

Judge Roy C. Archer  
District Judge, 126th District Court  
Travis County, Texas

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**REFERRED TO LAW**

Dear Sir:

Following is a copy of my appointment as a surveyor in connection with District Court Cause #74,902.

NO. 74902

STATE OF TEXAS, ET AL            |            IN THE 126TH DISTRICT COURT  
  |            VS.    |            OF  
W. T. COLLEY, ET AL            |            TRAVIS COUNTY, T E X A S

APPOINTMENT OF SURVEYOR

This the 3rd day of June, 1946, it appearing to the court that the appointment of a surveyor is necessary in the above entitled and numbered cause, it is accordingly ordered that M. O. METCALFE, who is a competent surveyor of this county, be and he is hereby appointed surveyor, and he shall forthwith survey the premises in controversy and report his action under oath to this court, together with a statement of the time employed by him in such respects, and for such time reasonable compensation is hereby ordered taxed as a part of the costs of such cause.

Roy C. Archer  
JUDGE

I assembled various official records which in my opinion were necessary to make the survey in connection with controversy before the Court and I am presenting a major portion of said records as Exhibits accompanying and being made a part of this report.

The following Exhibits 1 -10 inclusive have been certified to by the Commissioner of the General Land Office of the State of Texas, and Exhibits 11 -12 inclusive have been certified to by the County Clerk of Travis County, Texas, and are tabulated as follows:

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EXHIBIT NO.	SURVEY NAME	SURVEY NO.	SURVEY DATE	PATENT DATE	NAME OF SURVEYOR	TYPE INSTRUMENT	COMMENTS
1	J. P. Colley	190	Mar. 19, 1920		H. G. Lee	Corrected Field Notes	
2	John Bilberry	612	June 5, 1867	June 1, 1877	John E. Campbell	Original Field Notes	Field Notes accepted by Land Office
3	John Bilberry	612	Mar. 24, 1888		John E. Campbell	Resurvey	Unfavorable notations by Land Office
4	John Bilberry	612	April 1, 1899		H. G. Lee	Resurvey	Unfavorable notations by Land Office
5	McKinney & Williams	601	Oct. 1, 1861	Nov. 30, 1861	J. B. Williamson	Original Field Notes	
6	B. Bilberry	550	Mar. 25, 1873	May 22, 1876	James Kelly	Original Field Notes	Field Notes accepted by Land Office
7	T. C. R. R. Co.	191	July 20, 1889		John E. Campbell	Corrected Field Notes	Unfavorable notations account of conflict Bilberry Survey #612
8	J. J. White	63	Feb. 11, 1882	Sept. 14, 1883	S. Hayford	Corrected Field Notes	
9	J. P. Colley	190	Apr. 3, 1920		H. G. Lee	Surveyor's Report	Explanation to support his Survey location
10	W. D. Payne	205	Dec. 2, 1942	Dec. 23, 1942	Nick Hornsby	Corrected Field Notes	
11	John Bilberry	612	Aug. 27, 1932			Warranty Deed	
12	J. P. Colley	190				Quit-Claim Deed	

In connection with this report, I have prepared a map which I have designated as Exhibit A, and on this map I have shown the various Surveys together with the name, Survey number, date and the name of the surveyor. At various corners I have placed numbers within a circle, which numbers will be used in my report. I believe that these numbers will aid anyone comparing the report with the map in arriving at a quicker understanding and will also aid the presentation of evidence in the event that this cause goes to actual trial before a Judge or before a Judge and Jury. In my report I may frequently show numbers in parenthesis for instance (8) or (3 - 4) without referring to the Exhibit A, and it will be understood that the intention is to refer to Exhibit A.

Sometime in the spring of 1944 W. H. Bonnet made a verbal request to me as County Surveyor of Travis County, Texas, to make a corrected survey of the J. P. Colley Survey #190, Scrap File 7951 and to prepare field notes of same which would be acceptable to the General Land Office of the State of Texas for the purpose of issuing a patent. I proceeded to go upon the ground and commenced his survey on the 31st day of July, 1944, and worked on same intermittently until June 3, 1946, therefore, many of my studies and considerations of the field notes and other public records preceded the authorization of the Court in connection with this cause and I had found rock mounds, corners, land marks and land lines, which are necessarily referred to in this report.

It will be impossible for me to give the exact dates as to when I was at any particular corner or ran each particular line. During the execution of my work I ran several trial lines which were ultimately proven to not be true survey lines but which enabled me to identify certain rock mounds and to find various lines and corners placed by other surveyors.

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I made a study of the field notes of the J. P. Colley Survey #190 as shown by the survey of H. G. Lee, (see Exhibit 1) and noted that only one line of the J. P. Colley Survey #190 was adjacent to land which is owned by W. T. Colley as evidenced by a deed from Bryan Blalock and D. R. Blalock to W. T. Colley as recorded in Travis County Deed Records in Book 486, Page 53, (Exhibit 11). Referring to the aforementioned deed as recorded in Book 486, Page 53, I find that the description is identical with that set forth in the original field notes of the John Bilberry Survey #612, (Exhibit 2).

I refer again to the field notes of the J. P. Colley Survey #190 (Exhibit 1) and note that said field notes have the indorsement of approval by the General Land Office. The field notes of Survey #190 start as follows: "Beginning at the S. E. cor. of the John Bilberry Sur. No. 612 an old stone mound in a flat S 60° E 50 varas from where the south line of said survey crosses Cross Creek; Thence N 30° E 750 varas to N. E. corner of said Bilberry Survey, a stake for corner;"

As this J. P. Colley Survey #190 was what is known as a Scrap File Survey, the surveyor was required by General Land Office regulations (or by statute) to take up all land in a contiguous body, therefore, I proceeded to try and locate the original lines of the John Bilberry Survey #612 as set forth by the patented field notes (Exhibits 2 and 11).

During the year 1944 I had been taken to a rock mound which was considered to be the northwest corner of the J. J. White Survey #63, from this rock mound I ran N 88° 45' E (shown on my map Exhibit A) 954.3 varas 7-8) and found a rock mound and from this rock mound found a scrub cedar N 73° 00' E 5.5 varas, the original survey record calls for a cedar marked x bears N 72° 00' E 5.0 varas. I considered that I had located the two north corners of the J. J. White Survey #63.

I also ran from this northeast corner of the J. J. White Survey #63 (8) SOUTH 872.2 varas (record 864 varas) to a stake and rock mound (27) replaced by me from the original bearing trees found as called for in the J. J. White Survey #63 (Exhibit 8) said trees being a 22" Live Oak marked x bears N 78° 00' E 59.0 varas and a triple Live Oak bears S 83° 30' W 32.9 varas.

I returned to the northwest corner (7) of the J. J. White Survey #63 and ran N 4° 10' E 386.2 varas and found an old rock mound (7-9) as compared to the J. P. Colley Survey #190 (record of N 4° 00' E 384.0 varas) which appears to be the corner referred to as the northeast corner of the B. Bilberry Survey by H. G. Lee in his corrected field notes of Survey #190 (Exhibit 1).

I am calling attention to the various surveys of the John Bilberry Survey #612, the first survey was made by John E. Campbell, June 5, 1867, and was patented in accordance with said field notes (Exhibit 2). This original survey of the John Bilberry Survey #612 did not call for any bearing trees but called for rock mounds at each of the four corners and it called for two crossings of Cross Creek. I could not find any evidence that Cross Creek had ever made any material change in its location.

The John Bilberry Survey #612 (Exhibit 2) calls to begin as follows: "Beginning on S. E. cor. of Survey No. 601 made for McKinney & Williams, Thence S 30° 00' W 200.0 varas Cross Creek 750 vs. to North line of Survey No. 11."

The John Bilberry Survey #612 was resurveyed again by John E. Campbell on March 24, 1888, (Exhibit 3) evidently with the intent to have the patent to same issued in June 1877 cancelled and use in lieu thereof the revised location as shown by the Campbell resurvey of 1888 for J. M. Swisher. The reason for the resurvey does not show by any record found by me but apparently it was because Campbell did not find the true southeast corner of the McKinney and Williams Survey #601 at the time he made his original

survey in the year 1867 and had placed Survey #612 in conflict with the McKinney and Williams Survey. Although Campbell does not admit same directly he does so in a definite way indirectly by his resurvey of the John Bilberry Survey of 1888, and by the fact that to the north of his relocation of the John Bilberry Survey #612, he located the T. C. Railroad Company Survey #191, which Survey #191 calls for his revised location of the John Bilberry Survey #612 as a south line and calls for a north line of his revised location of the John Bilberry Survey as made for J. M. Swisher and also calls for the southeast corner of the McKinney and Williams Survey and for the south line of the McKinney and Williams Survey #601.

The field notes of the John Bilberry Resurvey of Survey #612 (Exhibit 3) as made for J. M. Swisher and the field notes of the T. C. Railroad Company Survey #191 also made for J. M. Swisher were never approved by the General Land Office and were never used in a patent to any party but they are of value in connection with proving the location of the original southwest corner of the original John Bilberry Survey #612 as patented in the year 1867, (Exhibit 2) as both sets of field notes heretofore referred to call for the original southwest corner of the John Bilberry Survey #612.

The corrected field notes of the John Bilberry Survey #612 as made for J. M. Swisher call to begin as follows: "Beginning at a stone mound and from which a L. O. 5 in. in dia. brs. N 82° W 5 vs. L. O. 4 in. in diameter bears N 24° W 4 vrs. (original southwest corner) (Exhibit 3).

After being appointed as a surveyor in this cause I went to the residence of W. T. Colley and asked him to give me directions to get as close as possible to the southwest corner of the John Bilberry Survey in my pickup and following his directions I was able to find a rock mound (12) on the east side of a hill which was located at about the place I had expected to find the southwest

corner of the John Bilberry Survey #612. From this old rock mound I found a 6" Live Oak marked  $\bar{x}$  bears N 28° 45' W 4.7 varas and a Live Oak 8" in diameter marked  $\bar{x}$  bears N 80° 40' W 5.2 varas as compared with the trees found set forth for the beginning corner in the field notes of the John E. Campbell resurvey of the John Bilberry Survey #612, which calls for a 4" Live Oak marked  $\bar{x}$  bears N 24° W 4 varas and a Live Oak 5" in diameter marked  $\bar{x}$  bears N 82° W 5 varas (Exhibit 3). That this rock mound is the southwest corner of the John Bilberry Survey is further evidenced by a report (Exhibit 9) of H. G. Lee which accompanies his survey of the J. P. Colley Survey #190 and dated April 3, 1920.

On my Exhibit 9 I have numbered the lines of said report in black ink and I refer to the statements set forth in lines 40 to 48 wherein H. G. Lee found this same rock mound together with the bearing trees which correspond with those set forth in the John Bilberry Survey (Exhibit 3). Considering this pile of rocks (12) as the original southwest corner of the original John Bilberry Survey #612 (Exhibit 2) as surveyed by John E. Campbell on June 5, 1867, and considering that it was the same southwest corner of the John Bilberry resurvey as made for J. M. Swisher (Exhibit 3) in the year 1888, and considering that said corner was referred to in the John E. Campbell Survey of the T. C. Railroad Company Survey #191 (Exhibit 7) copied as follows: "Thence N 60° W 390 varas to corner of same and original corner of said John Bilberry as first made." I proceeded with my survey as follows:

From this southwest corner of the John Bilberry Survey #612 I ran N 30° E along an old cutting at 405.3 varas I passed a rock mound (13) under the fence, at 591.5 varas I passed the center of Cross Creek and at 750 varas I fixed a point (16) in a field which point should have been the location of the original northwest corner of the John Bilberry Survey #612 based upon its record distance. This point being in a field and being on the

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McKinney and Williams Survey #601, several hundred varas distant from the south line of Survey #601, there is not any chance of finding the original rock mound. From this point (16) I ran S 59° 55' E at 570 varas set a temporary stake which was supposed to be the most westerly corner of the J. P. Colley Survey #190 on the south line of the McKinney and Williams Survey #601 and on the north line of the John Bilberry Survey #612, continuing S 59° 55' E a total distance of 750 varas and set a stake for a trial corner of the John Bilberry Survey #612 (14).

I returned to the rock mound which I consider is the southwest corner of the John Bilberry Survey #612 (12) and ran S 59° 55' E and at 111.2 varas I passed a small rock mound near a fence corner which is used as the middle north corner of the B. Bilberry Survey #550 (Exhibit 6) and continuing S 59° 55' E along a very old marked line, at 659 varas crossing the west waters edge of Cross Creek, at 681 varas crossing the center of Cross Creek, at 700 varas crossing the east waters edge of Cross Creek, at 750.4 varas (12-11) I found an old rock mound which I consider to be the southeast corner of the John Bilberry Survey #612, the northeast corner of the B. Bilberry Survey #550 and the most westerly corner of the J. P. Colley Survey #190 as surveyed by H. G. Lee March 19, 1920.

This rock mound (11) was found under an old fence at the edge of a small open clearing with comparatively good soil without any natural outcroppings of either solid or loose rock and the rocks embedded in the soil evidently were brought there for the purpose of marking a corner. The rock area was about 2½ feet in diameter. I found that this corner was N 0° 30' E 328.1 varas (7-10) and N 59° 40' W 278.6 varas (10-11) distant from the northwest corner of the J. J. White Survey #63 and following the H. G. Lee field notes of March 19, 1920, for the J. P. Colley Survey #190, I found that this rock mound is N 4° 10' E 386.2 varas (7-9) and S 72° 30' W 278.5 varas (9-11) from the northwest corner of the J. J. White Survey #63 (compare with my Exhibit 1).



The rock mound (11) which I have shown on my map for the southeast corner of the John Bilberry Survey #612, I believe is the identical corner used by H. G. Lee for the west corner of the J. P. Colley Survey #190 and is the same one referred to by Lee in his report of April 3, 1920, (Exhibit 9, lines 25-40).

From this southeast corner of the John Bilberry Survey #612, I ran N 30° 15' E at 750 varas I passed the trial northeast corner (14) of the John Bilberry Survey #612 as placed by me and previously referred to by me in this report and continuing in the same direction I found an old rock mound (19) at a distance of 775 varas which in my opinion is the northeast corner of the John Bilberry Survey #612.

In making my resurvey of the west line of the John Bilberry Survey #612 I noted that John E. Campbell considers that he was "Starting at the southeast corner of Survey #601 made for McKinney and Williams and ran S 30° W 750 varas to north line of Survey #11" (Exhibit 2), and that he inserts the notation 200 varas Cross Creek.

My survey showed that the crossing of Cross Creek was 591.5 varas instead of the 550 varas as indicated by the Campbell field notes discrepancy of 41.5 varas. Considering the excess distance found between the two rock mounds for the east corners of the John Bilberry Survey #612 of 25 varas found by me between two rock mounds (11-19) it is possible that the northwest corner of the John Bilberry Survey could have been 25 varas further N 30° 00' E into the field and then said corner would have been 183.5 varas distant from the center of Cross Creek as compared to the 200 varas distance called for in the original and patented field notes of the John Bilberry Survey #612 (Exhibit 2).

Previous to my appointment by the Court in Cause #74902, I had found an old rock mound used as the southeast corner of the McKinney and Williams Survey #601 (3) and as the southwest corner of the south portion of the W. D. Payne Survey #205 by Nick Hornsby, a licensed land surveyor, according to his field notes

dated December 2, 1942 (Exhibit 10) said rock mound being also used by H. G. Lee in making the J. P. Colley Survey #190 according to his report (Exhibit 9) from this rock mound I ran S 86° 35' W 1263.4 varas to an old rock mound (record S 87° W 1257 varas) used as the southwest corner of the McKinney and Williams Survey #601 (3-2).

From this rock mound (2) at the southwest corner of the McKinney and Williams Survey #601, I ran N 2° 25' W 1286.7 varas to an old rock mound for the original northwest corner of the McKinney and Williams Survey #601 as identified by its original bearing tree a 16" Live Oak marked x bears N 30° E 31 varas (2-1).

I find that the John Bilberry Survey #612 as originally located by John E. Campbell in accordance with his field notes, June 5, 1867, and as patented in June 1877 and as described in a deed from Bryan Blalock and D. R. Blalock to W. T. Colley as recorded in Book 486, Page 53, Travis County Deed Records was placed in conflict with the McKinney and Williams Survey #601 and as previously set forth in this report, John E. Campbell had discovered this fact previous to March 24, 1888, but said conflict does not materially affect the location of the common line of the John Bilberry Survey #612 and the J. P. Colley Survey #190, however, I have connected the southeast (3) corner of the McKinney and Williams Survey #601 with a rock mound which I consider is the northeast corner (19) of the John Bilberry Survey #612 and find that the northeast corner of the John Bilberry Survey #612 is S 86° 35' W 95.5 varas and S 59° 55' E 145.5 varas as compared to the H. G. Lee connection set forth in the J. P. Colley Survey field notes as S 87° W 161 varas and S 60° E 180 varas.

I have not been able to find anything in the records which indicated a conflict between the east line of the John Bilberry Survey #612 and the west line of the J. P. Colley Survey #190, and I consider that the east line of the John Bilberry Survey #612

as originally located and as patented must control the location of the west line of the J. P. Colley Survey #190 and I consider that I have located the east line of the John Bilberry Survey #612 by finding the rock mound at the southeast (11) and northeast (19) corner of said Survey.

I have considered the original field notes of the B. Bilberry Survey #550 which are also the patented Survey (Exhibit 6) and find that said Survey begins at the southeast corner of the John Bilberry Survey #612. I did not find any record of any resurvey of the B. Bilberry Survey #550 in the County Surveyors Records or in the General Land Office. I find that when John E. Campbell attempted to relocate the John Bilberry Survey #612 in the year 1888 that he calls for the northeast corner of the B. Bilberry Survey to be 330 varas S 60° E from the center of Cross Creek and that he calls for said corner to be S 60° E 1030 varas distant from his original southwest corner of the John Bilberry Survey #612. Although I can not find any authority for Campbell (1888) adopting the shifted position of the northeast corner of the B. Bilberry Survey #550, I note that said B. Bilberry Survey #550 was being recognized in its shifted position as evidenced by the J. J. White Survey #63, field notes made by S. Hayford February 11, 1882 (Exhibit 8).

In establishing the south line of the J. P. Colley Survey #190, immediately east of the John Bilberry Survey #612 and without going into the merits of the original location of the B. Bilberry Survey #550 and the shifted location for said survey, I am recommending that the corner recognized as the southeast corner of the John Bilberry Survey #612 (11) and the rock mound (10) which was called for by John E. Campbell as the northeast corner of the B. Bilberry Survey #550 in his field notes of the John Bilberry Survey #612 and in the year 1888, be adopted to control said line. By adopting the connecting line between said rock mounds, I find a course of S 59° 40' E 278.6 varas (11-10).

as originally located and as patented must control the location of the west line of the J. P. Colley Survey #190 and I consider that I have located the east line of the John Bilberry Survey #612 by finding the rock mound at the southeast (11) and northeast (19) corner of said Survey.

I have considered the original field notes of the B. Bilberry Survey #550 which are also the patented Survey (Exhibit 6) and find that said Survey begins at the southeast corner of the John Bilberry Survey #612. I did not find any record of any resurvey of the B. Bilberry Survey #550 in the County Surveyors Records or in the General Land Office. I find that when John E. Campbell attempted to relocate the John Bilberry Survey #612 in the year 1888 that he calls for the northeast corner of the B. Bilberry Survey to be 330 varas S 60° E from the center of Cross Creek and that he calls for said corner to be S 60° E 1030 varas distant from his original southwest corner of the John Bilberry Survey #612. Although I can not find any authority for Campbell (1888) adopting the shifted position of the northeast corner of the B. Bilberry Survey #550, I note that said B. Bilberry Survey #550 was being recognized in its shifted position as evidenced by the J. J. White Survey #63, field notes made by S. Hayford February 11, 1882 (Exhibit 8).

In establishing the south line of the J. P. Colley Survey #190, immediately east of the John Bilberry Survey #612 and without going into the merits of the original location of the B. Bilberry Survey #550 and the shifted location for said survey, I am recommending that the corner recognized as the southeast corner of the John Bilberry Survey #612 (11) and the rock mound (10) which was called for by John E. Campbell as the northeast corner of the B. Bilberry Survey #550 in his field notes of the John Bilberry Survey #612 and in the year 1888, be adopted to control said line. By adopting the connecting line between said rock mounds, I find a course of S 59° 40' E 278.6 varas (11-10).

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of the John Bilberry Survey #612 and I found that the location of this corner (25) was found to be N 59° 05' E 580.0 varas and N 87° 50' E 297.1 varas distant from the southwest corner of the John Bilberry Survey as previously described in this report.

On January 4, 1947 (dated by error 1946) I advised Mr. W. T. Colley, by letter, that I would consider any rock mounds or land lines which he considered of value and presented the facts and would show same in connection with this report, also sent copy of said letter to his attorney Mr. H. H. Shelton and to the Court, and assume that said letter is on file.

Mr. Colley visited my office after receiving the letter but he did not make any request for any additional work or locations although he again expressed the opinion that the rock mound (26) which he had already shown me was the southeast corner of the McKinney and Williams Survey #601. He did not bring in or refer me to any additional records which he wanted me to consider in connection with my survey and report.

In the event that I have worded my report in such a manner that I appear to have assumed the rights of final decision as to final location of any line involved in dispute, such has not been my intent, but I have attempted to find all corners, lines, bearing trees and have advised the Court in this report as to the value and the name of each corner found by me in accordance with my survey.

Respectfully submitted,

*Marlton O. Metcalfe*

Marlton O. Metcalfe,  
County Surveyor of Travis County, Texas.

St. File No. 59

Travis County  
Report of M.O. Metcalfe of Survey  
of the J.P. Colley - S.F. 7951  
Cause # 74902

Filed June 18, 1948

BASCOM GILES, Com'r

Walter Rosenberg  
File Clerk

See Travis Ruled St. 32A  
for surveyors Report

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