 36
442 ptd.

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A. A. BURREL
T. SEPT. 2, 1835

7
G. Burwell
3.61
ptd.

2
Joel Lewis
3.59
ptd.

3
P.S. Watts
L.S. 938 1/2
ptd.

7
J. Landis
S. 41
358 ptd.

122612
174644

F. P. ELLIOTT
T. AUG. 27, 1835

8
J. Landis
S. 43
354 ptd.

2
Joel Lewis
3.59
ptd.

3
J. Landis
S. 38
356 ptd.

7
J. Landis
S. 41
358 ptd.

122612
174644

F. P. ELLIOTT
T. AUG. 27, 1835

4
J. Landis
S. 39
353 ptd.

1
J. Landis
S. 40
353 ptd.

3
J. Landis
S. 38
356 ptd.

7
J. Landis
S. 41
358 ptd.

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ALEXANDER HAMPTON
T. AUG. 30, 1835

5
J. Landis
S. 42
360 ptd.

1
J. Houston
3.38
ptd.

2
John R. Curry
2.16
ptd.

7
T.H. Lewis
B. 29
ptd.

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ALEXANDER HAMPTON
T. AUG. 30, 1835

283
B.R.R.
280
ptd.

R. Evans
3.108
ptd.

D.T.D. Moore
1.56
ptd.

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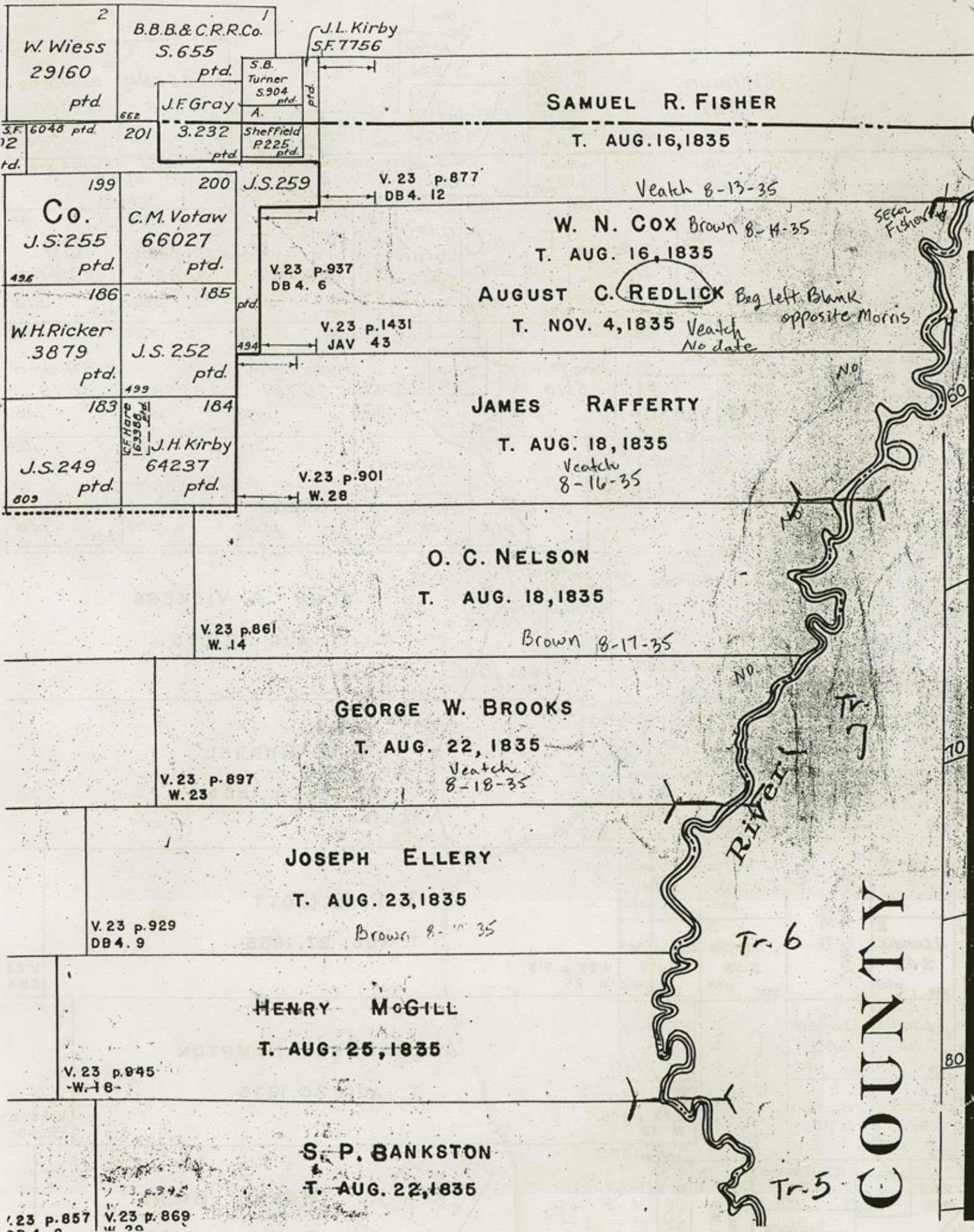
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John R. Curry
2.16
ptd.

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V. 23 p. 905
W. 39

HENRY BINNS
T. AUG. 29, 1835

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2
W. Wiess
29160
ptd.

B.B.B.&C.R.R.Co.
S. 655
ptd.

J.L. Kirby
SF. 7756

S.B. Turner
S. 904
A.
ptd.

J.F. Gray
ptd.

SAMUEL R. FISHER

S.F. 6048 ptd.
12
td.

662
201
3.232
ptd.

Sheffield
P. 225
ptd.

T. AUG. 16, 1835

199
Co.
J.S. 255
ptd.

200
C.M. Votaw
66027
ptd.

J.S. 259
V. 23 p. 877
DB 4. 12

Veatch 8-13-35
W. N. COX Brown 8-14-35
T. AUG. 16, 1835

496
186
W.H. Ricker
3879
ptd.

185
J.S. 252
ptd.

V. 23 p. 937
DB 4. 6
V. 23 p. 1431
JAV 43

AUGUST C. REDLICK Bag left Blank opposite Morris
T. NOV. 4, 1835
Veatch No date

183
J.S. 249
ptd.

184
J.H. Kirby
64237
ptd.

V. 23 p. 901
W. 28

JAMES RAFFERTY
T. AUG. 18, 1835
Veatch 8-16-35

O. C. NELSON
T. AUG. 18, 1835
Brown 8-17-35

GEORGE W. BROOKS
T. AUG. 22, 1835
Veatch 8-18-35

JOSEPH ELLERY
T. AUG. 23, 1835
Brown 8-18-35

HENRY MCGILL
T. AUG. 25, 1835

S. P. BANKSTON
T. AUG. 22, 1835

COUNTY

counter 25280

MULDOON et al. v. STERNENBERG et al.
No. 2406—7834.

Commission of Appeals of Texas, Section A.
April 1, 1942.

Rehearing Denied April 29, 1942.

1. Boundaries ⇨54(6)

In boundary suit to try title to tract of land, the presumption obtained that the lines of two contested surveys were actually run upon the ground by the surveyors, as against contention that a surveyor in preparing the field notes for one tract established the N. E. and S. E. corners thereof on the ground and constructed the other lines and corners by protraction.

2. Boundaries ⇨37(3)

In boundary suit to try title to tract of land which defendant claimed intervened between land owned by plaintiff and situated in two separate surveys, evidence supported presumption that the lines of the surveys were actually run upon the ground by the surveyors.

3. Evidence ⇨387(4)

If the calls of a survey when applied on the ground correspond with each other, parol evidence as to objects not called for in the field notes is not admissible to vary them.

4. Evidence ⇨460(4)

Parol evidence is admissible to show where, on the ground, a survey was actually made when the effort to apply the description to the ground gives rise to ambiguity, and such evidence is not admitted to override the field notes, but as an aid in their interpretation.

5. Evidence ⇨460(8)

In boundary suit to try title to tract of land which defendants claimed intervened between land owned by plaintiff and situated in two separate surveys where an effort to apply the field notes of the surveys to the ground disclosed ambiguities in the calls which were not merely for specified courses and distances but also for stakes which were not found at the points indicated by the calls for courses and distances, parol evidence as to the true location of such stakes was admissible.

6. Boundaries ⇨35(5)

Parol evidence is admissible to locate monuments called for in surveyor's field notes.

7. Boundaries ⇨37(3)

In boundary suit to try title to tract of land which defendants claimed intervened between land owned by plaintiff and situated in two separate surveys, evidence was sufficient to establish a finding of a common boundary line for surveys in which plaintiffs' land was situated with no third survey intervening.

8. Boundaries ⇨7

Stakes called for in field notes of two separate surveys, the boundary of which was in dispute, determined location of the corners.

9. Boundaries ⇨3(3)

Calls for monuments, whether natural or artificial, are given priority over calls for courses and distances.

Error to Court of Civil Appeals of Ninth Supreme Judicial District.

Suit by Mrs. Emma B. Sternenberg and others against J. M. Muldoon and others in trespass to try title to land, wherein defendants filed a cross-action. Judgment for plaintiffs was affirmed by the Court of Civil Appeals (146 S.W.2d 254), and defendants bring error.

Judgment of Court of Civil Appeals affirmed.

A. M. Huffman, Hugh C. Cunningham, Strong, Moore & Strong, and Beeman Strong, all of Beaumont, for appellants.

James F. Parker, of Kountze, for appellees.

HICKMAN, Commissioner.

The parties will be designated in this opinion as they were in the trial court wherein the defendants in error, Mrs. Emma B. Sternenberg, a feme sole, and others were plaintiffs, and Mrs. Eva Muldoon, a feme sole, and others were defendants. The suit was in the form of an action of trespass to try title, but developed into one wholly of boundary, the controlling issue being that of the true location on the ground of the west line of the John A. Vickers league in Hardin county. The plaintiffs contend that the east line of the Hiram Barber survey and the west line of the John A. Vickers league are a common line, while the defendants contend that the west line of the Vickers is 1029 varas east of the east line of the Barber, and that the intervening land is a

By *Bessie Lee Howard*
GARRY MAURO, Com'r

Filed June 10 1942
161 S.W.2d 783
Hardin County

See *Rid. Sk. 24*

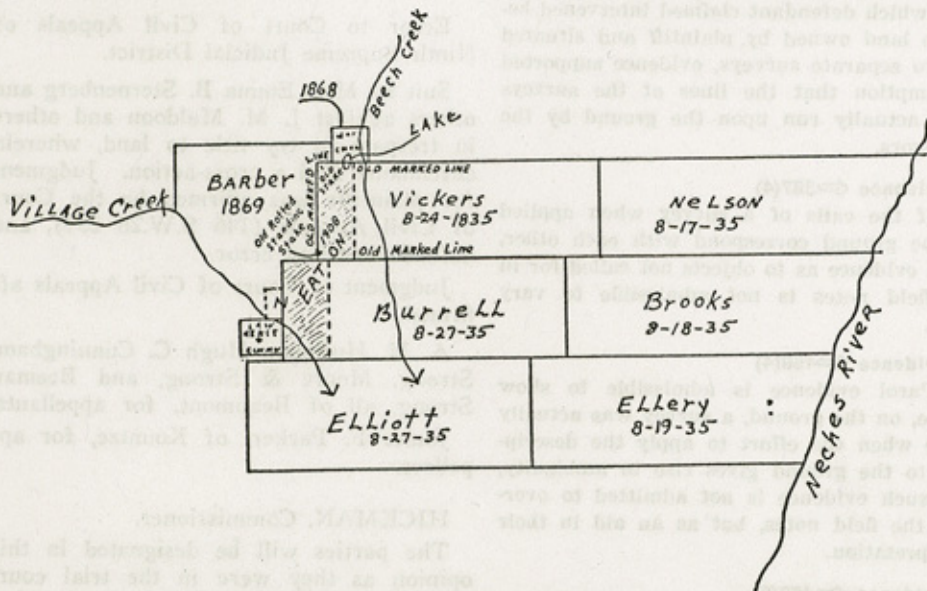
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*Hardin Co.
SK.F. 71C
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County 25281

part of the George W. Eaton survey. Upon a trial before the court without the assistance of a jury the plaintiffs' contention was sustained and they were awarded all the land sued for. Upon defendants' cross action, in which they put in issue the title to the entire Eaton survey, they were awarded a recovery of all of said survey except that portion thereof which was recovered by the plaintiffs as a part of the Vickers league. The trial court's judgment was affirmed by the Court of Civil Appeals. 146 S.W.2d 254.

It is thought that the sketch inserted below will aid in an understanding of the contentions of the parties; it is not a part of the record and no attempt has been made to construct it according to scale, but it is inserted for purposes of illustration only:



The Vickers league was surveyed and titled in 1835 and the Barber survey was surveyed in 1869 and titled in 1870. The Eaton survey is an irregularly shaped tract of 631 acres surveyed in 1908. The defendants contend that the west line of the Vickers should be located on the dotted line shown on the sketch as the east line of the upper portion of the Eaton survey, while the plaintiffs contend that the west line of the Vickers should be located on the line shown on the sketch as the east line of the Barber. It is conceded by all parties that the east line of the Barber is well established as indicated by the sketch and the controversy centers about the question

of whether the land in dispute is in the Vickers league, owned by plaintiffs, or the Eaton survey, owned by defendants. Of course, since the Eaton is a junior survey, if its field notes conflict with those of the Vickers league the former must yield.

By reference to the above sketch, it will be observed that two surveyors, Brown and Veatch, apparently worked in this section in 1835 surveying leagues for colonists. It would appear that they surveyed alternate sections. Brown surveyed the Nelson, Ellery and Burrell, and Veatch the Brooks, Vickers and Elliott. The field notes of the Nelson survey prepared by Brown on August 17, 1835, are as follows:

"The tract surveyed for the colonist O. C. Nelson is situated on the western bank of the Neches river, a stake was driven on said bank for the first corner of

the survey for the said interested party, and it is his S. E. corner, (bearings).

"Thence west 10,000 varas a stake was driven establishing the second corner thereon, and it is the southwest one of said league.

"Thence north 2500 varas were measured, a stake was driven, serving as the northwest corner of said league.

"Thence east 10,500 varas were measured to the S. E. corner of a survey on the western side of the Neches, which is the northeast corner of this survey, (bearings).

"Thence, descending the said river, on its various courses, until encountering the

corner thus corner of land survey

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corner on which this survey was begun, thus completing the survey of the league of land which you commanded me to have surveyed."

The field notes of the Vickers survey prepared by Veatch on August 24, 1935, are as follows: "The tract surveyed for the Colonist John A. Vickers is situated on the Western side of the Neches river, driving a stake on the northwest corner of Nelson's survey, and the first corner of this survey was established thereon; thence on the course to the west, 10,000 varas were measured, and a stake was driven, establishing the second corner thereon. Thence on the course to the South, two thousand, five hundred varas were measured, and a stake was driven, establishing the third corner thereon. Thence, on the course to the East, 10,000 varas were measured, and a stake was driven, establishing the fourth and last corner thereon, which is likewise the southwest corner of another survey. Thence North, 2500 varas were measured on its boundary line until encountering the corner on which this survey was begun, thus completing the survey of the league of land which you commanded me to have surveyed."

The field notes of the Barber survey, prepared December 7, 1869, call for the east line thereof to adjoin the west line of the Vickers, although they disclose that the surveyor did not locate any marks of the west line of the Vickers at the time he established the east line of the Barber.

The Court of Civil Appeals affirmed the judgment of the trial court, holding that the issue of the location of the west boundary line of the Vickers league was simply one of fact, and that there was evidence supporting the fact conclusion of the trial judge that the Vickers league extended west to adjoin the Barber survey.

The northeast corner and the southeast corner of the Nelson league are definitely established, and there is no controversy with reference thereto. It is the theory of the defendants that the evidence shows conclusively that the surveyor, Brown, in preparing the field notes of the Nelson league established the northeast and southeast corners thereof on the ground and then constructed the other lines and corners thereof by protraction. They further contend that the evidence conclusively shows that the Vickers was an office survey, and that, therefore, it should be held as a mat-

ter of law that such leagues must be located on the ground by the course and distance calls in their field notes.

[1] We cannot sustain this contention. The presumption obtains that the lines of these surveys were actually run upon the ground by the surveyors. *Ayers v. Lancaster*, 64 Tex. 305; *Maddox v. Turner*, 79 Tex. 279, 15 S.W.2d 237; *Groesbeck v. Harris*, 82 Tex. 411, 19 S.W. 850; *Finberg v. Gilbert*, 104 Tex. 539, 141 S.W. 82; *Texas Co. v. Andrade*, Tex.Civ.App., 52 S.W.2d 1063 and authorities there cited. This latter case was affirmed in *Carter v. Texas Co.*, 126 Tex. 388, 87 S.W.2d 1079.

[2] The evidence in this case does not overcome that presumption as a matter of law, but, on the contrary, tends to support it. The field notes recite that stakes were driven at the various corners of both the Nelson and the Vickers leagues. The fact that two surveyors made the field notes to alternate leagues would suggest that they were actually surveying this territory, and besides, testimony as to old marked lines and stakes tended to support the presumption that the surveyors did their duty.

[3] The principal contention of the defendants is presented in their first assignment of error, that being the assignment upon which the application for writ of error was granted. It is that parol evidence could not be resorted to for the purpose of establishing the west line of the Vickers league. The argument is based upon the theory that, since there was no conflict or ambiguity in the calls in the field notes of either the Nelson league or the Vickers league, such leagues should be located on the ground by the calls of their field notes. Defendants invoke the rule that, if the calls when applied on the ground correspond with each other, parol evidence as to objects not called for in the field notes is not admissible to vary them. That is a well established rule of boundary law. *Johnson v. Archibald*, 78 Tex. 96, 14 S.W. 266, 22 Am.St.Rep. 27; *Reast v. Donald*, 84 Tex. 648, 19 S.W. 795; *Thomson v. Langdon*, 87 Tex. 254, 28 S.W. 931, and *Gill v. Peterson*, 126 Tex. 216, 86 S.W.2d 629, 632. But it has no application here.

[4-6] In the case last cited the opinion carefully points out that "parol evidence is admissible to show where, on the ground a survey was actually made, * * * when

Hardin Co.
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the effort to apply the description to the ground gives rise to ambiguity," and that such evidence is not admitted to override the field notes, but as an aid in their interpretation, citing *Wilson v. Giraud*, 111 Tex. 253, 231 S.W. 1074. When an effort was made to apply the field notes of the leagues under discussion to the ground ambiguities were disclosed. The calls were not merely for specified courses and distances, but were for stakes as well, and when it was found that such artificial objects were not at the points indicated by the calls for course and distance rendering parol evidence as to the true location of such stakes admissible. Parol evidence is always admissible to locate monuments called for in the field notes. *Hughes v. Sandal*, 25 Tex. 162; *Thatcher v. Matthews*, 101 Tex. 122, 105 S.W. 317; 7 Tex.Jur., *Boundaries*, Sec. 77, p. 235, and cases there cited.

The assignments before us do not present questions as to the admissibility of particular items of evidence, but merely present the broad question that none of such evidence was admissible because the land could be located on the ground by its field notes and because such evidence was not as to objects called for in the field notes. The evidence was offered in an effort to locate the artificial objects called for by the field notes, and the rule excluding parol evidence as to objects not called for in the field notes has no application. *West Lumber Co. v. Goodrich*, 113 Tex. 14, 223 S.W. 183. There is no particular rule as to the character of evidence which may be considered in locating objects called for in the field notes.

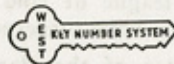
[7] We overrule the contention that there is no evidence in this record that the stakes called for as the northwest and southwest corners of the Vickers league were driven at the points found by the trial court, that is, at points which establish that the west line of the Vickers and the east line of the Barber is a common line. The witness Hyde, a licensed state surveyor, who went upon the ground in 1936 for the purpose of surveying the Barber survey and obtaining correct information with reference to the surrounding surveys, testified at great length with reference to the various lines which he ran in that vicinity. He testified that he found an old stake at about the point fixed by the trial court as the northwest corner of the Vickers and a rotten stake, still

standing, at about the point fixed as the southwest corner hereof. He further testified to old lines which were consistent with the fact that such stakes were those called for in the original field notes of the Vickers league. There is no evidence in the record which would indicate that those stakes were placed there for any other purpose than the marking of the corners of the Vickers league. The trial court as the trier of facts concluded that they marked the corners of the Vickers league, and it cannot be said, as a matter of law, that the conclusion was not warranted.

[8,9] It is elementary that, if they were the stakes called for in the field notes, they determine the location of the corners, for calls for monuments, whether natural or artificial, are given priority over calls for course and distance. 7 Tex.Jur., *Boundaries*, Sec. 37, pp. 166 et seq.

The judgment of the Court of Civil Appeals, which affirmed the judgment of the trial court, is affirmed.

Opinion adopted by the Supreme Court



**STANDARD ACCIDENT INS. CO. v.
THOMPSON.**

No. 1893—7841.

Commission of Appeals of Texas, Section B.
April 15, 1942.

Motion for Rehearing Denied May 13, 1942.

1. Insurance ⇨146(1)

An entire policy, such as a public liability policy, together with its endorsements, must be looked to in ascertaining the indemnity intended by the parties, and the language must be construed with reference to the subject matter of the contract in the light of the situation with which the parties were dealing.

2. Insurance ⇨435

Where insurer issued to railroad a public liability policy providing that insurer insured against loss for damages for injuries caused by or arising from, out of, or by reason of any work done in connection with or incident to widening of underpass, the par-

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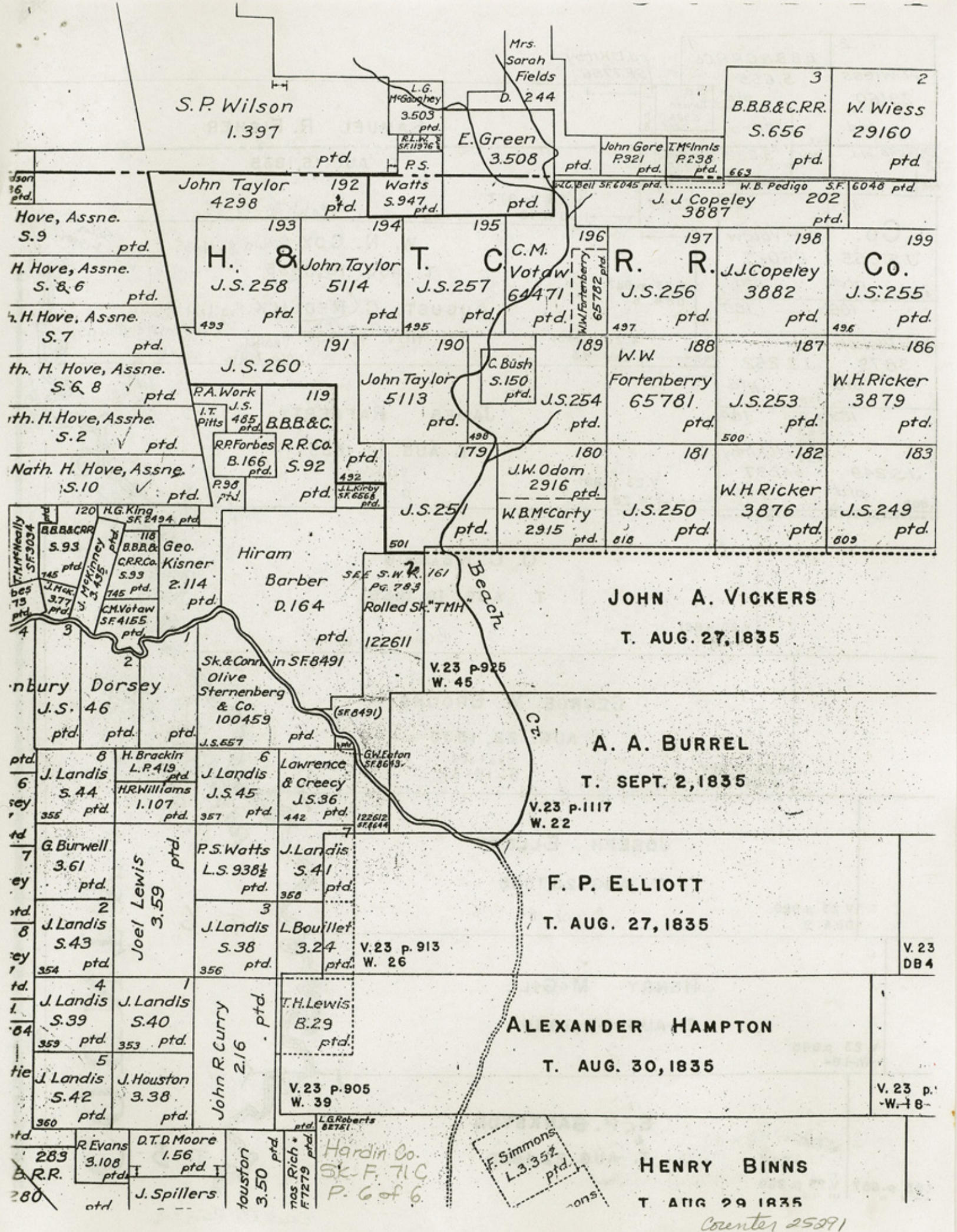
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Hiram Barber 161
D. 164 ptd.

SEE S.W. R. 161
Pg. 783

Rollad Sk. TMH 122611

V. 23 p. 925
W. 45

H.G. King 120
S.F. 2494 ptd.

Geo. Kisner 118
S. 93 ptd.

Hiram Barber 161
D. 164 ptd.

SEE S.W. R. 161
Pg. 783

Rollad Sk. TMH 122611

V. 23 p. 925
W. 45

H.G. King 120
S.F. 2494 ptd.

Geo. Kisner 118
S. 93 ptd.

Hiram Barber 161
D. 164 ptd.

SEE S.W. R. 161
Pg. 783

Rollad Sk. TMH 122611

V. 23 p. 925
W. 45

H.G. King 120
S.F. 2494 ptd.

Geo. Kisner 118
S. 93 ptd.

Hiram Barber 161
D. 164 ptd.

SEE S.W. R. 161
Pg. 783

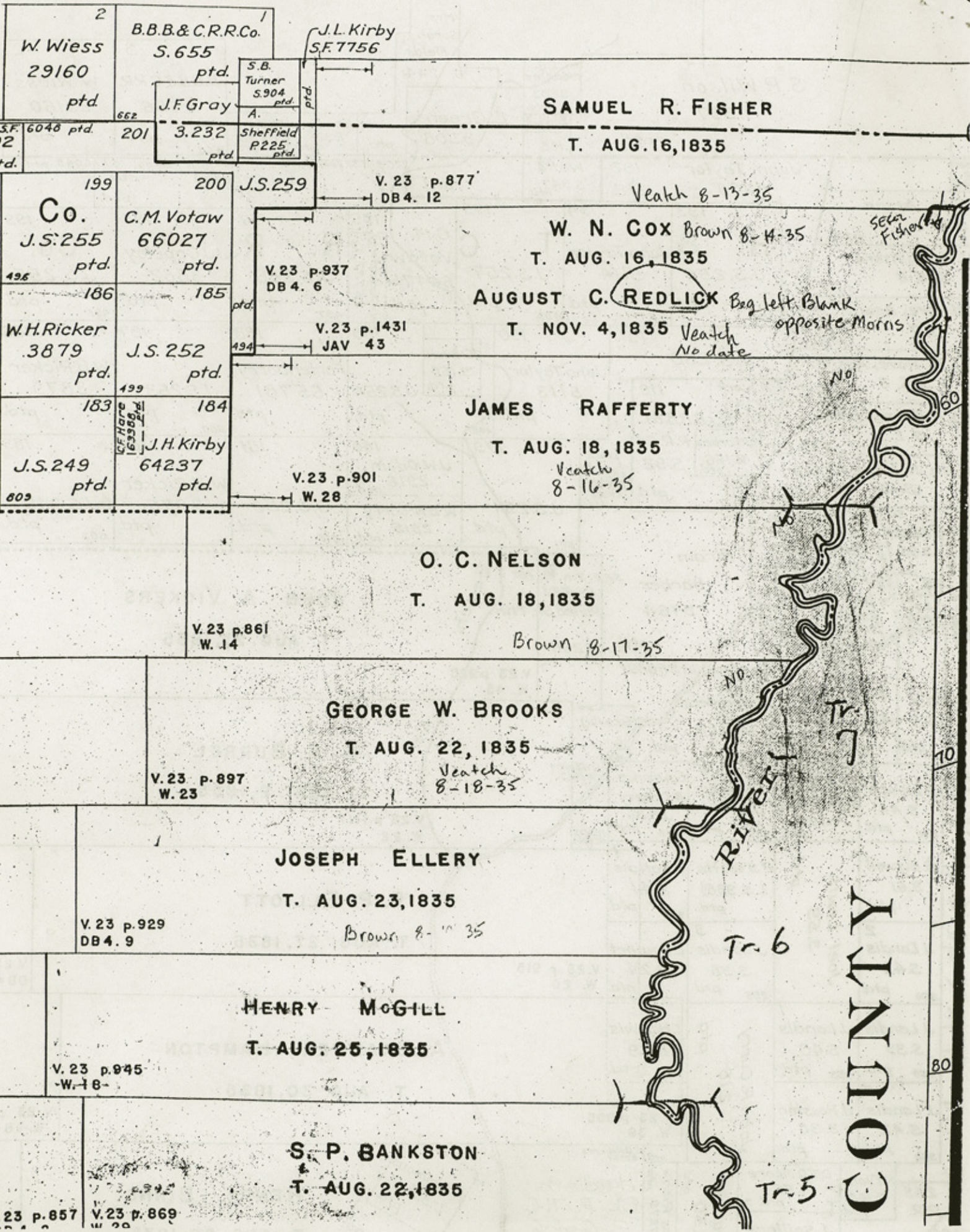
Rollad Sk. TMH 122611

V. 23 p. 925
W. 45

HARDIN CO.
SK. F. 71 C.
P. 6 of 6

F. SIMMONS
L. 3.352
ptd.

Counter 25291



2
W. Wiess
29160
ptd.

1
B.B. & C.R.R. Co.
S. 655
ptd.

J.L. Kirby
S.F. 7756

J.F. Gray
3.232
ptd.

S.B. Turner
S. 904
A.
ptd.

Sheffield
P. 225
ptd.

SAMUEL R. FISHER

T. AUG. 16, 1835

S.F. 6048
12
ptd.

662
201

199
Co.
J.S. 255
ptd.

200
C.M. Votaw
66027
ptd.

J.S. 259

V. 23 p. 877
DB 4. 12

Veatch 8-13-35

W. N. COX Brown 8-11-35
T. AUG. 16, 1835

See
Fisher

186
W.H. Ricker
3879
ptd.

185
J.S. 252
ptd.

V. 23 p. 937
DB 4. 6

AUGUST C. REDLICK
T. NOV. 4, 1835

Veatch
No date

Bag left Blank
opposite Morris

183
J.S. 249
ptd.

184
J.H. Kirby
64237
ptd.

V. 23 p. 1431
JAV 43

JAMES RAFFERTY

T. AUG. 18, 1835

Veatch
8-16-35

V. 23 p. 901
W. 28

O. C. NELSON

T. AUG. 18, 1835

Brown 8-17-35

V. 23 p. 861
W. 14

GEORGE W. BROOKS

T. AUG. 22, 1835

Veatch
8-18-35

V. 23 p. 897
W. 23

JOSEPH ELLERY

T. AUG. 23, 1835

Brown 8-11-35

V. 23 p. 929
DB 4. 9

HENRY MCGILL

T. AUG. 25, 1835

V. 23 p. 945
W. 18

S. P. BANKSTON

T. AUG. 22, 1835

V. 23 p. 869
W. 20

V. 23 p. 857
W. 20

COUNTY

Tr. 6

Tr. 5

Counter 25292

File No Sketch File 71D-1
Hardin County
Final Judgment

Filed June 15 19 28

GARRY MAURO, Com'r
By Douglas Howard

NO. 5689

MRS. EMMA B. STERNENBERG,
ET AL

VS.

J.M. MULDOON

IN THE DISTRICT COURT

OF

HARDIN COUNTY, TEXAS.

BE IT REMEMBERED that on the 23rd day of August, A.D. 1939, came on to be heard in its regular order, at a regular term of this court, the above entitled and numbered cause, and came all parties by their respective attorneys and announced ready for trial, a jury being waived, all matters in controversy, as well of fact as of law, were submitted to the court; and the pleadings, evidence and argument of counsel having been heard and fully understood and the court being of the opinion that the facts adduced upon the trial entitle the plaintiffs to recover as against the defendants for the land sued for and described in plaintiffs' second amended original petition filed herein on May 9, 1939, and that the cross-plaintiffs are entitled to recover the land sued for and described in their cross-action contained in defendant's second amended original answer and cross-action filed herein on May 23, 1939, SAVE AND EXCEPT as to those portions in conflict with the Hiram Barber Survey and in conflict with the John A. Vickers League Survey.

It is therefore ORDERED, ADJUDGED AND DECREED that the plaintiffs, Mrs. Emma B. Sternenberg, Mrs. Cordelia Petty, Van A. Petty, Jr., Dabney E. Petty, and Olive S. Petty, individually and as members of the partnership firm of Olive-Sternenberg & Company, and the partnership firm of Olive-Sternenberg & Company, composed of Mrs. Emma B. Sternenberg, Mrs. Cordelia Petty, Van A. Petty, Jr., Dabney E. Petty and Olive S. Petty, do have and recover of and from the defendants, Mrs. Eva Muldoon, A.M. Huffman and

Hardin Co.
Sketch File 71D-1
P. 1 of 7

••• 1 •••

count 25293

H .C. Cunningham, and each of them, the title to and possession of the following described land and premises situated in Hardin County, Texas, and described as follows, to-wit:

BEING a part of the John A. Vickers League, Abstract No. 52, and

BEGINNING at the Northwest corner of said league a stake for corner from which a black gum 16 in. in dia. bears South $69\frac{1}{2}$ degrees E. 2.6 varas, which black gum is marked with three old crosses, another cross with a bar above and below, and a diamond, and a sweet gum 24 inches in dia. bears N. 86 degrees W. 3.6 varas, which sweet gum is marked with an old cross;

THENCE East in the North line of said Vickers League at 364.3 varas intersect most northern Southeast corner of Hiram Barber Survey, and at 900 varas enter a lake, and at 1029 varas stake for corner, which point is 451 varas west of the intersection of the North line of the Vickers League and the West bank of Beech Creek;

THENCE South 2556.7 varas to stake for corner in the south line of the said Vickers league, which point is 805 varas West of the intersection of the south line of the Vickers League with the West bank of Beech Creek;

THENCE West with the South line of the Vickers League 1029 varas to Southwest corner of Vickers League and a corner of the Hiram Barber Survey;

THENCE North with the west line of the said Vickers League 2556.7 varas to another corner of Hiram Barber Survey and the Northwest corner of the Vickers League and to the place of beginning, containing 465 acres of land, more or less,

and that the aforesaid description correctly describes said lands by objects now upon the ground, for which said plaintiffs may have their writs of restitution and possession as often as may be necessary to enforce this judgment and decree, together with their costs in this behalf expended for which they may have their execution.

It is further ORDERED, ADJUDGED AND DECREED that on the cross-action of Mrs. Eva Muldoon, A.M. Huffman and H.C. Cunningham, that the said Mrs. Eva Muldoon, A.M. Huffman and H.C. Cunningham and each of them do have and recover cross- of and from the/defendants, Mrs. Emma B. Sternenberg, Mrs. Cordelia Dabney E. Petty Petty, Van A. Petty, Jr.,/and Olive S. Petty, and each of them the title to and possession of the following

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Sketch File
71D-1
P. 2 of 7

described land situated in Hardin County, Texas, to-wit: /

"The Geo. W. Eaton Survey No. 858, containing 631 acres of land situated about 6-1/2 miles N. 17 E. from the County Site and described by metes and bounds as follows:

BEGINNING on the North bank of Village Creek and in the West line of the A.A. Burrell League from which a cypress marked X brs. N. 75 deg. 30 min. W. 2-7/10 vrs. and a cypress marked X brs. S. 89 W. 4.1 vrs;

THENCE up the Creek as it meanders as follows:
N. 85 W. 25 vrs.; S. 64.40 W. 43 vrs.; S. 15.40 E. 5 vrs.;
S. 49 W. 13 vrs.; N. 19 E. 34 vrs.; N. 44 E. 26 vrs.;
N. 20.10 E. 45 vrs.; N. 2.10 E. 72 vrs.; N. 23.20 W.
48 vrs.; N. 18.30 W. 69 vrs.; N. 81 W. 63 vrs.; N.
88.40 W. 59 vrs.; N. 16.40 E. 94 vrs.; N. 17 W. 60 vrs.;
N. 5.40 W. 105 vrs.; N. 82.10 W. 40 vrs.; S. 82.10 W. 34
vrs.; S. 48.20 W. 32 vrs.; N. 74.40 W. 27 vrs.; N.
38.30 E. 66 vrs.; N. 8 W. 65 vrs.; N. 36 W. 46 vrs.;
N. 48 W. 68 vrs.; S. 77.30 W. 60 vrs.; S. 19 W. 58
vrs.; S. 44.10 W. 44 vrs.; N. 7.30 E. 71 vrs.; N.
3.20 W. 80 vrs.; N. 26.40 W. 38 vrs.; N. 2.10 E. 76
vrs.; N. 17 W. 53 vrs.; N. 14.40 W. 57 vrs.; N. 66 W.
59 vrs.; S. 70 W. 54 vrs.; S. 89.30 W. 15 vrs.; S.
89.10 W. 88 vrs.; S. 78.30 W. 24 vrs.; N. 17.20 W. 59
vrs.; N. 48 W. 64 vrs.; S. 67 W. 66 vrs.; S. 7 vrs.
to stake on North bank of Village Creek at a point due
North of where the S.B. Cooper East line intersects the
S. bank of said Creek. Thence N. 13 W. 443 vrs. up the
creek to the S.E. corner of the Hiram Barber Survey;

THENCE North in East line of Hiram Barber Survey 257
vrs. a corner of said Barber;

THENCE East in a South line of Hiram Barber Survey 600
vrs. to another corner of said survey;

THENCE N. with the East line of Hiram Barber Survey 2500
vrs. Hiram Barber N.E. cor.;

THENCE East in Hiram Barber S. line at 550 vrs., pass
the S.W. corner of H. & T.C. Section No. 179, continued
East in the South line of H. & T.C. Section No. 179,
in all from the Hiram Barber interior N.E. corner 1029
vrs. to stake for corner in the S. line of H. & T.C. Sect-
ion No. 179, and in the West line of John A. Vickers
League Survey;

THENCE South in West line of John A. Vickers League
2450 vrs. the S.W. corner of John A. Vickers League
in the North line of A.A. Burrell League;

THENCE West in the North line of the A.A. Burrell
League 600 vrs. A.A. Burrell N.W. corner;

THENCE South in A.A. Burrell West line at 1776 vrs.
the place of beginning."

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SAVE AND EXCEPT the following described tracts of land:

1. That portion of said George W. Eaton Survey No. 858, hereinbefore particularly described in conflict with that portion of the John A. Vickers League hereinbefore awarded to plaintiffs and described as follows:

BEING a part of the John A. Vickers League, Abstract No. 52, and

BEGINNING at the Northwest corner of said league a stake for corner from which a black gum 16 in. in dia. bears south $69\frac{1}{2}$ degrees E. 2.6 varas, which black gum is marked with three old crosses, another cross with a bar above and below, and a diamond, and a sweet gum 24 inches in dia. bears N. 86 degrees W. 3.6 varas, which sweet gum is marked with an old cross;

THENCE East in the North line of said Vickers League at 364.3 varas intersect most northern Southeast corner of Hiram Barber Survey, and at 900 varas enter a lake, and at 1029 varas stake for corner, which point is 451 varas west of the intersection of the North line of the Vickers League and the West bank of Beech Creek;

THENCE South 2556.7 varas to stake for corner in the south line of the said Vickers League, which point is 805 varas West of the intersection of the south line of the Vickers League with the West bank of Beech Creek;

THENCE West with the South line of the Vickers League 1029 varas to Southwest corner of Vickers league and a corner of the Hiram Barber Survey;

THENCE North with the west line of the said Vickers League ~~2556.7~~ 2556.7 varas to another corner of Hiram Barber survey and the Northwest corner of the Vickers League and to the place of beginning, containing 465 acres of land, more or less,

and that the aforesaid description correctly describes such 465 acres, more or less of the John A. Vickers league by objects now upon the ground.

2. That portion of said George W. Eaton Survey, No.

858, hereinbefore particularly described in conflict with the survey of 1280 acres patented to Hiram Barber by the State of Texas on September 6, 1870, by patent No. 484, Vol. 13, and being Abstract No. 88, in Hardin County, Texas, which is that portion of the G.W. Eaton Survey lying West of the following described lines of such Hiram Barber Survey with reference to objects now upon the ground:

BEGINNING at an interior ell corner of the Hiram Barber Survey, which is also the Northwest corner of the J.A. Vickers league, a stake for corner from which a black gum 16 in. in dia. bears south $69\frac{1}{2}$ degrees E. 2.6 varas, which black gum is marked with three old crosses, another cross with a bar above and below, and a diamond,

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P. 4 of 7

and a sweet gum 24 inches in dia. bears N. 86 degrees W. 3.6 varas, which sweet gum is marked with an old cross;

THENCE South in West line of J.A. Vickers league with old marked line 2556.7 varas to Southwest corner of J.A. Vickers league;

THENCE West 268.2 varas to corner;

THENCE South with old marked line to corner on North bank of Village Creek;

for which said cross-plaintiffs may have their writs of restitution and possession as often as may be necessary to enforce this judgment and decree.

And it is further ORDERED, ADJUDGED AND DECREED that on the cross-action of Mrs. Eva Muldoon, A.M. Huffman and H.C. Cunningham, that the said Mrs. Eva Muldoon, A.M. Huffman and H.C. Cunningham and each of them take nothing of the ^{cross-}defendants, Mrs. Emma B. Sternenberg, Mrs. Cordelia Petty, Van A. Petty, Jr., ^{Dabney E. Petty} and Olive S. Petty, and each of them as to the title to and possession of the following described tracts of land situated in Hardin County, Texas, to-wit:

1. That portion of said George W. Eaton Survey No. 858, hereinbefore particularly described in conflict with that portion of the John A. Vickers league hereinbefore awarded to plaintiffs and described as follows:

BEING a part of the John A. Vickers league, Abstract No. 52, and

BEGINNING at the Northwest corner of said league a stake for corner from which a black gum 16 in. in dia. bears South $69\frac{1}{2}$ degrees, E. 2.6 varas, which black gum is marked with three old crosses, another cross with a bar above and below, and a diamond, and a sweet gum 24 inches in dia. bears N. 86 degrees W. 3.6 varas, which sweet gum is marked with an old cross;

THENCE East in the North line of said Vickers league at 364.3 varas intersect most northern Southeast corner of Hiram Barber Survey, and at 900 varas enter a lake, and at 1029 varas stake for corner, which point is 451 varas west of the intersection of the North line of the Vickers league and the West bank of Beech Creek;

THENCE South 2556.7 varas to stake for corner in the south line of the said Vickers league, which point is 805 varas West of the intersection of the south line of the Vickers league with the West bank of Beech Creek;

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Sketch File 71D-1
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THENCE West with the South line of the Vickers league 1029 varas to Southwest corner of Vickers league and a corner of the Hiram Barber Survey;

THENCE North with the west line of the said Vickers league 2556.7 varas to another corner of Hiram Barber survey, and the Northwest corner of the Vickers league and to the place of beginning, containing 465 acres of land, more or less,

and that the aforesaid description correctly describes such 465 acres, more or less of the John A. Vickers league by objects now upon the ground.

2. That portion of said George W. Eaton Survey, No. 858, hereinbefore particularly described in conflict with the survey of 1280 acres patented to Hiram Barber by the State of Texas on September 6, 1870, by patent No. 484, Vol. 13, and being Abstract No. 88, in Hardin County, Texas, which is that portion of the G.W. Eaton Survey lying West of the following described lines of such Hiram Barber Survey with reference to objects now upon the ground:

BEGINNING at an interior ~~ell~~ corner of the Hiram Barber Survey, which is also the Northwest corner of the J.A. Vickers league, a stake for corner from which a black gum 16 in. in dia. bears South $69\frac{1}{2}$ degrees E. 2.6 varas, which black gum is marked with three old crosses, another cross with a bar above and below, and a diamond, and a sweet gum 24 inches in dia. bears N. 86 degrees ~~W. 3.6~~ varas, which sweet gum is marked with an old ~~cross~~ ^{cross} ~~cross~~;

THENCE South in West line of J.A. Vickers league with old marked line 2556.7 varas to Southwest corner of J.A. Vickers league;

THENCE West 268.2 varas to corner;

THENCE South with old marked line to corner on North bank of Village Creek;

And it is further ordered, adjudged and decreed that the cross-defendants, Mrs. Emma B. Sternenberg, Mrs. Cordelia Petty, Van A. Petty, Jr., Dabney E. Petty and Olive S. Petty and each of them, do have and recover of and from the cross-plaintiffs, Mrs. Eva Muldoon, A.M. Huffman and H.C. Cunningham and each of them, all costs in such cross-action incurred by them for which they may have their execution.

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P. 6 of 7

65-3-9

Counter 25298

To which action and judgment of the court the said Mrs. Eva Muldoon, A.M. Huffman and H.C. Cunningham, and each of them, in open court excepted and gave notice of appeal to the Honorable Court of Civil Appeals for the Ninth Supreme Judicial District of Texas, at Beaumont, Texas.

DONE this 6th day of Sept A.D. 1939.

Thos Blue
JUDGE PRESIDING

APPROVED AS TO FORM *only,*
~~not~~ *not as to substance.*

H C Cunningham

A M Huffman
For themselves and as attorneys
for Mrs. Eva Muldoon.

Attorney for plaintiffs, Mrs.
Emma B. Sternberg, et al.

Hardin Co.
Sketch File 71D-1
P. 7 of 7



THE STATE OF TEXAS
COUNTY OF HARDIN
I, VICKI JOHNSON, DISTRICT CLERK IN and for
HARDIN COUNTY, TEXAS, do hereby certify that
the foregoing is a true and correct copy of the
original as same appears of record in my office.
Given under my hand and official seal of office,
in Kountze, Texas.
the 11th day of June, 19 38
Vicki Johnson
VICKI JOHNSON, DISTRICT CLERK
Hardin County, Texas
By Sam Hatcher
Deputy

Counter 25299

File No Sketch File 71D-2
Hardin County
Findings of Fact and Conclusions of Law
Filed June 15 1998
By GARRY MAURO, Com'r
Douglas Howard

NO. 5689

MRS. EMMA B. STERNENBERG, ET AL | IN THE DISTRICT COURT
VS | OF
J.M. MULDOON | HARDIN COUNTY, TEXAS.

Request having been made by the defendants, Mrs. Eva Muldoon, H.C. Cunningham and A.M. Huffman, for FINDINGS OF FACT AND CONCLUSIONS OF LAW in the above styled and numbered cause, I hereby file the following as my findings and conclusions:

- (1). I find that the John A. Vickers League was granted by the State of Coahuila and Texas to John A. Vickers on August 27th, 1835, I further find that the plaintiffs are the owners of the record title to all of such Vickers league lying West of Beech Creek and that all of the land sued for by plaintiffs herein lies west of Beech Creek.
- (2). I find that the Hiram Barber survey of 1280 acres was patented by the State of Texas to Hiram Barber on September 6th, 1870. I further find that the cross-defendants are the owners of the record title to all of such Hiram Barber Survey.
- (3). I find that the G.W. Eaton Survey No. 858, No. 3, of 631 acres was located in 1908 by Carter Hart, County Surveyor of Hardin County, Texas, by corrected Field notes for Geo. W. Eaton by virtue of his affidavit and application made before W.W. Dies on the 15th day of January, 1908, under section 8 of an act approved April 15th, 1905, providing for the sale of unsurveyed lands, I further find Mrs. Eva Muldoon, H.C. Cunningham and A.M. Huffman are the owners of the record title to such Eaton survey except insofar as same is in conflict with the said John A. Vickers League, ^{in conflict with} and the said Hiram Barber survey. I further find

such title of A.M. Huffman, H.C. Cunningham and Mrs. Eva Muldoon to emanate from the State of Texas subsequent to June 24th, 1912.

(4). I find that the Hiram Barber survey can be located on the ground by the corrected field notes of same made by Elar Young in 1870, upon which patent was issued, and that the eastern lines of the Hiram Barber Survey as actually located on the ground are described with reference to objects now upon the ground as follows, to-wit:

BEGINNING at the northeast corner of such Hiram Barber Survey in the West line of H. & T.C. R.R. Co. Survey 179;

THENCE South in old line 816.9 varas to corner, which point intersects old line running west from northeast corner of O.C. Nelson League, which old line at this point is the north line of the J.A. Vickers league;

THENCE West in old line 365.1 varas to corner from which a Black gum 15 in. in diameter brs. S. $69\frac{1}{2}$ deg. East 2.6 varas, which black gum is marked with three old crosses with a bar above and below, and a diamond, and a sweet gum 24 inches in dia. bears N. 86 deg. W. 3.6 varas, which sweet gum is marked with an old cross; and this corner is 1480 varas west of the intersection of the north line of the J.A. Vickers league with the West bank of Beech Creek;

THENCE South with old line 2556.7 varas to corner, this also being the Southwest corner of the J.A. Vickers league; and is 1834 varas west of the intersection of the South line of said Vickers league with the West bank of Beech Creek;

THENCE West in marked line 268.2 varas to corner, this corner is also the Northwest corner of A.A. Burrell league;

THENCE South with very old line to intersection of same with North bank of Village Creek.

Hardin Co.
Sketch File 71D-2
P. 2 of 5



(5). I find that the Jno. A. Vickers league can be located on the ground by the field notes contained in its grant and that the lines of that part of the survey lying west of Beech Creek, as actually located on the ground, are described with reference to objects now upon the ground as follows, to-wit:

The Northwest corner of the Jno. A. Vickers league is an interior ell corner of the Hiram Barber Survey from which a black gum 15 inches in diameter brs. S. $69\frac{1}{2}$ deg. East 2.6 vrs. which black gum is marked with three old crosses with a bar above and below and a diamond, and a sweet gum 24 inches in dia. bears North 86 deg. West 3.6 vrs. which sweet gum is marked with an old cross, and this corner is 1480 vrs. West of the intersection of the North line of the J.A. Vickers league with the West bank of Beech Creek;

The North line of the J.A. Vickers league begins at such Northwest corner of said Vickers league and runs East with marked line at 1480 varas intersect the West bank of Beech Creek and continues on East with marked line to the Northwest corner of the O.C. Nelson league;

The West line of the J.A. Vickers league begins at such Northwest corner of the J.A. Vickers league and runs thence South with an old line and an eastern line of the Hiram Barber Survey 2556.7 vrs, the Southwest corner of the J.A. Vickers league, which corner is 1834 vrs. West of the intersection of the South line of said Vickers league with the West bank of Beech Creek;

The South line of said J.A. Vickers league begins at such Southwest corner of said league and runs East with marked line at 1834 vrs. intersect the West bank of Beech Creek and continues on East with marked line to the Southwest corner of the O.C. Nelson league.

(6). I find that the A.A. Burrell league can be located on the ground by the field notes contained in its grant and that the lines of that part of the A.A. Burrell league in issue in this suit, as actually located on the ground, are described with reference to objects now upon the ground as follows, to-wit:



The North line of the A.A. Burrell league is coincident with the South line of the Jno. A. Vickers league West of Beech Creek and continues on West of the Southwest corner of the J.A. Vickers league as I have heretofore found same to be located 268.2 varas, at which point the Northwest corner of the A.A. Burrell is located and which is also an interior corner of the Hiram Barber Survey.

The West line of the A.A. Burrell league begins at such Northwest corner of the Burrell League and runs thence South with old marked line and an eastern line of the Hiram Barber Survey to Village Creek and continues South with said marked line and the east line of the Lawrence & Creecy Survey and the East line of the Joseph Landis Survey No. 7 to where such old line intersects a marked line running east to the Southeast corner of the G.W. Brooks league and the Northeast corner of the Joseph Ellery League. In connection with the location of the West line of said A.A. Burrell league, as I have found it to be located, at the request of the attorneys for the cross-plaintiffs, I incorporate herein the following additional finding of fact, although same is not the only evidence of and supporting such found location of the West line of the Burrell league: At a point 20 vrs. south of the Southeast corner of the Lawrence & Creecy survey in such old line and in the East line of the Joseph Landis Survey No. 7 is a large beech tree which was marked with two sets of very old marks denoting that it was a line tree. Blocks were taken out of such old beech tree on the north and south side of same in the presence of T.M Hyde, a licensed state surveyor, C.B. Lathy, a surveyor for the Republic Production Company, Mr. Hugly, a surveyor for Houston Oil Company of Texas, and Mrs. Cochran, with the Houston Oil Company of Texas, and several others, which showed two sets of land marks on the north and south side of such tree, which were land marks, one set being 97 years old, another set being 104 years old and the oldest set has a blaze in the center with a hack above and below and was old enough to be the work of David Brown in locating the A.A. Burrell league in 1835, and the surveyor Hyde testified that in 1835, in this part of the country judging by following the surveys of various surveyors working in this country at that time, that the surveyor, David Brown, was the only surveyor using such a system of marking a line tree at that time, although it is very common practice today, although not universal. I find that such oldest set of marks on such beech tree are original land marks placed thereon by David Brown in 1835 in running out such survey. I further find that the youngest set of marks thereon corresponds with the date of the survey of the Joseph Landis Survey No. 7.

The South line of the A.A. Burrell league begins at the intersection of such west line of the Burrell league with a line running west from the Southeast corner of the G.W. Brooks league which is also the Northeast corner of the Joseph Ellery League and runs thence East with said marked line to the Southeast corner of the Burrell league.

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P. 4 of 5

(7). I find that all of said G.W. Eaton Survey of 631 acres sued for and described in the cross-petition of Mrs. Eva Muldoon, H.C. Cunningham and A.M. Huffman is in conflict with the Jno. A. Vickers league, the Hiram Barber Survey and the A.A. Burrell league.

It is therefore my conclusion that plaintiffs are entitled to the land sued for by them and that cross-defendants are entitled to recover from cross-defendants that portion of the G.W. Eaton Survey within the limits of the A.A. Burrell league, but are not entitled to recover any portion of said G.W. Eaton Survey within the limits of the Hiram Barber Survey and the Jno. A. Vickers league and have entered judgment accordingly.


JUDGE PRESIDING.

Hardin Co.
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P. 5 of 5

THE STATE OF TEXAS
COUNTY OF HARDIN
I, VICKI JOHNSON, DISTRICT CLERK IN and for
HARDIN COUNTY, TEXAS, do hereby certify that
the foregoing is a true and correct copy of the
original as same appears of record in my office.
Given under my hand and official seal of office,
in Kountze, Texas.
the 11th day of June, 19 98
Vicki Johnson
VICKI JOHNSON, DISTRICT CLERK
Hardin County, Texas
By Sam Hoche
Deputy

Counter 25304

Shine & Associates

REGISTERED SURVEYORS TEXAS AND LOUISIANA
D. D. SHINE, RPS, LSLS, RLS

File No Sketch File 71G
Hardin County
Filed Correspondence 19 98
June 15
GARRY MAURO, Com'r
Darrell Lee Howard

June 11, 1998

Mr. Ben Thomson
Director of Surveying
Texas General Land Office
1700 N. Congress
Austin, Texas 78701-1495

Re: Scrap File 8644, George W. Eaton Survey, A. A. Burrell League, J. A. Vickers League, and surrounding surveys, Hardin County

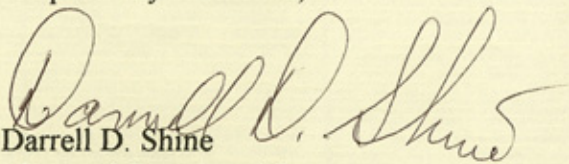
Dear Ben:

Pursuant to our meeting with you in the GLO on June 10, 1998 and at your request, I am enclosing herewith certified copies of the Final Judgment and the Findings of Fact and Conclusions of Law from Cause No. 5689 in the District Court of Hardin County, Mrs. Emma B. Sternberg, et al v. J. M. Muldoon, to be attached as an addendum to the my reports of 4/15/97 and 5/18/98.

Also at your request, I checked the County Tax Assessor's Office and found there is not even a file card for Abstracts 902 and 903, and there are no taxes being paid nor have there been on these abstracts for many years.

This should fulfill all of your requests and allow you to bring this matter to a conclusion. I am looking forward to receiving a copy of your endorsements on the file along with a copy of your memo concerning the GLO's actions concerning this matter.

Respectfully submitted,


Darrell D. Shine
Licensed State Land Surveyor

cc: Mr. Spencer Reid
Mr. Ken Mills
Mr. George Vorpahl
Mr. Karey Lee
Mr. Paul Hugon



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