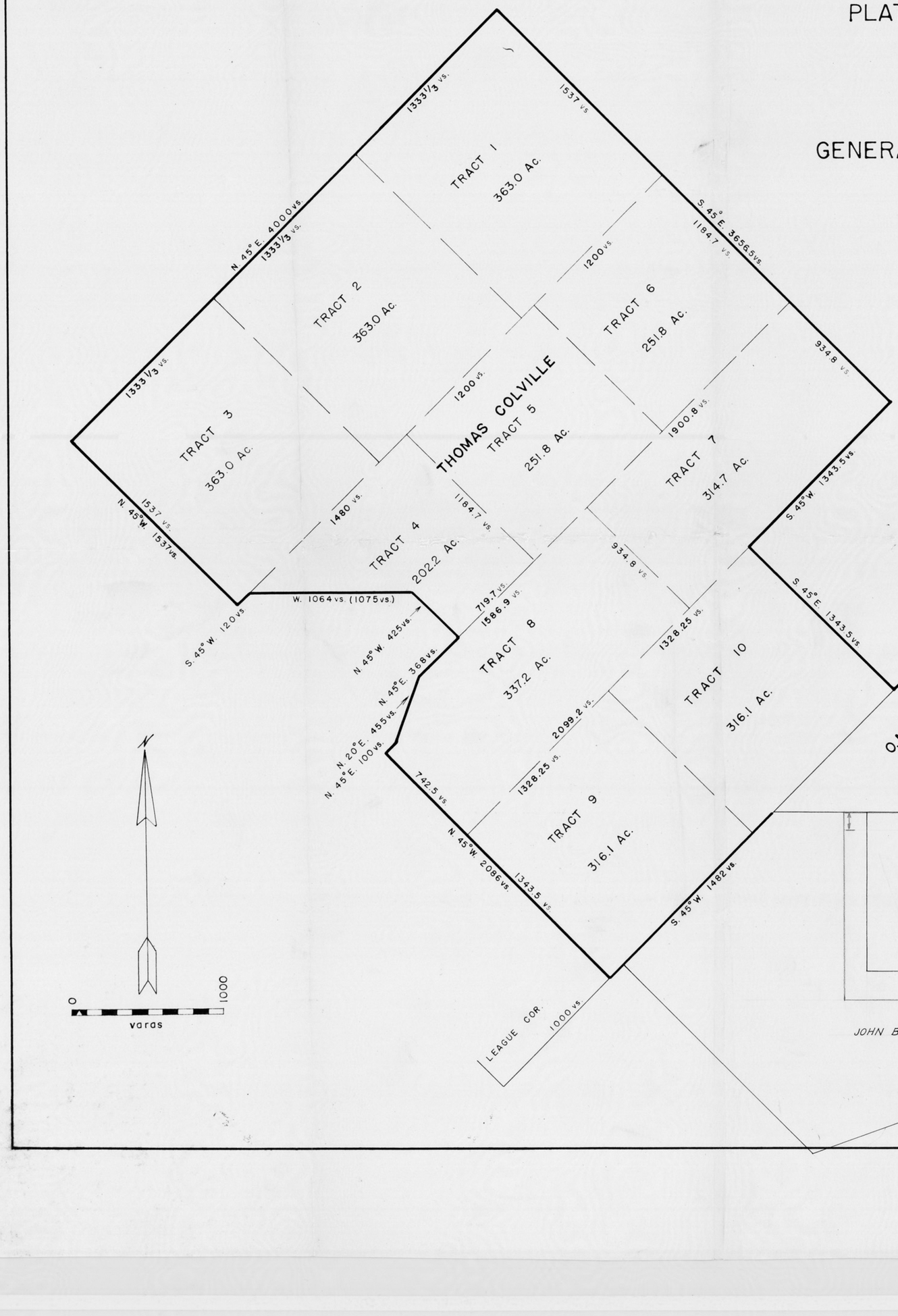
PLAT OF ALABAMA & COUSHATTI INDIAN RESERVATION

POLK CO.

GENERAL LAND OFFICE ····· AUSTIN TEXAS

— BILL ALLCORN ——— COMMISSIONER —

Scale: 1 inch = 400 Varas. April 16, 1958. G.E.S.



TRACT	ACRES
THOMAS GOLVILLE	3078.82
M. A. HARDIN	412.96
GEORGE NELSON	319.97
O. M. OWENS	99.73
C. P. WELCH	177.13

Indian Survey

17

JOHN BRIGHT
ptd

I. & G. N. R. R. Co.
ptd

Polk Co. Sketch File 44

Sketch File No. 44
County Polk

PLAT OF ALABAMA & COUSHATTI INDIAN RESERVATION

POLK CO.

GENERAL LAND OFFICE ····· AUSTIN TEXAS

— BILL ALLCORN ——— COMMISSIONER —

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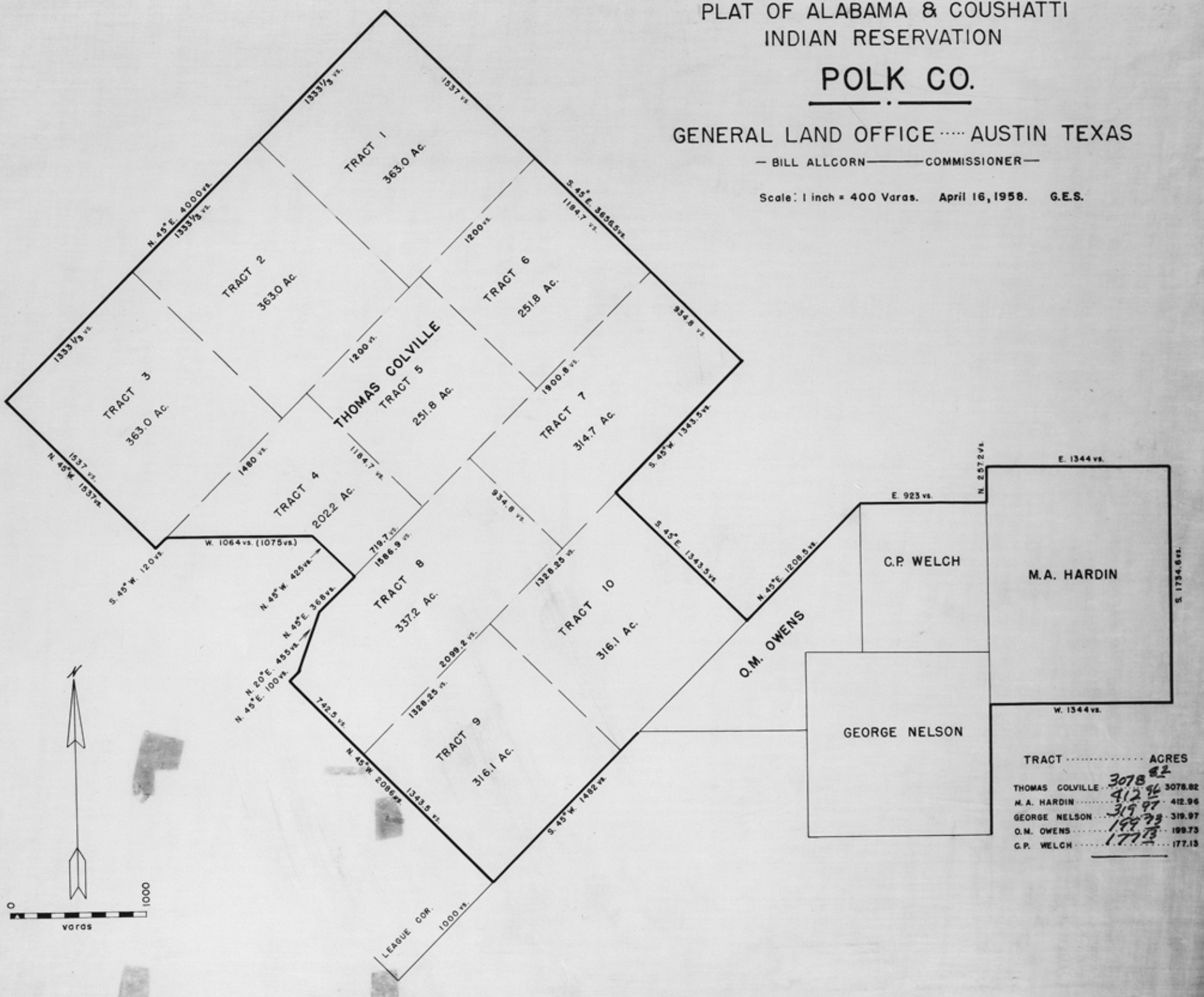

TRACT	ACRES
THOMAS COLVILLE	3078 82 3078.82
M. A. HARDIN	412 96 412.96
GEORGE NELSON	319 97 319.97
O.M. OWENS	199 73 199.73
G.P. WELCH	177 13 177.13

Polk Co. SK. File 44

counter 34297

5-25-1955

QUITCLAIM DEED

WHEREAS, The Act of August 23, 1954, Public Law 627 of the 83rd Congress (68 Stat. 768), authorizes the Secretary of the Interior to convey to the State of Texas the lands in Polk County, Texas held by the United States of America in trust for the Alabama and Coushatta Indians of Texas subject to certain limitations and conditions:

NOW THEREFORE, By this Indenture made this 25 day of May 1955 by and between Douglas McKay Secretary of the Interior, acting for and on behalf of the United States of America, party of the first part, and the State of Texas, party of the second part.

WITNESSETH, That the party of the first part does quitclaim, effective July 1, 1955, all rights, title and interest of the United States of America in the following described tract of land situated in Polk County, State of Texas, to the party of the second part subject to the limitations and conditions imposed by Public Law 627 supra.

A part of the Thomas Colville League, in Polk County, Texas, described as follows, to-wit:

Beginning at a point 1000 varas north 45 E from the most western corner of the Colville League, which said point is also in the south eastern line of the H. H. Cone survey, stake for corner;

Thence north 45 E 4000 varas, more or less, to the most northern corner of the Thos. Colville League, which point is also the most eastern corner of the H. H. Cone survey, and being the most western corner of the C. W. Thompson survey of 1/4 league said point also being the original corner of the said Thomas Colville League. The original bearing trees being a pine 30" in diameter bears N 30 W 9 varas distant, also a white oak 8" in diameter bears N 33 E 13.1 dist. oak, ash, hickory, beach, sugar tree, magnolia and some pine timber; undergrowth cane, dogwood and myrtle, land fertile.

Thence south 45 E crossing the creek several times with the line of the Colville League 3656.5 more of less to the most northern corner of a 320 acre tract known as the Hanley tract, a light wood stake for corner, from which an oak bears north 42 E 30 links, and an oak bears north 5 west, 37 links;

Thence south 45 west 1343.5 to a stake for corner, a white oak oak bears N 58 E 30 links and a magnolia bears N 3 west;

Thence south 45 east 1343.5 varas to corner in the southeast line of the said Colville League, a red oak bears west 50 links, and a white oak bears north 84 deg east 60 links;

Thence south 45 west with the line of the Colville League to a point in said line, which is 1000 varas north 45 east from the most southern corner of the said Colville League, the distance being about 2656.5 varas, more or less;

Thence north 45 deg west 2086 vrs to the most southern corner of a tract of 141 acres in said Colville League, which 141 acres is fully described in deed from J. H. Matthews and wife to W. T. Carter, recorded in Vol. 41, pages 77 and 78 of the Deed Records of Polk County, Texas, which 141 acres tract is also known as the Tom Kinard Tract, a pine marked X brs N 64 deg W 2 vrs;

Thence N 45 E 100 vrs pine marked X brs E 6 vrs;

Thence N 20 E 455 vrs to corner, from which a beach marked X brs N 20 E 4 vrs;

Thence N 45 E 368 vrs to corner, red oak marked X brs S 15 W 5 vrs, also corner oak S M 43 E 2 vrs;

Thence N 45 W 425 vrs to corner from which a beach brs S 45 W 5 vrs;

Thence W 1064 vrs to corner, ash marked X brs 4 vrs;

Thence S 45 W 120 vrs intersects Esbabeda line corner, from which a pine marked X. brs N 10 E 6 vrs;

Thence N 45 W 1537 vrs to the place of beginning, containing 3071 acres, more or less.

Being the same premises which W. D. Gorden et. al. conveyed to the United States of America, in trust for the Alabama and Coushatta Indians of Texas by warranty deed dated the 20th day of September A.D. 1928 and recorded in the office of the Clerk of the County Court, Polk County, Texas, in Deed Book Vol. 88, page 209, et seq.

In Witness hereof, the _____ Secretary of the Interior acting for and on behalf of the United States of America has hereunto set his hand and official seal the day and year written above.

S/ Douglas McKay

Secretary of the Interior
Acting for and on behalf of
the United State of America

Polk Co. Sketch File 44 counter 31298

DISTRICT OF COLUMBIA)
) SS
CITY OF WASHINGTON)

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA, ON THIS 25TH DAY OF MAY 1955 PERSONALLY APPEARED DOUGLAS McKAY SECRETARY OF THE INTERIOR, TO ME KNOWN TO BE THE IDENTICAL PERSON WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN SET FORTH.

MY COMMISSION EXPIRES JANUARY 14, 1958.

S/ ROBERT J. MALONE
NOTARY PUBLIC

counter 31299

Board for Texas State Hospitals and Special Schools

Mailing Address:
Box S, Capitol Station
Austin 78711

Office Location:
4405 N. Lamar Blvd.
Ph. GL 3-7231

C. J. Ruilmann, M.D.
Director of Mental Health & Hospitals

Raymond W. Vowell
Executive Director

James M. Schless, M.D.
Director of Tuberculosis Hospitals

August 6, 1964

Mr. Herman Forbes
General Land Office
Room 300
200 East 12th
Austin, Texas

RE: Alabama-Coushatta Reservation

Dear Mr. Forbes:

As per your telephone request of even date, enclosed herewith are two copies of quitclaim deed signed by Douglas McKay, Secretary of the Interior, relative to the above property.

If we can be of further help to you in this matter, please advise.

Very truly yours,

E. M. Scott
Chief of Legal Services
EMS:ccm
Enclosure

Polk Co. Sk. File 44

counter 34300

Jack Stallings, Chairman
11200 Socorro Road
El Paso, Texas 79927
(915) 859-8714

Victor Fain, Commissioner
P.O. Box 68
Nacogdoches, Texas 75961
(713) 564-8361

Frank Heldenbrand, Commissioner
P.O. Box 186
Selman City, Texas 78689
(214) 847-2245

TEXAS INDIAN COMMISSION

Walt Broemer, Executive Director
P.O. Box 510
Livingston, Texas 77351
(713) 327-3683

Alabama-Coushatta
Indian Reservation
Rt. 3, Box 640
Livingston, Texas 77351
(713) 563-4391

Tigua Indian Reservation
P.O. Box 17579, Ysleta Station
El Paso, Texas 79917
(915) 859-7913

December 16, 1981

Mr. Bob Armstrong, Commissioner
General Land Office
S.F. Austin State Office Building
1700 N. Congress
Austin, Texas 78701

Attention: Jack Howard

Dear Commissioner Armstrong:

For some years the Alabama-Coushatta Indian Reservation has worked on getting clear title to 263 acres of Indian Land surveyed for vacant land for the Tribe but never deeded.

ARCO and Eastex Inc. will provide quit claim deeds on this tract by January 29, 1982. The survey and a map are attached.

The Texas Indian Commission wishes to nominate Tract 15 (263 acres) for the next bid invitation for mineral leases under the following specifications:

> The royalty on Tract 15 fixed at exactly 1/5 of the gross production of oil and/or gas and the bidding shall be on the cash bonus, but no bid of less than $50 per acre shall be considered. The rental thereon is fixed at exactly $5 per acre beginning with the second year of the lease on a three year lease agreement.

Please set the Board for Lease Meeting with the Chairman of the Texas Indian Commission on January 8, 11, or 12 at 11:30 a.m. in the General Land Office to approve the Bid Nomination and for the approval of a Pooling Agreement with Union Oil of California for Tracts 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, and 14.

Sincerely,

Walt Broemer

Walt Broemer
Executive Director

WB:wr

cc: Tribal Council
Texas Indian Commission
Superintendent
Business Manager

Polk Co. Sk. File 44

counter 34301

THE STATE OF TEXAS }
COUNTY OF POLK. }

Survey of two hundred and sixty three acres of land supposed to be vacant to make up the quantity of twelve hundred and eighty acres provided for Alabama tribe of Indians, by Act of Legislature of the State of Texas at its Session of 1853 & 4.

Beginning on the West boundary line of a Survey made for John M. Rugue, at the S. E. corner of a Survey made for George Nelson, a stake from which a red oak 10 in. in dia. mkd. X brs. N. 37½° E. 4 7/10 vs. and a dogwood 4 in. in dia. mkd. F brs. N. 56½° E. 4 5/10 vs.

Thence South along said Ruges Survey 460 varas to the South West corner of same, on the North boundary line of John McKim's Survey a stake from which a black oak 36 in. in dia. mkd. $\frac{X}{18}$ brs. S 8½ E. 2 1/10 vs. and a black oak 15 in. in dia. mkd. B brs. S. 79° W. 2 9/10 vs.

Thence West along McKim's North boundary at 680 varas N. W. corner of said McKim's Survey at 1200 varas a goon, at 1350 varas Big Sandy runs So. at 2118 varas made corner, a stake from which a white oak 18 in. in Mkd. 18 brs. S. 50° W. 4 8/10 vs. and a holly 10 in. in dia. mkd (18) brs. N. 50° E. 7 2/10 vs.

Thence North 1120 varas to the South line of a Survey made for O. N. Owens a stake from which a black gum 18 in. in dia. mkd. 18 brs. S. 36 E. 3 vs. and a white oak 12 in. in dia. mkd. X brs. S. 47° W. 5 vs.

Thence East with said Owens South line at 494 varas a lagoon at 631 varas Big Sandy at 774 varas the said Owens South East corner on the West line of George Nelson Survey a stake from which a Hickory mkd. F brs. N. 30° W. 6 vs. and a Sweet gum mkd. C brs. S. 13° E. 4 vs.

Thence South with said Nelson Survey at 500 varas Big Sandy runs S. at 774 varas the said Nelson's S. W. corner a stake from which a stake from which a white oak 20 in. in dia. mkd. X brs. N. 61½° E. 4 7/10 vs. and a holly 10 in. in dia. mkd. F brs. S. 3° W.

7 1/10 vs.

Thence East at 40 varas Big Sandy at 1344 varas the place of beginning. Done November the 8th. 1855.

John R. Johnson
County Surveyor, Polk County, Texas.

Pinckney Smith)
(Chair Carriers.
Francis Smith)

I, John R. Johnson, County Surveyor for the County of Polk do hereby certify that the Survey designated by the foregoing plat and field notes was made by me on the 8th. day of November 1855 and that the lines, boundaries and corners of the Survey, together with the marks, natural and artificial are truly described therein.

Witness my hand this the 15th. day of November 1855.

John R. Johnson
County Surveyor Polk County, Texas.

I, John R. Johnson, County Surveyor for the County, do hereby certify that I have examined the foregoing plat and field notes and find them correct, and that said field notes were duly recorded on the 20th. day of November 1855.

John R. Johnson
County Surveyor Polk County, Texas.

5-25-1955

QUITCLAIM DEED

WHEREAS, THE ACT OF AUGUST 23, 1954, PUBLIC LAW 627 OF THE 83RD CONGRESS (68 STAT. 768), AUTHORIZES THE SECRETARY OF THE INTERIOR TO CONVEY TO THE STATE OF TEXAS THE LANDS IN POLK COUNTY, TEXAS HELD BY THE UNITED STATES OF AMERICA IN TRUST FOR THE ALABAMA AND COUSHATTA INDIANS OF TEXAS SUBJECT TO CERTAIN LIMITATIONS AND CONDITIONS:

NOW THEREFORE, BY THIS INDENTURE MADE THIS 25 DAY OF MAY 1955 BY AND BETWEEN DOUGLAS McKAY SECRETARY OF THE INTERIOR, ACTING FOR AND ON BEHALF OF THE UNITED STATES OF AMERICA, PARTY OF THE FIRST PART, AND THE STATE OF TEXAS, PARTY OF THE SECOND PART.

WITNESSETH, THAT THE PARTY OF THE FIRST PART DOES QUITCLAIM, EFFECTIVE JULY 1, 1955, ALL RIGHTS, TITLE AND INTEREST OF THE UNITED STATES OF AMERICA IN THE FOLLOWING DESCRIBED TRACT OF LAND SITUATED IN POLK COUNTY, STATE OF TEXAS, TO THE PARTY OF THE SECOND PART SUBJECT TO THE LIMITATIONS AND CONDITIONS IMPOSED BY PUBLIC LAW 627 SUPRA.

A PART OF THE THOMAS COLVILLE LEAGUE, IN POLK COUNTY, TEXAS, DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT A POINT 1000 VARAS NORTH 45 E FROM THE MOST WESTERN CORNER OF THE COLVILLE LEAGUE, WHICH SAID POINT IS ALSO IN THE SOUTH EASTERN LINE OF THE H. H. CONE SURVEY, STAKE FOR CORNER;

THENCE NORTH 45 E 4000 VARAS, MORE OR LESS, TO THE MOST NORTHERN CORNER OF THE THOS. COLVILLE LEAGUE, WHICH POINT IS ALSO THE MOST EASTERN CORNER OF THE H. H. CONE SURVEY, AND BEING THE MOST WESTERN CORNER OF THE C. W. THOMPSON SURVEY OF 1/4 LEAGUE SAID POINT ALSO BEING THE ORIGINAL CORNER OF THE SAID THOMAS COLVILLE LEAGUE. THE ORIGINAL BEARING TREES BEING A PINE 30" IN DIAMETER BEARS N 30 W 9 VARAS DISTANT, ALSO A WHITE OAK 8" IN DIAMETER BEARS N 33 E 13.1 DIST. OAK, ASH, HICKORY, BEACH, SUGAR TREE, MAGNOLIA AND SOME PINE TIMBER; UNDERGROWTH CANE, DOGWOOD AND MYRTLE, LAND FERTILE.

THENCE SOUTH 45 E CROSSING THE CREEK SEVERAL TIMES WITH THE LINE OF THE COLVILLE LEAGUE 3656.5 MORE OF LESS TO THE MOST NORTHERN CORNER OF A 320 ACRE TRACT KNOWN AS THE HANLEY TRACT, A LIGHT WOOD STAKE FOR CORNER, FROM WHICH AN OAK BEARS NORTH 42 E 30 LINKS, AND AN OAK BEARS NORTH 5 WEST, 37 LINKS;

THENCE SOUTH 45 WEST 1343.5 TO A STAKE FOR CORNER, A WHITE OAK OAK BEARS N 58 E 30 LINKS AND A MAGNOLIA BEARS N 3 WEST;

THENCE SOUTH 45 EAST 1343.5 VARAS TO CORNER IN THE SOUTHEAST LINE OF THE SAID COLVILLE LEAGUE, A RED OAK BEARS WEST 50 LINKS, AND A WHITE OAK BEARS NORTH 84 DEG EAST 60 LINKS;

THENCE SOUTH 45 WEST WITH THE LINE OF THE COLVILLE LEAGUE TO A POINT IN SAID LINE, WHICH IS 1000 VARAS NORTH 45 EAST FROM THE MOST SOUTHERN CORNER OF THE SAID COLVILLE LEAGUE, THE DISTANCE BEING ABOUT 2656.5 VARAS, MORE OR LESS;

THENCE NORTH 45 DEG WEST 2086 VRS TO THE MOST SOUTHERN CORNER OF A TRACT OF 141 ACRES IN SAID COLVILLE LEAGUE, WHICH 141 ACRES IS FULLY DESCRIBED IN DEED FROM J. H. MATTHEWS AND WIFE TO W. T. CARTER, RECORDED IN VOL. 41, PAGES 77 AND 78 OF THE DEED RECORDS OF POLK COUNTY, TEXAS, WHICH 141 ACRES TRACT IS ALSO KNOWN AS THE TOM KINARD TRACT, A PINE MARKED X BRS N 64 DEG W 2 VRS;

THENCE N 45 E 100 VRS PINE MARKED X BRS E 6 VRS;

THENCE N 20 E 455 VRS TO CORNER, FROM WHICH A BEACH MARKED X BRS N 20 E 4 VRS;

THENCE N 45 E 368 VRS TO CORNER, RED OAK MARKED X BRS S 15 W 5 VRS, ALSO CORNER OAK S M 43 E 2 VRS;

THENCE N 45 W 425 VRS TO CORNER FROM WHICH A BEACH BRS S 45 W 5 VRS;

THENCE W 1064 VRS TO CORNER, ASH MARKED X BRS 4 VRS;

THENCE S 45 W 120 VRS INTERSECTS ESBABEDA LINE CORNER, FROM WHICH A PINE MARKED X. BRS N 10 E 6 VRS;

THENCE N 45 W 1537 VRS TO THE PLACE OF BEGINNING, CONTAINING 3071 ACRES, MORE OR LESS.

BEING THE SAME PREMISES WHICH W. D. GORDEN ET. AL. CONVEYED TO THE UNITED STATES OF AMERICA, IN TRUST FOR THE ALABAMA AND COUSHATTA INDIANS OF TEXAS BY WARRANTY DEED DATED THE 20TH DAY OF SEPTEMBER A.D. 1928 AND RECORDED IN THE OFFICE OF THE CLERK OF THE COUNTY COURT, POLK COUNTY, TEXAS, IN DEED BOOK VOL. 88, PAGE 209, ET SEQ.

IN WITNESS HEREOF, THE _____ SECRETARY OF THE INTERIOR ACTING FOR AND ON BEHALF OF THE UNITED STATES OF AMERICA HAS HEREUNTO SET HIS HAND AND OFFICIAL SEAL THE DAY AND YEAR WRITTEN ABOVE.

S/ DOUGLAS McKAY

SECRETARY OF THE INTERIOR
ACTING FOR AND ON BEHALF OF
THE UNITED STATE OF AMERICA

Polk Co. Sketch File 44 counter 76856

1-14-1840

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San Augustine, be and the same

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ble.

DAVID S. KAUFMAN,
the House of Representatives.
DAVID G. BURNET,
President of the Senate.

MIRABEAU B. LAMAR.

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may hereafter be established, who in case of the death, resignation or absence on leave, of the Minister or Chargé d'Affairs from the court to which he is accredited, shall act as Chargé d'Affairs during the time, such vacancy or absence of the Minister or Chargé d'Affairs shall continue.

Sec. 4. Be it further enacted, That the salary of Chargé d'Affairs shall be five thousand dollars per annum; and the salary of Secretary of Legation shall be two thousand dollars per annum, and five hundred dollars shall be annually allowed for the contingent expenses of each Legation; which amounts shall be paid in gold and silver, and the said Chargé d'Affairs shall be allowed an outfit of two thousand dollars.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved, 25th January, 1840.

MIRABEAU B. LAMAR.

AN ACT

Authorising the President to have Surveyed a Reserve of Land for the Coshattee and Alabama Indians.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the President be and he is hereby authorised and required, at as early a period as practicable, to have surveyed two leagues of land, including the village of the Coshattee Indians, also two other leagues of land including the fenced in village of the Alabama tribe of Indians for the entire and exclusive use and benefit of said tribes of Indians until otherwise provided for by law.

Sec. 2. Be it further enacted, That the surveys of land made for the Indians aforesaid, shall be made conformable to the surveys next adjoining, that is to say, if the surveys next to those to be made for the Indians aforesaid, front one and a-half miles on the river, or are square surveys, the surveys to be made for the Indians shall be made in like manner: Provided always, That the improvements of said Indians shall be as near in the center of the two leagues to be appropriated to the use of each tribe, calculating from the side lines, as practicable.

Sec. 3. Be it further enacted, That the President be and he is hereby authorised and required to have surveyed on the va-

cant lands of this Republic, thirty miles square, at some proper point on the frontier, on which all the friendly Indians, within this Republic, shall be placed as soon as circumstances will permit.

Sec. 4. Be it further enacted, That the Government shall at all times, exercise exclusive jurisdiction over the soil included in the surveys contemplated by this act, and also criminal jurisdiction over the aforesaid tribes of Indians.

Sec. 5. Be it further enacted, That the President be and he is hereby authorised and required to appoint an Indian Agent for the Coshattee and Alabama tribes of Indians with such instructions and powers as may be necessary to accomplish the object contemplated by this act; and that the sum of two thousand dollars in promissory notes be and the same is hereby appropriated to carry the same into effect.

Sec. 6. Be it further enacted, That whenever it shall be deemed expedient to remove said tribes of Indians, and they are actually removed off of said reserved lands, the same shall be held subject to the future disposition of Congress.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved 11th January, 1840.

MIRABEAU B. LAMAR.

JOINT RESOLUTION

Granting to the President power to appoint additional Council if necessary.

Sec. 1. Be it resolved by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the President be and he is hereby authorised and required to employ one or more additional council to assist the Attorney General in the management and argument of the case now pending in the Supreme Court set for trial on Friday, the 17th inst., wherein the board of land commissioners for the county of Nacogdoches are appellants and James Reily assignee is appellee.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved 16th January, 1840.

MIRABEAU B. LAMAR.

2-3-1854

CHAPTER XLIV

An Act for the relief of the Alabama Indians.

Section 1. Be it enacted by the Legislature of the State of Texas, That twelve hundred and eighty acres of vacant and unappropriated land, situated in either Polk or Tyler counties, or both, to be selected by the Chiefs of the Alabama Indians and the Commissioners hereinafter named, be, and the same is hereby set apart for the sole use and benefit of, and as a home for the said tribe of Indians; and that the District Surveyor of the District of Liberty, or his legal deputy, be authorized and required, upon the application of said Commissioners, to survey the same and return the field-notes of such survey, duly authenticated, to the Commissioner of the General Landoffice, who shall thereupon issue a patent to said tribe of Indians for the same, and that said Surveyor and Commissioners shall for such services receive the usual fees of office and no more.

Sec. 2. That should said Chiefs and Commissioners be unable to select a home for said Indians, on vacant and unappropriated land, then and in that case the said Commissioners are hereby authorized to purchase twelve hundred and eighty acres of unimproved land from the owner or owners thereof, situated in either of the aforesaid counties mentioned above, at a price not to exceed two dollars per acre, and shall take from the owner or owners of such land deeds with warranty conveying the same to said tribe of Indians, which deeds of conveyance shall be acknowledged or proven, and admitted to record in the county in which the land or the greater part thereof is situated, before the purchase money or any part thereof shall be paid. And the said Commissioners are authorized to draw upon the Treasury of the State, in favor of the person or persons from whom said land may have been purchased, for a sum not to exceed two thousand five hundred and sixty dollars, the amount of which draft the Treasurer shall pay out of any money in the Treasury not otherwise appropriated.

Sec. 3. That said land shall not be selected or located within four miles of the residence or improvements of any white inhabitant of this State. And that said Indians shall not alien, lease, rent, let, give or otherwise dispose of said land or any part thereof to any person whatsoever. And should the State of Texas hereafter provide a home for said tribe of Indians, and settle them thereon, then the said twelve hundred and eighty acres of land, with its improvements, shall become the property of the State.

R XLIV

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State of Texas hereafter provide
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of the State.

Sec. 4. That Samuel Rowe and James Barkly be, and they are hereby appointed Commissioners for the purpose contemplated in this act; and they shall be entitled to a sum not to exceed one hundred dollars for said services; and they shall return to the Treasury Department a certificate, under oath, taken before any officer authorized to administer an oath, the amount of land so purchased for the use of said Indians, and at what price. Should any portion of the land selected by said Chiefs and Commissioners prove to be upon the public domain, and it should not amount to the said twelve hundred and eighty acres, then and in that case the Commissioner of the General Landoffice is hereby authorized and required to issue a patent in the name of said tribe of Indians, for such land as may be vacant, upon the return of the field-notes of said District Surveyor of the amount surveyed of the public domain.

Sec. 5. That this act take effect from and after its passage.

Approved, February 3, 1854.

CHAPTER XLV.

An Act to amend An Act Incorporating the Buffalo Bayou, Brazos and Colorado Railroad Company, approved February the eleventh, eighteen hundred and fifty.

Section 1. Be it enacted by the Legislature of the State of Texas, That the "Buffalo Bayou, Brazos and Colorado Railroad Company" shall be entitled to all the rights, privileges and benefits accruing from any general law or laws that have or may hereafter be passed by this State to encourage the construction of railroads, in the same manner and to the same extent as if the gauge of said road was the same now fixed or which may be hereafter fixed upon by the State.

Approved, February 4, 1854.

2-6-1854

after its passage, and that all laws and parts of laws contrary to and conflicting with the provisions of this act be, and the same are hereby repealed.

Approved, February 6, 1854.

CHAPTER XLI.

An Act relating to the Indians of Texas.

Section 1. Be it enacted by the Legislature of the State of Texas, That jurisdiction over twelve leagues of land of the vacant domain of the State of Texas, or so much of twelve leagues as the government of the United States may select, be, and the same are hereby set apart and appropriated for the use and benefit of the several tribes of Indians residing within the limits of Texas.

Sec. 2. That the government of the United States is hereby authorized to cause to be selected and surveyed of the vacant domain of the State, or to purchase of private individuals and cause to be distinctly marked, three separate districts, or less, each district to be in a form as nearly square as may be, the said three districts not to include exceeding twelve leagues of land.

Sec. 3. That whenever the proper agent of the government of the United States shall notify the district surveyor of any land district within the limits of which the land so selected or purchased, may be situated, it shall be the duty of said district surveyor to cause such land so selected or purchased, to be plainly delineated upon the county map of the county in which the same is situated, and any location or entry upon any vacant land after the same shall have been so designated for Indian purposes, shall be held null and void; provided, no land selected or purchased for Indian purposes under the provisions of this act, shall be situated more than twenty miles south or east of the most northern line of military posts, established by the government of the United States, and extending from Red River to the Pecos river.

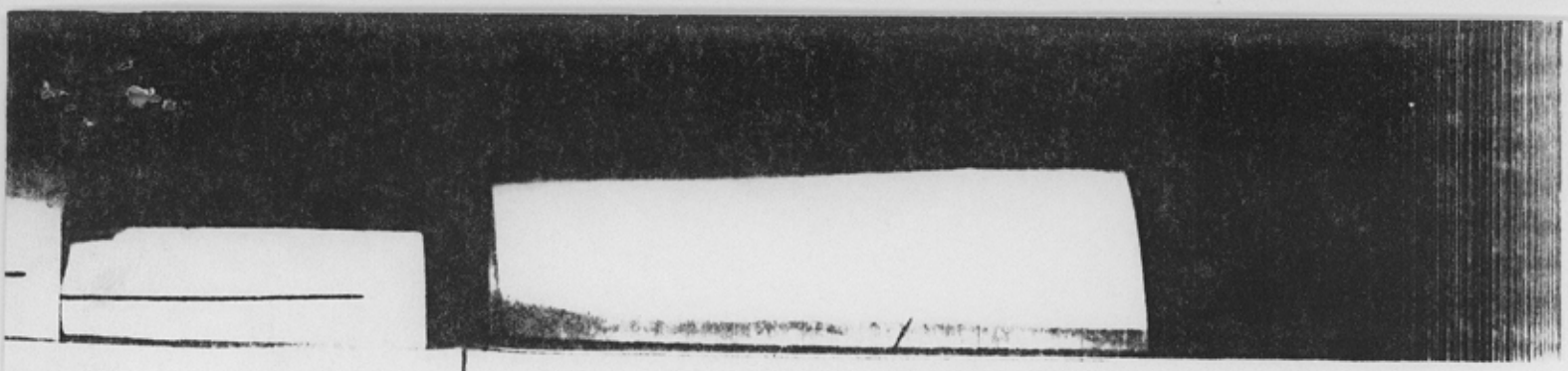
Sec. 4. That the jurisdiction over said twelve leagues of land or any portion thereof, which may be selected for Indian

purposes, within the meaning of this act, be, and the same is hereby ceded to the government of the United States so far as to enable it to extend any act of Congress now existing or hereafter to be passed regulating trade and intercourse with the Indian tribes; provided, this cession of jurisdiction shall not be construed so as to deprive the State of Texas of the right of jurisdiction over any person other than an Indian for any offence committed upon the person or property of any one within the limits of this State; and further provided, that all process issuing from any of the courts of this State may be served in the like manner and have the same force and effect as though executed in any other portion of the State.

Sec. 5. That the government of the United States, as soon as the above twelve leagues of land, or so much thereof as may be deemed necessary, shall have been selected or purchased and distinctly marked, shall be and it is hereby authorized to establish upon said land whatever agencies and military posts may be deemed necessary, and to settle upon said land such Indian tribes or bands of Indians as belong within the limits of Texas, and shall exercise entire control and jurisdiction over said Indians within said limits, so long as said government shall judge such control and jurisdiction necessary to the well being of said Indians; provided, that whenever the land or any district thereof, selected or purchased as herein provided, shall cease to be used for Indian purposes, the jurisdiction herein ceded shall cease, and such portion of said land as shall be taken from the public domain of this State, shall revert, together with all and singular the improvements made thereon, to the State, to be disposed of in such manner as the Legislature may thereafter see proper; provided, that should the line of the contemplated railroad to the Pacific run through any portion of said territory selected under the provisions of this act, the right of way to three hundred feet in width be, and the same is hereby reserved.

Sec. 6. That this act take effect and be in force from and after its passage.

Approved, February 6, 1854.



8-30-1856

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Sec. 3. That this act take effect from and after its passage.
Approved August 30th, 1856.

CHAPTER CLVII.

An Act to legalize the official acts of David P. Fearris, Notary Public of the county of Ellis.

Section 1. Be it enacted by the Legislature of the State of Texas, That the notarial acts of David P. Fearris be, and the same are hereby declared as legal as though he had been a naturalized citizen, previous to his appointment as Notary Public of Ellis county. And that this act take effect from and after its passage.
Approved, August 30th, 1856.

CHAPTER CLVIII.

An Act for the protection of the lands that have been or may hereafter be granted for purposes of Education.

Section 1. Be it enacted by the Legislature of the State of Texas, That no statute of limitation shall run in favor of any one who has heretofore, or may hereafter settle upon or occupy any of the lands that have heretofore been granted or may hereafter be granted by the State, for purposes of Education. And this act shall take effect, and be in force, from and after its passage.
Approved, August 30th, 1856.

CHAPTER CLIX.

An Act for the relief of the Coshattee Indians.

Section 1. Be it enacted by the Legislature of the State of Texas, That six hundred and forty acres of vacant and unappropriated land situated in Liberty, Polk, or Tyler counties, or any of them, to be selected by the Chiefs of the Coshattee tribe of Indians and the Commissioners hereinafter named, be and the same is hereby set apart for the sole use and benefit

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of, and as a home for the said tribe of Indians; and that the District Surveyor of the District of Liberty, or his legal deputy, be authorized and required, upon the application of said Commissioners, to survey the same and to return the field notes thereof, duly authenticated, to the Commissioner of the General Land Office, who shall thereupon issue a patent to said tribe of Indians for the same; and that said Surveyor shall, for such service, receive the usual fees of office and no more.

Sec. 2. That should said Chief and Commissioners be unable to select a suitable home for said Indians, on vacant and unappropriated land, then and in that case, the said Commissioners are hereby authorized to purchase six hundred and forty acres of land from the owner or owners thereof, situated in any of the aforesaid counties, at a price not to exceed two dollars per acre, and shall take from the owner or owners of such lands, deeds with warranty, conveying the same to said tribe of Indians; which deeds of conveyance shall be acknowledged or proven, and admitted to record in the county in which the land or the greater part thereof is situated, before the purchase money or any part thereof shall be paid. And the said Commissioners are hereby authorized to draw on the Treasurer of the State in favor of the person or persons from whom said land or any part thereof may have been purchased, for a sum of money not to exceed twelve hundred dollars, the amount of which draft the Treasurer shall pay out of any money in the Treasury, not otherwise appropriated.

Sec. 3. That said Indians shall not alien, lease, rent, let, give, or otherwise dispose of said land, or any part thereof, to any person whomsoever. And should the State of Texas hereafter provide a different and permanent home for said tribe of Indians, and settle them thereon, then said six hundred and forty acres of land with its improvements shall become the property of the State.

Sec. 4. That Samuel Rowe and Milton A. Harden be, and they are hereby appointed Commissioners for the purposes contemplated in this act, and that they shall be entitled to a sum of money not to exceed one hundred dollars each for their services as Commissioners, as aforesaid. They shall return to the Treasury Department a certificate sworn to before any officer authorized to administer oaths, setting forth the quantity of land so purchased for said Indians, in what county situated, and at what price it was purchased.

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Sec. 5. Should any portion of the land selected by said Chiefs and Commissioners prove to be on the public domain and not amount to the said six hundred and forty acres, then and in that case, the Commissioner of the General Land Office is hereby authorized and required to issue a patent to and in the name of said tribe of Indians, for such land as shall be so vacant upon the return of the field notes of the District Surveyor, of the amount surveyed of the public domain.

Sec. 6. That this act take effect and be in force from and after its passage.

Approved, August 30th, 1856.

CHAPTER CLX.

An Act Supplementary to an act for the relief of the citizens of Mercer's Colony, passed February 2d, 1850.

Section 1. Be it enacted by the Legislature of the State of Texas, That section eight of the above mentioned act be so amended that it shall only be necessary for the Colonists or citizens to prove by his, her or their own oaths, supported by the oaths of two respectable witnesses, that he, she or they emigrated to and was a resident citizen of the Territory commonly known as Mercer's Colony, on or before the 25th day of October, A. D. 1848, and that he, she, or they have never received any land from this Government by virtue of their emigration hither.

Sec. 2. That the proof required by the first section of this act shall be made before the District Court of the county in said Colony, where the party resided in said Colony; and it shall be the duty of the District Court to hear and determine and award or refuse certificates to the parties applying under the provisions of this act, and the act to which this is supplementary, as in other cases.

Sec. 3. That no petition shall be required and it shall only be necessary for the applicant to have the case docketed, and the same shall be heard in its order.

Sec. 4. That the certificates for the claims established under this act shall be issued by the Clerk, and be countersigned by the Judge of the Court issuing the same, and of the issues of said certificates, the clerk shall make annual re-

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2-16-1858

Resolved, That the Governor of Texas be, and he is hereby requested to furnish each of our delegation in Congress with a copy of this Resolution.

Approved February 16, 1858.

CHAPTER 24.

Joint Resolution is relation to the Indians residing in the counties of Polk and Tyler.

Section 1. Be it Resolved by the Legislature of the State of Texas, That the Governor of the State be, and he is hereby authorized to remove the Indians located and now residing in the counties of Polk and Tyler, under and by virtue of an Act entitled an Act for the relief of the Coshattee Indians, approved August 30th, 1856, from said Polk and Tyler counties, and provide a permanent home for and settle them, in such manner and at such place as to him may seem expedient and for the welfare and benefit of said Indians. Provided, such removal shall not take place unless the consent of said Indians thereto shall first be given through their Chiefs, to be ascertained and reported to the Governor by an agent, to be appointed by him for the purpose of negotiating for such consent; and provided further, that the lands, upon which said Indians are now settled, shall, when abandoned by them, under the provisions of this Act, be and remain reserved from location, except upon such terms and conditions as the Legislature may hereafter prescribe.

Sec. 2. That the sum of five thousand dollars is hereby appropriated to carry out the provisions of the first section of these Resolutions; and the State Treasurer is hereby required to pay said sum out of any moneys not otherwise appropriated, upan a warrant or warrants drawn by the Governor by virtue hereof.

Sec. 3. That these Resolutions shall take effect from and after their passage.

Approved February 16, 1858.

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Austin county line to the Brazos river; thence up said river with its various meanderings to the place of beginning, be, and the same is hereby created a county to be called the county of Waller, and the city of Hempstead is hereby declared the county seat of said county.

Sec. 2. That this act take effect and be in force from and after its passage.

Approved January 25th, 1875.

CHAPTER V.

An Act to provide for the disposal of certain lands belonging to the State of Texas, known as the Indian Reservations.

Whereas, Under the provisions of acts of the Legislature of the State of Texas, approved February 6, 1854, and February 4, 1856, jurisdiction over certain portions of the public domain of the State of Texas was ceded to the United States Government, and said land was set apart and appropriated for the use of the several tribes of Indians residing within the limits of the State of Texas; and

Whereas, Said acts further provided, that whenever the land, or any district thereof, selected or purchased as therein provided, shall cease to be used for Indian purposes, the jurisdiction therein ceded shall cease, and such portion of said land as shall be taken from the public domain of the State shall revert, together with all and singular the improvements made thereon, to this State, to be disposed of in such manner as the Legislature may thereafter see proper; and

Whereas, Said land selected by the United States Government, under the provisions of above recited acts has long been abandoned by said government as a reservation for Indians, and is now, and for some time past has been occupied and improved solely by actual settlers, many of whom were under the belief that said land was public domain of the State, and open to settlement under the existing laws of this State regulating homesteads; therefore,

Section 1. Be it enacted by the Legislature of the State of Texas, That all that portion of land in the State of Texas heretofore set apart and appropriated for the use of the several tribes of Indians residing within the limits of

the State, as recited in above preamble, be and the same is hereby declared abandoned by the United States Government and reverted back to this State

Sec. 2. That all persons who are now actual settlers on said "Reservations," shall have the right to claim a homestead of one hundred and sixty acres, if the head of a family, or eighty acres, if a single person of not less than twenty-one years of age, of the land so settled upon, subject to the provisions of this act, and the restrictions and conditions as now or hereafter may be provided by the laws of this State not conflicting herewith; provided, said actual settler, within six months after this act take effect, shall make application to the surveyor of the county, in which said land is situated, to have his claim surveyed, and shall pay the regular fees allowed by law for making such surveys. Said actual settler, or his assignee or assignees, at the expiration of three years from the date of his actual settlement on said land, shall be entitled to a patent therefor, upon filing in the General Land Office an affidavit to the effect, that such person, or his assigns, has occupied and improved said land for three years, in good faith, and has complied with all requirements of law, and paid all fees, which affidavit shall be corroborated by the affidavits of two disinterested and credible citizens of the county in which the land is situated, all of which affidavits shall be subscribed and sworn to before the district clerk, who shall certify to same, and the credibility of said citizens, under the seal of his office.

Sec. 3. That all lands in said "Reservations" remaining unsettled at the passage of this act, shall be and the same is hereby appropriated and set apart, one-half to the "public school fund" of this State, and the remaining one-half to settlement by actual settlers, subject to the provisions of this act, and of all laws not in conflict therewith.

Sec. 4. It shall be the duty of the surveyor of the counties in which said "Reservations" are situated, to have all of said land now occupied and claimed by actual settlers thereon, correctly surveyed, and the field notes thereof recorded in his office, according to law and instructions issued by the General Land Office, prescribing the duties of surveyors, for which service he shall be paid by the settler the regular fees allowed by law. He shall also prepare a map of all land contained within said "Reservations," on which map he shall first lay off and plat all land

claimed as homesteads by actual settlers, under provisions of section 2 of this act; and the balance of land in said "Reservations" remaining unsettled, he shall lay off and plat on said map, in quarter sections, of one hundred and sixty acres each, which he shall number consecutively, commencing with No. 1, in similar manner to that now prescribed by law for the numbering of sections, located by virtue of railroad certificates, which have alternate sections reserved for the public school lands of this State, that is to say, the numbers of each quarter section of all the land thus appropriated and set apart, shall alternate uniformly throughout, so that no two even or two odd numbered quarter sections shall be side by side, but shall be diagonal to each other. Said even-numbered quarter sections shall be reserved by the State for public school lands, and the odd numbered quarter sections shall be open to settlement by actual settlers as hereinafter provided. Said map, together with the field notes of surveys made of all lands now occupied and claimed as homesteads by actual settlers thereon, shall be completed, filed and recorded in said surveyor's office, within twelve months after the passage of this act, and a duplicate copy of said map and the said field notes shall be forwarded to the General Land Office within the same prescribed time.

Sec. 5. That in all cases where actual settlers now occupying lands within said "Reservations" have allowed a vacancy of less than forty acres of said land to intervene between their respective claims, they shall change the boundary lines of their claims, so that each settler shall take an equal portion of such intervening vacant land, in order to have their claims adjoin each other; and it shall be the duty of the surveyor of the county in which such land is situated to enforce this provision.

Sec. 6. That every head of a family, without a homestead, who may hereafter desire to settle on any land within said "Reservation," shall be entitled to select one hundred and sixty acres of said land wholly within one of the unsettled quarter sections having odd numbers, and every single person of not less than twenty-one years of age, shall be entitled to select eighty acres of any one quarter section unsettled, which shall be divided by the surveyor in two equal parts, and the choice of either part given to said claimant. Before entering on the land so selected, every claimant shall first make application to said surveyor to

have such land surveyed, and thereupon it shall be the duty of said surveyor to survey the land thus selected, together with the alternate quarter section adjoining, reserved for the "Public School Fund" of this State, and make out field notes thereof which he shall certify as being correct, record them in his office, and forward same together with all other necessary papers connected with such application, to the General Land Office, for which service he shall be paid by the person making such application, the regular fees allowed by law, including the fees for surveying the alternate quarter section for the State; provided, that if the person making such application be single, and shall make the first selection of one-half of any such quarter section, he shall pay only the fees allowed by law for surveying one-half of said quarter section, together with the fees due by law for surveying the whole of the alternate quarter section for the State attached thereto; and any settler desiring to settle on the remaining one-half of said quarter section thus left vacant, before being allowed to enter upon same, shall be required to pay the fees for surveying said remaining one-half of said quarter section, and shall refund to the person who made a first selection out of same quarter section one-half of the amount which said person making such first selection paid for the survey of the alternate quarter section for the State connected therewith. In no case shall any applicant claiming a homestead by virtue of three years residence thereon and compliance with all the requirements of law be required to pay anything for the land, or any other fees than the fees herein allowed and due by law in the surveyor's office and in the General Land Office.

Sec. 7. That all laws and parts of laws so far as they contravene the provisions of this act be and the same are hereby repealed, and that this act shall take effect and be in force sixty days from and after its passage; and nothing in this act shall be so construed as to prejudice the rights of third parties.

Approved January 25th, 1875.

agreement of all the parties that Noble and Wilson would deposit with appellee sums to be obtained from the sale of certain lands, in which appellants owned an interest, and that the said sums were to be applied to the payment of the note. The deposits were made, but none of the money was applied to the debt. That money was a payment on the note under the agreement. Noble and Wilson were proper parties. Adams v. Bank, 178 S. W. 993. The answer may have been open to attack through special exceptions, which, however, we do not decide, but it was good as against a general demurrer. The agreement set up in the answer was a part of the same transaction with the execution of the note, and showed a good defense.

This is a second appeal of this case; the judgment on the former appeal having been reversed on account of the disqualification of the trial judge. 171 S. W. 247. The judgment from which this appeal was taken was rendered by a special judge.

The judgment is reversed, and the cause remanded.

W. T. CARTER & BRO. et al. v. COLLINS et al. (No. 68.)

(Court of Civil Appeals of Texas. Beaumont. Oct. 26, 1916. Rehearing Denied Nov. 23, 1916.)

1. BOUNDARIES ⟸37(1) — SUFFICIENCY OF EVIDENCE—CONFLICTING SURVEYS.
A verdict finding no conflict between surveys *held* sustained by the evidence.
[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 184–189, 192, 194.]

2. BOUNDARIES ⟸3(1)—DESCRIPTION—RELATIVE IMPORTANCE.
While ascertaining the surveyor's intention is the primary object in locating boundaries, it is a rule of evidence that calls for natural objects, artificial objects, and distance and course rank in the order given.
[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 3, 5.]

3. BOUNDARIES ⟸3(3)—DESCRIPTION—ARTIFICIAL OBJECTS.
In a boundary location calls for natural or artificial objects prevail over those for course and distance only when they can be identified with reasonable certainty.
[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 6–19.]

4. ADVERSE POSSESSION ⟸115(5) — SUFFICIENCY OF EVIDENCE—HOSTILE CHARACTER OF POSSESSION.
Where the wife of the record owner's lessee lived on the land after her husband's death, but did not claim title by adverse possession in a former suit to eject her, and certain of her children testified that she did not dispute her lessor's title, her hostile holding was a jury question.
[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 314, 697, 699, 700.]

5. LANDLORD AND TENANT ⟸56(1)—HOSTILE HOLDING—LESSEE'S FAMILY.
Where the children of the record owner's lessee continued to live upon the land until date of suit, they continued to hold under the lease although the original lessee had died.
[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. § 124.]

6. ADVERSE POSSESSION ⟸80(2)—COLOR OF TITLE—DEEDS—SUFFICIENCY OF DESCRIPTION.
Under a statute requiring registration of the deed under which a claim by adverse possession is made, a deed not describing the land in fact nor according to the field notes claimed to be applicable thereto is insufficient.
[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 464, 465.]

7. ADVERSE POSSESSION ⟸97—EXTENT OF POSSESSION—TRESPASSER.
Where the record owner's lessee resided upon the land, such lessee had constructive possession of the entire tract, and a trespasser could only disseise the true owner to the extent of his actual possession.
[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 537–541.]

8. APPEAL AND ERROR ⟸1070(2)—HARMLESS ERROR—VERDICT—INCONSISTENT ANSWERS.
Where a record owner's lessee had constructive possession of an entire tract, inconsistent jury answers, regarding the adverse possession by a trespasser of a small portion, are immaterial, where such possession was claimed to establish title by adverse possession to the entire tract.
[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4232, 4233.]

9. PARTITION ⟸4—ACT OF PARTIES—POWER OF ATTORNEY.
A power of attorney from one owning an undivided interest in property to the other part owner, in which the grantor described himself as the owner of a certain part thereof, is insufficient to establish a partition, where it is not shown that the power was accepted or acted on.
[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 6–12.]

10. APPEAL AND ERROR ⟸843(2)—NECESSITY OF DECISION.
Where appellees are the record owners of real estate, it is unnecessary to pass upon their claim of title by adverse possession.
[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3331.]

11. ADVERSE POSSESSION ⟸110(4)—PLEADING POSSESSION—SUFFICIENCY.
A plea of adverse possession of an entire tract and a specific portion thereof is insufficient to raise the question regarding another specific portion.
[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 644, 645.]

Appeal from District Court, Polk County; L. B. Hightower, Sr., Judge.

Trespass to try title by V. A. Collins, Robert Dunham, and Mrs. Mary Colville against W. T. Carter, E. A. Carter, and Jack Thomas, a copartnership doing business under the name of W. T. Carter & Bro. and Thompson-Tucker Lumber Company. Judgment for plaintiffs, and defendants appeal. Affirmed.

S. H. German, of Livingston, and Townes & Vinson and Baker, Botts, Parker & Garwood, all of Houston, for appellants. W. D. Gordon, V. A. Collins, and Thos. J. Baten, all of Beaumont, and J. L. Manry, of Livingston, for appellees.

Polk Co. Sk. File 44

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CONLEY, C. J. This was an action of trespass to try title brought by appellees, V. A. Collins, Robert Dunham, and Mrs. Mary Colville, against W. T. Carter & Bro., a partnership composed of W. T. Carter and E. A. Carter and Jack Thomas, and also against the Thompson-Tucker Lumber Company, a private corporation, to recover all of the Thomas Colville league of land in Polk county, save and except a strip 1,000 varas wide by 5,000 varas long off of the southwest portion of the league, known as the "1000-vara strip." The title to a tract of 320 acres known as the "Handley tract" in the east corner of the Colville league, claimed by appellants in their answer, was conceded to be in appellants, and judgment was accordingly rendered in their favor, and that tract is therefore not involved in this appeal. Appellants, in addition to their pleas of general denial and not guilty, disclaimed any interest in or title to the Thomas Colville league, save and except whatever part thereof might be included within the following boundaries, the same being referred to as the Bartolo Escobeda league of land, title to the said Bartolo Escobeda being issued on the 22d day of June, 1835, and which they described as follows:

"Beginning at the most northern corner of the Lowry T. Hampton league survey, from which a white oak 20 inches in diameter bears south 47 east 8 varas distant and another white oak 18 inches in diameter bears south 1½ west 7 varas distant; thence north 45 east 5,000 varas to a corner from which a pine 15 inches in diameter bears south 80 east 4 varas, and a black oak 15 inches in diameter bears north 2½ west 11.1 varas distant; thence north 45 west 5,000 varas to a corner, from which a cotton wood 14 inches in diameter bears north 14 east 13.2 varas distant, and a black oak 20 inches in diameter bears south 80½ west 9.1 varas distant; thence south 45 west 5,000 varas to corner; thence south 45 east 5,000 varas to the beginning, containing one league of 4,428 acres of land."

As to the land included within the above boundary, the appellants pleaded title by legal conveyances from the sovereignty of the soil, and also pleaded 3, 5 and 10 years' statutes of limitation. The case was tried with a jury, and was submitted on special issues, upon the answers to which the court entered judgment in favor of appellees for all of the Colville, except the Handley 320-acre tract, and the 1,000-vara strip above referred to. In due time appellants filed their motion for a new trial, which was overruled, and an appeal was perfected to this court.

The principal questions to be determined upon this appeal are as follows: First. Do the Escobeda and Colville leagues conflict? Second. If they do not conflict, have the appellants perfected title to the Colville land by virtue of the statutes of limitation, under deeds and muniments of title describing the identical land? Third. If the Escobeda and Colville leagues do not conflict, and appellants are not entitled to recover under their pleas of limitation, are not appellants entitled to recover the Tom Kinard 140-acre tract by virtue of the statute of limitation?

It is conceded that the appellants have title to the Escobeda league, and the appellees have the record title to the Colville league, except the Handley 320 acres and the 1,000-vara strip, and that the Escobeda is an older grant than the Colville.

In the solution of the issues involved, the first question presented for consideration is, Do the Escobeda and the Colville leagues conflict? The jury found that they do not conflict. But the appellant contends: First, that the undisputed evidence showed that the two leagues were located in conflict, except as to the 1,000-vara strip off of the southwest portion of the Colville league; and second, that it was therefore error to submit the issue of conflict to the jury, as was done by the trial court; and, third, that the findings of the jury that the two leagues were not in conflict is contrary to the undisputed evidence, or, at least, contrary to the great preponderance of the evidence, and should therefore be set aside.

These contentions are embraced in appellants' first five assignments of error. The ultimate effect of these assignments is to raise the question that the verdict of the jury on the issues of boundary is not supported by the evidence, and that the charge of the court submitting such issues is not sustained by the facts of the case, and we will discuss the subject from such viewpoint, without treating seriatim each assignment of error as found in the brief.

The Bartolo Escobeda league was originally surveyed by S. C. Hirams, the field notes bearing date March 31, 1835, same being as follows:

"XBD Title June 30, 1835, Vol. 20, p. 583,
Polk Co. XBD V 83.

"Field notes of a league of land surveyed by Bartolo Escobeda on the east side of Trinity on the branch of the Neches called the Big Sandy. Beginning at the northwest corner of league No. 2 surveyed for Lowry T. Hampton mound and stake, from which a black oak 20 inches in diameter bears south 47 deg. east 8 varas dist. also a white oak 18 inches in diameter bears south 1½ deg. west 7 varas distant, thence north 45 deg. east 2430.3 varas Big Sandy running south 15 varas wide, 5000 varas, made a mound and planted a stake, from which a pine 15 inches in diameter bears south 80 deg. east, 4 varas distant; also a black oak 15 inches in diameter bears north 2½ deg. west 11.1 varas distant. Timber, Pine, oak, elm, hackberry and hickory, undergrowth cane, sassafras and myrtle, some overflow and the land on the west side rich and fertile, but on the east mostly poor sandy land; thence north 45 deg. west 580.5 varas, pine 20 inches in diameter, line tree, 5000 varas, mound and stake, third corner, from which an elm 14 inches in diameter bears north 14 deg. east 15.2 varas distant, also a black oak 20 inches in diameter bears south 80½ deg. west 9.1 varas distant. Timber principally pine, undergrowth myrtle, cypress and paw paw; thence south 45 deg. west 385 varas, pine 18 inches in diameter, line tree 543.5 varas, black oak 18 inches in diameter, line tree, 4250 varas Big Sandy, 5000 varas mound and stake, fourth corner, timber pine, oak, hickory, and

hackberry, undergrowth, myrtle, peach and cane, land generally rich and fertile. Thence south 45 deg. east 5003.5 varas, fell 4¼ varas south of the place of beginning, timber of a good quality, pine, oak, magnolia, beech and land rich, north 45 deg. west on true line, 5003.5 varas to the fourth corner, containing one league, about 7 labors of good farming land.

"S. C. Hirams, Surveyor,

"March 31, 1835."

This surveyor surveyed the Juan Falcon on the same day. The Thomas Colville was surveyed on June 24, 1835. The Lowry T. Hampton on March 14, 1835, the A. Wiley on June 24, 1835, the Henry Cone on the ——— day of ———, 1835, the A. Emanuel on June 24, 1835, and the F. Castanado on June 1, 1835. These are all adjoining surveys and their location, as well as other matters hereinafter referred to are shown on the following map:

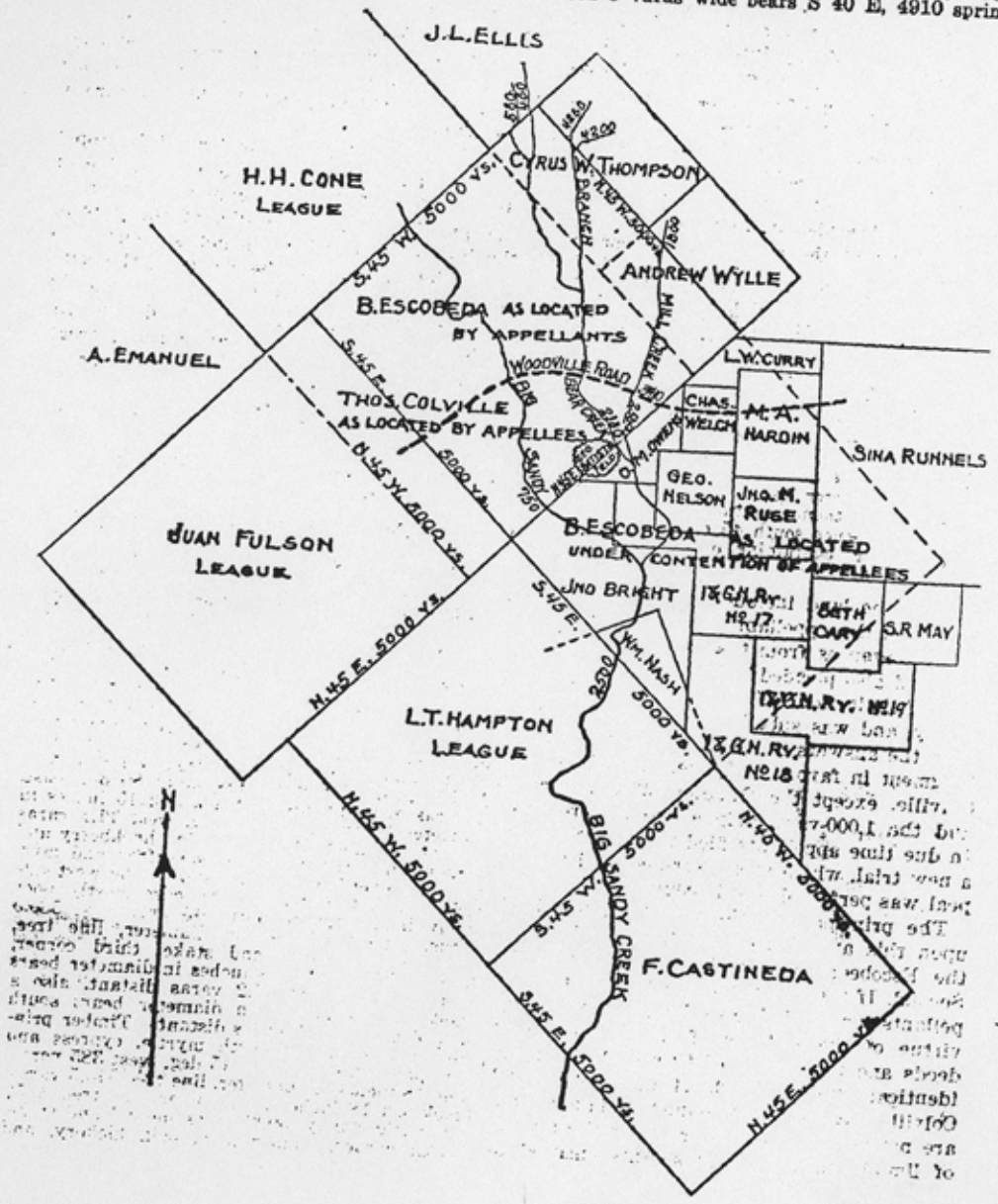
The field notes of the Colville are as follows:

"XBD Title Aug. 30/35 Vol 21 p 815 Polk Co.
XBD V 115

"Field notes of a League of Land surveyed for Thomas Colville on Big Sandy. Beginning at the S W corner of a league surveyed for Doctor Cone.

"Thence: N 45 E 340" Branch bears S 10E 580" branch bears S 25 E, 1195" Spring branch bears S 80 E 3280" Creek 8 varas wide bears S 10 E 5000" 2nd corner from which a pine 30 in di bears N 30 W 9 varas dist also a White Oak 8 in di bears N 33 E 13.1 varas dist. Oak, ash, hickory, sugartree, magnolia and some pine timber. Undergrowth Cane, dogwood & Myrtle, Land fertile.

"Thence S 45 E 830" Big Sandy, 900" Big Sandy again, 999" Big Sandy again 8 varas wide Bears South 2180" beautiful spring, 2980" trace leading from the lower village on Trinity to the prairie or Alabama Village on the Naches, 4096" creek 3 varas wide bears S 40 E, 4910 spring



branch, 5000" 3rd corner from which a beach 18 in di bears S 11 E 13.1 varas dist. Also a red oak 10 in di bears S 62 deg. 30' E 5 varas dist. Oak, ash, beach, magnolia and pine undergrowth cane dogwood & myrtle, land rich. "Thence S 45 W 4250" Big Sandy 10 varas wide bears S 8 E 5000.5 4th corner, oak, ash, sugartree and pine timber, Undergrowth cane, dogwood & myrtle, land rich. "Thence on random line, or along the Eastern boundary line of league 5000" to the place of beginning, containing one league of about 6 labors of farming land. "June 24th, 1835 Notes Sent S. C. Hiroms."

The great preponderance of the evidence in this case establishes the fact that the Thomas Colville league was actually located on the ground as shown in the above plat. Several of the corners were identified by original witness trees still standing, and the lines running out from these corners fit calls for most of the natural objects called for in the field notes, although some of the streams crossing its lines are misnamed. The field notes of the Andrew Wiley, dated June 24, 1835, and made by the same surveyor who located the Thomas Colville, call for the southeast corner of the Thomas Colville, and ties said survey to its southeast corner. The Colville field notes have their beginning corner at and called for the Cone league. The beginning corner of the Colville is as follows:

"Beginning at the southwest corner of a league surveyed for Doctor Cone,"

There is no question about the location of the Cone league. The A. Emanuel calls to begin at this corner of the Cone.

[1] The undisputed evidence shows that the L. T. Hampton league is located just as it is found on the ground, and as it is placed in the above map, and yet, the surveyor who did the work, in surveying the Hampton league, made an error in his very first call; beginning on the east bank of Big Sandy creek, the field notes call is "Thence south 45 deg. east 2,500 varas," when, in fact, it should be "south 45 deg. west, 2,500 varas." In this same survey the third corner is tied to Big Sandy creek "south 45 deg. east 2,430 varas," when the distance, as found on the ground from this corner of the league, is 2,660 varas. These discrepancies are not the only evidence of loose and inaccurate work on the part of this surveyor. Aside from the uncertainties affecting the location of the land involved in this suit, a number of the other adjacent surveys, made approximately at the same time, contained more or less inaccurate calls. The western corner of the Hampton is designated as the "northwest corner." The southern corner of the Cone as the "southwest" corner, and the eastern corner as its western corner. As a matter of fact, his calls for adjoining and contiguous corners are nearly all misnamed, and called northwest for north, southeast for south, northeast for east and northwest for west.

Although the Escobeda and Falcon surveys were made on the same day, by the same surveyor, Hirams, yet a literal construction of the field note calls of these two surveys, and constructing the Escobeda by course and distance from the beginning corner called for, places said surveys in conflict, and rests one upon the other. The General Land Office maps for 1841 and 1856, in evidence, so place these surveys.

If the Escobeda is located on the Falcon, it would not touch Big Sandy creek. In the field notes of the Escobeda, Big Sandy creek is a prominent feature in the various calls. It is clearly shown by the evidence that Big Sandy creek has not changed its course since these surveys were made. The Escobeda cannot be located so as to touch Big Sandy creek at any point, if it is placed in conflict with the Falcon. Therefore, it is illogical to assume that it was the purpose or intention of the surveyor to locate said league where the Falcon is located. To arrive at the intention of the original surveyor in the matter of locating the Escobeda, it is evident that some change has to be made and substituted in the field notes of that league. To locate the league on the ground, it would be necessary, therefore, to look to the field note calls for natural and artificial objects, and, if possible, to find and identify them on the ground.

The north corner of the Hampton and the south corner of the Escobeda are coincident points, and call for the same witness trees. These trees have been found and identified on the ground. The evidence shows that both the appellants and the appellees are practically agreed that the beginning corner of the Escobeda, as fixed in its field notes, should be ignored. The northwest corner of the Hampton, and such beginning corner made to start at the north corner of the Hampton. The charge of the court so instructed the jury, and there is no complaint on either side to the charge, in this respect.

Although the appellants are willing to concede this change, and substitution in the field note calls of the Escobeda, they are not willing that any further change or substitution be made. From that beginning point, it is their contention that the Escobeda league must be constructed by course and distance, literally, in accordance with the field notes. While, on the other hand, it is the contention of appellees that if the league is so constructed it may be in accordance with the field notes calls for course and distance, it is inconsistent with the field note calls for the natural objects found and identified on the ground, and therefore the calls for course and distance must give way to the calls for such natural objects, and the league constructed accordingly.

In 1860 Gee, a county surveyor of Polk county, made a resurvey of the Escobeda, and returned his field notes to the General Land Office, for the first time placing the land in conflict in General Land Office with the Thomas Colville, by making its beginning

point the north corner of the Hampton, and constructing it solely by course and distance therefrom. It appears from these field notes and the certificate attached by him thereto that in making the resurvey, he found not a single bearing tree or line tree called for in the original field notes, except the ones called for at the north corner of the Hampton, and the south corner of the Escobeda. This is rather significant, since the survey at that time was only 25 years old, and the witness trees, as called for in the field notes, if they were on the land, in all probability should have been standing. He does state, however, that in running north 45 degrees east, he found a marked line, and at a point 5,000 varas he made a corner "on an old marked line that does not continue beyond the corner." The importance of these facts are materially reduced when we remember that the line he is referring to is a coincident line with the Colville and the Wiley surveys, both of which were made in 1835, and that this line is the only one of the Escobeda which both parties practically agree was actually surveyed when the league was located; the appellants contending that it constitutes the east line of the Escobeda, and the appellees that it is the west line of the Escobeda. The surveyor Gee also states that in running the line north 45 degrees west 5,000 varas from the north corner of the Escobeda, as located by him, he made "a corner on an old line." This point is located on the coincident line of the C. W. Thompson survey made in 1850, and for this reason the circumstance is not of great weight.

In constructing the Escobeda league from the beginning point at the north corner of the Hampton by course and distance, not a natural object called for in the field notes can be made to fit, as they are found and located on the ground. From the beginning corner, the first course is "north 45 degrees east 2430.3 varas, Big Sandy creek running south, 15 varas wide." On such course Big Sandy creek is found at 756 varas, and its course is almost east and west. On this same course what is known as Bear creek is reached at a point, according to appellees' evidence, at 2,476 varas, and is 9 varas wide, and crosses this line in an almost easterly and westerly direction. It is the contention of appellants that the surveyor Hirams, in the Colville field notes, called Bear creek "Big Sandy," and that, allowing for this error in name, and designating Bear creek "Big Sandy," as Hirams evidently thought it was, this natural object is found within 45.5 varas of the distance called for in the field notes. In response to this proposition, however, appellees urge: That the field notes call for a creek 15 varas wide, and that Bear creek at this point is only 9 varas wide, and that at the concluding corner of the first course of the Escobeda, the field notes describe the land adjacent to the corner on that line as follows:

"The land on the west side rich and fertile, and on the east mostly poor sandy land."

That if the line be extended north 45 degrees east 5,000 varas from the north corner of the Hampton, the soil is rich and fertile all the way through, and that there is found no such contrast in the nature of the soil at the south corner on this course as the field notes call for.

Much evidence is found in the record that if this call be reversed so as to run from the north corner of the Hampton south 45 degrees east, 5,000 varas, a corner will be established so as to fit the nature of the soil called for, and that the field note call for the natural object "Big Sandy, running south 15 varas wide," will be complied with, as the same is actually found on the ground. And, in this connection, they urge that the fact that Big Sandy on this course is located on the ground 2,660 varas from the north corner of the Hampton, instead of 2,430.3 varas, does not mitigate against the force of their contention, since the appellants concede that the Hampton league is properly located on the ground, and that the same error in calling for the distance of Big Sandy creek from the north corner of that league is made; such field notes designating this creek to be located at 2,430.5 varas.

It is to be noted that the third course of the Escobeda calls to cross Big Sandy again at 4,250 varas south 45 degrees west from the third corner, which corner, according to the contention of appellants, as they located Escobeda, is the north corner. This creek is actually found on the ground 2,780 varas from said corner, a variance in the field note calls of 1,170 varas. The appellees assert, and the evidence shows that if the Escobeda be constructed as the appellees contend it should be, and the third course call be substituted for the fourth course, that is to say, if the distance south 45 degrees west 4,250 varas be run from the north corner of the Escobeda, as they locate it, Big Sandy creek is found on the ground to be an exact fit to the call for course and distance.

Running north 45 degrees east from the eastern corner of the Hampton, there is no marked line. The eastern corner of the Hampton is in a cleared field. At a distance of 5,000 varas from that corner in that course, the bearing trees given for the third corner of the Escobeda are not found. But, it is the contention of appellees that the surveyor Hirams surveyed only two lines of the Escobeda, as they locate it, and that he made random calls for the other lines. That these two lines are as follows:

"One of them is the line called for in the Escobeda field notes to run south 45 degrees west 4,250 varas, Big Sandy, 5,000 varas, mound and stake * * * timber pine, oak, elm, hackberry and hickory, undergrowth cane, sassafras and myrtle, some overflow and the land on the west side rich and fertile, but on the east mostly poor sandy land."

This is the west line of the Escobeda, as appellees contend it should be located. In transposing the field note calls for the third course and substituting it for the fourth course, the original calls in the Escobeda field notes fit the ground with exactness on this line. The other line, which they contend was surveyed, is the one running south 45 degrees east from the north corner of the Hampton, and crossing Big Sandy 15 varas wide, at exactly the same distance (less a half vara) that the Hampton crosses it. The evidence shows that this line of the Hampton is vouched for by all the witnesses who testified in the case.

It is further earnestly contended by the appellees that since the league is a rectangle, and two of its converging base lines have been found and identified on the ground, they have in fact located the league; the construction of the other lines being a mere mechanical process in making the application of the calls for course and distance in the field notes. It is to be seen that if the Escobeda league is located as contended for by the appellees, it places it out of conflict with the other leagues and surveys, all of which were made by the same surveyor, and within a very short period of each other, and acquits the surveyor of doing an irrational thing, that of surveying one league upon another, when it was his official duty to locate the survey upon vacant domain, and without any intervening vacancies.

These were all issues for the jury to determine from the evidence submitted to them, and, having determined them adversely to appellants, and their findings being amply supported by the evidence, it is not the province of this court to disturb them.

[2, 3] It is the law of this state that where natural objects, as called for in the field notes, can be actually found and identified on the ground as showing the footsteps of the surveyor, both course and distance, when inconsistent therewith, must give way and be disregarded. Urquhart v. Burleson, 6 Tex. 502; Browning v. Atkinson, 37 Tex. 660. The courts of this state have undertaken to grant the dignity of calls in field notes, and to attach to them different degrees of importance. The first in importance are natural objects, such as streams, hills, mounds, nature of soil, etc. Next in importance are artificial objects, such as stakes, mounds, marked trees, etc., and the least of all, course and distance. This classification and grade of calls, however, is only a rule of evidence. The primary purpose in all cases of the kind is to locate the survey as it was intended to be located on the ground by the original surveyor, and if this can be accomplished with more certainty under the circumstances of the case by the calls for course and distance, they will control. It has been determined, however, that only when the natural or artificial objects called for in the field notes can be found and identified on the ground with reasonable certainty will they control calls for course and distance. Browning v. Atkinson, 37 Tex. 660; Railway Co. v. Anderson, 36 Tex. Civ. App. 121, 81 S. W. 781; Sloan v. King, 33 Tex. Civ. App. 537, 77 S. W. 48; Goodrich v. West Lbr. Co., 182 S. W. 341, where a general review of many of the decisions on that point will be found.

The charge of the court in submitting these issues contained a correct statement of the law for the guidance of the jury.

Appellants contend that they are entitled to a reversal of this cause under the principles announced in the Goodrich Case, supra, but there is a pronounced difference between the facts of that case and the present one. In the Goodrich Case, the court said:

"To our minds, nothing has been found of sufficient gravity to arrest the distance. No tree has been found, or bearing tree, called for in the original field notes. The surveyor does not say that any line was marked, but the contention is made that the old line, found running south 47 degrees east, is the east boundary line of the grant. The objection to this—and we think that same is conclusive—is that to accept this old line does not satisfy the quantity of land; that the length of the line is not satisfied; that no landmark referred to by the original surveyor can be found; and that in addition this old line, claimed to be the eastern boundary line of the grant, is found to extend only about two-thirds of the way across the four-league grant, or to about the Beasley corner, and cannot be found running any further south, although its course, as testified to, runs through virgin timber. * * * Therefore we are persuaded to believe" that nothing has been found "to arrest or stop the north or northwest line of this grant. * * *"

In the present case, the field notes of the Escobeda contain calls for natural objects, and the evidence in the record contains facts upon which the jury were justified in determining that such natural objects were found and identified on the ground, so as to fix and locate the Escobeda league contrary to some of the calls for course and distance. Appellants' assignments of error 1 to 5 are therefore overruled.

[4] Under assignments of error 6, 7, and 8, appellants contend that the court erred in not rendering judgment for them for the land sued for, under the five and ten years' statutes of limitation, the jury having answered that they, appellants, had held peaceable and adverse possession of the land in question for a period of more than 5 years, and more than 10 years before the filing of this suit, cultivating, using, and enjoying the same under deeds and memoranda of title, by and through their respective tenants, John Johnson and George Baptiste. The appellees in this case are, of course, claiming the land in controversy under the Colville title. The evidence shows that on the 15th of October, 1857, William T. Colville, a son and only heir of Thomas Colville, the original grantee of the Colville league, entered into a legal contract of lease with Thomas P. L. Kinard, as follows:

"Know all men by these presents: That I, Thomas P. L. Kinard, of the county of Polk, have this day rented of Wm. T. Colville of the county of Refugio and Orlando Dorsey the said Wm. T. Colville being the son and heir of the late Thomas Colville, the league of land known as the Colville league lying on the Big Sandy it being the same league that I have heretofore rented from the said W. T. Colville for the last four years and on which I now reside, and I undertake and promise the said Colville and Dorsey to keep the said league of land in good order and condition and to keep trespassers off of the same and to let such persons occupy the land as will hold under me as the tenant of said Colville and Dorsey and no others, and I also undertake to improve the aforesaid league to the best of my ability and to pay to the said Colville and Dorsey the sum of one dollars per year so long as this lease shall last and it is further understood that this lease shall be renewed yearly in the absence of which renewal through the oversight or other cause the same shall continue for longer period.

"In testimony whereof I have this day hereunto affixed my hand and seal this 15th day of Oct. 1857. Thomas P. L. Kinard.

his
"Witness: D D X Kinard.
mark

"Oct 15th 1859. The above lease is this day renewed on the same terms and conditions for two years and it not then renewed for one year longer. Thomas P. L. Kinard.

his
"Witness: D D X Kinard."
mark

This instrument was acknowledged by Thomas P. L. Kinard before the county clerk of Polk county on December 25, 1860, was filed for record December 26, 1860, and is recorded in Book I, page 105.

The evidence is undisputed that Thomas P. L. Kinard and his first and second wives, and some of his children have been in possession of this land ever since the execution of said lease, and up to the time of the filing of this suit. As to whether or not they were claiming adversely to the Colville title or in recognition of it was a sharply disputed question, and much evidence was introduced on the subject by both sides. Several of the sons of Thomas P. L. Kinard testified in the trial of the case to the effect that their father, and after his death their stepmother, as well as themselves, always recognized the Colville title to the land, and were holding under the claim which their father had. The appellants, on the other hand, introduced evidence to the contrary, and produced, among other things, a lease contract dated the ——— day of November, 1882, between Mary Kinard and the heirs of G. S. Thomas, appellants' predecessor in title, and also produced a certified copy of the pleadings in a suit of trespass to try title filed in the federal court at Galveston in 1885, by appellees' predecessors in title, against the said Mary Kinard, the widow of Thomas P. L. Kinard, and others, in which they allege that on January 1, 1883, the plaintiffs in that suit were lawfully seized and possessed of the Colville league; "that on the day and year aforesaid the said defendants and each of them entered upon said tract of land without any right or title, and ejected the plaintiffs therefrom, and ever since then and until now unlawfully withhold from plaintiffs * * * the possession thereof." In this suit Mary Kinard filed an answer, consisting of demurrers and plea of not guilty. She did not set up any adverse title by limitation.

On the question of repudiation of the Kinard tenancy, the court submitted the following question to the jury:

"Issue No. 10. After the death of Thomas P. L. Kinard in 1870, and up to January 1, 1883, did or did not Mary Kinard occupy the Colville land under the tenancy contract between Thomas P. L. Kinard and Dorsey and Colville? Let your answer be, 'She did,' or, 'She did not,' according as you find the facts to be."

The jury answered, "She did." This being a question of fact which has been settled adversely by the verdict of the jury, there is no basis for appellants' claim that the court should have entered judgment for them under the Kinard tenancy.

[5] Upon this finding of the jury and the other practically undisputed evidence it follows that when Thomas P. L. Kinard became the tenant of Colville and Dorsey on the Colville league, that relationship continued between the parties and their privies up to the filing of this suit, there being ample evidence to support the theory that Mary Kinard and some of the children of Thomas P. L. Kinard, while always residing upon the land, gave full recognition to the tenancy of Thomas P. L. Kinard, and never held or claimed the land adversely to the Colville title. Hence the Kinard family were the tenants of the appellees and their predecessors in title from the date of the establishment of the Thomas P. L. Kinard tenancy up to the filing of this suit. Mattfeld v. Huntington, 17 Tex. Civ. App. 716, 43 S. W. 53; Oury v. Saunders, 77 Tex. 278, 13 S. W. 1030; Fowler v. Simpson, 79 Tex. 611, 15 S. W. 682, 23 Am. St. Rep. 370; Flanagan v. Parson, 61 Tex. 302; Cobb v. Robertson, 99 Tex. 138, 86 S. W. 746, 87 S. W. 1148, 122 Am. St. Rep. 609.

[6] On the 17th day of March, 1884, John B. Johnson executed a lease contract to the heirs of G. S. Thomas, appellants' predecessor in title. This contract contained the following description of the land leased:

"4,428 acres of land, being the B. Escobeda league situated in Polk county, state of Texas, and for description reference is here made to the title to said league in the said B. Escobeda."

John B. Johnson testified that he lived on the land from the fall of 1877 up until the fall of 1887, and that he was on the land about 3 or 3½ years after he signed this lease. The contract also contained a provision that his tenancy commenced on October 25, 1882.

The court submitted to the jury the question of whether or not Johnson had peaceable and adverse possession of the land described in appellants' answer, cultivating, using and enjoying the same continuously for a period of five years as a tenant of Thomas' heirs, while they claimed under a

deed, or deeds, duly registered, describing the land and paying taxes thereon during said period, and the jury answered in the affirmative. An examination of the record discloses the fact that not until February 21, 1907, in a deed made by Seth Grosvenor to W. S. Carlisle, one of appellants' predecessors in title, was there any deed or lease in appellants' chain of title attempting to describe the land claimed by appellants in any other way than by the description given in the original grant, which description, as heretofore stated, placed said league in conflict with the Falcon, and in no manner in conflict with the Colville. The Gee field notes of the Escobeda, which place it in conflict with the Colville, although made in 1860, were not used in any of the leases or deeds in appellants' chain of title until the execution of the Carlisle deed above mentioned.

The object desired in requiring the registration of deeds under the plea of 5 years' limitation is to give notice to the owner of the land that persons in possession of it are claiming adversely to them, and, of course, this object will not be obtained unless the description of the land is such that it would indicate the land being claimed. Mistake in the name or number of the survey upon which the land may be situated, however, would not necessarily render the deed ineffective under the plea of 5 years' limitation, if there be cause for external objections, which definitely fix and designate the land, or if it be otherwise described so as to identify it with the land owned and claimed by the real and true owner. Randolph v. Lewis, 163 S. W. 647; Udell v. Peak, 70 Tex. 547, 7 S. W. 786; McCurty v. Locker, 2 Tex. Civ. App. 220, 20 S. W. 1109; Basham v. Stude, 128 S. W. 662; Stout v. Taul, 71 Tex. 438, 9 S. W. 329; Cleveland v. Smith, 156 S. W. 247; Griffin v. Houston Oil Co., 149 S. W. 567; Clifton v. Creason, 145 S. W. 323; Eastham v. Gibbs, 58 Tex. Civ. App. 627, 125 S. W. 372.

The field notes contained in the Johnson lease nor in any of appellants' recorded deeds during the continuation of the tenancy created by said lease do not embrace the land included in the Colville league, nor are they to be identified with the field notes made by the surveyor Gee, which field notes appellants adopt for the land claimed by them in their pleadings, under the 5 and 10 years' statutes of limitation.

Johnson further testified to having made another lease contract on September 1, 1909, with W. T. Carter & Bro. and Thompson-Tucker Lumber Company. This contract is not copied into the record. It appears from the transcript of the pleadings in this case that the present suit was filed on June 3, 1914, and therefore appellants could not perfect title by limitation under the 5 years' statute based on the latter lease. For the reasons herein stated, the Johnson tenancy did not perfect title by limitation to the land under the 5 years' statute.

[7, 8] On the 14th day of June, 1885, George Baptiste and others entered into a lease contract with the heirs of G. S. Thomas and others, in which the land leased is described as follows:

"The league above mentioned is thus described: Beginning at the northwest corner of the Lowry T. Hampton league; thence north 45 deg. east (most eastern corner of league) 5,000 varas, thence north 45 deg. west (most northern corner) 5,000 varas; thence south 45 deg. west (most western corner) 5,000 varas, thence south 45 deg. east (most southern corner) 5,000 varas, and for more particular description reference is made to the grant to Bartolo Escobeda on the 22d of June, 1835, and the field notes of said survey now shown by certified copy on file in the county clerk's office, Polk county. The survey was made by S. C. Hirams, March 31, 1835."

There is testimony in the record showing that Baptiste lived on a small tract of the Colville for a great many years, and that he cultivated 8 or 9 acres thereof continuously for 34 years. There is also evidence in the record that George Baptiste was also a tenant of appellees' predecessors in title under an agreement made with Judge Crosson, who, it is claimed, was acting for appellees' predecessors in title in making said lease contract. Issues 8 and 9, submitted to the jury by the court, cover the question of perfection of title by limitation by the appellants under the 5 and 10 years' statutes, based upon the Baptiste tenancy, and these two issues were answered in favor of the appellants. In issue No. 11 the court submitted to the jury the question of whether or not George Baptiste held possession of any part of the Colville league under any contract of tenancy with appellees' predecessor in title, and, if they found such a contract of tenancy, whether it had ever been repudiated. In answering this question, the jury found that such a contract of tenancy existed, and that it had never been repudiated.

The answers of the jury to these three questions are inconsistent and contradictory, and this is made the subject of attack under appellants' fourteenth assignment of error. However, under the view we take of appellants' limitation issues generally, such error is immaterial, and will not affect the disposition of this case; the jury having found that the Kinard lease executed to William Colville et al. in 1853 had not been repudiated by his widow, Mary Kinard, and the evidence being undisputed that some member of the Kinard family has lived on the Colville league continuously up to the time of filing of this suit, as the tenant of the true owners. Such possession of the tenants drew to the real owners the constructive possession of the entire survey, and therefore Johnson and Baptiste, conceding that the latter was the tenant of the appellants, and that all the leases and deeds in appellants' chain of title had used such description of the land affected as to actually place it in conflict with the Colville, were still trespassers upon

the land, and their possession must be restricted to that portion of the Colville survey actually reduced to possession. A trespasser entering under such circumstances can only disseize the true owner to the extent of the actual ouster. Whitehead v. Foley, 28 Tex. 284; Evitts v. Wroth, 61 Tex. 84; Bowles v. Brice, 66 Tex. 730, 2 S. W. 729; Houston Oil Co. v. Frazier, 161 S. W. 20; Village Mills Co. v. Houston Oil Co., 186 S. W. 785. Assignments of error 6, 7, 8, and 14, therefore, are overruled.

[9] We do not find any merit in appellants' contention that there was a partition of the league of land between Wm. T. Colville and Orlando Dorsey in 1858 under the conveyance of Colville to Dorsey of that date, and that the possession of Kinard was on that portion of the league owned by Dorsey, and that therefore the tenancy of Kinard could not affect the possession of Colville. Under all the conveyances between these two parties, including the conveyance of 1858 and the ones of 1862 and 1868, the interests conveyed are undivided interests, and do not describe any specific portions of the league. The recital in the power of attorney executed by Wm. T. Colville to Orlando Dorsey in 1860 that his (Colville's) interest was in the north half of the league is an ex parte statement on his part, and there is no evidence of acquiescence in this statement by Dorsey. The record does not show that Dorsey ever accepted the power granted in said power of attorney, or that he ever sold any interest in said league thereunder.

[10] We have deemed it unnecessary to go into appellees' proposition that they have also, in addition to the record title, acquired title by limitation under the 3 years' statute, by virtue of the Kinard tenancy, even conceding that there is a conflict in the Escobeda and Colville leagues, since we have found the record title to be in them.

The ninth assignment of error attacks the charge of the court in submitting special issue No. 11, that is the issue of tenancy of Baptiste with appellees' predecessor in title, because the proof is wholly insufficient to sustain it. The tenth assignment of error attacks the finding of the jury on this issue as contrary to the undisputed evidence. The eleventh assignment attacks the finding of the jury under said special issue No. 11 as being contrary to the great preponderance of the evidence, and on the ground that the jury was misled and actuated by passion and other improper motives. The twelfth assignment of error attacks the finding of the jury under said special issue No. 11, to the effect that the contract of tenancy had never been repudiated, as contrary to the undisputed evidence, and assignment of error No. 13 is that it was contrary to the great preponderance of the evidence. It follows from what we have said in passing upon the Kinard tenancy with the Colvilles, and upon appellants' limitation pleas generally, that these assignments are nugatory, and they are therefore overruled.

Appellants' fifteenth assignment is based upon the alleged error of the court in overruling its motion for judgment in their favor for the 141 acres of land described in the deed from T. P. Kinard to Matthews, and from Matthews to appellants, W. T. Carter & Bro., for the reason, as they claim, that the undisputed evidence shows that the appellants and those whose estate they have, have had possession thereof more than 5 years, under circumstances giving them title under the 5 years' statute of limitation.

The sixteenth assignment of error is based on the same proposition affecting their claim under the 10 years' statute of limitation.

[11] There appears in the record a deed from T. P. Kinard and wife to W. T. Carter & Bro., dated February 23, 1907, for the merchantable timber on 141 acres out of the Colville league, specifically described by metes and bounds. On the same day the same grantors executed a deed to J. H. Matthews for the same land as described in the foregoing deed, and Matthews on September 25, 1911, conveyed the same land to W. T. Carter & Bro. The evidence is undisputed that T. P. Kinard lived on this land for a great many years, and the evidence is probably sufficient to establish a limitation title thereto if the pleadings of appellants were in shape to support it. An examination of appellants' answer, in which the different statutes of limitation are pleaded, shows that there is no separate plea upon the part of appellants setting forth their claim to this particular tract of land. Appellants' plea of limitation covers the entire Escobeda league of land and a specific 320 acre tract included in what they claim to be the true boundary lines of the Escobeda. There is no attempt in the pleadings to set forth any claim to this specific tract of land under any of the statutes of limitation. Under such circumstances, the court did not err in refusing to enter judgment for said 141 acres. Houston Oil Co. v. Kimball (Sup.) 122 S. W. 533; Giddings v. Fischer, 97 Tex. 188, 77 S. W. 209.

Finding no error in the trial of this cause, the same is affirmed.

GALVESTON-HOUSTON ELECTRIC RY. CO. et al. v. JEWISH LITERARY SOCIETY. (No. 7173.)

(Court of Civil Appeals of Texas. Galveston. Dec. 23, 1916. On Motion for Rehearing, Jan. 26, 1917.)

1. EMINENT DOMAIN ⇐276—TAKING OF PROPERTY—ADDITIONAL SERVITUDE IN STREET—INTERURBAN RAILROAD.

The operation on existing street railroad tracks and subject to the city ordinances regulat-

HOGUE v. BAKER.

(Supreme Court of Texas. May 23, 1898.)

MANDAMUS — WHEN GRANTED — PUBLIC LANDS — FILING FIELD NOTES—SCHOOL LANDS.

1. A writ of mandamus must be reasonably necessary to the enforcement of the right which is sought to be secured, and will not be allowed if there be another adequate remedy.

2. Under Rev. St. 1895, art. 4166, prescribing that the field notes of every survey made in acquiring homestead shall be filed in the general land office within 12 months, mandamus is the proper remedy to compel the land commissioner to receive and file such field notes.

3. Under Const. art. 7, § 2, setting apart one-half of the public domain for the school fund, where the legislature had permitted the appropriation of one-half of the undivided public domain, the remaining one-half belongs equitably to that fund, and is not subject to settlement under laws providing for homestead donations.

Original application by R. S. Hogue for a writ of mandamus to compel the commissioner of the general land office to receive and file the field notes of a survey made for acquiring a homestead donation. Writ denied.

E. T. Moore, D. W. Doom, V. C. Moore, and D. H. Doom, for petitioner. M. M. Crane, Atty. Gen., and T. A. Fuller, Asst. Atty. Gen., for respondent.

GAINES, C. J. This is an original application to this court for a writ of mandamus to compel the commissioner of the general land office to receive and file the field notes of a survey made on behalf of the relator for acquiring a homestead donation under chapter 8 of title 87 of the Revised Statutes of 1895. The relator alleges, in substance, that he had settled upon a tract of 160 acres of land in Scurry county for the purpose of acquiring a homestead; that it was unappropriated public domain; that he had made the required application and affidavit, and caused the land to be surveyed, and had returned the field notes of the survey, duly certified, to the general land office, but that the commissioner had refused to receive and file them. The respondent demurred to the petition, and also answered, alleging, in substance, that the land in controversy was a part of the public domain, reserved by the special act of the legislature entitled "An act to adjust and define the rights of the Texas and Pacific Railway Company within the state of Texas, in order to encourage a speedy construction of a railway through the state to the Pacific Ocean," passed May 2, 1873, and that by virtue of that act, and of section 2 of article 7 of the constitution, it was not subject to appropriation as a homestead donation; and also that, of the public domain existing at the time the constitution of 1876 went into effect, largely more than one-half had been taken up on certificates and by settlers as homestead donations, and had been otherwise disposed of by the legislature for various purposes other than for the benefit of the general free school fund of the state, and that by virtue of the section of the constitution above cited all the remaining unappropriated public domain of right belonged to that fund. The petitioner demurred to the answer, and also filed a general denial. But upon the hearing, by agreement between the parties, the case was submitted for final determination upon the demurrer to the petition and answer. We understand by the agreement that we are to dispose of the case as if the facts alleged in the answer were formally admitted to be true.

The first question which presents itself is as to the remedy which is sought in this case. It is urged in behalf of respondent that, even if the relator is entitled to have his field notes filed, resort cannot be had to the writ of mandamus. But we are of the opinion that this contention cannot be maintained. It is true that ordinarily the writ of mandamus must be the last resort, and it will not be allowed if there be another remedy which is adequate and complete. It must be reasonably necessary to the enforcement or establishment of the right which is sought to be secured. Association v. Madden (Tex. Sup.) 44 S. W. 823. In the chapter of the Revised Statutes which provides the method by which a homestead donation may be acquired, it is prescribed that "the field notes of every survey made under the provisions of this chapter, after being duly certified, mapped and recorded, shall be returned to and filed in the general land office within twelve months after the date of the survey aforesaid." Rev. St. 1895, art. 4166. It may be that, when the settler has returned his field notes in accordance with the requirements of this article, the failure of the commissioner to accept and file them until after the lapse of the 12 months would not destroy his inchoate title. But it seems to us that the purpose of the statute is twofold,—one to acquaint the commissioner with the fact that the necessary steps have been taken to appropriate the land, so that it may be designated upon the maps in his office as segregated from the public domain; and the other to preserve in that office the evidence of the settler's right. When filed in the general land office, the field notes, with the plat and certificate, become archives of that office, and, under our statutes, a certified copy thereof may be used as evidence in all the courts. It furnishes a convenient method of proving, not only that the survey has been made, but also that the field notes have been returned to the land office in the time prescribed by law. It follows that the right to have the field notes filed in the general land office is a valuable privilege, and one which, in our opinion, should in a proper case be enforced by the writ of mandamus.

This brings us to the main question in the case: Was the land which was settled upon and surveyed subject to appropriation as a homestead donation? In the view we take of the case, we find it unnecessary to deter-

mine whether or not the fact that it was a part of the Texas & Pacific Railway reservation affects the question. It being an admitted fact that largely more than one-half of the public domain as it existed at the time our present constitution took effect had been set apart and otherwise disposed of for purposes other than for the benefit of the general school fund, it is insisted, on behalf of the respondent, that the remainder is no longer subject to settlement under our laws which provide for homestead donations. On the other hand, the relator's contention is, in substance, that since the constitution not only declared that one-half of the public lands of the state should constitute a part of the school fund, but at the same time provided that a homestead should be given to such actual settlers upon the public domain as owned no homestead, such settlers have a right under the law to locate upon any of the unappropriated public domain so long as any part thereof remains which has not been expressly set apart by the legislature for the benefit of the public schools. In support of this position, counsel rely upon the decision of this court in the case of Galveston, H. & S. A. Ry. Co. v. State, 77 Tex. 367, 12 S. W. 988, and 13 S. W. 619. Although there may be expressions in the opinion in that case which, considered without reference to the question before the court, may seem to support the position of counsel, the decision of the point here made was not necessary to a determination of the question there under consideration. There certificates for land had been issued to the railroad company after the constitution went into effect. They had been located and surveyed in alternate sections, as required by law, and one of the two surveys made by virtue of each certificate had been set apart to the school fund and the other to the company. The purpose of the suit was to recover for the school fund an undivided half of the surveys which had been set apart to the company. The contention of the attorney general in that case is thus stated in the opinion of the court: "It is contended by appellee 'that by the constitution of 1876 there was unconditionally appropriated to the public free schools an undivided one-half of the unappropriated public domain within the state at the time said constitution was adopted, in addition to such alternate surveys as should thereafter be reserved from grants to corporations.' It is insisted that the expression 'one-half of the public domain' must be given all the force that the words imply, unrestrained and unmodified by what precedes them in the same section or by what is found in other articles of the constitution. It is insisted that that clause in the constitution is self-executing, and had the immediate effect of appropriating to the school fund an undivided half of the then unappropriated public domain that was not otherwise appropriated by other provisions of the same constitution." And again the court say: "The attorney general in his argument filed in this court says: 'As one-half of the public domain was unconditionally appropriated to the schools, appellant's title to any of the land might be seriously questioned, for its surveys were made with notice that no partition had ever been made so as to give the school fund its part, and that, therefore, none of the lands it located were in fact or in law unappropriated.' If the state is content, the appellant certainly ought to be." These extracts clearly show the question which was involved in that case, and the propositions which the court was called upon to consider. In answering the contention made in behalf of the state, the court announced the proposition that section 2, of article 7, of the constitution, in so far as it made one-half of the public domain a part of the public school fund, was not self-executing, and that it was not intended that there should be a partition in gross between the state and the school fund before any lands were subject to be located by virtue of certificates issued or to be issued, or by settlers for the purpose of acquiring homesteads. In the proposition that the manner of segregating the interest of the school fund in the lands was left to the legislature—in other words, that the provision which made a half of the public domain a part of the school fund was not fully self-executing, and that the legislature was not bound to make a partition before any part of the public lands could be appropriated—we fully concur. Neither do we see any reason to doubt the correctness of the court's conclusion upon the question involved in that case.

Let us recur, then, to the constitutional provision which we are called upon to construe. The section of the constitution under consideration reads as follows: "All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the state out of grants heretofore made or that may hereafter be made to railroads, or other corporations, of any nature whatsoever; one-half of the public domain of the state; and all sums of money that may come to the state from the sale of any portion of the same, shall constitute a perpetual public school fund." Const. art. 7, § 2. The plain purpose of the section is to declare what shall be the school fund. Lands theretofore set apart to that fund are preserved to it, and it is further declared that one-half of the public domain shall constitute a part of the constitutional dedication. In our opinion, it fixed the right of the school fund in one-half of the unappropriated public domain, but left the legislature, as we have previously intimated, with extended authority over the segregation of that interest by partition of the lands or of their proceeds. It gave to the school fund the right to an equitable half of the

public domain, and in so far the provision executed itself. The mode of partition or of the segregation of that half, except as to alternate certificates granted to railroad companies and other corporations, was left wholly to legislative control; and it seems to us that, if the legislature had made a partition or provided a mode of segregation, its action would have been conclusive. We see no good reason why value should not have been the guide in making a division, and, since this involved the determination of a question of fact, its action could hardly be the subject of review by the courts, unless, perchance, it should appear obviously and grossly inequitable. The fact that it was provided that, by virtue of every certificate granted to railroad or other corporations, two sections of land should be surveyed, one of which should be set apart to the schools, evinces that a division as a whole was not contemplated. The segregation could be accomplished by successive divisions in part or by sales of parcels successively and a division of the proceeds. In many of the acts which were passed after the constitution went into effect, and which authorized the appropriation of public domain, provision was made for a division pro tanto. This was the case as to grants to railroad companies and other corporations, as was clearly required by the mandate of the section in question. It was also the case as to the act which granted certificates for land to disabled Confederate soldiers. The act of July 14, 1879, which authorized a sale of the unappropriated lands in certain counties of the state, directed that the proceeds of the sales made thereunder should be applied, one half to the school fund, and the other half to the payment of the public debt. It was not so, however, with respect to the veteran certificates, which were authorized to be issued by the act of April 26, 1876. Nor has the legislature at any time undertaken to make compensation to the school fund for the lands appropriated by virtue of the outstanding certificates, which were revived by the constitution, or those appropriated to the other special objects provided for in that instrument, such as the lands for building the capitol and those taken up by settlers as homestead donations.

It follows from what has been said that, in our opinion, where the legislature has taken affirmative action, and has provided pro tanto for the segregation of the interest of the school fund, its action is final. But we do not think that the same can be said as to such appropriations as were passively permitted without making such provision. In view of the plain mandate of the constitution, which declared one-half of the public domain a part of the school fund, we cannot think that it intended, at least as to the veteran certificates and those revived by the constitution itself, that the school fund should not be compensated for the lands that should be appropriated thereby from that portion of the public domain which should remain after such appropriation. It has never been understood that, in granting a land certificate, the state warrants that there is public land to which it may be applied. When the public domain is exhausted by other certificates or for other purposes, a certificate becomes practically a nullity. Therefore it seems that the idea upon which the legislature has proceeded in granting veteran certificates, and in failing to provide any method by which the school fund should get a corresponding part of the public lands upon the location of those and other certificates of a like character and upon settlers' locations, was that upon each appropriation the school fund's interest should remain in the unappropriated and undivided part, so that, upon each appropriation of the character under consideration, the quantity to which the school fund was entitled in the remainder continued precisely the same as it was before such appropriation. If we are not mistaken in our conclusions, it results that, when the legislature has permitted the appropriation of one-half of the undivided public domain without setting apart to the school fund its half, the remaining half belongs equitably to that fund.

We do not concur in the proposition that, because the constitution gave the right to persons without homesteads to acquire by settlement a homestead donation, the right continues so long as any part of the public domain remained not specifically set apart to the school fund and not otherwise appropriated. The right of acquiring land as a homestead donation was necessarily limited. The lands upon which the right was to be exercised were not inexhaustible, and, upon the exhaustion of the lands subject to such appropriation, the right of necessity ceased. It could not have been intended that the half of the public lands which was made a part of the school fund should be subordinate and subject to the right of homestead donation. To hold that the homestead must be first taken out, and that one-half of the remainder should then belong to the school fund, would be practically to rule that the school fund should take nothing, and would make the plain and emphatic language of section 2 of article 7 an empty declaration. Since there will always be persons without homesteads, the result of that holding would be that all the unappropriated lands should be held for that purpose. In our opinion, it is therefore clear that one half of the public domain, without reference to the right of acquiring homestead donations, was made a part of the school fund, and that when the other half was exhausted the right of such acquisition ceased.

We have not found it necessary to determine whether it was the intention to appropriate one half of the whole of the public domain, as it existed at the time the constitu-

tion went into effect, or whether it was the half of what should remain after setting apart the 3,050,000 acres for building the capitol and the 1,000,000 for the support of the university, as provided for in the constitution itself, that was appropriated. If the school fund was entitled to only a half of the remainder after subtracting these lands, still, according to the statements made and the figures exhibited in the answer of the respondent, there is not enough of the public lands left unappropriated to make good to the school fund its half either in quantity or value. We are of the opinion that as to the certificates which were revived by the constitution it was not the purpose to give them any preference over the school fund, or to permit them to be located at its expense. The lands located by virtue of these certificates, as we think, were to be taken out of the half which the state retained. When the constitution took effect, the public lands amounted approximately to 75,000,000 of acres, and it is to be presumed that this fact was known to the convention which framed that instrument. One-half of this quantity was more than sufficient to satisfy the outstanding certificates, to encourage the construction of railroads and other internal improvements, and to meet every demand made upon it by the constitution or by the legislature under its authority.

Having reached the conclusion that the half of the public domain not dedicated to the school fund has already been exhausted, and that what remains belongs equitably to that fund, it follows that the survey in controversy is not subject to location for the purpose of acquiring a homestead donation. The writ of mandamus is therefore refused.

EBERSTADT et al. v. STATE ex rel. ARMISTEAD.

(Supreme Court of Texas. May 30, 1898.)

REMOVAL OF COUNTY COMMISSIONERS — MISCONDUCT — MISJOINDER — TRIAL — DEMURRER TO EVIDENCE — MOTION TO INSTRUCT JURY.

1. In a proceeding in the name of the state to remove several county commissioners from office, under Const. art. 5, § 24, and Rev. St. 1895, art. 3531, providing that county officers may be removed from office by the judges of the district court for incompetency, official misconduct, etc., they may be joined in the same action under allegations that they conspired together in the acts complained of, and alleged as grounds for removal.

2. A motion asking the court to peremptorily instruct the jury to return a verdict for the defendants after the state had introduced its evidence, and with which it formally joined issue, should not be treated as a demurrer to the evidence, for such a motion does not have the effect to withdraw the case from the jury; and, if the motion is overruled, the trial must proceed as if it had not been made.

3. The court could not, where the evidence for the state was sufficient to sustain the allegations of official misconduct, but was not conclusive and would justify a contrary finding, after a motion to peremptorily instruct the jury to return a verdict for the defendants had been overruled, give a peremptory instruction directing a verdict against the defendants.

Certified questions from court of civil appeals of Fifth supreme judicial district.

Proceeding by the state, on the relation of J. A. Armistead, against E. Eberstadt and others, to remove them from office. From a judgment for removal, defendants appealed to the court of civil appeals, which certified questions for an opinion.

L. S. Schluter, J. H. Culberson, R. R. Taylor, T. D. Rowell, and Geo. T. Todd, for appellants. Sheppard & Jones and Armistead & Prendergast, for appellee.

BROWN, J. The court of civil appeals for the Fifth supreme judicial district certified to this court the questions copied hereafter, with a statement of the pleadings and proceedings, of which we make the following summary: J. A. Armistead, county judge of Marion county, Tex., instituted this proceeding in the district court of that county, to remove from their respective offices, as county commissioners of that county, E. Eberstadt, J. R. Hedges, and J. D. Little. The election and qualification of each of the defendants were properly averred. It was alleged that at the same election John M. Harper was elected to the office of county treasurer of Marion county. The petition charged that the defendants, in their official capacity, in the month of December, 1896, conspired together and with the said John M. Harper to convert to the use and benefit of the said Harper all the money which was then in his hands, and all that might thereafter come into his hands, as county treasurer of the said county, by means of certain official acts to be done and performed by the defendants acting together as county commissioners. The petition set out the different things which it was charged the defendants had agreed with the said Harper to do officially in order to enable him to convert the said funds to his own use, each act charged requiring for its accomplishment the joint official action of all of the defendants. The defendants answered by general demurrer, special exceptions, and a general denial, with a special denial of all the allegations in the petition. We copy the remainder of the statement and the questions propounded, as follows:

"Upon the close of the evidence of the plaintiff, the defendants, without having offered any evidence, filed the following: 'Now come the defendants, after the state had closed its evidence, and move and pray the court to direct the jury to return a verdict for the defendants: (1) Because no willful, illegal, or corrupt conduct is shown, or evidence tending to show it; (2) because no conspiracy is shown, or evidence tending to show any conspiracy or combination; (3) because no material issue of fact remains or is shown requiring the action of a jury in this

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IN TWO VOLUMES

Volume I

AUSTIN
The Texas State Historical Association
1952

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At the end of World War II most of the aircraft factories and supplemental equipment companies were converted to peace time production on a much smaller scale of operation. New schemes for utilizing the equipment which was largely designed for working aluminum included prefabricated houses, household furnishings, and industrial supplies. Chance-Vought, one of the four divisions of United Aircraft, Incorporated, took over the North American plant in May, 1949, for the production of and experimentation with jet planes. Various manufacturing companies such as the Texas Engineering and Manufacturing Company were organized to utilize the facilities of one of the world's largest centers of aircraft production.

BIBLIOGRAPHY: *Texas Almanac* (1940-1947); Files of the Bureau of Business Research, University of Texas.

Airlines in Texas. *See* Aviation in Texas.

Airville, Texas. Airville, in northeastern Bell County, listed two businesses in 1933 and in 1944 was the location of one business, a rural school, and several dwellings.

Ais Indians. The Ais (Ayis, Ays, Eyeish, Ayish), an East Texas tribe associated with the Hasinai [qv] confederacy, spoke a language different from the Caddo [qv] tribes of the region. For this reason, it has been suggested by some authorities that the Ais represented a culture older than the confederacy known to the French and Spanish. Their early home was on Ayish Bayou between the Sabine and Neches rivers. In 1717 Nuestra Señora de los Dolores de los Ais Mission [qv] was founded for them in the vicinity of present San Augustine. According to historical accounts the Ais were distrusted alike by the Caddo and by French and Spanish authorities. In the later part of the eighteenth century they were placed under the jurisdiction of the officials residing at Nacogdoches. They were later placed on the Wichita reservation in Oklahoma.

BIBLIOGRAPHY: F. W. Hodge (ed.), *Handbook of American Indians*, I (1907).

Margery H. Krieger

Akasquy Indians. The Akasquy Indians, an unidentified tribe, possibly Caddoan,[qv] were visited by Rène Robert Cavelier, Sieur de la Salle [qv] in 1687, when the Indians were living near the Palaquesson Indians [qv] near the lower Brazos River.

BIBLIOGRAPHY: F. W. Hodge (ed.), *Handbook of American Indians*, I (1907).

Margery H. Krieger

Akron, Texas. Akron, in central Smith County, is a station on the St. Louis and Southwestern Railroad five miles northeast of Tyler.

Alabama-Coushatta Indian Reservation. The Alabama-Coushatta Indian Reservation occupies a 4,351-acre tract in Polk County, seventeen miles east of Livingston, twenty miles west of Woodville, and ninety miles northeast of Houston. This is the pine timber region, with the Big Thicket [qv] lying just to the south. It is a section of rolling clay and sand hills, cut in a general north and south direction by three streams: Mill Creek on the east, Bear Creek in the center, and Big Sandy Creek on the west, all three converging into Big Sandy proper a short distance south of the reservation. The land is tax-free and inalienable; title is vested in the tribe.

The Alabama-Coushatta Indians [qv] had migrated into Texas by 1807. In 1831 the Coushatta, numbering 426, lived in two villages on the east bank of the Trinity River. The Alabama were situated on the west bank of the Neches in three small villages. In 1840 a relief act for the Indians passed by the Fourth Congress granted two leagues for the Alabama, including the Fenced-In-Village, and two leagues for the Coushatta, taking in the Batista and Colete [qv] villages. After the annexation of Texas, although the United States assumed responsibility for the Indians within the state, the Alabama-Coushatta remained under the protection of the state government.

Largely because of efforts of General Sam Houston, the state in 1854 purchased 1,280 acres of heavily timbered land for the Alabama Indians, paying $2.00 per acre. The Indians, 330 in the tribe, were settled on this reserve in 1854 and 1855. Upon Houston's recommendation, the legislature in 1856 granted to the Coushatta Indians a tract of 640 acres, but this land was never located. Thereafter, gradually, the Coushatta came to live with the Alabama under the combined authority of several acts of the legislature. Settled in their reserve, the Indians were prosperous, and when their crops were gathered, they went back to their Indian life of hunting-parties and festivities. They were fond of ball sports, dances, and games. In the *Texas Almanac* for 1861 an anonymous writer who lived among the Alabama for twenty years, described them as a happy people, kind, warmhearted and gay, docile and confiding, happy in their domestic relations, and unlimitedly hospitable.

During the Confederate period, 1861-1865, acts were passed by the legislature fixing the salaries of Indian agents and making appropriations. After the war the federal government was considered responsible for the Indians and from time to time appropriated money for improving living conditions on the reservation. In 1918 Congress appropriated $5,000 for education. In 1921 it appropriated an additional $5,000, but only $1,432 was expended. The third appropriation of $3,500 in 1924 marked the beginning of annual federal appropriations, which since that time have amounted to $4,500 a year. In 1928, an additional area of 3,071 acres was added by federal appropriation, bringing the reservation to its present total of 4,351 acres. In 1930 the state legislature made appropriations for improvements on the reservations, including payments for medical care and for several buildings. The school each year also receives its proportion of the state school fund, and in 1934 the reservation was made an independent school district. State authorities instruct the Indians in the proper cultivation of the soil, care of livestock and poultry, gardening, horticulture, soil and timber conservation, and canning. A doctor and dentist visit the reservation one day each week. A graduate nurse lives on the grounds and conducts the hospital. The Indians have several good buildings, a clinic, and a large church erected on the old dance and ball grounds of the village.

In 1945 approximately 360 Indians were grouped into eighty families. Sixty-two families lived on the reservation and eighteen lived outside but were entitled to many of the privileges of the reservation. Governmental affairs were conducted by a general council which was comprised of the Indians themselves, operating under their own constitution and by-laws. The superintendent of the reservation acted as adviser to the council. In 1945 Sylestine Cooper was chief of the tribe.

The federal government provides partial aid for the Indians who desire to attend college. Young women of the tribe who have proper qualifications are often employed as teachers in the Indian school. In 1944 the children above the third grade were transferred to the Big Sandy school.

The following superintendents served as heads of the reservation while the Board of Control was in charge: Clem Fain, Hobby Galloway, Ralph Howe, J. E. Farley, Rex Corley, and J. B. Randolph. In 1950 the reservation was under control of the Board for Texas State Hospitals and Special Schools; C. H. Jones, Jr., was the superintendent.

BIBLIOGRAPHY: Harriet Smither, "The Alabama Indians of Texas," *Southwestern Historical Quarterly*, XXXVI (1932-1933); Mary Donaldson Wade, "The Alabama Indians of East Texas," *Biennial Report of the Texas State Board of Control* (1936).

James W. Markham

Alabama-Coushatta Indians. The Alabama-Coushatta Indians are classed as members of the Muskhogean linguistic stock, together with such tribes as the Choctaw, Creek, and Chickasaw. Historically, they appear first in 1541, when Hernando de Soto attacked the village of Alibamo in the area which became northwestern Mississippi. In the same year he visited a Coushatta village on the Tennessee River. For the next 160 years there is no record of the two tribes, but sometime during that period they migrated eastward, for they emerge in 1702 upon the upper course of the Alabama River as enemies of the French. By 1717, however, the French had won their support, both tribes co-operating in the construction of Fort Toulouse on the Coosa River near the Alabama village. Peace reigned between the French and the Alabama until the close of the French domination in 1763, when the area was ceded to Great Britain.

By the turn of the century, a four-way split of the Alabama tribe had occurred: one group remained on the Coosa, a second established several villages in Louisiana, a third settled in the Creek Nation in the Indian Territory, while a fourth moved across the Sabine River into Texas, settling on the Neches River. During all these movements, the Coushatta followed the Alabama. In 1807 they also moved into Texas, locating their village on the Trinity River.

In 1836, just before the battle of San Jacinto, the Alabama went into Louisiana but returned to Texas after the War of Independence had been won. In their absence, white settlers had taken over their lands. Homeless, the Indians became wanderers for the next sixteen years.

The Alabama and Coushatta have been closely related all through their known history, living in adjacent areas and intermarrying, although separated at times because of the exigencies of escape from white encroachment. In 1854 the state of Texas finally purchased and gave to the Indians a tract of 1,280 acres which formed the initial unit of the present Alabama-Coushatta Indian Reservation. The Alabama successfully resisted all subsequent attempts at removal and together with a few Coushatta were still in possession in 1950.

Culturally, they have always been one people, in spite of minor differences. Their languages are mutually understandable, although many differences occur in individual words. The closest tie has been that of blood, as intermarriage has been the rule since earliest times. Until about 1840 the Alabama-Coushatta used aboriginal Indian names, but because of the difficulties which arose over legal descent and property ownership, the Indians gradually adopted white names, the most common source being white neighbors, friends, or benefactors. The change is highly significant from the point of view of cultural patterns, as it marks the disintegration of certain aboriginal culture traits such as the matrilineal descent and inheritance pattern, matrilocal residence, and clan affiliation and allegiance.

In 1940 research by the University of Texas revealed twenty-four different family names on the reservation, and lines of descent were established for five generations, with varying degrees of Alabama, Coushatta, Mexican, Choctaw, and white blood present. The fifth generation of one family showed the following admixture: 21/32 Alabama, 8/32 Coushatta, 2/32 Mexican, and 1/32 Choctaw. Another family showed the following: 8/16 Alabama, 7/16 Coushatta, and 1/16 white.

Only since 1933 has a record of vital statistics been kept. For the period, 1933–1940, the University of Texas study showed a 14 per cent increase in population, with a total of 340 residents in 1940. The birth rate for that period was so high that if the rate of increase were to continue, the population would double in fifty years by natural increase alone. The modern pampering of the mother in childbirth is lacking among these Indians, delivery often being accomplished by the mother without assistance. There is no record of abortion, infanticide, or malformed births. Neither is there any record of miscarriages or premature births for the period studied.

There gradually emerged after the settling of the reservation three distinct community and personality groups. The first, or in-group, was the conservative, dominant Alabama group headed by the old men of the leading Alabama families. They were the leaders in the migration from the southeast, were the most influential in securing the location, and were the most typical churchmen and purveyors of the moral code. The second, or out-group, was made up chiefly of Coushatta, living for the most part on the outside of the reservation, more individualistic and less co-operative than the Alabama. The third group was composed of the younger men, who have traveled considerably among other Indian groups and had greater contact with white social and governmental agencies. Better-educated, more liberal-minded, this third group sought to reconcile conflicting interests. The three groups have remained fairly constant. The University of Texas study in 1940 listed sixty-three homes, with one unoccupied, or a total of sixty-two family groups. Fourteen of these homes were outside the reservation, occupied for the most part by members of the mixed Coushatta group.

With the increase of white contact, especially with the Presbyterian missionaries who, although they must live outside the reservation, have served the people since 1881, the old forms of life have more and more given way to the practices of white American civilization. With the exception of some of the very oldest members and the youngest children, all of the group are bilingual, learning the Indian tongue first and then English. The adoption of the white man's way of life is also reflected in housing, clothing, food, farming and gardening, education, the singing school, newspapers and

magazines, transportation, and medical care and hospitalization.

Yet there persist decidedly Indian traits. These may be classed as follows: the Indian language, physical features, group action, influence of superstition and magic, the Indian doctor (both male and female), the use of native Indian medicines, persistence of clan groupings, certain social customs as in courtship and marriage, a strong personal relationship and identification with nature, persistence of witchcraft with definite methods of determining the witch, detached elements in foods, handicrafts, and kinship terminology, persistence of the "typical" Indian pattern of stoicism, reserve, and silence.

Perhaps the most striking of these Indian traits is that of group action. Group deliberation absolves all personal differences. Slow, patient discussion eliminates these differences, reconciles opposing views, and the final decision on any question reflects a unanimous group opinion. Following such decision, action is usually immediate and efficient. Tasks undertaken by group action have been noted as follows: well-drilling at the various homes, cutting wood for winter supply at school and church, harvesting community crops, clearing a fire lane around the reservation fence, and manufacturing of mattresses in the school gymnasium by the women (with a male foreman).

Sincere devotion to the church is another unifying force. Sunday finds 90 per cent of the village residents attending services. Consciousness of the fact that they are Indians is another cementing bond. The land is also a strong cohesive force. The original reservation, awarded in 1854, inalienable forever, and continuously occupied since that time, has assumed a tremendously vital part in their community consciousness. Clan affiliation is still recognized, each member of the tribe being a member of one of eleven clans: alligator, bear, beaver, deer, grandaddy long legs, tiger, wildcat, wind, salt, turkey, and wolf; these clans do not function as social units.

Many of the younger Indians have attended college in Texas and Oklahoma. Several have received degrees. Although quite a few of them have secured jobs off the reservation, it still remains as home, and all members of the tribe assemble there for major reunions.

Variant spellings of the Alabama name are found in literature: Alibamu, Alibamo, Alibanio, etc. When conversing in their own language, the Alabama pronounce the name as Holbamo. Variant Coushatta spellings are: Colchattas, Coosadas, Coosawda, etc. The Indians themselves pronounce the name as Koasati. The two tribes are legally united as an administrative unit so far as their relations with the United States and the state of Texas are concerned. *W. E. S. Dickerson*

Alabama Creek. At least two Texas streams are known as Alabama Creek. Arranged in alphabetical order according to the counties in which they head, they are:

(1) Alabama Creek (also known as Village or Big Sandy Creek), rising about three miles southeast of the town of Moscow in Polk County and flowing southeasterly approximately sixty-three miles to empty into the Neches River about two miles east of the town of Fletcher in Hardin County. The stream has been known in Polk County both as Big Sandy and as Alabama as far back as 1835. In Hardin County the stream is better known as Village Creek.

(2) Alabama Creek, rising in two main branches in east central Trinity County and flowing easterly into the Neches River at the boundary between Trinity and Polk counties. According to old settlers the stream received its name because settlers from Alabama located on the northern branch while Alabama Indians [qv] were living on the southern branch.

Alabama Grays. *See* Mobile Grays.

Alabama Indians. *See* Alabama-Coushatta Indians.

Alabama Red Rovers. *See* Red Rovers.

Alabama Trace. The Alabama Trace, an Indian road sometimes used by the pre-Republic settlers, extended from the lower Coushatta River through the "old" Alabama Indian village in modern Polk County northeast across the Angelina River to the Old San Antonio Road [qv] near Nacogdoches. An alternate route extended from the Alabama village south of the Neches River northward along Atoya Creek until it also joined the Old San Antonio Road.

BIBLIOGRAPHY: Ellen Marshall, Some Phases of the Establishment and Development of Roads in Texas, 1718-1845 (M. A. thesis, University of Texas, 1934).

Alaman, Lucas. Lucas Alaman, Mexican statesman and historian, was born in Guanajuato on October 18, 1792. He served as a delegate to the Spanish Cortes in 1811 and 1812, returning to Mexico in 1823 after the downfall of Agustín de Iturbide.[qv] Alaman was said to be responsible for Mexico's passing of the Law of April 6, 1830,[qv] which was intended to stop American immigration into Texas. Author of *Historica de Mejico* (1849–1852), he also published historical essays on Mexican colonial history and numerous political articles. Alaman died in Mexico on June 21, 1853.

BIBLIOGRAPHY: *Encyclopedia Americana*, I (1944).

Elmer W. Flaccus

Alamito Creek. At least two Texas streams are known as Alamito Creek for the Spanish word meaning small cottonwood. Arranged in alphabetical order according to the counties in which they head, they are:

(1) Alamito Creek, rising near the county line between Jeff Davis and Presidio counties about twelve miles north of the town of Marfa and flowing south across Presidio County and into the Rio Grande about six miles southeast of the town of Presidio. This stream, near present Marfa, has been identified as a camp site on the route of the expedition lead by Antonio de Espejo [qv] in 1583.

(2) Alamito Creek, a tributary of Salado Creek in northeastern Webb County.

Alamo, Texas. Alamo, in the irrigated area of southern Hidalgo County on the Missouri Pacific Railroad, was incorporated in 1924 and named for the Alamo Land and Sugar Company. A shipping point for vegetables and citrus fruits, Alamo had a population of 1,944 in 1940 and of 3,017 in 1950.

Alamo, Battle of. *See* Alamo, Siege and Fall of.

Alamo, Flag of the. No official document or statement is available concerning the flag of the Alamo, and there is discrepancy among historians in referring to it. Some writers maintain that the flag used by William B. Travis [qv] and his men was that of Coahuila and Texas—red, white, and green—with two blue stars on the white bar. Other writ-

8-1-1989

COPY

The State of Texas

Austin, Texas

School Land Board Resolution

WHEREAS, pursuant to Tex. Rev. Civ. Stat. Ann. art. 5421c-2 (Vernon's Supp. 1989) and Title 24, §736 U.S.C., trust responsibility for the Alabama-Coushatta and Tigua Tribes was authorized to be transferred from the State of Texas to the United States of America; and

WHEREAS, by Executive Order No. WPC-89-13, dated July 25, 1989, all of the lands and improvements thereon held in trust by the State of Texas for the benefit of the Alabama-Coushatta Tribe have been transferred from the State of Texas to the United States of America; and

WHEREAS, by Executive Order No. WPC-89-14, dated July 25, 1989, all of the lands and improvements thereon held in trust by the State of Texas for the benefit of the Tigua Tribe have been transferred from the State of Texas to the United States of America; and

Polk. Co. Sketch File 44

counter 34335

WHEREAS, it has been the duty of the School Land Board to lease said lands for mineral exploration and development and to grant easements upon such lands for such uses as are permitted by law and that such responsibility is to be transferred to by authority of the above cited statutes and Executive Orders to the United States of America;

WHEREAS, it is the desire of the School Land Board that such transfers be made in an orderly fashion and with the least possible disruption to the operations of the tribes and of mineral lessees and holders of easements granted by and through the School Land Board and its predecessors;

THEREFORE, BE IT RESOLVED, that the School Land Board of the State of Texas hereby ratifies and confirms the transfer of the lands of the Alabama-Coushatta and Tigua Tribes from the trusteeship of the State of Texas to the trusteeship of the United States of America together with the beneficial interest and all rights, benefits, duties and obligations accruing under each and every of the outstanding oil, gas and mineral leases as the same may appear of record and under all easements as the same may appear of record; and,

Be it further RESOLVED that the School Land Board requests that the Commissioner of the General Land Office of the State of Texas and his staff take all appropriate and necessary steps to ensure the prompt and orderly transfer of such assets to the United States of America as trustee to said tribes, including the preparation and delivery of certified copies of each of the

records affecting the said mineral and surface estates that are maintained in the Archives of the General Land Office together with an appropriate report as to the status and condition of each oil and gas lease and easement, and notifying each oil and gas lessee and holder of any easement of the transfer, and to extend to the Department of the Interior and other agencies of the United States Government and to the administration and leadership of each of the tribes the full cooperation and assistance of the School Land Board, the Commissioner, and the staff of the General Land Office now and in the future upon any matter affecting any oil, gas or mineral lease and any easement affecting the lands transferred.

Dated this 1st day of August, 1989, at Austin, Texas.

Jack Giberson
Acting Commissioner and Chief Clerk
of the General Land Office
Acting Chairman, School Land Board

Attest:

Linda K. Fisher
Linda Fisher, Secretary
of the School Land Board

counter 34337

M-80579 (35)
School Land Board
Resolution
8-1-89

GENERAL LAND OFFICE, AUSTIN, TEXAS AUG 30 1989

I, GARRY MAURO, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof is a true and correct copy of the original of this instrument now on file in this office together with all the endorsements thereon.

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

Garry Mauro

GARRY MAURO

Commissioner of the
General Land Office

counter 34338

FILE NO. Sketch File 44

Polk COUNTY

SLB Resolution

FILED: 1-21 19 98

GARRY MAURO, COM'R

BY: M Carroll

counter 37339

Texas General Land Office
Garry Mauro, Commissioner

Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701-1495
(512) 463-5001

January 20, 1998

I, Garry Mauro, Commissioner of the General Land Office of the State of Texas, do hereby certify that the papers, records, and documents of said office show:

That, on April 20, 1835, in Nacogdoches, Bartolo Escobeda obtained from Radford Berry, alcalde of said town and municipality, a certificate showing that Escobeda was a longtime resident of the municipality, a married man with a family, and that he had never obtained land from the supreme government of the state;

That, on April 20, 1835, at Nacogdoches, Bartolo Escobeda presented to Special Commissioner Jorge Antonio Nixon a petition for land in the enterprise of Empresario José Vehlein, stating that he had a wife and one child and that he was a farmer and stock raiser;

That, on May 20, 1835, Special Commissioner Nixon requested from the empresario a report on the petition;

That, on May 20, 1835, Arthur Henrie, as attorney-in-fact for José Vehlein, certified that the petitioner was one of the colonists under Vehlein's empresario contract of December 21, 1826, with the State of Coahuila and Texas and that the order of survey could be issued;

That, on May 20, 1835, Special Commissioner Nixon admitted the petition and ordered Arthur Henrie to have surveyed the league of land designated by the interested party, provided it was entirely vacant, the field notes to be examined by Henrie and translated in the commissioner's office;

That, S.C. Hiroms returned field notes dated March 31, 1835, for a league of land leaving blank the name of the grantee, the name "Bartolo Escobeda" having been inserted in a different hand, which field notes are for a survey on the east side of the Trinity on the branch of the Neches called the Big Sandy, beginning at the NWE [one of the letters W or E has been written over the other in the original] corner of league No. 2 surveyed for Lowry T. Hampton, a mound and stake, from which a black oak 20 inches in diameter bears south 47° east 8 varas distant, also a white oak 18 inches in diameter bears south 1 1/2° west 7 varas distant. Thence north 45° east at 2,430.5 varas Big Sandy running south, 15 varas wide; at 5,000 varas made a mound and planted a stake, from which a pine 15 inches in diameter bears south 80° east 4 varas distant, also a black oak 15 inches in diameter bears north 2 1/2° west 11 1/10 varas distant (some overflow and the land on the west side rich and fertile but on the east mostly poor, sandy). Thence north 45° west at 580.5 varas a pine 20 inches in diameter, line tree; at 5,000 varas a mound and stake, the 3rd corner, from which an elm 14 inches in diameter bears north 14° east 13 2/10 varas distant, also a black oak 20 inches in diameter bears south 80 1/2° west 9 1/2 varas distant. Thence south 45° west at 385 varas a pine 18 inches in diameter, line tree; at 543.5 varas a black oak 18 inches in diameter, line tree; at 4,250 varas Big Sandy; at 5,000 varas a mound and stake, the 4th corner

counter 34340

(land generally rich and fertile). Thence south 45° east on a random line 5,003.5 varas fell 4 1/2 varas south of the place of beginning; north 45° west on true line 5,003.5 varas to the 4th corner, containing one league of about seven labors of good farming land;

That, with no endorsements or explanations, changes in pencil to the above field notes show the first course of the survey to run south 45° east, the second course to be north 45° east, and Hirom's fourth course to actually be the third course and to run north 45° east rather than south 45° east as reported by Hiroms;

That, on June 22, 1835, Arthur Henrie, surveyor, and Radford Berry, translator, endorsed the following field notes inserted in the title:

> The tract surveyed for colonist Bartolo Escobeda is situated on Big Sandy Creek and begins at a corner of Lowry T. Hampton's survey, from which a white oak 22 inches in diameter bears south 47° east ^8 varas distant and another white oak 18 inches in diameter bears south 1 1/2° west 7 varas distant. Thence ~~south~~ north 45° ~~West~~ east surveyed 5,000 varas and formed the 2nd landmark, from which a pine 15 inches in diameter bears south 80° east 4 varas distant and a black oak 15 inches in diameter bears north 2 1/2° west 11 1/10 varas distant. Thence north 45° west surveyed 5,000 varas and raised the 3rd landmark, from which an elm 14 inches in diameter bears north 14° east 13 2/10 varas distant and a black oak 20 inches in diameter bears south 80 1/2° west 9 1/10 varas distant. Thence south 45° west surveyed 5,000 varas and formed a mound around a stake for the 4th landmark. Thence south 45° east surveyed 5,003 5/10 varas to the first landmark, thus completing the survey of the league of land...

That, a notation at the foot of these field notes indicates that the interlined words "north" and "east" in the title field notes are valid, while the stricken out words "south" and "north" are not;

counter 3434

That, on June 22, 1835, at Nacogdoches, Special Commissioner Nixon ordered the issuance of the title of possession;

That, on June 22, 1835, at Nacogdoches, Special Commissioner Nixon, in the name of the State of Coahuila and Texas and in conformity with the Colonization Law of March 24, 1825, of said state, issued to Bartolo Escobeda title of possession to the league of land described in the field notes set down by Surveyor Arthur Henrie and ordered a testimonio made of it;

That, on September 28, 1835, P. Roblow left a receipt showing that he had received the Bartolo Escobeda title from Commissioner Nixon;

Files: Spanish Collection, Box 50, Folder 21; Box 66, Folder 61; Field Notes Book SCH, p.1

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That, on May 2, 1835, in the town of Nacogdoches, Thomas Colvill obtained from Radford Berry, alcalde of said town and municipality, a certificate showing that he was a man of good moral habits, industrious, friendly to the constitution and laws of the country, of the Christian religion, and a married man;

That, on May 3, 1835, at Nacogdoches, Thomas Colvill presented to Special Commissioner Jorge Antonio Nixon a petition for land in the enterprise of Empresario José Vehlein, stating that he had a wife and one child;

That, on May 3, 1835, Special Commissioner Nixon requested from the empresario a report on the petition;

That, on May 3, 1835, Arthur Henrie, as attorney-in-fact for José Vehlein, certified that the petitioner was one of the colonists under Vehlein's empresario contract of December 21, 1826, with the State of Coahuila and Texas and that the order of survey could be issued;

That, on June 8, 1835, Special Commissioner Nixon admitted the petition and ordered Arthur Henrie to have surveyed the league of land designated by the interested party, provided it was entirely vacant, the field notes to be examined by Henrie and translated in the commissioner's office;

That, S.C. Hiroms returned field notes dated June 24, 1835, for a league of land surveyed for Thomas Colvill on Big Sandy, beginning at the southwest corner of a league surveyed for Dr. Cone. Thence north 45° east 5,000 varas, crossing branches at 340 varas, 580 varas and 1,195 varas and a creek at 3,280 varas. Thence south 45° east 5,000 varas to the third corner, from

which a beech 18 inches in diameter bears south 11° east and a red oak 10 inches in diameter bears south 62° 30' east 5 varas distant, crossing Big Sandy at 830 varas, 900 varas, and 999 varas, 8 varas wide, running south. Thence south 45° west 5,006.5 varas to the fourth corner, crossing Big Sandy at 4,250 varas, 10 varas wide, bearing south 8° east. Thence on a random line or along the eastern line of another survey 5,000 varas to the place of beginning;

That, on August 30, 1835, Arthur Henrie, surveyor, and Joseph Carriere, translator, endorsed the following field notes inserted in the title:

> The tract surveyed for Colonist Thomas Colvill begins at the adjoining Cone's southwest corner, being the 1st of this survey, on the Big Sandy. Thence course north 45° east surveyed 5,000 varas and formed the 2nd corner, raising a mound around a stake, from which a pine 30 inches [in diameter] bears north 30° west 9 varas distant and a white oak 8 inches [in diameter] bears north 33° east 13 1/10 varas distant. Thence south 45° east surveyed 5,000 varas and formed the 3rd corner, raising a mound around a stake, a beech 18 inches [in diameter] bears south 11° east 13 1/10 varas and a red oak 10 inches bears south 6° 23' east 5 varas distant. Thence south 45° west surveyed 5,006 5/10 varas and formed the 4th and last corner of this survey, raising a mound around a stake. Thence north 45° surveyed 5,000 varas to the corner where this survey began.

That, on August 30, 1835, at Nacogdoches, Special Commissioner Nixon ordered the issuance of the title of possession;

That, on August 30, 1835, at Nacogdoches, Special Commissioner Nixon, in the name of the State of Coahuila and Texas and in conformity with the Colonization Law of March 24, 1825, of said state, issued to Thomas Colvill the title of possession to the league of land described in the field notes set down by Surveyor Arthur Henrie and ordered a testimonio made of it;

Files: Spanish Collection, Box 51, Folder 16; Box 66, Folder 16; Field Notes Book SCH, p.54

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That Sketch File 44, Polk County, contains a copy of the decision of the Court of Civil Appeals of Texas, styled W.T. Carter & Bro., etal v. Collins, etal ((No 68) (Court of Civil Appeals of Texas, Beaumont. Oct. 26, 1916. Rehearing Denied, Nov. 23, 1916) adjudicating the location and senority of the Thomas Colville League, Polk County, free of conflict;

That a plat of the Alabama & Coushatta Indian Reservation, Polk County, Texas is filed in the Polk County Sketch File No. 44 in the Texas General Land Office, and contains an endorsement

counter 34343

which a beech 18 inches in diameter bears south 11° east and a red oak 10 inches in diameter bears south 62° 30' east 5 varas distant, crossing Big Sandy at 830 varas, 900 varas, and 999 varas, 8 varas wide, running south. Thence south 45° west 5,006.5 varas to the fourth corner, crossing Big Sandy at 4,250 varas, 10 varas wide, bearing south 8° east. Thence on a random line or along the eastern line of another survey 5,000 varas to the place of beginning;

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That, on August 30, 1835, at Nacogdoches, Special Commissioner Nixon ordered the issuance of the title of possession;

That, on August 30, 1835, at Nacogdoches, Special Commissioner Nixon, in the name of the State of Coahuila and Texas and in conformity with the Colonization Law of March 24, 1825, of said state, issued to Thomas Colvill the title of possession to the league of land described in the field notes set down by Surveyor Arthur Henrie and ordered a testimonio made of it;

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That a plat of the Alabama & Coushatta Indian Reservation, Polk County, Texas is filed in the Polk County Sketch File No. 44 in the Texas General Land Office, and contains an endorsement

brs 4 vrs; Thence S 45 W 120 vrs intersects Esbabeda line corner, from which a Pine marked X. brs N 10 E 6 vrs; Thence N 445 W 1537 vrs to the place of beginning, containing 3071 acres, more or less.", to the State of Texas, and that "Being the same premises which W.D. Gorden et. al. conveyed to the United States of America, in trust for the Alabama and Coushatta Indians of Texas by Warranty Deed dated the 20th day of September A.D. 1928 and recorded in the office of the Clerk of the County Court, Polk County, Texas, in Deed Book Vol. 88, Page 209, et seq.", a copy of said Quitclaim Deed was filed in the Texas General Land Office in Polk County Sketch File No. 44;

That from July 1, 1955 to April 1, 1986, the official records of the Texas General Land Office reveal the following Mineral Leases out of the Thomas Colville League Survey on behalf of the Alabama-Coushatta Indian Tribe to wit:

Mineral File #	Lease Date	Lessee	Acres	Survey Name
M-52190	12-9-60	British-American Oil Prod. Co.	363	Thomas Colville TR. 1
M-52191	12-9-60	British-American Oil Prod. Co.	363	Thomas Colville TR. 2
M-52193	12-9-60	British-American Oil Prod. Co.	202.2	Thomas Colville TR. 4
M-52194	12-9-60	British-American Oil Prod. Co.	251.8	Thomas Colville TR. 5
M-52195	12-9-60	British-American Oil Prod. Co.	251.8	Thomas Colville TR. 6
M-52196	12-9-60	British-American Oil Prod. Co.	314.7	Thomas Colville TR. 7
M-52197	12-9-60	British-American Oil Prod. Co.	337.2	Thomas Colville TR. 8

M-52198	12-9-60	British-American Oil Prod. Co.	316.1	Thomas Colville TR. 9
M-52199	12-9-60	British-American Oil Prod. Co.	316.1	Thomas Colville TR. 10
M-56078	12-6-63	Humble Oil & Refining Co.	363	Thomas Colville TR. 1
M-56079	12-6-63	Humble Oil & Refining Co.	363	Thomas Colville TR. 2
M-56080	12-6-63	Humble Oil & Refining Co.	363	Thomas Colville TR. 3
M-56081	12-6-63	Humble Oil & Refining Co.	202.2	Thomas Colville TR. 4
M-56082	12-6-63	Humble Oil & Refining Co.	251.8	Thomas Colville TR. 5
M-56083	12-6-63	Humble Oil & Refining Co.	251.8	Thomas Colville TR. 6
M-56084	12-6-63	Humble Oil & Refining Co.	314.7	Thomas Colville TR. 7
M-56085	12-6-63	Humble Oil & Refining Co.	337.2	Thomas Colville TR. 8
M-56086	12-6-63	Humble Oil & Refining Co.	316.1	Thomas Colville TR. 9
M-56087	12-6-63	Humble Oil & Refining Co.	316.1	Thomas Colville TR. 10
M-62085	5-10-68	K.B. Foreman	363	Thomas Colville TR. 1
M-62086	5-10-68	K.B. Foreman	363	Thomas Colville TR. 2
M-62087	5-10-68	K.B. Foreman	363	Thomas Colville TR. 3

Dicta No. 98-035

counter 37346

M-62088	5-10-68	K.B. Foreman	202.2	Thomas Colville TR. 4
M-62089	5-10-68	K.B. Foreman	251.8	Thomas Colville TR. 5
M-62090	5-10-68	K.B. Foreman	251.8	Thomas Colville TR. 6
M-62091	5-10-68	K.B. Foreman	314.7	Thomas Colville TR. 7
M-62092	5-10-68	K.B. Foreman	337.2	Thomas Colville TR. 8
M-62093	5-10-68	K.B. Foreman	316.1	Thomas Colville TR. 9
M-70588	8-22-74	Atlantic Richfield Co.	363	Thomas Colville TR. 1
M-70589	8-22-74	Atlantic Richfield Co.	363	Thomas Colville TR. 2
M-70590	8-22-74	Atlantic Richfield Co.	363	Thomas Colville TR. 3
M-70591	8-22-74	Atlantic Richfield Co.	202.2	Thomas Colville TR. 4
M-70592	8-22-74	Atlantic Richfield Co.	251.8	Thomas Colville TR. 6
M-70593	8-22-74	Atlantic Richfield Co.	314.7	Thomas Colville TR. 7
M-70594	8-22-74	Atlantic Richfield Co.	337.2	Thomas Colville TR. 8
M-70595	8-22-74	Atlantic Richfield Co.	316.1	Thomas Colville TR. 9
M-70596	8-22-74	Atlantic Richfield Co.	316.1	Thomas Colville TR. 10
M-80577	10-22-79	National Exploration Co.	363	Thomas Colville TR. 1

counter 31347

M-80578	10-22-79	National Exploration Co.	363	Thomas Colville TR. 3
M-80579	10-22-79	National Exploration Co.	314.7	Thomas Colville TR. 7
M-80580	10-22-79	National Exploration Co.	316.1	Thomas Colville TR. 9
M-82039	5-6-80	Union Oil Co. of California	363	Thomas Colville TR. 2
M-82040	5-6-80	Union Oil Co. of California	202.2	Thomas Colville TR. 4
M-82041	5-6-80	Union Oil Co. of California	251.8	Thomas Colville TR. 5
M-82042	5-6-80	Union Oil Co. of California	251.8	Thomas Colville TR. 6
M-82043	5-6-80	Union Oil Co. of California	337.2	Thomas Colville TR. 8
M-82044	5-6-80	Union Oil Co. of California	316.1	Thomas Colville TR. 10
M-92008	4-1-86	Sun Operating Limited Partnership	363	Thomas Colville TR. 1
M-92009	4-1-86	Sun Operating Limited Partnership	363	Thomas Colville TR. 2
M-92010	4-1-86	Sun Operating Limited Partnership	363	Thomas Colville TR. 3
M-92011	4-1-86	Sun Operating Limited Partnership	202.2	Thomas Colville TR. 4
M-92012	4-1-86	Sun Operating Limited Partnership	251.8	Thomas Colville TR. 5

counter 34348

M-92013	4-1-86	Sun Operating Limited Partnership	251.8	Thomas Colville TR. 6

That on August 1, 1989, Jack Giberson, Acting Commissioner and Chief Clerk, executed a School Land Board Resolution, sworn to according to law, pursuant to Tex. Rev. Civ. Stat. Ann. art. 5421c-2 (Vernon's Supp. 1989) and Title 24, §736 U.S.C., transfering all land and improvements held in trust responsibility for the Alabama-Coushatta Tribe, as well as another tribe, from the State of Texas to the United States of America, said resolution was filed in the Texas General Land Office on August 1, 1989, in Mineral File M-80579 and a copy was filed in Sketch File No. 44 on January 21, 1998;

IN TESTIMONY WHEREOF, I hereto set my hand and seal of said office the first date above written.

Garry Mauro

GARRY MAURO
COMMISSIONER

GM/MC

Mr. Alan H. Minter
Minter, Joseph & Thornhill, P.C.
811 Barton Springs Road, Ste. 800
Austin, TX 78704-1196

Fee: $200.00
Register Nos. 16384 &
Dicta No. 98-035
Files: Polk County Sketch File 44, Spanish Collection, Box 50, Folder 21; Box 66, Folder 61; Field Notes Book SCH, p. 1 and Spanish Collection, Box 51, Folder 16; Box 66, Folder 16; Field Notes Book SCH, p. 54

counter 34349

FILE NO. Sketch File 44

Polk COUNTY

C/T 98-035

FILED: 1-22 19 98

GARRY MAURO, COM'R

BY: M Cassell

counter 34350

GENERAL LAND OFFICE, AUSTIN, TEXAS FEBRUARY 2, 1998

I, GARRY MAURO, Commissioner of the General Land Office of the State of Texas, do hereby certify that attached hereto are true and correct copies of a letter to Francis M. White, Commissioner of the General Land Office from Dr. I. H. Starr dated March 12, 1860 along with a typed transcription. The letter is from the Microfilmed Records/General Correspondence File, Reel 31-ER, together with all endorsements thereon.

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

Garry Mauro

GARRY MAURO, COMMISSIONER
TEXAS GENERAL LAND OFFICE

File No Sketch File 44
POLK County
Correspondence: I.H. Starr to Com. F.M. White
Filed February 2 1998
GARRY MAURO, Com'r
By Douglas Howard

EXHIBIT B

county 34351

Nacogdoches March 2/86

Hon. F. M. White.
Comr. G. L. Office
Austin.

Dear Sir.

With this I enclose the following papers —

1st Field notes for 889 acres survey Polk Co. in favor to John McDonald as of John Boyle No 3488 for 960 acres —

2d — Bounty warrant mentioned —
Please enter this same for Patent if found correct —

Also

3d — field notes of a resurvey by the surveyor of Polk Co. of the Bartolo Escobida league of land —

4th — a certified sketch of the position of the Escobida league as connected with others —

I wish this to be properly entered so as to show the true position of this league — I represent the owner of one half who has spent much money and labor in a search for this land and has finally ascertained that the only reliable call in the title is for the North Corner of the Hamilton league which is the South Corner of the Escobida league — thus placing the Escobida and Colville leagues in conflict to the extent shown — I have understood that a draughtsman in your office places the Escobida league N. E. of Hampton, but as there are no evidences, I am informed, on the ground that any league was ever surveyed there and nothing in the Escobida title places it there the owners have been at the expense of having it run out as the title indicates —

Please advise me of the receipt of these papers

Respectfully D. B. Dean

Fld 40.996

Pas 17 Starr

Mar. 12/60

Sends field notes of

Palm Bright dc

Asked receipt

answered. May 3/60

B-175-Leh

5 A B. 28

01/29/1998 TGLO ARCHIVES AND RECORDS county 31353

Nacogdoches March 12/60

Hon F. M. White
Comm G. L. Office

Dear Sir:

With this I enclose the following papers -

1st Field Notes for 889 acres survey Polk Co. on warrant to John McDonald ass of John Bright (?) no 3488 for 960 acres -

2nd Bounty Warrant mentioned -

Please enter the same for patent if found correct -

Also

3rd field notes of a resurvey by the surveyor of Polk Co. of the Bartolo Escobeda league of land -

4th a certified sketch of the position of the Escobeda league as connected with others-

I wish this to be properly entered so as to show the true position of this league - I represent the owner of one half who has spent much money and labor in a search for the land and has finally ascertained that the only reliable call in the title is for the North Corner of the Hampton league which is the South Corner of the Escobeda league - thus placing the Escobeda and Colville leagues in conflict to the extent shown - I have understood that a draughtsman in your office places the Escobeda league N.E. of Hampton's, but as there are no evidences as I am informed on the ground, that any league was ever surveyed there and nothing in the Escobeda title places it there the owners have been at the expense of having it run out as the title indicates-

Please advise me of the receipt of these papers

Respectfully I. H. Starr

EXHIBIT B

GENERAL LAND OFFICE, AUSTIN, TEXAS FEBRUARY 2, 1998

I, GARRY MAURO, Commissioner of the General Land Office of the State of Texas, do hereby certify that attached hereto are true and correct copies of a letter to Dr. I. H. Starr from Commissioner Francis M. White dated May 31, 1860 along with a typed transcription. The letter is from the Microfilmed Records/General Correspondence File, Reel 36-ES, Pages 272 and 273, together with all endorsements thereon.

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

Garry Mauro

GARRY MAURO, COMMISSIONER
TEXAS GENERAL LAND OFFICE

File No Sketch File 44
County POLK
Correspondence: Comm. F.M. White to I.H. Starr
Filed February 2 19 98
GARRY MAURO, Com'r
By Douglas Howard

EXHIBIT B

Counter 34355

General Land Office
Austin May 31/1856

Dr J. H. Starr
Nacogdoches

Dear Sir.

In reply further to yours of 12th March. I would state that we have examined thoroughly the Bartola Escobida claim and adjacent surveys and are satisfied that the league is represented incorrectly both upon the maps in use in this Office and the sketch sent up by the Surveyor. The Escobida survey was made March 31 35. and Thomas Colville's Survey on the 24th June 35 both by J. C. Hiroms. and therefore it is not probable that they should conflict. The discrepancy seems rather to have originated from a mixing up and reversion of courses in the Escobida field notes viz: Escobida calls for beginning at the N.W. corner of Hampton whose the bearing was agree with those of the N.E. corner of Hampton. Escobida call for

Counter 34357

General Land Office
Austin May 31, 1860

Dr. I. H. Starr
Nacogdoches, Texas

Dear Sir.

In reply further to yours of 12th March, I would state that we have examined thoroughly the Bartolo Escobida claim and adjacent surveys and are satisfied that the league is represented incorrectly both upon the map in this office and the sketch sent us by the surveyor. The Escobida Survey was made March 31/35 and Thomas Colville Survey on the 24th June '35 both by S. C. Hiroms and therefore it is not probable that they should conflict. The discrepancy seems rather to have originated from a mixing up and reversion of courses in the Escobida field notes viz: Escobida calls for beginning at the NW corner of Hampton while the bearing trees agree with those of the NE corner of Hampton. Escobida calls for running from the beginning corner N 45 degrees E 2,430 varas to Big Sandy Creek while Colville calls for Big Sandy Creek at 750 varas. By changing the courses in Escobida "N 45 degrees E" to S 45 degrees E, the distance to Big Sandy Creek agrees exactly with Hampton's call for the same creek. The third course in Escobida's original field notes "S 45 degrees W 4,250 varas Big Sandy Creek" agrees the call for said creek at the same distance in Colville's SE line. By placing Escobida's league on Colville's league, the calls for Big Sandy Creek agree neither on the NW line nor the SE line of both surveys, and as the calls for the Creek of one line agree with the SE line of Colville and the calls of the other with the NE line of Hampton. The survey evidently lies SE of Colville and NE of Hampton as represented in the enclosed sketch plotted by Mr. Pressler.

Respectfully,
Francis M. White

Texas General Land Office Microfilmed Records
General Correspondence File
Reel 36-ES/Pages 272 and 273

EXHIBIT B

counter 34358

LAW OFFICES OF
MINTER, JOSEPH & THORNHILL, P.C.
811 BARTON SPRINGS ROAD
SUITE 800
AUSTIN, TEXAS 78704-1196
TELEPHONE 512/478-1075
TELECOPIER 512/478-5838

ALAN H. MINTER
JOHN M. JOSEPH
W. ROUTT THORNHILL, JR.
WILLIAM C. DAVIDSON

SCOTT W. STOVER
JEFFREY S. HOWARD
WILLIAM P. McLEAN

Planning & Development Manager
MICHELE C. HAUSSMANN
(not licensed to practice law)

October 2, 1998

Mr. Spencer L. Reid
Office of Senior Deputy Commissioner
Texas General Land Office
Stephen F. Austin Building
1700 North Congress Avenue
Austin, TX 78701-1495
Attn: Robert H. Dedman

via facsimile 463-5098

RE: Bartolo Escobeda League, A-30, Polk County, Texas a/k/a Escobeda Survey

Dear Mr. Reid:

I represent the Alabama-Coushatta Tribe of Texas. They are interested in a pending matter styled C.C. Kilgore, et al v. Black Stone Oil Company, et al, No. 09-98-143 CV, in the Court of Appeals for the 9th Supreme Judicial District of Texas at Beaumont involving the location of the above-referenced land. It is the Tribes' contention that the question of location of the Escobeda Survey was adjudicated in the decision of W.T. Carter and Brothers, et al v. Collins, et al, 192 S.W. 316 (Tex. Civ. App. - Beaumont 1916, Writ Ref'd). Some references in that case caused me to investigate the records of the Land Office and reach the conclusion that the Escobeda Survey has never been located by the required filing procedures at and location free of conflict with prior locations by the GLO. This letter is a request for your office to conduct a Certificate of Negative Research on the Escobeda Survey.

Thank you in advance for your cooperation in this matter, I remain,

Yours truly,

Alan H. Minter

AHM:cs 10476
f:\Alabama-Coushatta\Survey Claim\Reid, Spencer L. Letter

counter 34359

LAW OFFICES OF
MINTER, JOSEPH & THORNHILL, P.C.
811 BARTON SPRINGS ROAD
SUITE 800
AUSTIN, TEXAS 78704-1166
(512) 478-1075
(512) 478-5838

TO:

NAME	BOB DEDMAN
COMPANY NAME	TEXAS GENERAL LAND OFFICE
FAX NUMBER	463-5098

FROM:

NAME	ALAN H. MINTER

PAGES (INCLUDING COVER) -2- DATE OCTOBER 2, 1998

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL CYNDA AT (512) 478-1075

COMMENTS:

counter 34360

Texas General Land Office
Garry Mauro, Commissioner

Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701-1495
(512) 463-5001

File No Sketch File 44
Polk County
Statement of Facts
Filed October 28 19 98
GARRY MAURO, Com'r
By Douglas Howard

October 28, 1998

I, Garry Mauro, Commissioner of the General Land Office of the State of Texas, do hereby certify that the papers, records, and documents of said office show:

That we have reviewed the official records and maps of the Texas General Land Office, as to the Bartolo Escobeda League, originally surveyed under the authority of the Colonization Law of March 24, 1825, in the Mexican State of Coahuila and Texas, then the Liberty Land District, now Polk County, Texas. We found no map, record, or document which indicates that the Escobeda league has been located on the ground free of conflict with senior surveys previously located.

That the original field notes for the Escobeda league are shown to be in total conflict with the Juan Falcon League, by the 1856 Polk County map by C.W. Pressler in the Texas General Land Office. Corrected field notes for the Escobeda league filed in 1860 are shown to be in conflict with the Thomas Colville League adjacent to and northwest of the Falcon and with the Cyrus Thompson and Thomas Wylie surveys to the northwest of the Colville, according to the 1863 Polk County map by Biberstein & Reichel.

That by letter dated March 12, 1860, found in the General Correspondence files and in Polk County Sketch file #44, a claimant under the Escobeda league requested a determination as to the location of the Escabeda "in relation to adjacent surveys" as defined by corrected field notes filed by the County Surveyor.

That by letter dated May 31, 1860, found in the General Correspondence files and in Polk County Sketch file #44, the Commissioner of the Texas General Land Office determined that "the (Escobeda) league is represented incorrectly both upon the map in this office and the sketch sent us by the surveyor"...and "The survey evidently lies SE of Colville and NE of Hampton..."

That Polk County Sketch File #44 contains a copy of the case of W.T. Carter & Bros., et al v. Collins et al 192 S.W. 316 (Tex.Civ.App.- Beaumont 1916).

That as of the date of this certificate, the records of the Texas General Land Office do not

counter 34361

indicate any further or additional requests for or efforts towards the location of the Bartolo Escobeda league since 1860.

****

IN TESTIMONY WHEREOF, I hereto set my hand and seal of said office the first date above written.

Garry Mauro

GARRY MAURO
COMMISSIONER

GM/RHD/mc

Mr. Alan H. Minter
Minter, Joseph & Thornhill, P.C.
811 Barton Springs Rd., Ste. 800
Austin, Texas 78704-1196

Dicta No. 99-011
Files: Polk County Sketch File #44

counter 34362

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	2559
CONNECTION TEL	94785838
SUBADDRESS	
CONNECTION ID	
ST. TIME	10/30 10:23
USAGE T	01'49
PGS.	2
RESULT	OK

Alan Minter
478-5838

October 28, 1998

I, Garry Mauro, Commissioner of the General Land Office of the State of Texas, do hereby certify that the papers, records, and documents of said office show:

That we have reviewed the official records and maps of the Texas General Land Office, as to the Bartolo Escobeda League, originally surveyed under the authority of the Colonization Law of March 24, 1825, in the Mexican State of Coahuila and Texas, then the Liberty Land District, now Polk County, Texas. We found no map, record, or document which indicates that the Escobeda league has been located on the ground free of conflict with senior surveys previously located.

That the original field notes for the Escobeda league are shown to be in total conflict with the Juan Falcon League, by the 1856 Polk County map by C.W. Pressler in the Texas General Land Office. Corrected field notes for the Escobeda league filed in 1860 are shown to be in conflict with the Thomas Colville League adjacent to and northwest of the Falcon and with the Cyrus Thompson and Thomas Wylie surveys to the northwest of the Colville, according to the 1863 Polk County map by Biberstein & Reichel.

That by letter dated March 12, 1860, found in the General Correspondence files and in Polk County Sketch file #44, a claimant under the Escobeda league requested a determination as the location "in relation to adjacent surveys" as defined bycorrected field notes filed by the County

counter 34363

Alan Minter
478-5838

October 28, 1998

I, Garry Mauro, Commissioner of the General Land Office of the State of Texas, do hereby certify that the papers, records, and documents of said office show:

That we have reviewed the official records and maps of the Texas General Land Office, as to the Bartolo Escobeda League, originally surveyed under the authority of the Colonization Law of March 24, 1825, in the Mexican State of Coahuila and Texas, then the Liberty Land District, now Polk County, Texas. We found no map, record, or document which indicates that the Escobeda league has been located on the ground free of conflict with senior surveys previously located.

That the original field notes for the Escobeda league are shown to be in total conflict with the Juan Falcon League, by the 1856 Polk County map by C.W. Pressler in the Texas General Land Office. Corrected field notes for the Escobeda league filed in 1860 are shown to be in conflict with the Thomas Colville League adjacent to and northwest of the Falcon and with the Cyrus Thompson and Thomas Wylie surveys to the northwest of the Colville, according to the 1863 Polk County map by Biberstein & Reichel.

That by letter dated March 12, 1860, found in the General Correspondence files and in Polk County Sketch file #44, a claimant under the Escobeda league requested a determination as the location "in relation to adjacent surveys" as defined bycorrected field notes filed by the County Surveyor.

That by letter dated May 31, 1860, found in the General Correspondence files and in Polk County Sketch file #44, the Commissioner of the Texas General Land Office determined that "the (Escobeda) league is represented incorrectly both upon the map in this office and the sketch sent us by the surveyor"...and "The survey evidently lies SE of Colville and NE of Hampton..."

That Polk County Sketch File #44 contains a copy of the case of W.T. Carter & Bros., et al v. Collins et al 192 S.W. 316 (Tex.Civ.App.- Beaumont 1916).

That as of the date of this certificate, the records of the Texas General Land Office do not

counter 34364

indicate any further or additional requests for or efforts towards the location of the Bartolo Escobeda league since 1860.

****

IN TESTIMONY WHEREOF, I hereto set my hand and seal of said office the first date above written.

GARRY MAURO
COMMISSIONER

GM/RHD/mc

Mr. Alan H. Minter
Minter, Joseph & Thornhill, P.C.
811 Barton Springs Rd., Ste. 800
Austin, Texas 78704-1196

Dicta No. 99-011
Files: Polk County Sketch File #44

counter 31365

OFFICE OF THE ATTORNEY GENERAL
STATE OF TEXAS
NATURAL RESOURCES DIVISION

FACSIMILE MESSAGE

To: **Bob Dedman, General Land Office**

Facsimile No.: **463-5098**

Date: May 2, 2000

Number of pages transmitted (including cover sheet): 10

From: **Jeffee Martinez-Vargas**
Telephone No.: (512) 463 2012 Direct: **(512) 475 4138**
Facsimile No.: **(512) 320 0911**

Re: Kilgore v. Black Stone

Message: Opinion of Court of Appeals

Alan Minter 478-1075

counter 34366

In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-98-143 CV

C. C. KILGORE ET AL, Appellant

V.

BLACK STONE OIL COMPANY ET AL, Appellee

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause No. 16,791

OPINION

In this suit for conversion of oil and gas and title to minerals, the appellants raise four issues. Issue one complains of the trial court's grant of summary judgment applying *stare decisis* to a case this Court decided some eighty-three years ago in *W. T. Carter & Bro. v. Collins*, 192 S.W. 316 (Tex. Civ. App.--Beaumont 1916, writ ref'd). Based upon the doctrine of *stare decisis* as it is applied to cases involving the determination of

counter 34367

boundary lines, we conclude the trial court did not err in granting the summary judgment in question. Because of this holding, the only other issue we need address is appellant's complaint regarding improper venue transfer. We find no need to address the issue regarding privileged documents, because our holding on the *stare decisis* issue extinguishes the need for consideration of any extraneous survey evidence on the alleged boundary dispute. We overrule appellants' complaint challenging the venue ruling because venue in Polk County was mandatory under TEX. CIV. PRAC. & REM. CODE ANN. § 15.011 (Vernon Supp. 2000).

STARE DECISIS

The issue that impends upon the others is whether, under the doctrine of *stare decisis*, this court's opinion in *Carter v. Collins* stands as a bar to appellants' claims as a matter of law. Central to this issue is an unresolved question about how Texas courts apply *stare decisis* to boundary line cases. *See Swilley v. McCain*, 374 S.W.2d 871, 875 (Tex. 1964); *see also* Gus M. Hodges, *Stare Decisis in Boundary Disputes: Let There Be Light*, 21 TEX. L. REV. 241 (1943). There are two divergent notions about how *stare decisis* should be applied to Texas boundary line cases, the orthodox doctrine and an unorthodox approach. The orthodox doctrine of *stare decisis* determines only questions of law. *Id.* at 242. After a legal question has been squarely decided by the Supreme

Court, its decision is precedent, binding it and courts of lower rank when the identical question is raised in a later suit between different parties. *See Swilley*, 374 S.W.2d at 875.

In contrast to the orthodox doctrine of *stare decisis*, some courts of appeals have concluded that a fact issue determination – i.e., the fixing of boundary lines, headright surveys, or other fixed real property markers – may be binding precedent under the doctrine of *stare decisis*. *See Rice v. Armstrong*, 616 S.W.2d 415, 417 (Tex. Civ. App.--Texarkana 1981, writ ref'd n.r.e.). Under this approach, the location of a boundary line will control the location of the same line in a later suit even though the first case turned upon an issue of fact or the legal questions of the later case are not those of the first case. *See Swilley*, 374 S.W.2d at 875.

This court has addressed this notion of *stare decisis* in three opinions. *See Atchley v. Superior Oil Co.*, 482 S.W.2d 883 (Tex. Civ. App.--Beaumont 1972, writ ref'd n.r.e.); *Patterson v. Peel*, 149 S.W.2d 284 (Tex. Civ. App.-Beaumont 1941, writ ref'd); and *McDonald v. Humble Oil & Refining Co.*, 78 S.W.2d 1068 (Tex. Civ. App.--Beaumont 1935, writ dism'd). And we adhere to the unorthodox view. *See Atchley* 428 S.W.2d at 897-98.

Asserting that they own the mineral interests in the Escobeda League in Polk County, appellants sued appellees for converting oil and gas that they contend belonged

counter 34369

to them and was produced from the Escobeda League. Essential to their recovery is appellants' contention that the Escobeda League conflicts with three surveys, the Colville, Thompson, and Wylle.[1] Appellees pleaded a defense under the doctrine of *stare decisis* and moved for summary judgment. Appellees contended the appellants were suing them for converting oil and gas produced from lands located under the Colville, Thompson, and Wylle Surveys, that those surveys did not conflict with Escobeda, and that the absence of any conflict was forever determined by this court in *Carter v. Collins*. In this case, appellants do not claim under any of the parties to *Carter v. Collins*. Their claims are based upon earlier severances of the Escobeda mineral interests. But their claims urge the same conflict between Escobeda and Colville as that urged by the appellants in *Carter v. Collins*.

Carter v. Collins was an action in trespass to try title brought by the appellees of that case to recover most of the Thomas Colville League. *See W. T. Carter & Bro. v. Collins*, 192 S.W. at 317. Appellants in that earlier case disclaimed any interest in Colville except to whatever part of Colville was included within the boundaries of Escobeda. *Id.* The jury found that Colville and Escobeda do not conflict. *Id.* In 1916, this court identified the principal question as whether the Colville and Escobeda leagues

---

[1]We have adopted the spelling of Wylle that is used on the plat in *Carter v. Collins*, 192 S.W. at 318.

were in conflict. *Id.* In our earlier opinion, the court concluded that the evidence sustained the jury finding of no conflict. In reaching its conclusion, the court discussed in detail the relevant evidence beginning with the original survey of Escobeda in 1835. *Id.* at 317-21.

While the quality of the surveying efforts described in *Carter v. Collins* was at times inept at best, nevertheless, we conclude, after a rather painstaking and detailed review of the various boundary descriptions, as well as the illustrated plat reproduced in the opinion, that sufficient evidence was contained in the record in the prior case to support the jury's finding that the two boundary descriptions of the Escobeda League and the Colville League do not conflict in that they were not superimposed, one survey on top of the other. *Carter v. Collins* was a trespass to try title case in which the appellants "disclaimed any interest in or title to the Thomas Colville league, save and except whatever part thereof might be included within the . . . Bartolo Escobeda league of land . . . ." *Id.* at 317. Appellants, in essence, were claiming ownership to property only to the extent it was reflected in the Escobeda League boundary survey. The issue was simply decided by having the jury compare the two surveys, review an illustrated plat admitted into evidence, and evaluate testimony from witnesses. *Id.* at 318.

counter 31371

With regard to the evidence reviewed by this Court in the earlier case, we observed that "[t]he great preponderance of the evidence in this case establishes the fact that the Thomas Colville league was actually located on the ground as shown in the above plat." *Id.* at 319. Having said that, we then went on to methodically set out the inaccuracy in the purported location of the Escobeda survey in relation to other correctly established surveys and in relation to the existence of natural objects found and identified on the ground. *Id.* at 319-321. This was done by applying the following legal maxim which provides for a qualitative classification and grade of calls in survey and field note interpretation:

> It is the law of this state that where natural objects, as called for in the field notes, can be actually found and identified on the ground as showing the footsteps of the surveyor, both course and distance, when inconsistent therewith, must give way and be disregarded.

Id. at 321.

After conducting this very detailed analysis of the Escobeda survey *vis-a-vis* well-established neighboring surveys and natural, identifiable objects, we concluded:

> It is to be seen that if the Escobeda league is located as contended for by the appellees, it places it out of conflict with the other leagues and surveys, all of which were made by the same surveyor, and within a very short period of each other, and acquits the surveyor of doing an irrational thing, that of surveying one league upon another, when it was his official duty to locate the survey upon vacant domain, and without any intervening vacancies.

Counter 34372

Id. Since the "other leagues and surveys" do indeed include the Thompson and Wylie leagues, as represented on the illustrated plat contained in the opinion, we find that *Carter v. Collins* establishes the accuracy of those surveys, as well as the fact that Escobeda is not in conflict with the other surveys. *Id.* at 321.

Our reading of *Carter v. Collins* in its entirety leads us to the conclusion that boundary lines were determined for a number of leagues, including the three at issue in the instant case. Therefore, *stare decisis* controls. The spirit of the so-called unorthodox view of *stare decisis* is certainly defeated if a decision must turn on whether exact metes and bounds appear in detail in the prior opinion. As noted above, over eighty-three years have passed since this Court handed down *Carter v. Collins*. The parties to that case, as well as any successors in interest, have had to live with the boundaries established therein. To step in at this point in time and essentially "wipe the slate clean" would, we believe, cause irreparable harm. The Texas Supreme Court has historically recognized the need for real property issues to remain settled once the appellate courts have spoken, *viz*:

> The distinction [legal distinction between "mortgages" and "assignments" in conveyances of real property] so recognized has become a long-established rule, under which many transactions have been entered into, which involve property of great value. Such being the case, we are not at liberty to overrule the former decisions of the court upon the question. It is far more important that a line of decisions under which valuable rights have accrued should be deemed settled than that the court should conform to what may be thought a more correct technical rule.

counter 34373

Adams v. Bateman, 88 Tex. 130, 30 S.W. 855 (1895). *See also Trapp v. Shell Oil Co.*, 145 Tex. 323, 198 S.W.2d 424, 442 (1946) (opinion on reh'g) ("Since the Century[2] and Gulf-Atlantic[3] cases were decided so many years ago and many property rights have no doubt been acquired under them, we should not at this late day change them, even though doubt as to their correctness may exist in the minds of some lawyers and judges."). We, therefore, find no abuse of discretion by the trial court in granting appellees' motion for summary judgment based upon the doctrine of stare decisis. Issue one is overruled.

VENUE

Appellants complain that the trial court erred in transferring this case from Harris County to Polk County. According to appellants, venue was proper in Harris County under TEX. CIV. PRAC. & REM. CODE ANN. § § 15.002(a)(2) and (3) and 15.005, because some of the appellees either resided in Harris County or had their principal offices there. Appellants concede that § 15.011 is mandatory, but contend this case is a suit for the recovery of personalty and its venue is not governed by § 15.011. We overrule appellants' complaint because their suit, as discussed under the *stare decisis* issue, is essentially one

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[2] *Railroad Comm'n v. Magnolia Petroleum Co.*, 130 Tex. 484, 109 S.W.2d 967 (1937), was generally known as the "Century" case. *See Trapp*, 198 S.W.2d at 439.

[3] *Gulf Land Co. v. Atlantic Refining Co.*, 134 Tex. 59, 131 S.W.2d 73 (1939).

for the recovery of land. *See Renwar Oil Corp. v. Lancaster*, 154 Tex. 311, 276 S.W.2d 774, 776 (1955). Accordingly, mandatory venue of this suit was in Polk County.

For the reasons stated above, we affirm the grant of summary judgment by the trial court.

AFFIRMED.

DAVID FARRIS[4]

Submitted on October 28, 1999
Opinion Delivered April 27, 2000
Publish

Before Walker, C.J., Stover and Farris, JJ.

[4]The Honorable David Farris, sitting by assignment pursuant to TEX. GOV'T CODE ANN. § 74.003(b) (Vernon 1998).

counter 34375

Nacogdoches March 12/60

Hon F. M. White
Comm G. L. Office

Dear Sir:

With this I enclose the following papers -

1st Field Notes for 889 acres survey Polk Co. on warrant to John McDonald ass of John Bright (?) no 3488 for 960 acres -

2nd Bounty Warrant mentioned -

Please enter the same for patent if found correct -

Also

3rd field notes of a resurvey by the surveyor of Polk Co. of the Bartolo Escobeda league of land -

4th a certified sketch of the position of the Escobeda league as connected with others-

I wish this to be properly entered so as to show the true position of this league - I represent the owner of one half who has spent much money and labor in a search for the land and has finally ascertained that the only reliable call in the title is for the North Corner of the Hampton league which is the South Corner of the Escobeda league - thus placing the Escobeda and Colville leagues in conflict to the extent shown - I have understood that a draughtsman in your office places the Escobeda league N.E. of Hampton's, but as there are no evidences as I am informed on the ground, that any league was ever surveyed there and nothing in the Escobeda title places it there the owners have been at the expense of having it run out as the title indicates-

Please advise me of the receipt of these papers

Respectfully I. H. Starr

We have examined thoroughly the -Escab Bartlo Escabida claim and adjacent surveys and are satisfied that the league is represented incorrectly both upon the map in use in this office and the sketch sent up by the surveyor. The Escobida suevey was made

[copy Pressler memo ?]

counter 81522

General Land Office
Austin May 31, 1860

Dr. I. H. Starr
Nacogdoches, Texas

Dear Sir.

In reply further to yours of 12th March, I would state that we have examined thoroughly the Bartolo Escobida claim and adjacent surveys and are satisfied that the league is represented incorrectly both upon the map in this office and the sketch sent us by the surveyor. The Escobida Survey was made March 31/35 and Thomas Colville Survey on the 24th June '35 both by S. C. Hiroms and therefore it is not probable that they should conflict. The discrepancy seems rather to have originated from a mixing up and reversion of courses in the Escobida field notes viz: Escobida calls for beginning at the NW corner of Hampton while the bearing trees agree with those of the NE corner of Hampton. Escobida calls for running from the beginning corner N 45 degrees E 2,430 varas to Big Sandy Creek while Colville calls for Big Sandy Creek at 750 varas. By changing the courses in Escobida "N 45 degrees E" to S 45 degrees E, the distance to Big Sandy Creek agrees exactly with Hampton's call for the same creek. The third course in Escobida's original field notes "S 45 degrees W 4,250 varas Big Sandy Creek" agrees the call for said creek at the same distance in Colville's SE line. By placing Escobida's league on Colville's league, the calls for Big Sandy Creek agree neither on the NW line nor the SE line of both surveys, and as the calls for the Creek of one line agree with the SE line of Colville and the calls of the other with the NE line of Hampton. The survey evidently lies SE of Colville and NE of Hampton as represented in the enclosed sketch plotted by Mr. Pressler.

Respectfully,
Francis M. White

Texas General Land Office Microfilmed Records
General Correspondence File
Reel 36-ES/Pages 272 and 273

GENERAL LAND OFFICE, AUSTIN, TEXAS FEBRUARY 2, 1998

I, GARRY MAURO, Commissioner of the General Land Office of the State of Texas, do hereby certify that attached hereto are true and correct copies of a letter to Dr. I. H. Starr from Commissioner Francis M. White dated May 31, 1860 along with a typed transcription. The letter is from the Microfilmed Records/General Correspondence File, Reel 36-ES, Pages 272 and 273, together with all endorsements thereon.

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

Garry Mauro

GARRY MAURO, COMMISSIONER
TEXAS GENERAL LAND OFFICE

Polk Co. St. Files

counter 81526

GENERAL LAND OFFICE, AUSTIN, TEXAS FEBRUARY 2, 1998

I, GARRY MAURO, Commissioner of the General Land Office of the State of Texas, do hereby certify that attached hereto are true and correct copies of a letter to Francis M. White, Commissioner of the General Land Office from Dr. I. H. Starr dated March 12, 1860 along with a typed transcription. The letter is from the Microfilmed Records/General Correspondence File, Reel 31-ER, together with all endorsements thereon.

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

Garry Mauro

GARRY MAURO, COMMISSIONER
TEXAS GENERAL LAND OFFICE

Counter 81523

We have examined thoroughly the -Escab Bartlo Escabida claim and adjacent surveys and are satisfied that the league is represented incorrectly both upon the map in use in this office and the sketch sent up by the surveyor. The Escobida suevey was made

[copy Pressler memo ?]

This was written on the back of the Starr letter to the Comm. It would appear to be a portion of a draft of the Comm subsequent letter.

B

counter 81524