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Newspaper account of the  
John H Gibson Lands in Yoakum  
Co.

The large clipping has been  
pieced together, copied,  
and enlarged to facilitate  
easier reading &  
prevent excessive wear  
on original.

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**AUSTIN HAPPENING**

**A Suit Has Been Filed to Test the Gibson Land Certificates.**

**THE HISTORY OF THE CASE.**

**Dr. Swearingen Is Advised That There Is No Yellow Fever at Tampico—Notes From the Capital.**

Austin, Tex., July 19.—The state has finally concluded, after more than seventeen years of dilly-dallying, to go into the courts for a settlement of the Gibson land case, and Attorney General Crane has instituted proceedings of trespass to try title against the Leon & H. Blum land company et al., present holders of the Gibson land certificates. The suit will be brought in the district court of Martin county, and involves the title to 1062 sections of land, which includes the entire area of Yoakum county and about one-third of Terry county. A proposition for a compromise was recently made by the attorney of the Leon & H. Blum company, but it was rejected, it being decided that the best way to settle the case was in the courts. The Gibson certificates were originally issued as a bonus for the cleaning out of the channels of San Jacinto and other Texas rivers, but were afterward attacked on the ground of fraud and non-execution of the work by Attorney General McCormick. The holders of the certificates then undertook to obtain patents under the 50-cent act, but their tender of payment for some reason was refused by Treasurer Lubbock on various grounds, and the matter has remained undecided ever since, the holders of the certificates remaining in possession of the land, however, the state doing without the taxes, and being unable to sell or lease it, owing to the claim of defendants.

**SCHULTZE HOLDS ON.**

Austin, Tex., July 19.—Another effort has been made to get the scalp of Edward Schultze of the land office, but the old man still has it on his head, and the indications are that it will remain there for some time to come. Some few days ago Land Commissioner Baker issued a call for Mr. Schultze's resignation, mention of which was made at the time. Now that call has been withdrawn. Schultze is one of the old employes of the land office, having been there since the days of E. J. Davis, and he is said to know more about the land system of Texas than any man in the service. Since it became known that he was about to be let out, prominent German voters all over the state have been protesting, and it is said that Congressman Sayers also interested himself in Schultze's behalf while here the other day. The result is that the old man will pursue the even tenor of his way. Colonel McLaughy once made up his mind to dismiss Schultze while he was land commissioner, but the pressure was too great and the dismissal did not materialize.

**KILLED BY ACCIDENT.**

Austin, Tex., July 19.—A white man named Ahl was accidentally killed by a negro named Coleman Callett at Littig last night, while watching an impending row between the latter and his father-in-law. Callett drew a gun, which was discharged prematurely with the above result. Sheriff White brought the killer in this evening and locked him up.

**TO NEGOTIATE WITH THE UTES.**

Austin, Tex., July 19.—Judge Julius Schulte of this city has been appointed United States commissioner to negotiate with the Ute Indians for the opening of their reservation in southern Colorado.

**NO YELLOW FEVER.**

Austin, Tex., July 19.—State Health Officer Swearingen received official information to-day from his agent at Tampico that there is no yellow fever at that port.

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**YOAKUM TERRY LANDS**

**Facts as Set Forth by the Leon & H. Blum Land Company. An Old Case.**

To The News.  
Galveston, Tex., Nov. 14.—In your issue of today there appears an article concerning the visit of Land Commissioner J. T. Robison, in which it is stated that the state of Texas had a suit against this company, in which it recovered 128,000 acres of land, and that he had secured from this company the necessary documents to clear the title to same. From time to time during the last fifteen years, newspaper articles have been published with reference to these Yoakum and Terry County lands, but the real facts are seldom stated. The facts are: This company, L. Fellman, the Island City Savings Bank and Dr. Ed Randall, owners of land certificates issued to John H. Gibson and located in Yoakum and Terry counties, were joint defendants in the suit in question, which was brought by the state at our solicitation, as we could not sue the state, and said defendants recovered from the state of Texas, in said suit, 246 sections, or 157,440 acres, and the state recovered the remainder. This decree was rendered by the district court of Travis County, Dec. 23, 1893, or thirteen years ago, and became final, no appeal being taken as the result was entirely satisfactory to both parties. This company and the other defendants perfected our title to the 157,440 acres of land recovered from the state, by filing with the commissioner of the general land office, transfers from John H. Gibson of the 246 land certificates. The land commissioner is now seeking to find the transfers from John H. Gibson to the land certificates to the sections recovered by the state, as they are desired by certain lawyers engaged in passing on title for buyers. We had a number of these transfers and on Monday gave them to the land commissioner. The few transfers we gave the land commissioner however, apply to only a part of state's land.

**THE LEON & H. BLUM LAND**  
By Aaron Blum, President

THE NEWS  
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Column #1, top part  
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# STATE AWARDED LAND

DISTRICT JUDGE BROOKS OF TRAVIS  
COUNTY HANDS DOWN A DECISION IN THE

## LAND CERTIFICATE CASE

WHEREIN THE LEON & H. BLUM  
LAND COMPANY ET AL. WERE  
DEFENDANTS.

BETWEEN FIVE AND SIX HUNDRED

Sections of Land Were Awarded the  
State Out of Over a Thousand  
That Were in Controversy.

**A**USTIN, Tex., Oct. 31.—Judge Brooks to-day, in the following decision in the Gibson land certificate case, awarded the state between 500 and 600 sections out of 1012 sections asked for:

No. 12,293—The state of Texas vs. the Leon & H. Blum land company et al. In the district court of Travis county for the Twenty-sixth judicial district, October term, A. D. 1898.

This is a suit by the state of Texas, acting through her attorney general, as plaintiff, against the Leon & H. Blum land company, a private corporation, and others, as defendants, in the form of "trespass to try title," to recover 1012 sections of land of 640 acres each, described in plaintiff's petition, and situated in Yoakum and Terry counties, constituting the entire county of Yoakum and the western one-third of Terry county.

The defendants disclaim as to all the even numbered or school sections asked for, and as to the remainder plead denial and not guilty.

The plaintiff, by supplemental petition, alleges that the defendants claim the land in controversy by virtue of the location of certain certificates issued by the commissioner of the general land office of the state of Texas to John H. Gibson for work claimed to have been done by him in clearing out the San Bernard river and a portion of Caney creek, in said state, under and by virtue of the following act of the legislature of said state, approved March 23, 1875, to-wit:

"An act to improve the navigation of Oyster creek, Bernard and Caney.

"Section 1. Be it enacted by the legislature of the state of Texas that a board of three commissioners, any two of whom may act, be appointed by the governor for each of the following streams: Oyster creek, Bernard and Caney; said commissioners to be selected from the inhabitants living on said streams, who are hereby constituted with full power to superintend, contract for and control the cleaning and

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governed by the opinion of the attorney general, a copy of which is herewith inclosed, and to review the work heretofore done by the contractors; and when not done in accordance with the law, or their contract, to require all deficiencies and short-

comings properly removed, so as to bring it up fully to what should have been done. He is further instructed, whenever an inspection is to be made of work, to make it in the presence of the commissioners, or a majority of them, and when he and the commissioners, or a majority of them, may differ in opinion as to any point growing out of or connected with the work, that the view of the commissioners shall control.

The said T. A. Washington is also instructed, whenever an inspection is made, to report his action through this office, to the office named in the law.

In testimony whereof I have hereto signed my name and caused the seal of state to be affixed, at the city of Austin, this 2d day of October, A. D. 1876.

(Seal.) RICHARD COKE, Governor.  
By the governor: A. W. DE BERRY, Secretary of State.

4. That under said act John Adrlance, J. C. McNeil and J. H. Shappard were appointed by the governor to act as commissioners on the San Bernard river to contract for and superintend the cleaning out of the same, and that J. K. White, M. W. Bowie and Felix Gibson were appointed like commissioners for Caney creek.

5. That J. H. Shappard and J. C. McNeil, two of the commissioners for the Bernard river, made and entered into the following contract, to-wit:

"State of Texas, County of Brazoria.— This indenture made and entered into this the 24th day of May, A. D. 1875, bet<sup>en</sup> John Adrlance, J. C. McNeil and J. H.

Shappard, Richard J. Coke, governor of the state of Texas, to contract for removing obstructions to the navigation of the Bernard river of the first part, and J. H. Dance and Andrew Bunker and such other persons as the said Dance & Bunker may associate with them of the second part.

"Witnesseth, that the parties of the first part have contracted with and do hereby contract with the parties of the second part to open and clean out a channel in said Bernard river at least sixty feet in width by cutting or sawing off, digging out or otherwise removing all obstructions below what is now considered low water for navigation on said river.

"And the parties of the second part furthermore agree and bind themselves to remove all obstructions to navigation in said river up to Underwood's bridge, on said river, and as much further up said Bernard river as may be deemed advisable by said board of commissioners or the engineer appointed by the governor of the state of Texas to inspect said improvements of the Bernard river." And the parties of the second part further agree and hereby bind themselves to clear said river from all obstructions from the mouth of said river up to said Underwood's bridge, demanding payment of the state under said law for all that portion of said Bernard river on which they may bestow or perform labor that is necessary for the thorough removal of all obstructions to the navigation of said river, as provided in the act of the legislature of the state of Texas passed March 23, 1875.

"And, further, the parties of the second part agree within ten days from this date to give a good bond and security in the sum of \$10,000 conditioned on the faithful performance of said work according to the requirements of said law, and also to compensate said commissioners for all loss of time, trouble and expense that they may incur or be at in superintending the improvement of said river, and to do and perform all such things, labor or work that may be necessary to be done or performed in order to the complete execution of the provisions of said act of the legislature of the state of Texas.

"J. H. SHAPPARD,  
"J. C. M'NEIL,  
"Commissioners,  
"ANDREW BUNKER,  
"J. H. DANCE,  
"Contractors"

Column #1, middle part

Column #2, middle part

ing out the San Bernard river and a portion of Caney creek, in said state, under and by virtue of the following act of the legislature of said state, approved March 13, 1875, to-wit:

"An act to improve the navigation of Oyster creek, Bernard and Caney.

"Section 1. Be it enacted by the legislature of the state of Texas that a board of three commissioners, any two of whom may act, be appointed by the governor for each of the following streams: Oyster creek, Bernard and Caney; said commissioners to be selected from the inhabitants living on said streams, who are hereby constituted with full power to superintend, contract for and control the opening and clearing out said streams in this state.

"2. That the said board of commissioners so appointed shall, within six months from the date of the passage of this act, enter into contract with solvent, responsible and experienced contractors to open and clear out a channel in said rivers and creek, at least sixty feet wide, by cutting or sawing off, digging out, or otherwise removing all obstructions below what is now considered too low water for navigation, and to girdle or cut down all trees likely to obstruct the navigation of said rivers or streams, for each and every of said streams, from the mouths of the same to head of navigation on each; also, for cutting canals through shoals, oyster banks, bend or bends of said rivers.

"3. That the said board of commissioners shall hire a competent engineer to examine and pass upon each mile of said stream or streams so opened and freed from obstruction who shall, under oath, file a certificate with the comptroller, after he has inspected said work, setting forth the number of miles worked on in said streams, opened and cleaned out, as required by this act, and for each and every day actually employed in inspecting said work so done on said stream or streams, the said engineer shall be entitled to receive the sum of \$8 per day, to be paid by the contractor or contractors.

"4. That upon the filing of the certificate of the engineer, as provided for in the third section of this act, the commissioner of the general land office shall issue, or cause to be issued, to the contractor or contractors who shall have done the work, for each and every mile of said stream or streams so opened, eight certificates, each for 640 acres of land; said certificates issued under this act shall be located in alternate sections, the even sections being reserved to the school fund, as other lands granted in aid of other works of internal improvement under the laws regulating the same, on any of the unappropriated or previously unsurveyed or unlocated land of the state; provided, always, that the state of Texas shall not be responsible for deficiency of public domain.

"5. That said contractor or contractors shall complete the work by the 1st day of December, A. D. 1876.

"6. That the land obtained under the provisions of this act shall be alienated within sixteen years; and a failure to comply with the provisions of this section shall work a forfeiture of all lands not alienated as required by this act; and the engineer appointed under provisions of this act shall be paid by the contractor or contractors.

"7. That this act shall take effect and be in force from and after its passage.

Approved March 13, 1875." Plaintiff alleges that under the provisions of said act the contractor was required to clean out a channel in said stream for the width and in the manner provided in said act and contract for said streams, but that the work was not done as provided for in said act and contracts, nor was there any substantial compliance by said contractor with said act in doing work on said streams, and on a considerable portion of said streams, for the cleaning out of which certificates were issued, no work was done at all, and that the engineer and agents of the state, whose duty it was under said law to examine and pass upon the work so done, not perform their duties under the law, fraudulently colluded with the contractor and falsely certified that said contractor cleaned out the San Bernard river for a distance of 55 1/2 miles and the Caney creek for 13 1/2 miles, in the manner called for in said act, and by means of said false certificate of said engineer and other false representations of said contractor and his agents

performance of said work according to the requirements of said law, and also to compensate said commissioners for all loss of time, trouble and expense that they may incur or be at in superintending the improvement of said river, and to do and perform all such things, labor or work that may be necessary to be done or performed in order to the complete execution of the provisions of said act of the legislature of the state of Texas.

"J. H. SHAPPARD,  
"J. C. M'NEIL,  
"Commissioners,  
"ANDREW BUNKER,  
"J. H. DANCE,  
"Contractors."

Which contract was afterward assigned to J. H. Gibson before any work was done. And that a like contract in same terms was made by the commissioners for Caney creek with said Gibson, or his assigns, with reference to Caney creek.

6. That under said contract J. H. Gibson worked upon Caney creek from its mouth to Thompson's bridge, the point where the work involved in this suit on said creek was begun, and that his work was approved by the acting engineer and certificates issued to him for such work which are not involved in this suit.

7. That J. H. Gibson, under said contract, also worked upon Caney creek, pulling out and sawing snags in the channel, and

cutting snags of said stream from Thompson's bridge to Gibson's plantation, which was the head of navigation on said stream, a distance of 13 1/2 miles, for which he received the 110 certificates, numbered from 447 to 556, both inclusive, involved in this suit.

8. That the commissioners appointed to make the contract as to Caney creek and to superintend and control said work did make the contract as set out in the fifth finding herein, but they never saw, directed, superintended, controlled or in any manner designated where or how any work was to be done under said contract, and did nothing but make said contract, and after said contractor claimed to have completed said work on Caney creek commissioners, in company with the contractor and Engineer T. A. Washington, appointed to inspect said work, did inspect the 13 1/2 miles involved in this controversy, and said commissioners refused to receive or approve said work as having been done in compliance with the contract therefor, and they never at any time approved or accepted said work as satisfactory or in compliance with the contract.

9. That while work was done by said contractor on said Caney creek for the 13 1/2 miles in controversy, yet he did not open and clean out a channel in said creek sixty feet wide, nor did he remove all obstructions in said channel for the space of sixty feet below what was then considered too low water for navigation, for such boats as then usually navigated said stream, nor did said contractor substantially do such work or comply with the provisions of said act.

As to this 13 1/2 miles the obstructions in the channel of the same were nearly all removed to a point beneath the surface of the water by cutting some out entirely, sawing others off beneath the surface of the water, but many of those sawed off were left from within six inches to three feet of the surface of the water at mean tide, and as such constituted material obstructions to navigation of said stream far more dangerous than if no work had ever been done.

10. That T. A. Washington, the engineer appointed to inspect said work on Caney creek, did inspect same and made the following certificate under oath:

I, T. A. Washington, engineer acting by virtue of appointment made by Hon. Richard Coke, governor of the state of Texas, in pursuance of an act of the legislature of said state styled "An act to improve the navigation of Oyster creek, Bernard and Caney, in the state of Texas," and approved March 13, 1875, having been called upon by John H. Gibson, contractor, to examine the work done by him on Caney between Thompson's bridge and Gibson's plantation on Caney, have inspected, examined and passed upon each and every mile of said Caney opened and freed from obstructions of said contractor, and found upon inspection that the said contractor had thoroughly cleaned out a channel in

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clean out a channel in said stream for the width and in the manner provided in said act and contract for said streams, but that the work was not done as provided for in said act and contracts, nor was there any substantial compliance by said contractor with said act in doing work on said streams, and on a considerable portion of said streams, for the cleaning out of which certificates were issued, no work was done at all, and that the engineer and agents of the state, whose duty it was under said law to mine and pass upon the work so done, not perform their duties under the law, fraudulently colluded with the contractor and falsely certified that said contractor cleaned out the San Bernard river for a distance of 55 1/2 miles and the Caney creek 13 1/2 miles, in the manner called for in said act, and by means of said false certificate of said engineer and other false representations of said contractor and his agents and representatives, said certificates which were located upon the land in controversy in this suit were procured to be issued, under which locations defendants in this suit claim.

Wherefore plaintiff says that because of the failure of said contractor to comply with the law under which said certificates were issued, and of the fraud practiced to secure their issuance, the same should be canceled and the land located thereby recovered by the state.

The defendants answer this supplemental petition by a general denial.

The question of fact, as well as of law, being submitted to the court, without a jury, I find the following to be the facts shown on said trial by the evidence:

1. That the law as set out in plaintiff's supplemental petition was passed by the legislature of Texas, and approved on March 13, 1875.

2. That T. A. Washington was at that time an engineer, and, under said act, he was appointed by the governor of the state to inspect and pass upon the work done in this controversy, and had issued the following commission: "To All to Whom These Presents Shall Come: Know ye that I, Richard Coke, Governor of Texas, reposing special and full confidence in the integrity and ability of T. A. Washington, of the County of Galveston and state of Texas, do, in virtue of the authority vested in me by an act of the legislature, entitled 'An act to improve the navigation of Oyster creek, Bernard and Caney,' approved March 13, 1875, constitute and appoint him, the said T. A. Washington, examiner, to examine and pass upon each mile of said stream or streams so opened and freed from obstruction, giving and hereby granting to him, the said T. A. Washington, all the rights, privileges and emoluments appertaining to said appointment.

In discharging his duties under this commission, the inspector is instructed to be

been done.

10. That T. A. Washington, the engineer appointed to inspect said work on Caney creek, did inspect same and made the following certificate under oath:

I, T. A. Washington, engineer acting by virtue of appointment made by Hon. Richard Coke, governor of the state of Texas, in pursuance of an act of the legislature of said state styled 'An act to improve the navigation of Oyster creek, Bernard and Caney, in the state of Texas,' and approved March 13, 1875, having been called upon by John I. Gibson, contractor, to examine the work done by him on Caney between Thompson's bridge and Hibson's plantation on Caney, have inspected, examined and passed upon each and every mile of said Caney opened and freed from obstructions of said contractor, and found upon inspection that the said contractor had thoroughly cleaned out a channel in said Caney at least sixty feet in width by cutting, sawing off, digging out and otherwise removing all obstructions from the banks and bed of said Caney below what was at the time of the passage of the act, and what at the present time in my opinion is below low water navigation on said Caney for each and every mile from Thompson's bridge to Gibson's plantation, 13 75-100 miles up said Caney. All of said work being from Thompson's bridge to Gibson's plantation, 13 75-100 miles on said Caney. And that there was no necessity for cutting canals through shoals, oyster banks or any bend or bends of said Caney. And I further certify that the number of miles worked on in said Caney by said contractor is 13 75-100 miles.

T. A. WASHINGTON, Engineer.

State of Texas, County of Galveston: Before me this day John S. Shields, a notary public for Galveston county, duly commissioned as such, personally appeared before the undersigned T. A. Washington, to me well known, who being duly sworn, made oath and says that the matters and things set forth in the above certificate are true. In testimony whereof I have signed my name and affixed my official seal at my office in the city of Galveston this the 13th day of December, A. D. 1876. (Seal.) JNO. S. SHIELDS, Notary Public.

11. That said certificate set out in the last above finding was materially false and was fraudulently made by the said Washington for the purpose of enabling the contractor to secure the issuance of the certificates therefor, or else he was guilty of such gross neglect and misconduct in making an examination of said stream at said time as would imply a fraudulent purpose on his part, and that said certificate was not made by said engineer in the exercise of an honest judgment as to the character of work done on said stream or the facts stated in said certificate.

12. As to the San Bernard river, I find



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Column #4, middle part

things set forth in the above certificate are true.

"In testimony whereof I have signed my name and affixed my official seal at my office in the city of Galveston this the 12th day of December, A. D. 1876.

"JNO. S. SHIELDS,  
"Notary Public."

16. I find that the certificate of T. A. Washington, the engineer, as to work done by said contractor on the twenty-five miles of said Bernard river from its mouth to the Mims place was false and fraudulently made.

17. I find the contractor for said streams, his agents and representatives secured the issuance by the commissioner of the general land office of the certificates Nos. 447 to 556, involved in this suit, for the 13 3/4 miles of work on Caney Creek, and of 200 of the 448 certificates, Nos. 1 to 446, inclusive, for the 25 miles on San Bernard river, from its mouth to the Mims place, by means of the false and fraudulent certificates of said T. A. Washington, engineer, and also by means of other false and forged instruments made by said parties to said commissioner of the land office of Texas.

18. That A. M. ... and his authorized agent in all the issuance of said certificates.

19. That the defendants, and those under whom they claim, had notice of the failure of said contractor to comply with the law in the respects set forth in the fraud practiced in securing the issuance of said certificates prior to their purchase of the same, and that said certificates were transferred by the original grantees to the defendants in this suit or those under whom they claim on the 1st day of ... 1877.

20. That both of said certificates of said Engineer Washington, as set out in the 10th and 15th finding of fact herein, were made by him and filed with the comptroller of the state of Texas as required by law, and the commissioner of the general land office duly and legally advised thereof prior to the issuance of said certificates.

21. That said 556 land certificates involved in this suit were all issued in the name of J. H. Gibson and are all in proper legal form, and that all of said certificates except the following, as set out in exhibit to agreement filed herein, shown by map from the land office, were in the time required by law located upon vacant unappropriated public domain in Yoakum and Terry counties, Texas, being the same land involved in this suit, and proper field notes returned as required by law to the general land office, but that said locations have never been patented, the governors of this state, from the issuance of said certificates to this time, having consistently denied the validity of said certificates and locations, because of the facts set out in plaintiff's petition.

22. That at the time the location of said land certificates, the official maps of the general land office of Texas showed a portion of New Mexico to be a part of Yoakum county, Texas, and being misled thereby the following numbered certificates were located in New Mexico, to wit: The certificates and parts of certificates as shown by the map from the land office attached as an exhibit to agreement of counsel filed herein, amounting to seventy-two and eight-tenths (72 8/10) certificates, or 46,592 acres, of which 20,000 were located by said certificates in New Mexico, 8836 acres thereof was located by said certificates in New Mexico, and three-quarter miles on Caney Creek and 37,696 acres was located by virtue of said certificates issued for work done on San Bernard river and it was not discovered that said certificates had been located in New Mexico until 1893, when an official survey of the boundary line disclosed the mistake, and that said certificates were never patented.

23. That the location of said certificates except those located in New Mexico were all regularly made as required by law and equal number of surveys made for the public free schools, which constitute the even numbered surveys involved in this suit, and that the locations of all the certificates involved in this suit were properly made.

"all obstructions below what is now considered too low water for navigation." Besides, it was unnecessary to remove obstructions to the bottom of a stream fifteen feet deep that could only be navigated by boats drawing three to six feet of water and less. It was further intended by said act only to cut down such trees on the banks as were likely to obstruct the navigation of said stream, and it was not intended that a contractor should receive eight sections of land per mile by cutting down trees on the margin of a river one hundred yards wide when at the time only a channel sixty feet wide was provided for.

The legislature, by providing that commissioners for each stream should be appointed and selected from the inhabitants living on said streams, "who were constituted with full power to contract for, superintend and control the opening and cleaning out of said streams," evidently intended not only that they should make such contract, but they were to superintend and control such work because of their acquaintance with said streams they would know what work and where the same was necessary to be done to improve said streams in the manner provided for in said act.

The commissioners, however, having made contracts practically in the general terms of the statute without designating or particularizing the work to be done, the contractor must look alone to the act to determine how and where he should work, and if he did work which was not called for in said act he can not receive compensation therefor, or if he did work but did not do the same substantially in the manner provided for in said act he should not receive compensation therefor. It further was not intended by said act to pay the contractor except for such part of said river as he actually did some work upon of the character called for in said act, and if any considerable portion of said streams in one body received no such work, then the contractor was not entitled to certificates therefor, whether said portions of said streams needed no work or not.

The state having appointed commissioners to superintend and control said work, and an engineer to inspect and pass upon the same, the state would be concluded, by their judgment, in the absence of fraud where work was actually done, and if the only questions in this case were whether or not the work done was up to the requirements of the contract and the state's agents for the purpose of passing upon this question determined that it was, then such act would be binding upon the state in the absence of fraud. However, neither the engineer nor the commissioners had any authority to approve the contractor's claim for any part of said stream upon which he did no work, nor did the commissioner of the land office have any power to issue certificates for any portion of said streams upon which no work had been done by the contractor, and all such certificates are void.

And all work done on said streams by the contractor under said act was not done in substantial compliance with the provisions of said act, and where the engineer appointed by the governor to inspect said work accepted the same with knowledge that the law had not been complied with, and made his certificate to the comptroller, either fraudulently or was guilty of such gross misconduct in reference thereto as would imply fraud upon his part, then such certificates for land as were issued for this character of work would be voidable in the hands of parties chargeable with notice of such failure to comply with said act, and of such fraud, and the state would not, in such case, be concluded by the act of her agents.

I, therefore, conclude:  
1. That certificates Nos. 447 to 556, both inclusive, issued for the work done on the 13 3/4 miles on Caney creek, which was not done in accordance with the provisions of said act, and which certificates were produced to be issued by the false certificate of the engineer Washington, and the false and counterfeit counter 40329

flout (erous) than y strain more Their small onto e around back. It w this re funny. Norris number keys, e of the are jus are the to app the far family, with a thing n trained the boy if any ring 1 on his about There taken the cu evening amuse. There show tion. shaven greater all eff. fortabl gence eled w Many last u shippe atnac steam landed ever So ting I are ti cue. show Th four ey a Su the if m aft mo in T ally pes ves one "S O Br opt wit tic " In Ne ty ma ed off in of NE In sit

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never been patented, the state, from the issuance of said certificates to this time, having a validity of said certificates because of the facts and locations, in plaintiff's petition.

22. That at the time said land certificates were issued by the general land office of New Mexico, Texas and being misled thereby the following numbered certificates were located in New Mexico, to wit: The certificates and parts of certificates as shown by the map from the land office attached as an exhibit to the petition of counsel filed herein, amounting to seventy-two and eight-tenths (72 8/10) 46,592 acres, of which said certificates in New Mexico were located by virtue of certificates issued for work on thirty-three miles on Caney Creek and was located by virtue of certificates issued for work done on San Bernard river and it was not discovered that had been located in New Mexico until 1893, when an official survey line disclosed the mistake and that said certificates were never located.

23. That the location of all regularly made as well as equal number of surveys for public free schools, which constitute the even numbered surveys involved in this suit, and that the location of all the certificates involved in this suit and regularly made, the validity of the certificates themselves.

24. That the certificates were executed by the then land commissioner during his absence from the land office and the usual fees for issuing such certificates were paid and said certificates delivered to A. M. Hobby at a place in the city of Austin other than the general land office.

Under the foregoing facts and pleadings the first inquiry is to determine the meaning and proper interpretation of the act of the legislature under which this work was done and, next, whether the contractor and, if not, the plaintiff can have the matter reviewed in the courts, or, are the plaintiffs of res adjudicated state's agents and office was to inspect and pass upon the certificates passed upon the same by the contractor was certificates in controversy and delivered said certificates to the contractor.

The act of the legislature providing for the work done is in itself quite plain to the details of the provisions are to be vague and uncertain and because of the meaning of some of the words necessary to construe the ordinary rules of construction in order to determine the meaning of the language we look first to the intent of the legislature and next to the construction placed upon the act by the parties thereto, and in the department of the act its passage and its effect thereunder, and in

question determined that it was, then such act would be binding upon the state in the absence of fraud. However, neither the engineer nor the commissioners had any authority to approve the contractor's claim for any part of said stream upon which he did no work, nor did the commissioner of the land office have any power to issue certificates for any portion of said streams upon which no work had been done by the contractor, and all such certificates are void.

And all work done on said streams by the contractor under said act was not done in substantial compliance with the provisions of said act, and where the engineer appointed by the governor to inspect said work accepted the same with knowledge that the law had not been complied with, and made his certificate to the comptroller, either fraudulently or was guilty of such gross misconduct in reference thereto as would imply fraud upon his part, then such certificates for land as were issued for this character of work would be voidable in the hands of parties chargeable with notice of such failure to comply with said act, and of such fraud, and the state would not, in such case, be concluded by the act of her agents.

I, therefore, conclude:  
1. That certificates Nos. 447 to 556, both inclusive, issued for the work done on the 13 1/2 miles on Caney creek, which was not done in accordance with the provisions of said act, and which certificates were produced to be issued by the false certificate of the engineer, Washington, and the false and fraudulent representations of the agents of the contractor, should be canceled and the land located by virtue thereof should be recovered by the state from the defendants, who purchased said certificates with notice of these facts.

2. That the certificates issued for work done on 25 miles on the San Bernard river, from its mouth to the Mims place, where no work was really done by said contractor of the character provided for in said act, were void, and the commissioner of the general land office had no power to issue such certificates, and these certificates to the number of 200 out of those numbered 1 to 446, both inclusive, in this suit should be canceled and the lands located thereby recovered by the state.

Whether or not the fraud practiced by the contractor or his agents in procuring the issuance of this series of certificates, Nos. 1 to 446 as a portion of said series should invalidate the whole, is a serious question. It is not a case merely of an excessive grant, but the recovery is based upon fraud used in the procurement of the issue of at least a portion of said series of certificates. However, under the findings of fact hereinafter set forth, the contractor was entitled to 226 certificates for 640 acres each; these were earned and due under the law and the facts; and it is not believed that fraud in the procurement of an excessive issue of certificates would invalidate those justly earned nor deprive the contractor of his right to receive the same. If, then, the issue of certificates Nos. 1 to 446 is only void for the excess—that is, for such number above those justly earned—it would result in 226 of said certificates being valid. In addition to this, there were nearly fifty-nine of said certificates, or, more exactly, 37,696 acres of land by virtue of said San Bernard certificates which was in New Mexico, and new ed on the public issue of this amount—37,696 acres—from the 122,000 acres, the state is entitled to recover of this series of certificates, would leave 90,804 acres which the plaintiff is entitled to recover out

question determined that it was, then such act would be binding upon the state in the absence of fraud. However, neither the engineer nor the commissioners had any authority to approve the contractor's claim for any part of said stream upon which he did no work, nor did the commissioner of the land office have any power to issue certificates for any portion of said streams upon which no work had been done by the contractor, and all such certificates are void.

And all work done on said streams by the contractor under said act was not done in substantial compliance with the provisions of said act, and where the engineer appointed by the governor to inspect said work accepted the same with knowledge that the law had not been complied with, and made his certificate to the comptroller, either fraudulently or was guilty of such gross misconduct in reference thereto as would imply fraud upon his part, then such certificates for land as were issued for this character of work would be voidable in the hands of parties chargeable with notice of such failure to comply with said act, and of such fraud, and the state would not, in such case, be concluded by the act of her agents.

I, therefore, conclude:  
1. That certificates Nos. 447 to 556, both inclusive, issued for the work done on the 13 1/2 miles on Caney creek, which was not done in accordance with the provisions of said act, and which certificates were produced to be issued by the false certificate of the engineer, Washington, and the false and fraudulent representations of the agents of the contractor, should be canceled and the land located by virtue thereof should be recovered by the state from the defendants, who purchased said certificates with notice of these facts.

2. That the certificates issued for work done on 25 miles on the San Bernard river, from its mouth to the Mims place, where no work was really done by said contractor of the character provided for in said act, were void, and the commissioner of the general land office had no power to issue such certificates, and these certificates to the number of 200 out of those numbered 1 to 446, both inclusive, in this suit should be canceled and the lands located thereby recovered by the state.

Whether or not the fraud practiced by the contractor or his agents in procuring the issuance of this series of certificates, Nos. 1 to 446 as a portion of said series should invalidate the whole, is a serious question. It is not a case merely of an excessive grant, but the recovery is based upon fraud used in the procurement of the issue of at least a portion of said series of certificates. However, under the findings of fact hereinafter set forth, the contractor was entitled to 226 certificates for 640 acres each; these were earned and due under the law and the facts; and it is not believed that fraud in the procurement of an excessive issue of certificates would invalidate those justly earned nor deprive the contractor of his right to receive the same. If, then, the issue of certificates Nos. 1 to 446 is only void for the excess—that is, for such number above those justly earned—it would result in 226 of said certificates being valid. In addition to this, there were nearly fifty-nine of said certificates, or, more exactly, 37,696 acres of land by virtue of said San Bernard certificates which was in New Mexico, and new ed on the public issue of this amount—37,696 acres—from the 122,000 acres, the state is entitled to recover of this series of certificates, would leave 90,804 acres which the plaintiff is entitled to recover out

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NOVEMBER 1, 1898.

of the grant of 446 Bernard river certificates which have been located upon the public domain of the state of Texas.

But as said series of certificates, 1 to 446, were issued at one time, and it is impossible to distinguish the valid from the invalid, and as the defendants had the right of selection in the first instance of the lands which they would survey for themselves out of the unappropriated public domain it

is not to be supposed that the defendants should now be allowed to select from the 24,000 acres of land located by virtue of said Bernard river certificates Nos. 1 to 446 in the state of Texas, 157,440 acres, and the state should have judgment for the balance of said grant or for 90,304 acres. The defendants shall make such selection within sixty days from the date of this decree and file description of same with the clerk of this court, and upon their failure to make such selection for them, and upon filing of same, with description thereof with the clerk of this court, plaintiff shall have its writ of possession for the lands recovered in this suit, which is:

1. All the even numbered or school sections described in plaintiff's petition.
2. All the lands located by virtue of certificates Nos. 447 to 558, both inclusive, issued for work done on the 13<sup>th</sup> miles on Ceney creek.
3. For 90,304 acres of land located in said Yoakum and Terry counties, Texas, by virtue of certificates Nos. 1 to 446, both inclusive, issued to John H. Gibson for work done on San Bernard river; all of which lands are described in plaintiff's petition.

Judgment accordingly.  
R. E. BROOKS,  
Judge Twenty-Sixth Judicial District of Texas.

## AMUSEMENTS.

### Dog and Pony Show.

Norris Bros' dog and pony show  
two entertainments at the  
yesterday, and will  
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DAILY NEWS, SAT

AUSTIN HAPPENINGS

A Suit Has Been Filed to Test the Gibson Land Certificates.

THE HISTORY OF THE CASE.

Dr. Swearingen Is Advised That There Is No Yellow Fever at Tampico—Notes From the Capital.

Austin, Tex., July 19.—The state has finally concluded, after more than seven years of dilly-dallying, to go into the courts for a settlement of the Gibson land case, and Attorney General Crane has instituted proceedings of trespass to try title against the Leon & H. Blum land company et al., present holders of the Gibson land certificates. The suit will be brought in the district court of Martin county, and involves the title to 1002 sections of land, which includes the entire area of Yoakum county and about one-third of Terry county. A proposition for a compromise was recently made by the attorney of the Leon & H. Blum company, but it was rejected, it being decided that the best way to settle the case was in the courts. The Gibson certificates were originally issued as a bonus for the cleaning out of the channels of San Jacinto and other Texas rivers, but were afterward attacked on the ground of fraud and non-execution of the work by Attorney General McCormick. The holders of the certificates then undertook to obtain patents under the 50-cent act, but their tender of payment for some reason was refused by Treasurer Lubbock on various grounds, and the matter has remained undecided ever since, the holders of the certificates remaining in possession of the land, however, the state doing without the taxes, and being unable to sell or lease it, owing to the claim of defendants.

SCHULTZE HOLDS ON.

Austin, Tex., July 19.—Another effort has been made to get the scalp of Edward Schultze of the land office, but the old man still has it on his head, and the indications are that it will remain there for some time to come. Some few days ago Land Commissioner Baker issued a call for Mr. Schultze's resignation, mention of which was made at the time. Now that call has been withdrawn. Schultze is one of the old employes of the land office, having been there since the days of E. J. Davis, and he is said to know more about the land system of Texas than any man in the service. Since it became known that he was about to be let out, prominent German voters all over the state have been protesting, and it is said that Congressman Sayers also interested himself in Schultze's behalf while here the other day. The result is that the old man will pursue the even tenor of his way. Colonel McGaughey once made up his mind to dismiss Schultze while he was land commissioner, but the pressure was too great and the dismissal did not materialize.

KILLED BY ACCIDENT.

Austin, Tex., July 19.—A white man named Ahl was accidentally killed by a negro named Coleman Callett at Littig last night, while watching an impending row between the latter and his father-in-law. Callett drew a gun, which was discharged prematurely with the above result. Sheriff White brought the killer in this evening and locked him up.

TO NEGOTIATE WITH THE UTES.

Austin, Tex., July 19.—Judge Julius Schulte of this city has been appointed United States commissioner to negotiate with the Ute Indians for the opening of their reservation in southern Colorado.

NO YELLOW FEVER.

Austin, Tex., July 19.—State Health Officer Swearingen received official information to-day from his agent at Tampico that there is no yellow fever at that port.

YOAKUM TERRY LANDS

Facts as Set Forth by the Leon & H. Blum Land Company. An Old Case.

To The News. Galveston, Tex., Nov. 14.—In your issue of today there appears an article concerning the visit of Land Commissioner J. T. Robison, in which it is stated that the state of Texas had a suit against this company, in which it recovered 128,000 acres of land, and that he had secured from this company the necessary documents to clear the title to same. From time to time during the last fifteen years, newspaper articles have been published with reference to these Yoakum and Terry county lands, but the real facts are seldom stated. The facts are: This company, L. Fellman, the Island City Savings Bank and Dr. Ed Randall, owners of land certificates issued to John H. Gibson and located in Yoakum and Terry counties, were joint defendants in the suit in question, which was brought by the state at our solicitation, as we could not sue the state, and said defendants recovered from the state of Texas, in said suit, 246 sections, or 157,440 acres, and the state recovered the remainder. This decree was rendered by the district court of Travis County, Dec. 23, 1898, or thirteen years ago, and became final, no appeal being taken as the result was entirely satisfactory to both parties. This company and the other defendants perfected our title to the 157,440 acres of land recovered from the state, by filing with the commissioner of the general land office, transfers from John H. Gibson of the 246 land certificates. The land commissioner is now seeking to find the transfers from John H. Gibson to the land certificates to the sections recovered by the state, as they are desired by certain lawyers engaged in passing on title for buyers. We had a number of these transfers and on Monday gave them to the land commissioner. The few transfers we gave the land commissioner however, apply to only a part of state's land.

THE LEON & H. BLUM LAND. By Aaron Blum, President

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STATE AWARDED LAND

DISTRICT JUDGE BROOKS OF TRAVIS COUNTY HANDS DOWN A DECISION IN THE

LAND CERTIFICATE CASE

WHEREIN THE LEON & H. BLUM LAND COMPANY ET AL. WERE DEFENDANTS.

BETWEEN FIVE AND SIX HUNDRED

governed by the opinion of the attorney general, a copy of which is herewith inclosed, and to review the work heretofore done by the contractors; and when not done in accordance with the law, or their contract, to require all deficiencies and shortcomings properly removed, so as to make it up fully to what should have been done. He is further instructed, whenever an inspection is to be made of work, to make it in the presence of the commissioners, or a majority of them, and when he and the commissioners, or a majority of them, may differ in opinion as to any point growing out of or connected with the work, that the view of the commissioners shall control.

The said T. A. Washington is also instructed, whenever an inspection is made, to report his action through this office, to the office named in the law.

In testimony whereof I have hereto signed my name and caused the seal of state to be affixed, at the city of Austin, this 2d day of October, A. D. 1876.

(Seal.) RICHARD COKE, Governor.  
By the governor: A. W. DE BERRY, Secretary of State.

4. That under said act John Adriance, J. C. McNeil and J. H. Shappard were appointed by the governor to act as commissioners on the San Bernard river to contract for and superintend the cleaning out of the same, and that J. K. White, H. W. Bowle and Felix Gibson were appointed like commissioners for Caney creek.

5. That J. H. Shappard and J. C. McNeil, two of the commissioners for the Bernard river, made and entered into the following contract, to-wit:

"State of Texas, County of Brazoria.—This indenture made and entered into this the 24th day of May, A. D. 1875, between John Adriance, J. C. McNeil and J. H. Shappard,

that the commissioners appointed to let the contract and superintend and control the work of cleaning out said stream, did enter into the contract set out in the fifth article herein, but they never directed, superintended, contracted or in any manner to be done, nor have they done anything

done and inspect the work in each place as claimed to have been completed by the contractor. Two of said commissioners approved the work done on this river, the third disapproved it.

13. That no work was done by the contractor of the character called for in said act of the legislature on said San Bernard river from the mouth of said river to the Mims place, a distance of twenty-five miles, and that there were no obstructions to navigation on said part of said stream for such boats as then usually navigated the same, and no trees on the banks of said stream on this part of the same which would likely interfere with navigation, and no work was necessary on said part of said stream under said law and contract; and there was a channel more than sixty feet wide in said stream for said distance free from all obstructions to navigation below what was then considered too low water for navigation, and there were no trees along the banks likely to obstruct navigation on this part of said stream at the time said act was passed and said contract for cleaning out said river made.

14. I find that work was done by the contractor on said Bernard river from the Mims place to the head of navigation thereon, a distance of 3 3/4 miles, of the character provided for in said act, and it is not shown by a preponderance of the evidence that said work was a substantial com-

legislature had in view in passing said act and to the conditions as they existed at the time the same was passed.

The three streams intended to be cleaned out under said act were tide water streams near the coast, in which the tide ebbed and flowed, and which were then and had for many years been navigated from their mouths to the head of tide water, which was considered the head of navigation on each stream. These streams were short and deep, being from five feet deep at the head of navigation to twenty feet deep at the mouth, and were wide near the mouth, the San Bernard river being from fifty to one hundred and fifty yards wide on the lower twenty-five miles of its length next its mouth. Along the banks of the greater portion of said streams grew large trees, which, when the streams were narrow, interfered with the sails of boats navigating the same, and there were many snags in said streams and other obstructions to navigation. There were bars in the bay at the mouths of two of said streams upon which the water was only from three to six feet at ordinary tide, and said streams were navigated almost entirely by sailboats of light draught, such as could pass over the bars at the mouth. The boats which navigated said streams were from forty to fifty feet long and fifteen to twenty-five feet wide, and less.

It evidently was not the intention of the legislature by this act to require the removal of the bars in the bay at the mouths of said streams, because the language used will admit of no such construction.

Without the removal of these bars no boats except those drawing from three to six feet of water and less could navigate said streams, whether they were free from obstruction or not.

By the use of the following language in said act, to-wit: "To open and clean out said streams at least sixty

of the grant of 446 Bernard river certificates which have been located upon the public domain of the state of Texas.

But as said series of certificates, 1 to 446, were issued at one time, and it is impossible to distinguish the valid from the invalid, and as the defendants had the right of selection in the first instance of the lands which it would survey for themselves out of the unappropriated public domain, it is believed the defendants should now be allowed to select from the 217,744 acres of land located by virtue of said Bernard river certificates Nos. 1 to 446 in the state of Texas, 157,440 acres, and the state should have judgment for the balance of said grant or for 90,304 acres. The defendants shall make such selection within sixty days from the date of this decree and file description of same with the clerk of this court, and upon their failure to make such selection for them, and upon filing of same, with description thereof, with the clerk of this court, plaintiff shall have its writ of possession for the lands recovered in this suit, which is:

1. All the even numbered or school sections described in plaintiff's petition.
2. All the lands located by virtue of certificates Nos. 447 to 556, both inclusive, issued for work done on the 13 3/4 miles on Caney creek.
3. For 90,304 acres of land located in said Yoakum and Terry counties, Texas, by virtue of certificates Nos. 1 to 446, both inclusive, issued to John H. Gibson for work done on San Bernard river; all of which lands are described in plaintiff's petition. Judgment accordingly.

R. E. BROOKS, Judge Twenty-Sixth Judicial District of Texas.

AMUSEMENTS.

Dog and Pony Show.

Norris Bros.' dog and pony show will give two entertainments at the Grand Opera House yesterday, and will depart for Galveston on Monday. The show will be in charge of Norris Bros.

**ons of Land Were Awarded the State Out of Over a Thousand That Were in Controversy.**

**A**USTIN, Tex., Oct. 31.—Judge Brooks to-day, in the following decision in the Gibson land certificate case, awarded the state between 500 and 600 sections out of 1012 sections asked for:

No. 12,293—The state of Texas vs. the Leon & H. Blum land company et al. in the district court of Travis county for the Twenty-sixth judicial district, October term, A. D. 1898.

This is a suit by the state of Texas, acting through her attorney general, as plaintiff, against the Leon & H. Blum land company, a private corporation, and others, as defendants, in the form of "trespass to try title," to recover 1012 sections of land of 640 acres each, described in plaintiff's petition, and situated in Yoakum and Terry counties, constituting the entire county of Yoakum and the western one-third of Terry county.

The defendants disclaim as to all the even numbered or school sections so sued for, and as to the remainder plead general denial, and not guilty.

The plaintiff, by supplemental petition, alleges that the defendants claim the land in controversy by virtue of the location of certain certificates issued by the commissioner of the general land office of the state of Texas to John H. Gibson for work claimed to have been done by him in cleaning out the San Bernard river and a portion of Caney creek, in said state, under and by virtue of the following act of the legislature of said state, approved March 23, 1875, to-wit:

"An act to improve the navigation of Oyster creek, Bernard and Caney.

"Section 1. Be it enacted by the legislature of the state of Texas that a board of three commissioners, any two of whom may act, be appointed by the governor for each of the following streams: Oyster creek, Bernard and Caney; said commissioners to be selected from the inhabitants living on said streams, who are hereby constituted with full power to superintend, contract for and control the opening and clearing out said streams in this state.

"2. That the said board of commissioners so appointed shall, within six months from the date of the passage of this act, enter into contract with solvent, responsible and experienced contractors to open and clear out a channel in said rivers and creek, at least sixty feet wide, by cutting or sawing off, digging out, or otherwise removing all obstructions below what is now considered too low water for navigation, and to girdle or cut down all trees likely to obstruct the navigation of said rivers or streams, for each and every of said streams, from the mouths of the same to the head of navigation on each; also, for cutting canals through shoals, oyster banks, bend or bends of said rivers.

"3. That the

Richard J. Coke, governor of the state of Texas, to contract for removing obstructions to the navigation of the Bernard river of the first part, and J. H. Dance and Andrew Bunker and such other persons as the said Dance & Bunker may associate with them of the second part.

"Witnesseth, that the parties of the first part have contracted with and do hereby contract with the parties of the second part to open and clear out a channel in said Bernard river at least sixty feet in width by cutting or sawing off, digging out or otherwise removing all obstructions below what is now considered low water for navigation on said river.

"And the parties of the second part furthermore agree and bind themselves to remove all obstructions to navigation in said river up to Underwood's bridge, on said river, and as much further up said Bernard river as may be deemed advisable by said board of commissioners or the engineer appointed by the governor of the state of Texas to inspect said improvements of the Bernard river. And the parties of the second part further agree and hereby bind themselves to clear said river from all obstructions from the mouth of said river up to said Underwood's bridge, demanding payment of the state under said law for all that portion of said Bernard river on which they may bestow or perform labor that is necessary to the thorough removal of all obstructions to the navigation of said river, as required by the act of the legislature of the state of Texas, passed on the 23rd day of March, 1875.

"And, further, the parties of the second part agree within ten days from this date to give a good bond and security in the sum of \$10,000 conditioned on the faithful performance of said work according to the requirements of said law, and also to compensate said commissioners for all loss of time, trouble and expense that they may incur or be at in superintending the improvement of said river, and to do and perform all such things, labor or work that may be necessary to be done or performed in order to the complete execution of the provisions of said act of the legislature of the state of Texas.

- "J. H. SHAPPARD,
- "J. C. M'NEIL,
- "Commissioners.
- "ANDREW BUNKER,
- "J. H. DANCE,
- "Contractors.

Which contract was afterward assigned to J. H. Gibson before any work was done. And that a like contract in same terms was made by the commissioners for Caney creek with said Gibson, or his assigns, with reference to Caney creek.

6. That under said contract J. H. Gibson worked upon Caney creek from its mouth to Thompson's bridge, the point where the work involved in this suit on said creek was begun, and that his work was approved by the acting engineer and certificates issued to him for such work which are not involved in this suit.

7. That J. H. Gibson, under said contract, also worked upon Caney creek, pulling out and sawing off snags in the channel, and

said river was not in compliance with the provisions of the contract.

15. That T. A. Washington, the engineer appointed to inspect the work done on the San Bernard river, did inspect the same and made the following certificate:

"I, T. A. Washington, engineer, acting by virtue of appointment made by Hon. Richard Coke, governor of the state of Texas, in pursuance of an act of the legislature of said state, styled "An act to improve the navigation of Oyster creek, Bernard and Caney in the state of Texas," and approved March 13, 1875, having been called upon by John H. Gibson, contractor, to examine the work done by him on Bernard river, have inspected, examined and passed upon each and every mile of said river opened and freed from obstructions by said contractor, and found upon inspection that the said contractor had thoroughly cleaned out a channel in said river at least sixty feet in width by cutting, sawing off, digging out and otherwise removing all obstructions from the banks and bed of said river below what was at the time of the passage of the act and what at the present time, in my opinion, is below low water navigation on said river for each and every mile from the mouth to a point 55 75-100 miles up said river, all of said work being between the mouth and a point 55 75-100 miles on said Bernard river, and that there was no necessity for cutting canals through shoals, oyster banks or any bend or bends of said river. And I further certify that the number of miles worked on in said Bernard river by said contractor is 55 75 miles.

"T. A. WASHINGTON, Engineer."

"State of Texas, County of Galveston.—Before me this day John S. Shields, a notary public for Galveston county, duly commissioned as such, personally appeared before the undersigned T. A. Washington, to me well known, who, being duly sworn, makes oath and says that the matters and things set forth in the above certificate are true.

"In testimony whereof I have signed my name and affixed my official seal at my office in the city of Galveston this the 12th day of December, A. D. 1875.

"J. N. S. SHIELDS,  
"Notary Public."

16. I find that the certificate of T. A. Washington, the engineer, as to work done by said contractor of the twenty-five miles of said Bernard river from its mouth to the Mims place was false and fraudulently made.

17. I find the contractor for said streams, his agents and representatives secured the issuance by the commissioner of the general land office of the certificates Nos. 47 to 55, involved in this suit, for the 13 1/2 miles of work on Caney creek, and of 200 of the 446 certificates, Nos. 1 to 446, inclusive, for the 25 miles on San Bernard river, from its mouth to the Mims place, by means of the false and fraudulent certificates of said T. A. Washington, engineer, and also by means of other false and forged instruments made by said parties to said commissioner of the land office of Texas.

18. That A. M. Ho was the principal

a channel in said streams, six to eight feet wide, by cutting or sawing off, digging out, or otherwise removing all obstructions below what is now considered too low water for navigation, and to girdle or cut down all trees likely to obstruct the navigation of said streams, for each and every of the same to the head of navigation on each," was meant that all obstructions to navigation in said streams for a width of sixty feet should in some way be removed below what was at that time considered low water navigation for such boats as could and did then navigate said streams—that is, for boats that could cross the bars at the mouths of said streams. In other words, all obstructions in said channel of sixty feet in said streams were to be removed "by cutting, sawing off, digging out, or otherwise," to a depth in said waters that was below water navigation at that time, or was below the water used in navigating said streams at low tide. The water used in navigating said streams was from three to six feet deep from the surface, and all obstructions were intended to be removed below this depth at low tide.

The contention of the defendants that it was meant to cut off or remove these obstructions just under the surface of the water at low tide would make the act ridiculous, because no boat uses only the surface of the water.

To give such construction to the act would require us to believe the legislature really meant to lay pitfalls and conceal snags and obstructions for boats, so they could not avoid them, and thus to render navigation of said streams impossible, instead of improving the same. On the other hand, if it had been intended to remove all obstructions from said channel of sixty feet from the mouths of said streams to the head of navigation, the act would not have contained the qualifying language, to-wit: "all obstructions below what is now considered too low water for navigation." Besides, it was unnecessary to remove obstructions to the bottom of a stream fifteen feet deep that could only be navigated by boats drawing three to six feet of water and less. It was further intended by said act only to cut down such trees on the banks as were likely to obstruct the navigation of said stream, and it was not intended that a contractor should receive eight sections of land per mile by cutting down trees on the margin of a river one hundred yards wide when at the time only a channel sixty feet wide was provided for.

The legislature, by providing that commissioners for each stream should be appointed and selected from the inhabitants living on said streams, "who were constituted with full power to contract for, superintend and control the opening and cleaning out of said streams," evidently intended not only that they should make such contract, but they were to superintend and control such work because of their acquaintance with said streams they would know what work and where the same was

official maps of Texas showed a to be a part of and being mislabeled certificates Mexico, to wit: The of certificates as the land office agreement of counties to seventy-two certificates, or so located by Mexico, 8896 acres of certificates and three-quarters and 37,696 acres certificates issued San Bernard river and it said certificates Mexico until 1893, the boundary and that said

ed. said certificates New Mexico were made by law and for the constitute the involved in this one of all the cer-

question be certificates

question were Commissioner office and certificates delivered to City of Austin office.

and pleadings the means of the act this work under the filed with by when whether reviewed matters commission of the those duty it would work and case, having determined that the certifying issued a said con-

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the land office have any power to issue certificates for any portion of said streams upon which no work had been done by the contractor, and all such certificates are void.

And all work done on said streams by the contractor under said act was not done in substantial compliance with the provisions of said act, and where the engineer appointed by the governor to inspect said work accepted the same with knowledge that the law had not been complied with, and made his certificate to the comptroller, either fraudulently or was guilty of such gross misconduct in reference thereto as would imply fraud upon his part, then such certificates for land as were issued for this character of work would be voidable in the hands of parties chargeable with notice of such failure to comply with said act, and of such fraud, and the state would not, in such case, be concluded by the act of her agents.

I, therefore, conclude:

1. That certificates Nos. 447 to 556, both inclusive, issued for the work done on the 13 1/2 miles on Caney creek, which was not done in accordance with the provisions of said act, and which certificates were procured to be issued by the false certificate of the engineer, Washington, and the false and fraudulent representations of the agents of the contractor, should be canceled and the land located by virtue thereof should be recovered by the state from the defendants, who purchased said certificates with notice of these facts.

2. That the certificates issued for work done on 25 miles on the San Bernard river, from its mouth to the Mims place, where no work was really done by said contractor of the character provided for in said act, were void, and the commissioner of the general land office had no power to issue such certificates, and these certificates to the number of 200 out of those numbered 1 to 446, both inclusive, in this suit should be canceled and the lands located thereby recovered by the state.

Whether or not the fraud practiced by the contractor or his agents in procuring the issuance of this series of certificates, Nos. 1 to 446 as a portion of said series should invalidate the whole, is a serious question. It is not a case merely of an excessive grant, but the recovery is based upon fraud used in the procurement of the issue of at least a portion of said series of certificates. However, under the findings of fact herein, the contractor was entitled to 226 certificates

for 640 acres each; these were earned and due under the law and the facts; and it is not believed that fraud in the procurement of an excessive issue of certificates would invalidate those justly earned nor deprive the contractor of his right to receive the same. If, then, the issue of certificates Nos. 1 to 446 is only void for the excess—that is, for such number above those justly earned—it would result in 226 of said certificates being valid. In addition to this, there were nearly fifty-nine of said certificates, or, more exactly, 37,696 acres of land by virtue of said San Bernard certificates which was in New Mexico, and nev-

ed on the public lands of Texas. Leaving this amount—37,696 acres—from the 128,000 acres, the state is entitled to recover of this series of certificates, would leave 90,304 acres which the plaintiff is entitled to recover out

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17. Authorized and required to appoint a competent engineer to examine and pass upon each mile of said stream or streams so opened and freed from obstruction who shall, under oath, file a certificate with the comptroller, after he has inspected said work, setting forth the number of miles worked on in said streams, opened and cleaned out, as required by this act, and for each and every day actually employed in inspecting said work so done on said stream or streams, the said engineer shall be entitled to receive the sum of \$8 per day, to be paid by the contractor or contractors.

18. That upon the filing of the certificate of the engineer, as provided for in the third section of this act, the commissioner of the general land office shall issue, or cause to be issued, to the contractor or contractors who shall have done the work, for each and every mile of said stream or streams so opened, eight certificates, each for 640 acres of land; said certificates issued under this act shall be located in alternate sections, the even sections being reserved to the school fund, as other lands granted in aid of other works of internal improvement under the laws regulating the same, on any of the unappropriated or previously unsurveyed or unlocated land of the state; provided, always, that the state of Texas shall not be responsible for deficiency of public domain.

19. That said contractor or contractors shall complete the work by the 1st day of December, A. D. 1876.

20. That the land obtained under the provisions of this act shall be alienated within sixteen years; and a failure to comply with the provisions of this section shall work a forfeiture of all lands not alienated as required by this act; and the engineer appointed under provisions of this act shall be paid by the contracting parties.

21. That this act shall

22. That the commissioners appointed to make the contract as to Caney creek and to superintend and control said work did make the contract as set out in the fifth finding herein, but they never saw, directed, superintended, controlled or in any manner designated where or how any work was to be done under said contract, and did nothing but make said contract, and after said contractor claimed to have completed said work on Caney said commissioners, in company with the contractor and Engineer T. A. Washington, appointed to inspect said work, did inspect the 13 3/4 miles involved in this controversy, and said commissioners refused to receive or approve said work as having been done in compliance with the contract therefor, and they never at any time approved or accepted said work as satisfactory or in compliance with the contract.

23. That while work was done by said contractor on said Caney creek for the 13 3/4 miles in controversy, yet he did not open and clean out a channel in said creek sixty feet wide, nor did he remove all obstructions in said channel for the space of sixty feet below what was then considered too low water for navigation, for such boats as then usually navigated said stream, nor did said contractor substantially do such work or comply with the provisions of said act.

24. As to this 13 3/4 miles the obstructions in the channel of the same were nearly all removed to a point beneath the surface of the water by nature, and

backer of said contract, and his authorized agent in all that, issuance of said certificates.

25. That the defendants, and those under whom they claim, had notice of the failure of said contractor to comply with the law in the respects set out above, and of the fraud practiced in securing the issuance of said certificates prior to their purchase of the same, and that said defendants were transferred by the original grantee to the defendants in this suit, and they claim on the 1st day of —, 1877.

26. That both of said certificates of said Engineer Washington, as set out in the 10th and 15th finding of fact herein, were made by him and filed with the comptroller of the state of Texas, as required by law, and the commissioner of the general land office duly and legally advised thereof prior to the issuance of said certificates.

27. That said 556 land certificates involved in this suit were all issued in the name of J. H. Gibson and are all in proper legal form, and that all of said certificates except the following, as set out in exhibit to agreement filed herein as shown by map from the land office, were in the time required by law located upon vacant unappropriated public domain in Yoakum and Terry counties, Texas, being the same land involved in this suit, and proper field notes returned as required by law to the general land office, but that said locations have never been patented, the governors of this state, from the issuance of said certificates to this time, having continuously denied the validity of said certificates and locations, because of the facts set out in plaintiff's petition.

28. That at the time the location of said land certificates

was necessary to be done to improve said streams in the manner provided for in said act.

The commissioners, however, having made contracts practically in the general terms of the statute without designating or particularizing the work to be done, the contractor must look alone to the act to determine how and where he should work, and if he did work which was not called for in said act he can not receive compensation therefor, or if he did work but did not do the same substantially in the manner provided for in said act he should not receive compensation therefor. It further was not intended by said act to pay the contractor except for such part of said river as he actually did some work upon of the character called for in said act, and if any considerable portion of said streams in one body received no such work, then the contractor was not entitled to certificates therefor, whether said portions of said streams needed no work or not.

The state having appointed commissioners to superintend and control said work, and an engineer to inspect and pass upon the same, the state would be concluded, by their judgment, in the absence of fraud where work was actually done, and if the only questions in this case were whether or not the work done was up to the requirements of the contract and the state's agents for the purpose of passing upon this question determined that it was, then such act would be binding upon the state in the absence of fraud. However, neither the engineer nor the commissioners had any authority to approve the contractor's claim for any part of said stream upon which he did no work, nor did the commissioner of

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