

In RE J.R.Hinson, et al.

To the Hon. J J Ferrell, Com. of the General Land Office,

Your petitioners, J.R.Hinson, E.E.Hinson, C.M.Wilson, A.E.Harris, W.N G.Taylor, J.W.Molley and W.H.Carter would respectfully show to your Honor that they are actual bona fide occupants of a certain tract or parcel of land situated in Wood County, Texas, surveyed in the name of B.F Smart, Nov. 10, 1905, and known as Certificate S.F. 7134, B.F. Smart Grantee, that same was surveyed as public land belonging to the State of Texas, that your petitioners being residents on said land at the time became entitled to file and did file on same as the law requires and that petitioners, C.M.Wilson and A.E.Harris have since received from the State of Texas Patents to the portion filed on by them. That the other petitioners have complied with the law in their applications and have paid the State of Texas the amount due to date on the portions allotted to each. Your petitioners now come and ask that your Honor cancel, revoke, set aside and hold for naught the said survey heretofore made by the County Surveyor of Wood County, for the said B.F. Smart and to close up and declare no vacant strip of land there for the following reasons, To-Wit:-

(I)

The District Court of Wood County, Texas, at its November Term, 1907, after a full and complete investigation of the matter in the suit of Mrs. Maude Carter Vs J.R.Hinson found that no vacancy existed. That the question as to whether there was or was not a vacant strip of land there, became a material inquiry in said suit and in order to properly adjudicate same it was necessary for the court to determine whether or not there was a vacant strip, as the defendant J.R.Hinson had impleaded his warrantor G.W.Green; said warrantor contending there was no vacant strip and the plaintiff contending there was. And upon joinder of these issues the Court, after a full and complete investigation of the matter, found the following facts, To-Wit:-

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MRS . MAUDE CARTER

--vs--

J. R. Hinson, ET AL.

This cause was instituted on the 5th, day of April, 1907, by plaintiff to recover upon two certain vendor's lien notes given by defendant, J. R. Hinson, for a certain tract of land described in plaintiff's petition, seeking a foreclosure of a lien on land described.

The notes bear date 21st, day of November, 1904, due the 1st, day of Dec. 1905, and Dec. 1st, 1907, respectively, with interest from date at the rate of 10% and 10% additional as attorneys fees.

J. R. Hinson defendant, seeks to recover over against George Green the value of 28.3, acres of the land the title to which he claims has failed by reason of it being public land and he charges that he has been forced to pay the State therefor.

George Green pleads a number of defenses, among which that the land is not public land.

C O N C L U S I O N S O F F A C T S

The defendant J. R. Hinson's ancestors in title purchased the land in controversy from defendant George Green, on the 3rd, day of May 1882, paying therefor the sum of \$675.00,

The deed from Geo Green to Holmes and from Holmes to E. E. Hinson and from E. R. Hinson to J. R. Hinson describes the land as follows: "B e e g i n n i n g, at the S. E. corner of a tract of land deeded to E. E. Hinson off of said Patten survey. Thence South 666 vrs. to Stake for corner; Thence West 571-1/2 vrs. a stake for corner: Thence North 666 vrs. to said Hinsons South boundary line of same survey; Thence East 571-1/2 vrs. to stake for corner, to the place of beginning,, containing 67-1/2 acres of land.

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The plaintiff's notes were given in part payment of the purchase money for said land when J. R. Hinson purchased the same, Mrs. Mayde Carter, the plaintiff, became the owner of the notes for value and is now the owner. The notes are for amounts and dated as follows:- Note No. 1 for \$100.00, dated 11/12/04, Note No. 2, for \$150.00, dated 11/12/04, Note No. 1, due 12/1/05, Note No. 2, due 12/1/07, and provided for 10% interest from date and 10% additional as attorney's fees in case of suit.

The present value of the notes is \$316.00, principal and interest, and \$31.60, attorneys fees, which is a reasonable fee.

The M.L. Patton Headright Survey, a part of which this land is, is described as follows:

(A-184)7/28/1857.

"Beginning at the N. E. Corner of J. C. Ogden survey #43 a stake from which a post oak 7 in. in diam. brs. N. 70" W. 8 vrs. Thence W. 1143 vrs. to the S. E. Corner of Berry Smith survey #778 Thence N. 1571 vrs. to the N. E. corner of #778. Thence East with the South line of survey #44, 1143 vrs. to its S.E. corner, Thence South 1571 vrs. to the place of beginning.

The E. ALVARADO lies just North of the Patton, and is described as follows:

E Alvarado
(3618)

Beginning 1571 vrs. North of the Northeast corner of the J. C. Ogden and set post in the West line of a survey in the name of John Shaw, from which a red oak brs. 90" West 26 vrs. A black Jack brs. South 9" West 22 vrs. Thence North 860 vrs. set post in same line from which a red oak brs. North 75" West 7-2/10 vrs. another brs. South 72", East 5 vrs. Thence West 4470 vrs. a branch, 4850 vrs. set post in East line of a league survey in the name of M.Y. Barbo, from which a post oak brs. North 66", West 16 vrs. another brs. south 15", West 7-1 vrs. Thence South 860 vrs. set post in same line from which a Black jack brs. North 86", East 3-5, vrs. another brs. North 30", East 2-2, vrs. Thence East 4480 vrs. to place of beginning."

The J. Shaw Headright, survey lies just East of the Alvarado and the North part of the ~~Patton~~ Patton and is described as follows:

JOHN SHAW

" Beginning, at the Northwest corner of A. Plorese survey #51 from which a black jack ___ inches in diameter brs. South 25", East 18 vrs. distance, and a Hickory 16 inches in dia. brs. North 35" West 5 vrs. dist. Thence North at 1750 vrs. the county line, at 2113 vrs. a stake from which a Hickory 12 inches in diameter brs. south

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50" East 2-5/10 vrs. dist. A black oak brs. North 38" West 9-8/10 vrs. dist. Thence East 2272 vrs. to the Northwest corner of B. M. Mays from which a red oak 33 inches in diameter brs. South 79", East distance 3-5/10 ves. A red oak 12 inches in diameter brs. South 88", West 9-5/10 vrs. distant. Thence South at 1300 vrs. a stake, on the N. B. L. of #287 from which a black jack 10 inches in diameter brs. South 43" East 11-5/10 vrs. dist. another 22 in. in diameter brs. South 55", West 18 vrs. dist. Thence West at 372 vrs. dist. a stake at the Northwest corner of #287 from which a Hickory 14 in. in diameter brs. North 5", West 32 vrs. dist. Another 12in. in diameter South 26", West 17 vrs. dist. Thence South 813 vrs. a stake on the N.B.L. of No. 51 for A. Florese, from which a Sweet Gum 22 in. in diameter brs. North 83", West 4 vrs. dist. a black oak 18 inches in Dia. brs. North 31" East. Thence West at 1900 vrs. to the place of beginning."

The Southeast corner of the Alvarado calls to be in the West Boundary Line of the Shaw; and the Northeast corner of the ~~Patton~~ Patton, calls for the Southeast corner of the Alvarado, which would place it in the West Boundary line of the Shaw.

From the foregoing I conclude that the West Boundary Line of the Shaw and the East Boundart Line of the Alvarado and Patton is one and the same line.

The Defendant, J. R. Hinson, together with C.M. Wilson and E. E. Hinson and others, on the 5th, day of April, 1906, filed on and contracted to purchase from the State the following described tract of land:

Beginning at the S. E. corner of the J.C. Ogden survey a stake in field on S.B.L. of the William Barnhill survey. Thence North with the E. B. Line with the J.C. Ogden and M.L. Patton, surveys at 4015 vrs. to the N. E. corner of the M.L. Patton survey a stake in field. Thence East at 240 vrs. to stake on the W.B.L of the John Shaw Survey. Thence South at 929.4 vrs. John Shaw S.W. Corner at 3815 vrs. the A. Florese S.W. corner and J.M. Moore N. W. corner at 4015.4 vrs. to stake on J.M. Moores W.B. L. from which a post oak 24 inches in diameter brs. North 9" East 12 vrs. A black Jack 14 inches in diameter brs. South 10 degrees West 14-1/2 vrs. Thence West at 240 vrs. to the place of beginning. Bearing Maeks "X" Variations 7-1/2" East.

The part of the above strip of land purchased by Hinson lies just East of the tract in controcersy and is covered in the description of the Deed from Green to Holmes.

The title to the part of the land deeded by Green to Holmes, and covered by the above described ~~land~~ land purchased from the State, has failed if it was subject to patent, and amounts to 28.3 acres for which he has contracted to pay the sum of \$3.50 per acre.

The Strip of land above described was surveyed by Geo. W. Cowan, County Surveyor, and lies East of and adjoining the counter 40674

Patton, Ogden, and west of the Shaw and Florese. This strip will be called in the se findings the "COWAN STRIP".

Because the calls for the East line of the Patton and Alvarado to be due North of the Northeast corner of the Ogden, I find that the East Boundary lines of the Alvarado, Patton and Ogden is a continuous North and South line.

If the "COWAN STRIP" above described was vacant land and subject to patent, then the west line of said strip which would be the East line of the Patton and Ogden surveys when it reaches the Ogden Southeast corner, is in a glade where no trees at all were ~~growing~~ growing forty years ago and where now only willows are growing. The Ogden Southeast corner calls for two black jacks for bearing trees; and I find that no such trees were ever there, and the corner could not have been located where Gowan, the Surveyor, places it in order to get the strip of public land.

I find that to go on East 240 vrs. the width of the "COWAN STRIP", and on the East Boundary line of the J. M. Moore, the character of timber called for bearing trees of the Southeast corner of the Ogden can be found, TO WIT: Black Jacks.

I find that running along the West Boundary of the Cowan Strip, which would be the East Boundary of the Patton and Ogden, there never has, within the memory of the oldest citizen of that community, been a marked line; but along the East Boundary of the Strip as surveyed by Cowan, which would be the West line of the Florese, there is now a well defined marked line and has been within the memory of the oldest citizen.

The A. FLORESE, which is East of "COWAN STRIP", is described as follows:

ANTONIO FLORES

"Beginning at a stake on the Northwest corner of survey No. 280 from which a black jack brs. south 72", East 7 vrs. another brs. South 68", West 13.2 vrs. (which are same bearing trees called for as Northwest corner of the J.M. Moore). Thence North 2886.7 vrs. a stake from which a red oak brs. South 33", East 7.7 vrs. a hickory brs. North 14-1/2", East 6-6/10 ves. Thence East 2886.7 vrs. a stake from which a hickory brs. South 23-1/2", East 4.4 vrs. a black oak brs. South 65", West 23.5 vrs. Thence South 2886.7 vrs. a stake on the North line of survey of No. 280 from which a red oak brs North 50-1/2", East 8 vrs. Another brs. North 60-1/4", East 24 vrs. Thence West 2886.7, to the place of beginning.

From the foregoing field notes the Northwest corner of the Flores and the Southwest corner of the Shaw are identical, and a portion of the West Boundary line of the Shaw is a continuous line North with the West boundary line of the Flores.

If by the field notes of the Alvarado, Patton and Ogden, their East northing and southing is tied to the West Boundary line of Shaw, and the West Boundary line of the Flores is a continuation of the Shaw West line, there can be no vacancy between the Patton and Ogden on the East and Flores on the West called for in the "COWAN STRIP".

I have attached hereto two maps, NO. ONE showing the surveys in question according to foregoing findings, and NO. TWO, showing same surveys with ~~R~~ "Cowan Strip",

I conclude that that part of the land to-wit: 28.3, acres, for which the notes in suit was given, and the title to which is claimed by defendant Hinson, to have failed by reason of being covered by the "Cowan Strip", is not infact public land, but is covered by the Patton Survey.

I, therefore, render judgment for plaintiff for \$316.00 amount of notes with interest and \$31.60 attorney's fees with a foreclosure of a vendor's ~~lien~~ lien upon the land described in her petition, and also for the defendant George Green, that he go hence without cost.

R. W. Simpson
J U D G E - P R E S I D I N G.

No. _____

Mrs. Maude Carter

vs.

I. R. Hinson, et al

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Findings of facts and Law by Court.
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F I L E D. Nov. 20th, 1907.

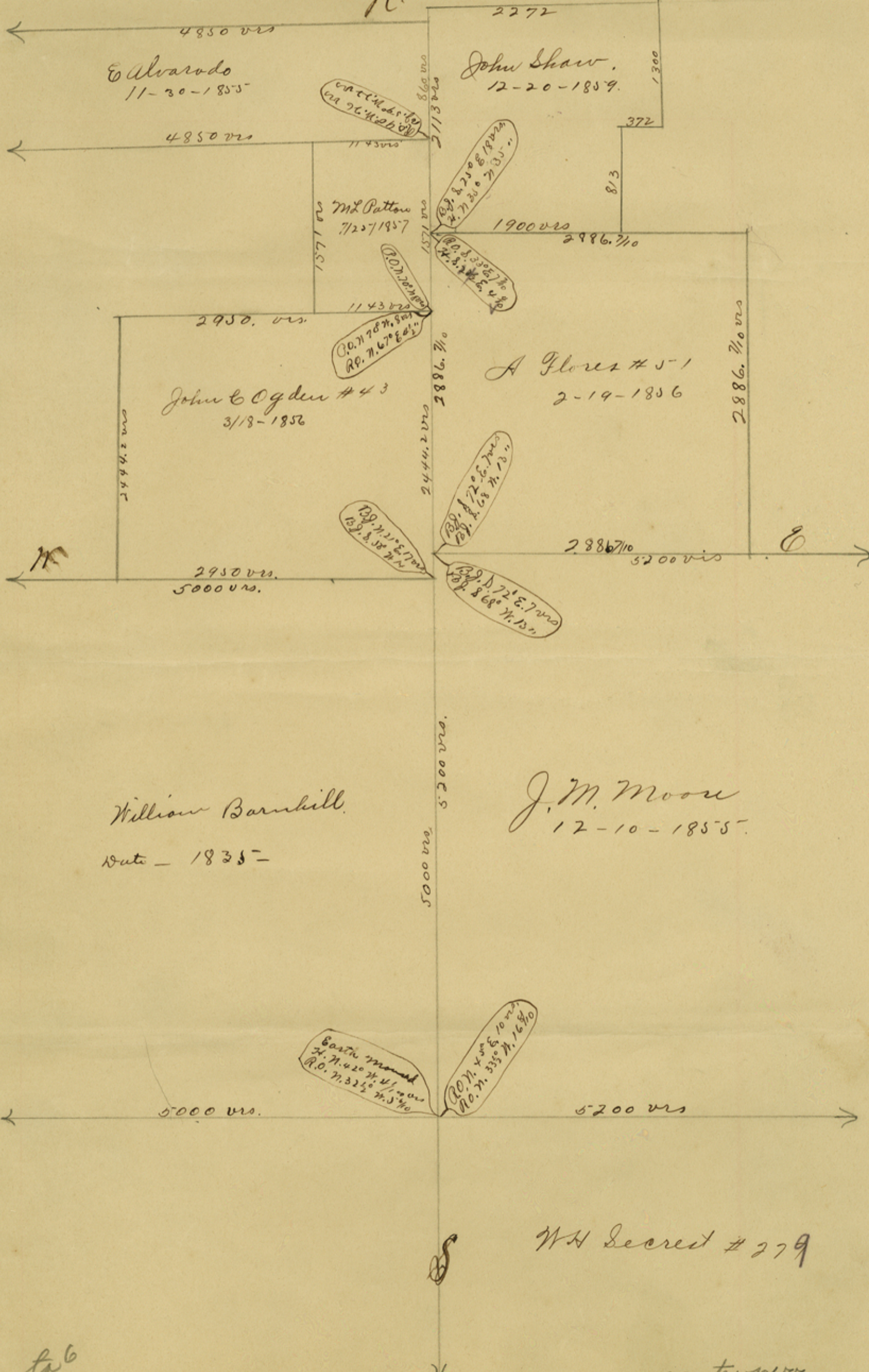
J. C. Wright, Clerk District Court, Wood County, Texas.

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No. 1

N.



E. Alvarado
11-30-1855

John Shaw
12-20-1859

cont'd as to
on 96.420 vs

M.L. Patton
7/20/1857

860 vs
2113 vs
372
813

1571 vs
1143 vs

2950 vs
5000 vs
2444.2 vs
2444.2 vs
2886.7/10
2886.7/10
2886.7/10

A Flores #5-1
2-19-1856

John & Ogden #43
3/18-1856

2950 vs
5000 vs
2886.7/10
2886.7/10
2886.7/10

William Barnhill

Date - 1835-

J.M. Moore
12-10-1855

cont'd as to
on 96.420 vs

860 vs
2113 vs
372
813

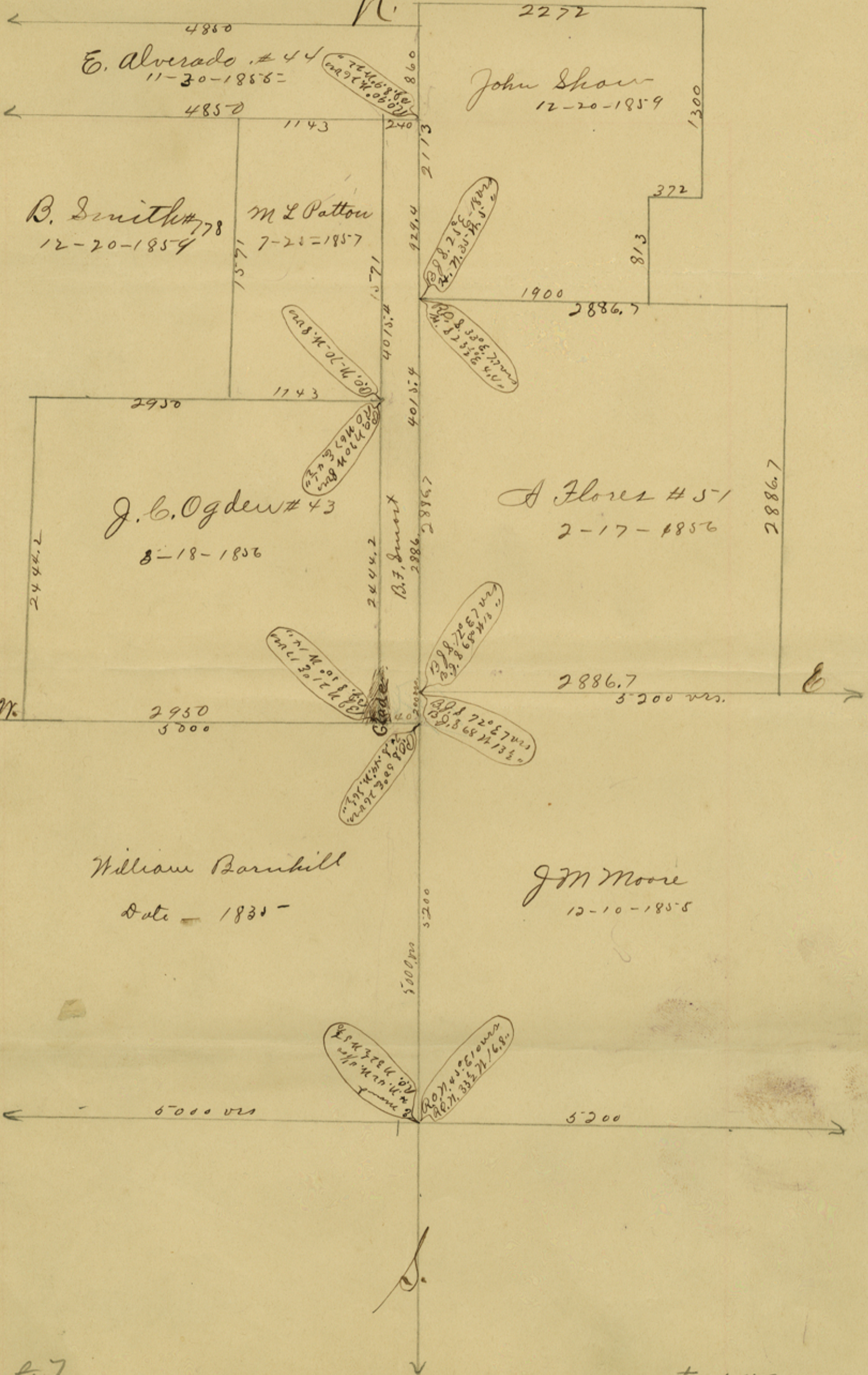
W.H. Secret #279

to 6

counter 40647

No 7

N.



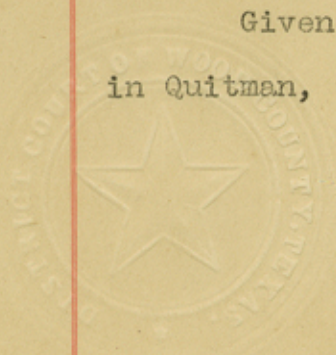
to 7

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STATE OF TEXAS #

COUNTY OF WOOD # I, J. C. Wright, Clerk of the District Court within and for the State and County aforesaid do, hereby certify that the above and foregoing is a true and correct copy of the Court's findings of facts and conclusions of law in the case of Mrs. Maude Carter, vs. J. R. Hinson, et al, as the same appears now on file in this office#

Given under my hand and seal of said Court, at office in Quitman, this the 3rd, day of January, 1908.

 *J. C. Wright* Clerk District Court
Wood County, Texas.

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Mrs. Maude Carter #
vs. # In District Court, Wood County, Texas.
J. R. Hinson, et al # Fall Term, A. D. 1907.

This Cause coming on this day to be heard, and all parties appearing in Court, in person or by attorney, and announced ready for trial, and a jury being waived all matters of facts as well as of law, was submitted to the Court, and after hearing the evidence and argument of the Plaintiff counsel in the case, the Court is of the opinion that Mrs. Maude Carter, should recover the full amount of her notes with interest and attorney fee, against J. R. Hinson. And the Court is further of the opinion that the defendant J. R. Hinson is not entitled to recover any thing on his plea on his warranty against the defendant George Green, and that George Green the defendant should go hence without day, and that the proof shows that the said J. R. Hinson is in possession and is entitled to possession of all the land described in plaintiffs petition, that there is no vacancy existing on the East side of the Patten survey of land as shown by the following conclusions of law and facts herewith filed by the Court, to-wit:

Mrs. Maude Carter

vs.

J. R. Hinson, et al.

This suit was instituted on the 5th, day of April, 1907, by plaintiff to recover upon 2 certain vendor's lien^{land} notes given by defendant J. R. Hinson, for a certain tract of land described in Plaintiffs petition, seeking a foreclosure of a lien on land described.

The notes bears date 21st, day of November, 1904, Due. 1st, day of Dec. 1905, and Dec. 1st, 1907, respectively, with interest from date at the rate of 10% and 10% additional as attorneys fees.

J. R. Hinson seeks to recover over against Geo. Green, the value of 28.3 acres of land, the title to which he claims has failed by reason of it being public land and he charges that he has been forced to pay the State therefor.

Geo. Green pleads a number of defenses, among which is that the land is not public land.

C O N C L U S I O N S O F F A C T S .

The defendant J. R. Hinson, s ancestors in the title purchased the land in controversy from defendant Geo. Green on the 3rd, day of May, 1882, paying therefor the sum of \$675.00.

The Deed from ~~Geo~~ Green to Holems and from Holmes to E.E. Hinson and from E. E. Hinson, to T.J. R. Hinson, describes the land as follows: Beginning at the S. E. Corner of a tract of land deeded to E. E. Hinson off of said Patten survey. Thence South, 666, vrs, to stake for corner. Thence West 571 1/2 vrs. a stake for corner. Thence North 666 vrs. to said Hinsons, South boundary line of same survey; Thence East 571 1/2 vrs. to stake for corner to place of beginning, containing 67 1/2 acres of land.

The plaintiffs notes were given in part payment for the purchase money for said land, when J. R. Hinson purchased the land.

Mrs. Maude Carter the plaintiff, became the owner of the notes for value and is now the owner. The notes are for amounts and dates as follows: Note No. 1 for \$100.00, dated 11/21/04. Note No. 2, for \$150.00 dated 11/21/04. Note No. 1 due 12/1/05. Note No. 2 due 12/1/07. and provided for 10% interest from date and 10% additional as attys. fee, in case suit is brought.

The present value of the note is \$316.00, principal and interest, and \$31.60 attorneys fees, which is a reasonable fee.

The M. L. Paton, Headright Survey, a part of which this land is, is described as follows:

(A-124)7/28/1857.

" Beginning at the N. E. corner of J. C. Ogden survey #43 a stake from which a Post Oak 7 in. in dia. brs. N. 70" W. 8 vrs. Thence W. 1143 vrs. to the S. E. corner, of Bery Smith survey #778# Thence N. 1571 vrs. to the N.E. corner #778. Thence East with the South line of survey 44# 1143 vrs. to its S. E. corner. Thence South 1571 vrs. to the place of beginning."

The E. Alvarado lies just North of the Patton, and is described as follows:--

(3618)

" Beginning 1571 vrs. North of the North East corner, of the J. C. Ogden, survey and set post in the west line of a survey in the name of John Shaw, from which a Red Oak brs. 90" West 26 vrs. A Black Jack brs. South 9" West 22 vrs. Thence North 860 vrs. set post in same line from which a Red Oak brs. North 75" West 7.2 vrs. another bears South 72", East 5 vrs. Thence West 4470 vrs. a branch, 4850 vrs. set post in East line of a league survey in the name of N. Y. Barbo, from which a post oak brs North 66" West 16 vrs. Another brs. south 15", West 7.1 vrs. Thence South 860 vrs. set post in same line from which a black jack brs. North 86" East 3.5 vrs. another brs. North 30", East 2.2 vrs. ~~XXXX~~ Thence East 4850 vrs. to place of beginning.

The J. Shaw Headright, survey lies just East of the Alvarado and the North part of the Patton and is described as follows:

John Shaw.

" Beginning at the North West corner of the Flores survey #51 from which a Black Jack 10 inches in Dia. brs. South 25" East 18 vrs. distant, and a Hickory 10 in. in dia. brs. ~~North~~ South North 35" West 5 vrs.

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Thence North at 1750 vrs. the county line, 2123 vrs. a stake from which a Hickory 12 in. in dia. brs. South 50" East 2.5 vrs. dist. A Black oak brs. North 38", West 9.8 vrs. dist. Thence East 2272 vrs. to the Northwest corner of B. M. Mays from which a red oak 33 in. in dia. brs. South 79" East distant 3.5 vrs. A red oak 12 in. in dia. brs. South 88", West 9.5 vrs. distant. Thence South at 1300 vrs. a stake, on the N.B. L. of #287 from which a Black Jack 10 in. in dia. brs. South 43" East 11.5, vrs. dist. another 22 in. in dia. brs. ~~xxx~~ South 55", West 18 vrs. Distant. Thence West at 372 vrs. a stake at the North West corner of #287 from which a hickory 14 in. in dia. brs. North 5", West 32 vrs. distant. Another 12 in. in dia. South 26", West 17 vrs. distant. Thence South at 813 vrs. a stake on the N.B. L. of #51 for A. Flores, from which a Sweet Gum 22 in. in dia. brs. North 83", West 4 vrs. distant. A Black Oak 18 in. in dia. brs. North 31" East. Thence West at 1900 vrs. to the place of beginning.

The Southwest corner of the Alvarado calls to be in the West boundary line of the Shaw; and the North East corner of the Patton calls for the Southwest corner of the Alvarado, which would place in west boundary line of Shaw.

From the foregoing I conclude that the West Boundary Line of the Shaw and the East Boundary line of the Alvarado and Patton is one and the same line.

The defendant J. R. Hinson, together with C. M. Wilson, and E. E. Hinson and others, on the 5th, day of April 1906 filed on and contracted to purchase from the State the following described tract of land:

Beginning at the S. E. corner of the J.C. Ogden, survey a stake in field on N. B. L. of the William Barnhill survey. Thence North with the E. B. lines of the J. C. Ogden and M. L. Paton surveys at 4015 vrs. to the N. E. corner of the M. L. Paton survey, a stake infield. Thence East at 240 vrs. to stake on the W.B. L. of the John Shaw survey. Thence South at 929.4 vrs. John Shaw S. W. corner, at 3815 vrs. the A. Flores S. W. Corner and J. M. Moore N. W. corner at 4015 vrs. to stake on J. M. Moore W.B. L. from which a post oak 24 in. in dia. brs. South 10", West 14 1/2 vrs. Thence West at 240 vrs. to the place of beginning. Bearing Marks "X" variations 7-1/2 "East".

That part of the above strip of land purchased by Hinson lies Just East of the tract in controversy and is covered in the description of the the deed from Green to Holmes.

The title to the part of land deeded by Green to Holmes, and covered by the above described ~~land~~ land purchased from the State, has failed if it was subject to patent, and amounts to 28.3 acres ~~for~~ for which he has contracted to pay the sum of \$3.50 per acre.

The strip of land above described was surveyed by Geo. W. Cowan, County Surveyor, and lies East and adjoining the Patton, Ogden and west of the Shaw and Florese. Tgis strip will be called in these findings the "COWAN STRIP"

Because the calls for the East line of the Patton and Alvarado to be due North of the Northeast corner of the Ogden, I find that the East Boundary lines of the Alvarado, Patton and Ogden is a continuous North and South Line.

If the "COWAN STRIP" above described was vacant ~~line~~ land and subject to patent, then the West line of said strip which would be the East line of the ^{Patton} ~~Patent~~ and Ogden Surveys when it reaches the Ogden South East Corner is a glade where no trees at all were growing 40 years ago, and ~~xxx~~ where now ~~only~~ willows are growing, The Ogden South East Corner calls for two black jacks for bearing trees, and I find no such trees were ever there, and the corner could not have been located where Cowan, the surveyor places it in order to get the strip of Public land.

I find that to go on East 240 varas the width of the (COWAN STRIP) and on the ~~West~~ boundary line of the J.M. Moore, the character of timber ~~xx~~ called for bearing trees of the South East corner of the Ogden can be found, to-wit: black jacks,

I find that running along the West boundary line of the Cowan strip which would be the East boundary line of the Patton and Ogden there never has, within the memory of the oldest citizen of that community been a marked line, but along the East boundary of the strip as surveyed by Cowan, which would be the West line of the Flores, there is now a well defined marked line and has been within the memory of the oldest citizens.

The A. Flores, which is East of the "Cowan STRIP" is described as follows:

"Beginning at a stake on the North West corner of survey No. 280 from which a black jack bears South 72" East 7 vrs. another bears South 68" West 13-2/19 vrs. (which are same bearing trees called for as North West Corner of the J.M. Moore). Thence North 2886-7/10 varas a stake from which a red oak bears South 33" East 7-7/10 vrs, a hickory bears North 14-1/2" East 6-6/10 vrs. Thence East 2886-7/10 varas a stake from which a hickory bears South 23-1/2" East 4-4/10 vrs. a black oak bears South 65" West 23-5/10 vrs. Thence South 2886-7/10 vrs a stake on the North line of survey No. 280 from which a red oak bears North 50-1/2" East 8 vrs. another bears North 60-1/4" East 24 vrs. Thence West 2886-7/10 vrs. to the place of beginning".

From the foregoing field notes the North West corner of the Flores and South West corner of Shaw are identical, and a portion of the West boundary line of the Shaw is a continuous line North with the West boundary line of the Flores.

If by the field notes of the Alverado, Patton and Ogden there East Northing and Southing is tied to the West boundary line of Shaw and the West boundary line of Flores is a continuation of the Shaw West line, there can be no vacancy between the Patton and Ogden on the East and Flores on the West, called for the "Cowan strip".

I have attached hereto two maps No. 1 showing the surveys in question according to the foregoing findings, and No. 2, showing same surveys with "Cowan Strip".

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I conclude that the part of the land to-wit: 28-3/10 acres for which the notes in suit was given and the title to which is claimed by defendant Hinson, to have failed by reason of being covered by the Cowan Strip", it is not in fact public land, but is covered by the Patton Survey.

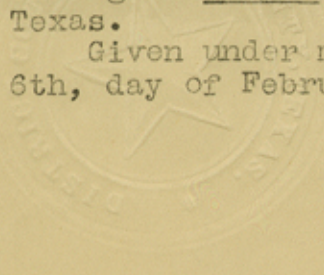
I therefore render Judgment for plaintiff for \$316.00 amount of notes with interest and \$31.60 attorneys fee with a foreclosure vendors Lien on the land described in her petition, and also for Defendant George Green that he go hence without cost.

It is therefore ordered, Adjudged and decreed by the Court that the Plaintiff Mrs. Maude Carter do have and recover of and from the Plaintiff the sum of \$347.60, with ten per cent per annum from date hereof, and all costs of this suit against the defendant J.R. Hinson and that the Vendors Lien as it heretofore existed on the following tract of land, to-wit:

"Beginning at the S.E. corner of a tract of land deeded to E.E. Hinson off of said Patton Survey, Thence South 666 vrs. to stake for corner, Thence West 571-1/2 vrs to stake for corner, Thence North 666 vrs. to said Hinson South Boundary line of same survey, Thence East 571-1/2 vrs. to stake for Corner to place of beginning, containing ~~2~~ 67-1/2 acres of land, then same is hereby foreclosed and an order of sale do issue from the Court for the sale of said land, directing and commanding the Sheriff of Wood County, to sell this land as under execution and to put the purchaser ~~into~~ of said land into possession of said land and that this judgment bear ten per interest from date hereof; and the Court further finds that the E.B. line of the M.L. Patton survey and the W.B. line of the John Shaw and A. Flores is one ~~and~~ the same line, and there is no vacancy between the said surveys as claimed by the State of Texas, and therefore no vacancy exist between said surveys and between the two said lines, It is therefore ordered, adjudged and decreed by the Court that J.R. Hinson take nothing by reason of having impleaded the said George Green and that said George Green go hence without day and that he recover of said J.R. Hinson, all the cost of said suit, for all of which let execution issue.

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State of Texas :
County of Wood : I, J. C. Wright, Clerk of the District Court, Within and for the State and County aforesaid do, hereby certify that the above and foregoing five pages contain a true and correct copy of the Judgment rendered in the case of Mrs. Maude Carter vs. J. R. Hinson, et al, said Judgment was rendered on the 20th, day of November, A. D. 1907. As the same appears of Record in my office in Vol. No. 6, and on pages 606 and ending on _____ of the Civil Minutes of the District Court, Wood County, Texas.

Given under my hand and seal of said Court, at office in Quitman, this 6th, day of February, A. D. 1908.


J. C. Wright, Clerk District Court,
Wood County, Texas.

P. S.

I further certify that, Notice of appeal was given, but has not been perfected, and that the time for making said ~~appeal~~ has expired, and I further certify that the above and foregoing decree ~~is~~ is the final decree rendered in said cause.

Witness my signature, this the 6th, day of Feby. 1908.

J. C. Wright counter 40684

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Your Honors attention is further directed to the patent of the J. C. Ogden survey which is as follows:- "Beginning at Daniel Townsends S.E. corner, from which a p.o. brs. N. 30°30' W. I 2/10 vrs. another brs. S 64°E. 6 vrs. Thence E. 1840 vrs. a branch; 2950 vrs. a stake from which a black jack br. N. 21°E. 17 vrs. another brs. S. 50° W. 14 vrs. Thence N. 2444.2 vrs. a stake from which a p.o. brs. N. 70° W. 3 vrs. A red oak brs. N 67°E. 4 1/2 vrs. Thence W. 2950 vrs. a stake from which a black hickory brs. S. 28°E. I 1/2 vrs. a black jack brs. S. 53°E. 13 vrs. Thence S. 2444.2 vrs to place of beginning."

If the "COWAN STRIP" as designated in the courts findings of fact begins at the true S.E. corner of the J.C. Ogden survey, and the true corner is where Cowan established it, the witness trees as called for in the patent could not and never did grow there as testified by witnesses before the court who had lived on the Ogden survey and had known same for more than 40 years; that same was in a marshy glade where only myrtle, willow and sweet gum bushes grew; that the natural condition of the land was such that black jack trees could not be found any where ^{around} the distance as called for in the patent. But if we go 240 vrs. E., the distance called for in the Cowan Strip, ~~to the true corner~~ we strike the W.B.L. of the J.M. Moore survey and the land is of red gravelly nature, that same is at the brow of a hill; that upon said land and for some little distance surrounding said corner, black jack, hickory and post oak trees grew 40 years ago and many of them are yet standing. This, your petitioner avers, is the true and correct ~~corner~~ south east corner of the J.C. Ogden survey and that the Courts finding on this point is correct. The undisputed testimony ~~in~~ the trial of the case showed that this had always been recognized as the S.E. corner of said Ogden survey. If we take the place located by Cowan as the S.E. corner of the Ogden survey and go north to the N.E. corner of said survey ^{as located by Cowan} we do not find any marked line. Two witnesses in the case testified that they had helped to clear land all along the east side of the Ogden survey and that they had never seen any marked line where Cowan located same. Part of the virgin forest is yet to be seen along the

supposed line but no marks can be found. But if we go 240 vrs. East to the J.M. Moore survey we do find a well defined and marked line all of the way through. We think there can be no doubt but that the true S.E. corner of the Ogden survey is 240 vrs. East of where Cowan located it and that the true E.B.L. of said survey is the one testified to by witnesses 240 vrs. east of the line located by Cowan.

Your attention is further directed to the bearing trees at the N.E. Corner of the Ogden survey. The field notes of the Ogden calls for a Post Oak brs. North 70" W. 8 vrs. The Patton Survey begins "at the N. E. corner of the J.C. Ogden survey #43 a stake from which a P.O. 7 in. in diam. brs. N. 70" W. 8 vrs. The same post oak is here called for. The testimony showed that one of the bearing trees called for in the Ogden patent, the red oak, is yet standing, and the post oak, the one described above, was blown down some years ago and cut up for wood. If this be the correct corner, and we think it is, from the testimony, and it is the one found by the Court, the N.E. corner of the Ogden is on the W.B.L. of the Flores. If we go 240 vrs. West to where Cowan says the N.E. corner is, we cannot find any bearing trees or marks of any kind indicating a corner of any description. So your petitioner avers and believes that the Court is eminently correct in finding the N.E. Corner of the Ogden survey where he did. With these two corners of the Ogden established your petitioner calls your Honors attention to the field notes of the Patton and Alverado surveys, together with that of the Shaw to establish the ~~1100~~ East Boundary Line of the Patton survey. The Patton survey calls for the N.E. corner of the J.C. Ogden to begin and links its N.E. Corner to and with the S.E. corner of the E. Alverado survey. The E. Alverado survey begins 1571 vrs (the length of the North and South line of the Patton) North of the N.E. corner of the Ogden and sets a post in the W.B.L. of the John Shaw survey. It then runs N. 860 vrs. and sets a post in the W.B.L. of the J. Shaw, for the N.E. corner. This evidently ties the three surveys together and makes the E.B.L. of the Patton, the E.B.L. of the E. Alverado and the W.B.L. of the Shaw one continuous North and South line, hence there could be no vacancy above the N.E.

corner of the J.C.Ogden survey. The testimony showed that the witness trees of the S.E.corner of the E.Alvarado are yet standing and show the corner to be in the W.B.L.of the Shaw as found by the Court. So from the evidence ~~adduced~~ introduced in the trial of the case we think the court was correct in his findings that the S.E.corner of the Ogden was on the J.M.Moore W.B.L. and that the N.E.Corner was on the A.Flores W.B.L. and that the E.B.L.of the Ogden and the W.B.Lines of the Moore and the Flores were one continuous North and South line. If this be correct, and we think it is, there can be no vacant strip North of the ~~E. corner of the~~ Ogden S.E. Corner.

(2)

The official map of Wood County shows a vacant strip to run from the S.E.corner of the William Barnhill survey North between the Barnhill and J.M.Moore survey and on through to the E.Alvarado survey. This has been a disputed strip for years. In some maps it appears as the Brooks and Burleson survey but such was never recognized officially. G.W.Cowan who was Co.Surveyor at the time the Smart survey was made, testified in the trial of the case that upon his recommendation the department closed up the strip ~~between~~ between the Moore and Barnhill surveys. Your Honors attention is called to his report in the matter for the facts in that case. Not having the report in evidence we can only present his testimony which was to the effect that he surveyed the Barnhill survey, beginning at the N.W.corner and going S.the required number of vars, but not finding the corner he went further South until he did find the corner. From this survey he found a gain North and South. In running the line East he must go as far East as he did North and South in order to make the survey in a square as called for in the patent and in doing so ~~he went~~ ^{it took him} to the W.B.L.of the J.M.Moore, this would close the vacancy between the two surveys. That was the substance of his testimony on this point. (If this is not correct your Honor can correct it from the record) Then if this be true we think that in justice and fairness to all he should have done the same in the case of the S.B.L. of the Ogden. He began at the S.W.Corner, the Cor-

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ner was definitely established, by running his required number of vars. ^{East}
he could not find the witness trees but could have ^{perhaps} found them on 240
vars further ^{East} and perhaps could have definitely established the corner
which if this had been done no vacancy could have been declared above
the S.E. corner of the Ogden as was found by the Court.

(3)

The field notes of the Patton Survey calls for 320 acres. The records of the Tax Collectors office show that, including that part of the so-called Smart survey covered by the Patton, the survey is short about 32 acres and has been for years. If the Smart survey is counted in it will be short about 90 or 100 acres. So the Patton survey is short already. A plot showing the owners and amount rendered by each is hereto attached and marked #3.

(4)

All of the land lines, corners, witness trees etc. of the several blocks of land along the lines have been established and recognized with reference to the lines as found by the court on plot #1. If the "Gowan Strip" is allowed to remain these will all be upset and endless confusion will arise. While if it is canceled all will remain as they were formally, definitely established and marked.

(5)

Your petitioner, J.R. Hinson, represents that he has already paid for the strip of land herein mentioned, the 23.3 acres, that the other petitioners have likewise paid for theirs, that no vacancy exists as found by the Hon. District Court of Wood County, and that it would be unjust, unequitable and unfair for these petitioners to again pay the State for said land. The State of Texas in its greatness can better afford to give to its citizens, if in fact it belonged to the State, the small amount in controversy, than to take from them unjustly what of right belongs to them. If your Honor should be of the opinion that this contest should have been made before the grant was made by the State, Your petitioners can only say that it is surely not too late to correct a wrong, ^{that they had no notice of same,} and in justness, fairness and equity, we ask that it be done.

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(6)

A final judgment of a court of competent jurisdiction declaring that no vacant strip exists has been entered and no appeal has been taken, and which judgment is final.

(7)

It having therefore been judicially determined that no vacant strip in fact exists, unless the ruling of the General Land Office heretofore made be revoked, your applicants will be forced to pay for land that never existed.

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Your Honors attention is directed to the case of Thatcher V s Mathews decided by the Supreme Court of Texas, Nov. 20, 1907, in which practically the same question, that of boundary and the proper construction of field notes, were involved. There were two questions certified from the Court of Civil Appeals of First Supreme Judicial District. There was a dispute as to the correct location of the boundary line between two surveys of land. The field notes of the survey are set out in full in the statement made by the Court of Civil Appeals to the Supreme Court. The defendants claimed the line to be 1200 vrs. above that claimed by the plaintiff and circumstantial evidence tended to show that the surveyor actually carried the chain and established the corners in the prairie at the places claimed by the defendant, but the Court of Civil Appeals held that evidence was inadmissible to show that the surveyor actually went beyond his call for distance and set an undiscrised stake; that the length of the line could not be extended by the call for the stake. The following questions were asked:-

1. Did we err in our construction of the field notes?
2. Did we err in holding the evidence was inadmissible to extend the ~~course~~ calls for course and distance?

The Supreme Court answered both questions in the affirmative. In discussing the questions above referred to, the Court say: "

the lines as actually run and the corners as actually established when consistent with other locative calls fix the true boundaries of the survey. The locations of such corners may be proved by any admissible evidence sufficient to lead to a belief of the fact. ----- Where a stake is once placed, it fixes the corner as conclusively as if marked by natural objects. Owing to the fact that it may be removed or obliterated its location may be more difficult of proof; but, if proved, it fixes the corner with the same certainty as where it is marked by a permanent object." " In Bolton Vs Land, 16 Tex. 96, the Court, speaking thru Mr. Justice Wheeler, holds that, "where the lines of a survey have been run and can be found, they constitute the true boundaries, which must not be departed from or made to yield to course and distance," &c. The same doctrine is announced in Dalby Vs Booth, 16 Tex. 564, . In other words, the foot-steps of the surveyor must be followed. ----- If the place where it (stake) was originally located can be established, the call for distance should yield to it".

The case at bar is very similar to the one above mentioned in that it depends upon the true location of the East Boundary Line of the Ogden Survey and the establishment of the S.E. and N.E. corners of same. We think that the S.E. corner of the Ogden survey was fully established by the evidence and the Court was fully warranted in finding as he did on that point. True no witness could be found who saw the line

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run and the corners established but circumstances and facts within the knowledge of witnesses who testified were sufficient to warrant the Court in so finding, and establishing the corner where he did. There was no evidence to establish the corner where Cowan, the surveyor established it, except his own testimony and he could find no corner and no witness trees indicating a corner, but same was established on the CALL for Distance, as the length of the S.B.L. as called for in the Patent would terminate where Cowan established his corner. The Court found from a preponderance of the testimony that the witness trees and circumstances were such as to warrant him in finding that the true corner was 240 vrs. further East, and that it was the place where the corner was originally located and therefore the call for distance should yield to it as required by the Supreme Court. The proof was similar in establishing the N.E. corner. One of the witness trees is yet standing, the other was blown down, but the proof was sufficient to warrant the Court in his finding that it was the true N.E. corner.

As to the E.B.L. of the Ogden survey, the one as found by the Court was well defined and marked, the one made by Cowan was not and never had been; no lines or marks had ever been found along the line though looked for. So in the language of the Supreme Court of Texas, "The lines as actually run and the corners as actually established when consistent with other locative calls fix the true boundaries of the survey. Where the lines of a survey have been run and can be found they constitute the true boundaries, which must not be departed from or made to yield to course and distance". The Hon. District Court of Wood County in following the rule and law as laid down by the Supreme Court of the State, found that in fact no vacant strip ~~existed~~ existed East of the Ogden survey. The lines and corners having thus been judicially established at the points and places claimed and recognized by these petitioners ~~as to be~~ for many years back, they would ask that your Honor adopt and approve them, and cancel the survey heretofore made in the name of the said B.F. Smart, S.F. 7134.

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Wood Co. S.F. 7134

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(6)

Wherefore premises considered, your petitioners pray that, your Honor cancel, set aside and hold for naught the order heretofore made granting the vacant strip and that all proceedings thereunder be declared void; that the patents heretofore granted to A. E. Harris and C. M. Wilson for portions of said survey be canceled and recalled and that the State refund to them and to all other petitioners herein all monies paid the State on said land and for such other and further relief general and special to which they may be entitled they will ever pray.

J. O. Rouse
Attorney for Applicants.

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No. 3

N

W

The M L Patton Sur-
vey as rendered for Foxes
in 1906 - 32 acres unnum-
bered

C. M. Wilson 67 1/2 acres	
E. E. Hinson 85 1/2 acres	
C. W. Taylor 39.2 acres	J. R. Hinson 67 1/2 acres
S. D. Taylor 28.3 acres	

E

S

$$\begin{array}{r}
 702 \frac{1}{2} \\
 85 \frac{1}{2} \\
 \hline
 288 \\
 283 \frac{1}{2} \\
 \hline
 571 \frac{1}{2}
 \end{array}$$

N

As rendered
for Sat 1907.

W

C. M. Wilson 48 1/2		19 1/2 Smart
E. E. Hinson 52 1/2		
C. W. L. Taylor 56 7/10 acres	J. R. Hinson 39.2	28.3 Smart curr.
S. D. Taylor 28 3/4 acres	Patton	

E

to 21

S

counter 40692

In Re J.R. Hinson ~~et al~~
- 14 -

Wood County Sketch Files
Genl. Land Office
Feb. 7 1908.

J.R. Hinson, et al. Protest to al-
lowing scrap files to cover
their lands -

SF 7134-8-9

"-7140-1-2-3-4

J.O. Rouse
Quintman Tex
2/7/08

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