

SKETCH FILE ¹¹

- SWISHER COUNTY -

Copy of Judgment of
Court; Petition^{and} Answer -

Cause No 2542

E. A. Dilly vs J. R. Hankins et al -
Amarillo Texas -
Nov. 30th 1917

Received in General Land
Office June 9th 1919 -

J. Robison, Comm
Secy
clerk

See correspondence with
Judge H. C. Randolph within -
5-16-18 Clerk

counter 37633

The State of Texas | November Term A. D. 1916.
County of Swisher | In the District Court of
 | Swisher County, Texas.

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes E. A. Dilley, who resides in the County of Reno, State of Kansas, hereinafter styled plaintiff, complaining of J. R. Hankins, and W. E. Jowell, both of whom reside in Swisher County, Texas; and of Mrs, Emily Householder, who resides in the County of Winnebago, State of Illinois; of B. L. Shook, who resides in Hale County, Texas; and of Geo. W. Williams and J. J. Shirley, who reside in Boone County, State of Nebraska, all of whom are hereinafter styled Defendants, and for cause of action, plaintiff respectfully represents and shows unto the Court that on September 1st, 1916, he was lawfully seized and possessed of the following described lands and premises, lying, situated and being in the County of Swisher, State of Texas, described as follows, to wit:

All of Survey No. 17, Block M-11, Patented to John E. Corwith, assignee of Adams Beaty & Moulton, on December 4th 1880, by Patent No. 623, Vol. 32, described by metes and bounds as follows:

Beginning at a mound, the S. E. corner of Survey No. 16, in same Block No. M-11; Thence East 1900 varas a mound; Thence North 1900 varas the S. E. corner of Survey No. 4, same block; Thence West 1900 varas a mound; Thence South 1900 varas to the beginning; that on said date, the defendants unlawfully entered on said land and premises and ejected the plaintiff therefrom, and unlawfully withhold from him possession thereof, to his damage in the sum Twenty Thousand Dollars; that the reasonable annual rental value of said land and premises is the sum of \$2000.00.

2.

Plaintiff would further show to the Court that

the real purpose of this suit is to definitely establish the boundary lines of said Survey No. 17, Block M-11 aforesaid, as between the plaintiff and the defendants, who are adjoining land owners to said property; That plaintiff is the owner of said Survey No. 17, Blk M-11; and that

Defendant J. R. Hawkins is the owner of Survey 24:

Defendant W. E. Jowell is the owner of Surveys 3 & 4

Defendant Emily Householder is the owner of West half of Survey 18;

Defendant B. L. Shook is the owner of Survey 16.

Defendant Charles H. Albers is the owner of Survey 23;

Defendants Geo W. Williams and J. L. Shirley are the owners of Survey 5; all in said Block M-11;

that Survey lies immediately South of Survey No. 17; Survey 18 lies immediately East of Survey 17; Survey 3 lies immediately North of Survey 18; Survey 4 lies immediately North of Survey 17; and Survey 5 lies immediately West of Survey 4;

3.

Plaintiff further shows unto the Court that all of said surveys were originally made by the same surveyor; that each of said surveys is 1900 varas square, and that each ties to the other either by immediate calls or through intermediate surveys; that the proper location of the boundary lines of one of said surveys determines the proper location of the boundary lines of each of the other surveys in said Block, and especially of those above described.

4.

Plaintiff further respectfully shows to the Court that prior to the time he purchased said Survey 17, said Block M-11 had been re-surveyed by one W. B. Hutchinson as County Surveyor of Swisher County, Texas, and various cor-

ners of the various surveys in said Block M-11, as per his re-survey, marked by iron pipes, which re-survey is known as the "Hutchinson Iron Pipe Survey".

5.

Plaintiff further says that after such re-survey by the said W. B. Hutchinson, and prior to the time plaintiff purchased said Survey No. 17, the owners of surveys above described had made an actual location on said respective surveys according to said Pipe Corner Survey, but he cannot say whether such location was intended by said parties as a permanent adoption and recognition of same as the true location of their respective surveys. That plaintiff cannot say when said locations were made, further than that they were made prior to his purchase of said Survey 17 in the year 1912.

6.

Plaintiff says that that some of the defendants herein, to wit: J. R. Hankins, Charles H. Albers and Mrs. Emily Householder, are claiming that the various corners of plaintiff's land are a distance of about 673 varas North and 61 varas West of said corners as established by said Hutchinson Iron Pipe Corners; and that all of the various corners of all the various surveys above described should be established about the same distance North and West of said Hutchinson Iron Pipe Corners.

7.

Plaintiff further says that the above defendants herein are claiming that said corners were properly established by said Hutchinson Pipe Corner Survey, and should remain established according to said Survey.

8.

Plaintiff further says that the defendant J. R. Hankins is estopped to deny that as to the boundary line between Survey 17, owned by plaintiff, and Survey 24, owned

by ~~plaintiff~~, and Survey 24, owned by the said J. R. Hankins the true boundary line is that established by the Hutchinson Pipe corner survey above referred to, for the following reasons, to wit:

In the year 1912, when plaintiff was contemplating purchasing Survey No. 17, aforesaid, from the owner thereof, plaintiff visited at the home of the said J. R. Hankins, and discussed with him his contemplated purchase of said Section. At said time, the said defendant Hankins was well acquainted with the facts that there was some character of confusion with reference to the boundaries of the various sections in said Block, and at that time, the said defendant was claiming that his boundaries should be North and West of the boundaries of said Section 17, as established by the Pipe Corner surveys aforesaid.

Although the said Hankins well knew the plaintiff was contemplating the purchase of said Section 17, said defendant Hankins, failed to in any way give plaintiff notice that he was claiming the division line between him and the owner of said Section 17, as being any where except as same was located by the Hutchinson Pipe Corner Survey. On the contrary said defendant discussed with plaintiff the fact that he had removed a small string of fence along said boundary, for the purpose of his own, and told plaintiff that at any time plaintiff desired, they would go in together and build a much better fence on said division or boundary line. In said conversation, said defendant led plaintiff to believe, and plaintiff did believe that said defendant Hankins, had reference to the boundary between said sections as same had been established by said W. B. Hutchinson Pipe Corner Survey.

Plaintiff further says that he would not have purchased said lands had he known there was any boundary dispute thereon, or had he known the defendant Hankins was

Estoppel

P12

claiming said boundary as being anywhere except that established by the Hutchinson Iron Pipe Corners aforesaid. And that for the reasons herein stated, the defendant Hankins, is estopped to deny that the boundary between plaintiff and said defendant is anywhere except according to the Hutchinson Pipe Corners of said Surveys.

9.

Plaintiff further says that he ought to have and maintain this cause of action as to the defendant J. R. Hankins, and that as to said defendant, he is entitled to a decree that the division line between said Survey 17, aforesaid, and Survey 24, aforesaid, the boundary or division line as established by the said W. B. Hutchinson Iron Pipe Corners Survey, is the true boundary line, for the reason that the plaintiff, and those under whom he holds title have for more than ten years next preceding the filing of this suit, and before the defendant J. R. Hankins' unlawful entry thereon, have held, occupied, used and enjoyed said Section of land No. 17, and especially that part of said Section as located by said Hutchinson Pipe Corners, which is now claimed by the said J. R. Hankins to be a part of said Survey 24, Block M-11 according to said Pipe corner location, and that such possession, use and occupancy have during all of said time been open, peaceable and adverse.

10.

WHEREFORE, premises considered, plaintiff prays that the defendants be cited to appear and answer this petition; that on final hearing he have judgment for the title and possession of his survey of land above described; that the boundaries thereof be finally determined as between plaintiff and the defendants herein; that writ of restitution issue, and for such other and further relief, general and special, in law and in equity as he may be entitled and for which he will

Restitution

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ever pray.

Culton and Taylor
Attorneys for Plaintiff.

(Endorsed)

No. 2542. In the District Court of Swisher County, Texas.

E. A. Dilley Vs. J. R. Hankins et al.

Plaintiff's Original Petition.

This Action is Brought as Well to Try title as for Damages.

Filed this 14th day of Oct. 1916.

J. M. Simpson

District Clerk Swisher County, Texas.

Filed Mar. 3rd 1917

J. C. Skillman

District Clerk Potter County, Texas.

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FIRST AMENDED ORIGINAL ANSWER.

E. A. Dilley		In the District Court of
Vs. #2542		Potter County, Texas.
J. R. Hankins et al		September Term 1917.

Now comes the defendant, J. R. Hankins, in the above styled and numbered cause, leave of the Court being first had and obtained, and files this his First Amended Original Answer, in lieu of his Original Answer herein, filed on the 20th day of November 1916, in the District Court of Swisher County, Texas, and filed in this Court March 3rd. 1917, and for such amendment says:

Now comes the defendant in the above styled and numbered cause and excepts generally to the Plaintiff's petition herein filed in this Court on March 3rd, 1917, and says that same is insufficient in law or equity to require this defendant to answer herein and that same shows no cause of action against this defendant.

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Exemption

Of which he prays judgment of the Court and said petition be held for naught, and will so ever pray.

Thos F. Turner

H. C. Randolph

Attorneys for defendant J.R.
Hankins.

And for answer herein, should the above exceptions be overruled, comes the defendant J. R. Hankins, and denies all and singular the allegations in the ~~plain-~~^{plain-}tiff's said petition contained and says that he is not guilty of the wrongs, injuries and trespasses therein alleged against him.

Of which he prays judgment of the Court, that he go hence with his cost in this behalf incurred.

Thos F. Turner

H. C. Randolph

Attorneys for Deft. J.R. Hankins.

And comes the said deft. J. R. Hankins, by his attorneys, and adopting the allegations of said petition as to residence of parties plaintiff and defendant herein, alleges as follows, to wit:

That on the 1st day of November 1916, this defendant was lawfully seized and possessed of the following described land and premises, situated in Swisher County, Texas, holding same in fee simple, to wit:

Approximately 215 acres of land, being a part of Survey No. 24, A. B. & M. Block M-11, described by metes and bounds as follows, to wit:

Beginning at the original S. W. corner of Survey No. 208, International and Great Northern Certificate No. 1667, abstract 457, in Block 6, Randall County, Texas, same being an iron pipe marked 208, B-6-129, B-5, this pipe is set in circular trench 12 feet in dia. same being the original corner of said Block 6; thence South, from iron pipe

Amial

Gross action

Randall Co Corner
P15

following the Meridian 27 miles, same being 51,321.6 varas set 1 inch Iron Pipe; thence due East 1900.8 varas a 2 inch iron pipe and 2 pits, whence a fence bears east 5.4 varas, another fence bears north 12.3 varas and east 15 varas; thence South 639 varas to an old fence row, fence now removed; thence East following old fence row, 1900.8 varas to the east line of Survey No. 24 Block M-11; thence North 639 varas to a 1 inch iron pipe shaft, buried below the plow, whence a fence line bears North 8.7 varas, another fence line bears east 136 varas, this iron shaft being the S.E. corner of Survey No. 17 and N.E corner of Survey No. 24, Adams, Beaty & Moulton, Certificate No. 367, Block M-11, in Swisher County; thence West 1900.8 varas to the above mentioned 2 inch iron pipe and 2 pits, same being the beginning corner for this 215 acres survey and being the S. W. corner of said survey No. 17 and the N. W. corner of said survey No. 24. That on the day and year last aforesaid the plaintiff and the other defendants herein entered upon said premises and ejected plaintiff therefrom and unlawfully withhold from this defendant the possession thereof, to his damage \$500.00.

Wherefore, this defendant prays judgment of the court that this defendant have judgment for the title and possession of said above described land and premises and that writ of restitution issue and for his cost of suit and for such other and further relief, special and general, in law and equity, as he be entitled to, and will so ever pray.

Thos F. Turner

H. C. Randolph

(Endorsed) No. 2542.

Attorneys for deft, J. R.

Hankins.

E. A. Dilley Vs. J. R. Hankins et al.

First Amended Original Answer & Cross Action of Defendant
J. R. Hankins.

Filed Sep. 28, 1917, J. C. Skillman, District Clerk
Potter Co. Tex.

E. A. Dilley

Vs. No. 2542

J. R. Hankins et al

|
| Final Judgment.
|

|
| Friday November, 30th 1917.
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On November 26th 1917, the above styled and numbered cause came on regularly for trial, and thereupon came the parties, both plaintiff and defendant, and announced ready for trial, and thereupon came a jury of twelve good and lawful men, to wit: J. B. Dickson, and eleven others, who after being duly empaneled and sworn, and after hearing the pleadings, evidence, charge of the Court and argument of counsel, retired on the 30th day of November 1917, to consider of their verdict, and after due deliberation, on the same day, returned into open court, with the following verdict, to wit:

"We, the jury, find for the plaintiff and defendants Shook and Jowell, and our verdict is as follows: We, the jury, find for the plaintiff, and that the boundary line between the said E. A. Dilley and the said J. R. Hankins should be and is located at the south boundary line of said survey 17 and the Hutchinson Pipe Corner location, and that said Section 17 in Block M-11 is bounded as follows: Beginning at an iron pipe set by W. B. Hutchinson for the North-west corner of Survey 17, Block M-11, Swisher County, Texas; thence south 1890 varas to a point for a corner; thence east following old fence line heretofore existing, along the South boundary line of said Survey 17, according to the Hutchinson Pipe corner location, 1962 $9/10$ varas to a ~~point~~ for a corner; thence North 1890 varas to an iron Pipe set by W. B. Hutchinson to the North-east corner of said Survey, according to said pipe corner location; thence West 1962 $9/10$ varas to the place of beginning. And that as to all lands contained within said boundaries the defendant, Hawkins take nothing.

We, the jury, find for the defendant B. L. Shook, upon his plea of limitation for the land described in his

answer, as follows: Beginning at an iron pipe set by W. B. Hutchinson for the North-east corner of Section 16; thence South at 1242 $5/10$ varas pass a new fence, in all 1900 varas, to a point 30 feet east of old fence corner; thence West with old fence line, 1952 varas; thence North with old fence 1900 varas, a point 14 varas north of fence; thence East with lane and public road 1952 varas to the beginning, same being Section No. 16, Block M-11, as located by the Hutchinson iron pipe corner.

We. the jury, find for the defendant W. E. Jowell, upon his plea of limitation against the plaintiff E. A. Dilley, for all of the land described in his original answer, being all of Section 4 as located by W. B. Hutchinson in Block M-11, Swisher County, Texas, described by metes and bounds and objects on the ground, as follows: Beginning at an iron pipe set by W. B. Hutchinson for N. W. corner of said Section 4; thence South along under a wire fence 1925 varas to a corner post for the S. E. corner of this tract; thence West with wire fence 1952 varas to a point $10 \frac{1}{2}$ north and $10 \frac{1}{2}$ varas east to an iron pipe set by W. B. Hutchinson for the S. W. corner of said Section 4; thence North 1925 varas with a wire fence to point $10 \frac{1}{2}$ varas east of an iron pipe set by W. B. Hutchinson for the North-west corner of Section 4; thence East 1925 varas to the place of beginning. J. B. Dickson, Foreman of Jury", which verdict was received by the court and ordered filed, and said jury discharged from further consideration of this case.

It is therefore, ordered, adjudged and decreed by the Court that the boundary line between Surveys 17 and 24, Block M-11, Swisher County, Texas, be and it is hereby located as established by the Hutchinson Pipe Corner location, of said Section 17, as follows: Beginning at a point 1890 varas South of an iron pipe set by W. B. Hutchinson for the

North-west corner of said Survey 17, Block M-11; thence East 1962.9 varas to a point for a corner, following the old fence line heretofore existing along the South line of said Section as same was located by said Hutchinson Pipe Corner; and that the boundaries of Section 17, Block M-11, are as follows: Beginning at an iron pipe set by W. B. Hutchinson for the N.W. corner of said survey 17, Block M-11, as per said Hutchinson Pipe Corner location; thence South 1890 varas to a point for a corner; thence East following the old fence line heretofore existing along the South line of said Section as same was located 1962.9 varas to a point for a corner; thence North 1890 varas to a pipe set by W. B. Hutchinson for the N. E. corner of said Hutchinson pipe corner location of said Section; thence East 1962.9 varas to the place of beginning, and that as to said tract of land the defendant J. R. Hankins recover nothing.

And it appearing to the court that in this cause, the plaintiff has heretofore recovered interlocutory judgment by default against Emily Householder, it is hereby ordered by the Court that said judgment be, and the same is hereby made final, and the boundary line as between the plaintiff and the said Emily Householder and all persons claiming from her or under her, the boundary lines of said Survey 17 according to said Hutchinson Pipe Corner are hereby determined to be as follows: Beginning at an iron pipe set by W. B. Hutchinson for the N. E. corner of said Survey 17; thence South 1890 varas to a point for a corner.

It is further ordered, adjudged and decreed by the Court that the defendant B. L. Shook do have and recover of and from the plaintiff and defendant J. R. Hankins, the title and possession of the following described lands and premises, and that said lands as hereinafter described are the true and correct boundary lines of Survey 16, Block M-11, to wit: Beginning at an iron pipe set by W. B. Hutchinson

for the North-east corner of Section No. 16; thence South at 1242 5/10 varas pass a fence, in all 1900 varas, to a point 30 feet east of old fence corner; thence West with old fence line, 1952 varas; thence with old fence 1900 varas, a point 14 varas North, of fence; thence East with lane and public road 1952 varas to the beginning, same being Section No. 16, Block M-11, as located by the Hutchinson iron pipe corners.

It is further ordered, adjudged and decreed by the Court that the defendant W. E. Jowell, do have and recover of and from the plaintiff E. A. Dilley, the title and possession of the following described lands and premises, and that said land and premises, as hereinafter described are the true and correct boundary lines of Survey 4. Block M-11, to wit: For all of the land described in his original answer, being all of Section 4 as located by W. B. Hutchinson in Block M-11, Swisher County, Texas, described by metes and bounds and objects on the ground as follows: Beginning at an iron pipe set by W. B. Hutchinson for the N. E. corner of said Section 4; thence South along under a wire fence 1925 varas to a corner post for the S. E. corner of this tract; thence West with wire fence 1952 varas to a point 10 1/2 varas north and 10 1/2 varas east to an iron pipe set by W. B. Hutchinson for the S. W. corner of said Section 4; thence North 1925 varas with a wire fence to a point 10 1/2 varas east of an iron pipe set by W. B. Hutchinson for the N. W. corner of Section 4; thence East 1952 varas to the place of beginning.

It further appearing to the court that plaintiff has heretofore recovered interlocutory judgment by default against the defendant Geo W. Williams and J. P. Shirley, and it further appearing from the verdict of the jury that the boundary lines of plaintiff do not conflict with the location of the lines of the lands belonging to

said defendants Williams, it is ordered by the Court that the plaintiff take nothing as against said defendants Williams and Shirley, and that all costs of making said defendants parties be taxed against the plaintiff, E. A. Dilley.

It is further ordered, adjudged and decreed by the Court that the defendant J. R. Hankins, take nothing as against the plaintiff E. A. Dilley, and the defendant B. L. Shook on his cross action herein, and that said parties go hence without day as to said cross action, and recover of and from said defendant Hankins all their costs incurred herein, by virtue of such cross action.

It is further ordered by the court that all costs herein be taxed against the defendant J. R. Hankins, save and except the costs of making parties defendants, W. E. Jowell, Mrs. Emily Householder, Geo M. Williams and J. P. Shirley, all of which are taxed against the plaintiff.

It is further ordered that the respective parties entitled thareto under this judgment may have writ of possession and restitution issued for their respective lands.

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The State of Texas |
 |
County of Potter |

I, J. C. Skillman, Clerk of the District Court in and for the County and State aforesaid, do hereby certify that the foregoing pages contain a true and correct copy of the Plaintiff's Original Petition; First Amended Original Answer and Cross Action of Defendant J. R. Hankins, and Judgment of the Court, in cause No. 2542, wherein E. A. Dilley is plaintiff and J. R. Hankins et al are defendants, as the same appears on file and of record now in my office. Said judgment recorded in Vol. 8 pages 164, 165 and 166 of the minutes of said Court. Given under my hand and seal of said Court this March 22nd 1919.

counter 37660

J. C. Skillman

Swisher Co.

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Received in
General Land Office
6-9-1919

Sec 206 S.W. Rep.
pages 549-553
Clote

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P22

H. C. RANDOLPH
ATTORNEY AND COUNSELOR AT LAW
PLAINVIEW, TEXAS

1411

May 16th.1919.

Hon. J. T. Robison,
Austin, Texas.

COMMISSIONER GENERAL LAND OFFICE.

Dear sir:

Enclosed find corrected field notes and certified copy of request from the Commissioners Court of Swisher County for a correction of field notes of survey No. **Twenty-three** in Block M-11, Swisher County, Texas.

Mr. Hankins is the present owner of said section No. 23, as recited in the order of the Commissioners Court, and files this request for a reduction in the acreage of survey 23, M-11, so that he will only be charged on the books of the Land Office and tax assessor of Swisher County with the actual acreage in said section 23. This is sent with the request that it be considered with the application filed by me for him to have the acreage in section No. 24, school Land reduced.

I send these preliminary documents with the request that you notify me at once what other instruments or proof you may need before acting on this application.

Yours truly,

H. C. Randolph

RECEIVED

MAY 19 1919

Referred to Map

S. 12165

counter 37634

IN THE COMMISSIONERS' COURT, SWISHER COUNTY, TEXAS.

This, the 12th day of May, 1919, there was presented to the said Court, corrected field notes for Survey No.23, in block M 11, Swisher County, Texas, duly certified by the County Surveyor, Swisher County, which field notes are as follows, to-wit:

"Beginning at an iron pipe set by W.B.Hutchinson for the S.E.Corner of Sec.18, S.W.Corner of Sec.19, N.W.Cor. of Sec.22, and the N.E.Corner of this Survey, Sec.23, all of block M-11;

Thence West with South line of section 18, blk.M-11 a distance of 1900.8 vrs to the N.E.Cor. of Sec. 24, same block;

Thence South with East line of Sec.24, a distance of 1227 vrs. to a point in N.line of B.W.Hopson strip Survey No. 36;

Thence East 1900.8 vrs. to a point in N. line of R.J.Stallings strip Survey No.59;

Thence North 1227 vrs. to the place of beginning."

And it appearing from said field notes that said survey, instead of containing 640 acres of land only contains 413 acres, wherefore the said Commissioners' Court requests the Commissioner of the General Land Office of the State of Texas to reduce the acreage in said survey to 413 acres, so that the owner thereof, J.R.Hankins will only pay taxes to the state and county for the actual acreage within the bounds of said survey.

And the Clerk of this court is hereby ordered to make a certified copy of this order for transmission to the General Land Office of the State of Texas.

State of Texas:

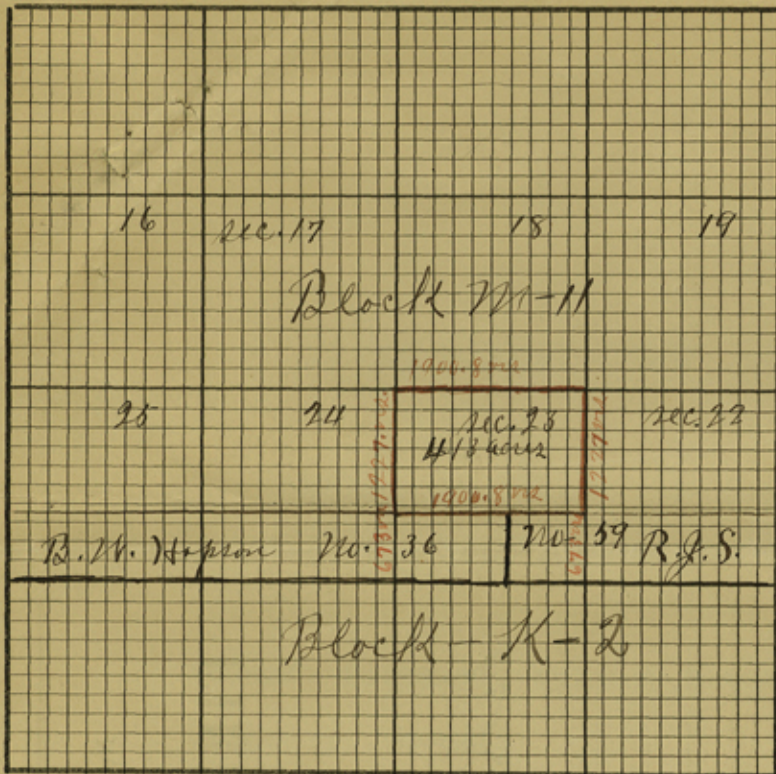
County of Swisher:

I J.M.Simpson, Clerk of the County Court in and for Swisher County, Texas, hereby certify that the above and foregoing is a true and correct copy of an order entered by the Commissioners' Court of Swisher County, Texas and duly recorded on page 2 Volume 434 of the minutes of said Court.

Given under my hand and official seal this the 13th day of May, 1919.

J.M.Simpson
County Clerk,
Swisher County, Texas

counter 37637



THE STATE OF TEXAS, }

County of Swisher }

FIELD NOTES of a Survey of 413
acres of Land made for
J. R. Hankins

Original Grantee: Adams, Beaty & Moulton

Patentee: Andrew Jackson Cherry 1878-

Cert. No. 367 Issued Jan 9th 191

Survey No. 23 Block M-11

Quantity: 413 acres being the
North 413 acres of section
23 blk M-11

Patent No. 145

Abstract No. 310

Scale 1900.8 Varas per Inch. Variation 11° 30'

Said survey is in Swisher County, Texas, situated near the
waters of South Tule Creek, a tributary of red River,
about 7 miles S.W. of Julia County Seat
of Swisher County

BEGINNING AT an iron pipe set by W. B. Hutchinson
for the S.E. corner of sec. 18, S.W. corner of sec.
19, N.W. cor. of sec. 22, and the N.E. corner of this
Survey sec. 23 all of block M-11;

Thence West with South line of section 18 blk.
M-11 a distance of 1900.8 varas to the N.E. cor. of sec.
24 same block;

Thence South with East line of sec 24 a distance
of 1227 varas to a point in N. line of B.M. Hapron
Strip Survey No. 36

Thence East 1900.8 varas to a point in N. line of
R. J. Stallings strip Survey No. 59;

Thence North 1227 varas to the place of Beginning.

S. W. C. Co. 58. F. L. # 11

to the place of beginning.

Bearings marked *As above*
Surveyed *May - 8th* 191*9* } Chain Carriers.
J. R. Hankins
G. L. Croin

I, *J. N. McClann*, County Surveyor of *Swisher* County, Texas,
do hereby certify that the foregoing described Survey was actually made by me on the ground, according to law,
on the date and with the Chain Carriers aforesaid, duly qualified, and that all the Corners, Lines, Boundaries and
Marks of the same, whether natural or artificial, are truly and correctly described and set forth in the forego-
ing Plat and field Notes.

By *J. N. McClann* Deputy.
County Surveyor *Swisher* County, Texas.

Filed for Record in my office, the *8th* day of *May* 191*9*, at *5-P* o'clock
M., and duly Recorded the *8th* day of *May* 191*9*, in Book *4* Page *122*
J. N. McClann Surveyor.

E 511*

No.

FIELD NOTES

OF A
SURVEY
MADE FOR

J. R. Hankins

J. N. McClann Surveyor,
Swisher County, Texas.

BERNETT PRINTING CO. PARIS TEX.

counter 37636

H. C. RANDOLPH
ATTORNEY AND COUNSELOR AT LAW
PLAINVIEW, TEXAS

1519
RECEIVED

JUN 9 1919

Referred to Law

June 6th. 1919. X

Hon. J. T. Robison,
Commissioner Genl. Land Office,
Austin, Texas.

Dear sir:

Yours of the 20th. inst., returning to me the certified copy of the judgment, petitions, etc., from the District Court of Potter County, in the case of Hankins vs. Dilley, tohand.

I note that you say that your office is unable to determine just what was recovered in the judgment. To cover this I enclose herewith along with the certified copies which I return you, field notes of survey No. 24 in Block in Block M-11, Swisher County, corrected to show the acreage left in survey No. 24 according to the judgment, amounting to 413 acres.

I also note that you are not able to determine whether the owner of 17 recovered simply by estoppel or by limitation. In order that you may have a history of the case and its effect on survey No. 24, I relate the following as the facts involved, and the rulings of the court, below and appellate. This suit was filed by Dilley, the owner of section No. 17 which lies immediately North of section No. 24, in Block M-11, to recover of Hankins the land appropriated by Hankins who had moved up on him, as he alleged, the distance of the strip to the south of 24 heretofore awarded and sold by the State as vacant land, and, in addition, Dilley made all adjoining land owners parties to the suit and asked that the lines be adjudicated between himself and them, setting up his land as being enclosed by the Hutchison iron pipe corners. In addition, Dilley plead that Hankins was estopped from claim-

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counter 37642

J.T. R. Com. Genl. L. O. #2. June 6th.-19.

ing that distance upon on what he claimed to be survey No. 17, because said Hankins had ^ktaled with him when he made the purchase, etc., and had not informed him that he claimed the land and put him on notice. The case was tried before a jury in Potter County, the contention of those opposing Hankins theory of the "slide," being that (1) there was no slide, that if the land was correctly located on the ground from the proper corner, that is, from the Northwest corner of survey 346, Block M6, that it would be located east and south of the location beginning at survey No. 208 Block 6, I. & G. N. Randall County. That is, that the land should be located from what is known as the "Dameron" corner in said Block 6, Castro County. (2) they also contended for limitation on the Shack land and estoppel as against Hankins claim to run up on Dilley's survey No. 17. The lower court held that there was no estoppel in the case and submitted the case to the jury upon only one issue, and that was, whether or not the land was to be located from certain corners in W1, M8 and M9. The jury found in favor of Dilley, et al, and against Hankins. On appeal to the court of Civil Appeals at Amarillo, that Court held that the case had been improperly submitted to the jury upon the question of location, but that the case must be affirmed because of the question of estoppel which the lower court failed to submit to the jury. I tried to get to the Supreme Court by the mandamus route, because of the conflict of opinion, the case being one not appealable, but the Supreme Court refused the madamus. See Opinion of the Court of Civil Appeals, Vol. 206, Southwestern Reporter, p 550.

The effect of this decision is, that Hankins now being the owner of the strip sold on the South of Block M-11, and being forbidden to go north and gain the land that he should have gained by the slide, is paying on two school land tracts, viz. that strip to the South and the full section 24, of which the court only awards him 413. acres. counter 37493

H. C. RANDOLPH
ATTORNEY AND COUNSELOR AT LAW
PLAINVIEW, TEXAS

J. T. R. Com. Genl. L. O. No. 3, June 6th. 19.

Mr. Hankins does not ask for a cancellation of the strip survey, for which he paid much more than for 24, but simply asks that he be credited on section 24 with the amount he has lost.

Please notify me at once what fees are necessary in this matter and I will remit them.

Yours truly,

76

counter 37674

1527

H. C. RANDOLPH
ATTORNEY AND COUNSELOR AT LAW
PLAINVIEW, TEXAS

June 7th. 1919.

Hon. J. T. Robison,
Austin, Texas.

Dear sir:

I find that I failed to enclose the corrected field notes of survey No. 24 in Block M-11, Swisher County, in my letter of the 6th. inst hence I now enclose them and ask that they be taken in connection with my letter of that date.

Yours truly,

H. C. Randolph

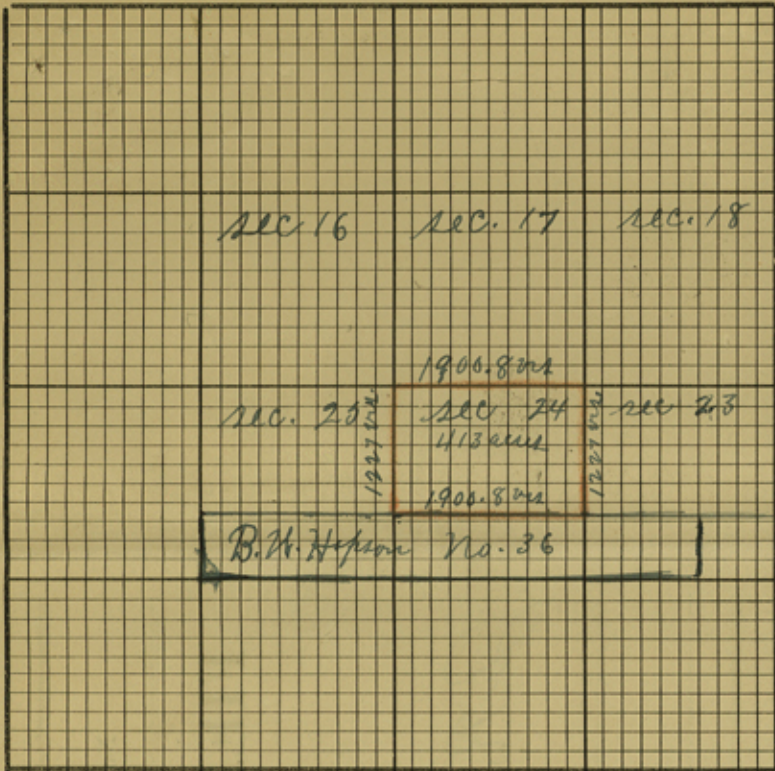
The 7th of seals 23 x 24 Blk. M.11 have been cert shot 673m. in the Southings according to the order of the Commissioners Court for Swisher Co (attached). The Surveyor should show by a connecting line & sketch between well established cor's how he arrives at this shortage. The South line of the Hooper & Stalling S. F. locations should be well established as found by N.K. Smith when he run a connecting line in 1904 along the west line of this block

RECEIVED
JUN 9 1919
Referred to Map

F. 46075

counter 37645

PT



THE STATE OF TEXAS, }

County of Swisher }

FIELD NOTES of a Survey of 413
acres of Land made for
J. R. Hankins

Original Grantee: _____

Patentee: _____

Cert. No. _____ Issued _____ 191

Survey No. 24 block M-11

Quantity: 413 acres of land

Scale 1900.8 Varas per Inch. Variation 11° 36' C.

Said survey is in Swisher County, Texas, situated on the
waters of South Tule creek, a tributary of Red River,
about 7 miles S.W. of Julia County Seat of
Swisher County

BEGINNING AT The Southeast corner of section 25 block
M-11, said corner being in the North line
of B.W. Hapson Survey No. 36, for the S.W. corner
of this Survey;

Thence North with East ^{line} of section 25 blk. M-11
1227 var. to the S.W. corner of sec. 17 same block.

Thence East with south line of section 17 blk.
M-11 - 1900.8 var. to S.W. corner of section 18 blk-
M-11 for the N.E. corner of this Survey;

Thence South with West line of sec. 23 blk.
M-11 a distance of 1227 var. to North line of
B.W. Hapson Survey No. 36.

Thence West with North line of B.W. Hapson
Survey No. 36 - 1900.8 var to the place of beginning.

to the place of beginning.
 Bearings marked as above
 Surveyed June 5th 1919 } Chain Carriers.
J. J. Croin
Monroe McClann

I, J. M. McClann, County Surveyor of Swisher County, Texas,
 do hereby certify that the foregoing described Survey was actually made by me on the ground, according to law,
 on the date and with the Chain Carriers aforesaid, duly qualified, and that all the Corners, Lines, Boundaries and
 Marks of the same, whether natural or artificial, are truly and correctly described and set forth in the forego-
 ing Plat and field Notes.

By J. M. McClann Deputy. County Surveyor Swisher County, Texas.

Filed for Record in my office, the 5th day of June 1919, at 3 o'clock P
 M., and duly Recorded the 5th day of June 1919 in Book 4 Page 131
J. M. McClann Surveyor.

E 541*

No.

FIELD NOTES
 OF A
 SURVEY
 MADE FOR

J. R. Hankins

*not approval - note
 discrepancy in E. + W. lines
 and Jury verdict in case of
 Billy vs Hankins -
 Robinson
 6-18-21-*

J. M. McClann Surveyor,
Swisher County, Texas.

HEWETT PRINTING CO. PARIS TEX.



General Land Office
State of Texas
Austin

J. T. ROBEYSON, COMMISSIONER
J. H. WALKER, CHIEF CLERK

June 18, 1921.

Hon. H. C. Randolph,
Plainview, Texas.

Dear Judge:

Concerning section 24, block M-11, for which you have sent in corrected field note for 413 acres on account of reduction for reason of the decree of court in the case of Dilley vs. Hankins or Hankins vs. Dilley, et al, as appears in 206 Southwestern reporter, beg to say I have again reviewed that case and I have again re-read the petition and judgment of the district court. I have done that in connection with your desire for a patent on what is alleged to remain of section 24, block M-11.

Upon a re-reading of this case in the 206 Southwestern beginning on page 549, it seems I have reached the conclusion that all that case settled was a controversy between the owners of section 17 and the owner of section 24 as to which was the proper dividing line between survey sections 17 and 24; also the line between 24 and 16. The court held that the line between 17 and 24 would be fixed by estoppel on the part of the owner of 24 and that 16 was decided on the ground of limitation. A careful reading of the case does not disclose where the court determined which would be the best and proper way to fix the lines of sections in the blocks according to the original survey, but on the other hand, the court specifically declined to determine whether or not the Dameron corner or corner of block 6, I&GN on the N should be used as the beginning corner or a controlling corner but rather intimated or indicated that each one of those corners should be taken into consideration. The problem of how both of the corners are to be taken into consideration is beyond my comprehension when they are at such variance that the surveys cannot be reconciled by adopting both of them as controlling. Should you come course and distance S from block 6 and go E from the Dameron corner and adopt the inter-

7
counter 37638



General Land Office
State of Texas
Austin

J. T. ROBISON, COMMISSIONER
J. H. WALKER, CHIEF CLERK

#2. HCR

section of those lines by course and distance as controlling the location of the surveys, it seems there would be greater confusion than has ever existed either under the original surveys as it is supposed to have been made or under the Hutchinson Iron Pipe survey.

To come into section 24 more definitely I do not believe this department can, at this time, afford to issue a patent upon it by either recognizing the Dameron corner or the corner of block 6, I&GN as a controlling corner nor by course and distance from the two corners as of equal force because, so far as I am aware, the courts have declined to determine with sufficient definiteness what would be a proper solution in that matter. More directly with reference to section 24, permit me to point out that the judgment of the district court based upon the jury's verdict found section 17 to be 1962.9 varas E and W on the S line. Section 24, of course, calls to be the same length as section 17. The corrected field notes of section 24, which you send in, call to begin at another survey which is at the SW corner or supposed to be at the SW corner of section 17 and then go E with the S line of 17 to the SW corner of 18 which is, or is supposed to be, at the SE corner of 17 and only makes the distance 1900.8 varas, thus making the N line of 24 62 varas shorter than the S line of 17 when I do not see how they can be other than the same under the calls in the field notes. I think you will likewise find in the judgment of the district court in the case in the 206 Southwestern above referred to, the distances are so out of harmony with what ought to be that I do not know how we can reconcile them here.

To be a little more specific, whoever is demanding a patent on 24 under the Dilley vs. Hankins judgment are, it seems, demanding patent on at least $13\frac{1}{2}$ acres more land than they are offering to pay for; that is, they are not including it in their field notes and I cannot understand what one means by that kind of procedure. They certainly do not think this department would not discover a

counter 37639



General Land Office
State of Texas
Austin

J. T. ROBISON, COMMISSIONER
J. H. WALKER, CHIEF CLERK

#2. HCR

glaring discrepancy like that.

All these matter will be held until such time as you may desire to present the matter more fully as you suggested in yours of a few days ago.

Under the status of this record and the failure of the courts as stated above to determine how is the way to indicate these lands as to boundary, allow me to suggest that the owner of section 24 might, under the act pertaining to transfers, etc. which became effective the 11th of this month, apply for a patent on section 24 on at least that portion that he deems out of conflict with section 17, without reference to this decision, and if it could be put in shape to be patented it would be patented as so many acres out of the S part of 24 and the balance of the N part of the section would still remain in this sale and if the interest should not be paid on it, it would be forfeited for the nonpayment of interest and advertised and resold unless the advertisement and resale should be withheld until the Attorney General could look into the matter with a view of bringing a suit to determine the proper location of the surveys on the ground and thereby fix for all time the boundaries of these blocks and sections within them, but if he should conclude to file such a suit I am rather disposed to think he would, in the suit, ask that the court decree all excess land out of private surveys and put it into or make it adjacent to the school surveys. I am throwing out this suggestion for you to think over. You recognize the fact that this department cannot look with favor on a judgment that will hold a private survey to be superior to a school survey in the same block when that superiority is based upon the action of the parties claiming the land, rather than upon the legality of the boundaries in the original survey. From the decree it seems the court may have intended to say that the owner of 17 had some of 24 within his land and if so that land belongs to the public school fund of Texas and this department will not submit without a struggle



General Land Office
State of Texas
Austin

J. T. ROBISON, COMMISSIONER
J. H. WALKER, CHIEF CLERK

#4. HGR

in its endeavor to have the right thing done
towards the public institutions while at the
same time recognizing the rights of the indi-
vidual.

Yours truly,

Robison-wb

Commissioner

F. 46075
S. 12162