May 4, 1998

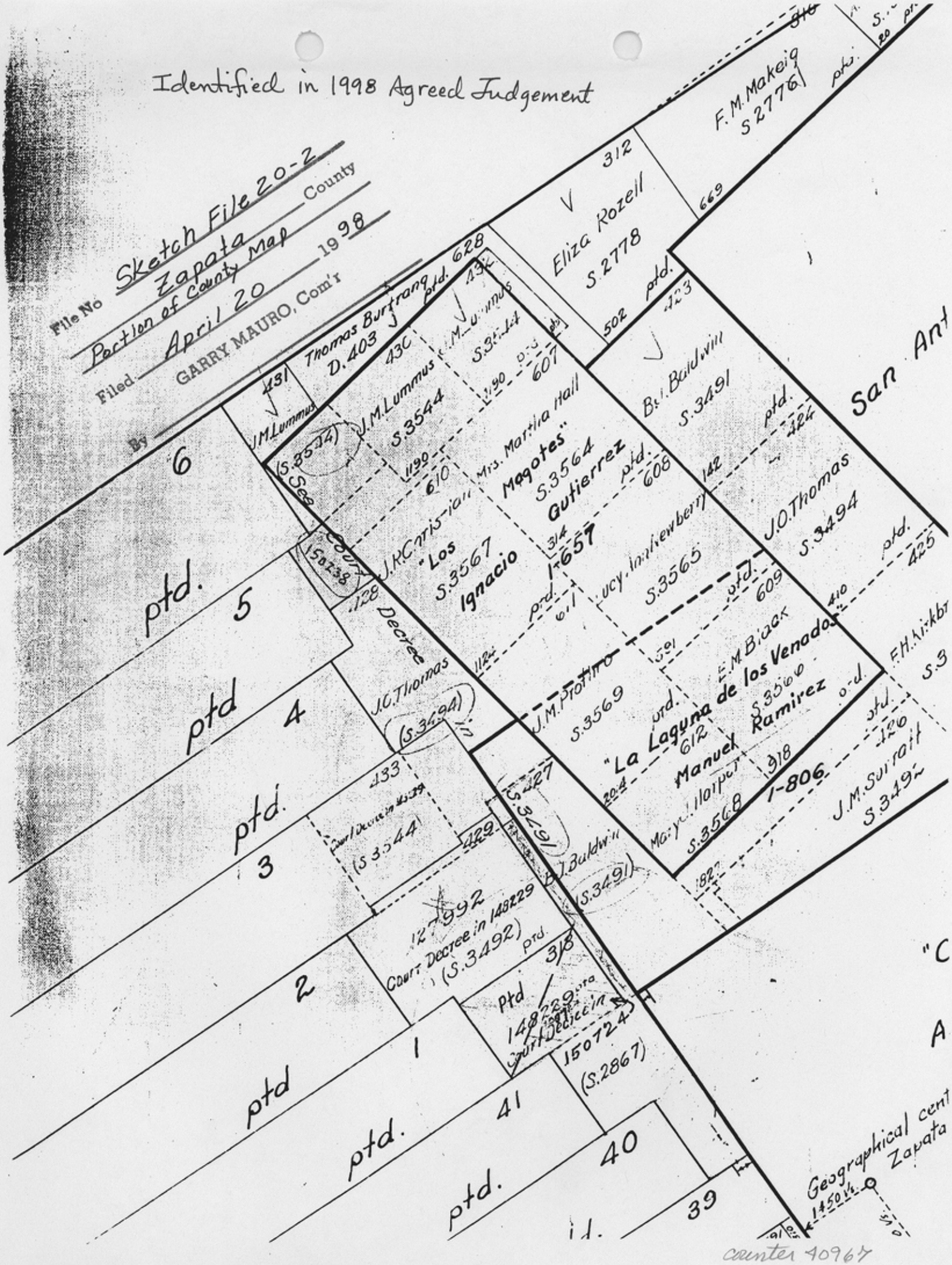
Memorandum to File: Zapata Co Sketch File 20

Cause for Agreed Final Judgment dated March 24, 1998 arose on June 3, 1997 when the Railroad Commission requested GLO's opinion on State's interest in San Patricio S-3491, S-3494, S-3544 and approximately 300 acres described by metes and bounds in the mandate of the Supreme Court in No. 1561, *Leonard Haynes v. State of Texas,* issued to the District Court of Travis County, Texas, in No. 1561, *Leonard Haynes v. State of Texas,* on October 4, 1907, all in Zapata Co.

Interpretation of the 1907 court judgment was not clear to Surveying Division personnel. They forwarded opinion request to Asset, Energy, VLB. AEV forwarded request to Legal Services.

File No Sketch File 20 - 1
Zapata County
Summary
Filed April 20 19 98
GARRY MAURO Com'r
By Douglas Howard

counter 40966


Identified in 1998 Agreed Judgement
File No Sketch File 20-2
Zapata County
Portion of County Map
Filed April 20 1998
By GARRY MAURO, Com'r
F.M. Makeig S 2776
Eliza Rozell S.2778
Thomas Burtrang D.403 ptd. 628
J.M. Lummus S.3544
Mrs. Martha Hall "Magotes" S.3564
"Los Ignacio" S.3567
Gutierrez
J.R. Christian
Lucy Inniewberry S.3565
J.O. Thomas S.3494
B.J. Baldwin S.3491
J.M. Proffitt S.3569
"La Laguna de los Venados"
Manuel Ramirez
E.M. Black
J.M. Surratt S.3491
F.H. Kirkbr
Court Decree (S.3494)
Court Decree in 148229 (S.3492)
Court Decree in 150724 (S.2867)
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ptd. 6
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-Carell Watson

222-021

Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1998

File No Sketch File 20-3
Zapata County
Agreed Final Judgment
Filed April 20 1998
By GARRY MAURO, Com'r
Douglas Howard

VIA INTERAGENCY MAIL

Mr. Ken Mills
Director, Real Estate Section
Legal Services Division
General Land Office
Stephen F. Austin Building

Re: *William Herbert Hunt Trust Estate, J.W. Beavers, Jr., Trustee v. Garry Mauro, Commissioner of the General Land Office of the State of Texas*; Cause No. 97-12885, 261st Dist., Travis County, Texas.

Dear Mr. Mills:

Enclosed is the Agreed Final Judgment entered and signed today by Judge Scott McCown in the above-referenced case.

As ordered, a copy of this judgment should be be placed in the files of the General Land Office concerning the affected lands.

If you have any questions, please call me at 475-4138.

Sincerely,

Jeffee Martinez-Vargas
Assistant Attorney General
Natural Resources Division

/jmv

Enclosure

cc w/encl: Spencer Reid
Kay Molina

98 MAR 26 PM 3:03
GENERAL LAND OFFICE
LEGAL SERVICES

counter 40968

No. 97-12885

WILLIAM HERBERT HUNT TRUST ESTATE, J. W. BEAVERS, JR., TRUSTEE,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	TRAVIS COUNTY, TEXAS
GARRY MAURO, COMMISSIONER, THE GENERAL LAND OFFICE OF THE STATE OF TEXAS,	§	
Defendant.	§	261st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this day came on to be heard the above-entitled and numbered cause, and William Herbert Hunt Trust Estate, Plaintiff, appeared by attorney of record and announced ready for trial, and Garry Mauro, Commissioner of the General Land Office of the State of Texas, appeared by attorney of record and announced ready for trial, and all questions of fact were submitted to the Court.

The Court, after having first determined that it has jurisdiction of the parties hereto and the subject matter hereof, and hearing the evidence and arguments of counsel, has determined that the following facts are undisputed.

1. On March 27, 1907, the Texas Supreme Court rendered judgment in No. 1561, *Leonard Haynes v. State of Texas* (reported 100 S.W. 915), rendering judgment against the State of Texas and in favor of Leonard Haynes pursuant to which a mandate was issued to the District Court of Travis County, Texas, on October 4, 1907.

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98 MAR 24 PM 1:33
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

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2. The opinion of the Texas Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, rendered March 27, 1907, and the mandate issued to the Travis County District Court on October 4, 1907, rendered judgment in favor of Haynes and awarded Haynes title to the lands described in the following instruments:

a. File No. 657, San Patricio First Class Abstract 566, Ignacio Gutierrez, Two Leagues "Los Mogotes".

b. File 806, San Patricio First Class Abstract 401, Manuel Ramirez, Two Plus Leagues, Mexican Grant.

c. File 3491, San Patricio Scrip, Abstract 212, Survey 427.

d. File 3494, San Patricio Scrip, Abstract 233, Survey 428.

e. File 3544, San Patricio Scrip, Survey 431.

f. Approximately 300 acres described by metes and bounds in the mandate of the Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, issued to the District Court of Travis County, Texas, in No. 1561, *Leonard Haynes v. State of Texas*, on October 4, 1907.

Said properties are hereinafter referred to as "the Lands."

3. Notwithstanding the ruling and mandate of the Texas Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, portions of Surveys 427, 428, 431, and the approximately 300-acre tract described in paragraph f. above, are listed on Defendant's records as surveyed unsold School Land.

4. Plaintiff, as successor in title to Leonard Haynes, is the owner and operator of oil and gas wells located on the Lands.

counter 70970

5. The records of Defendant, which are inconsistent with the ruling and mandate of the Supreme Court referenced above, cast a cloud on title of Plaintiff and have impaired and threaten to continue to impair the rights of Plaintiff with respect to the Lands.

The Court is of the opinion that Plaintiff is entitled to a declaratory judgment as requested. It is therefore **ORDERED, ADJUDGED, and DECREED** that the State of Texas has no claim to title to the Lands.

It is further **ORDERED, ADJUDGED, and DECREED** that all endorsements, memos, or other records of the Defendant General Land Office stating, suggesting, or otherwise indicating to the contrary are void and of no effect.

It is further **ORDERED, ADJUDGED, and DECREED** that Defendant shall maintain a copy of this judgment in the Defendant's records concerning the Lands.

All costs of Court expended or incurred in this cause are adjudged against the party incurring same. All other relief not expressly granted is denied.

Signed this 24th day of March, 1998.

JUDGE PRESIDING

counter 10971

APPROVED AS TO FORM AND SUBSTANCE:

McELROY, SULLIVAN, RYAN & MILLER, L.L.P.
P. O. Box 12127
Austin, Texas 78711
(512) 327-8111
(512) 327-6566 FAX

Attorneys for Plaintiff, William Herbert Hunt Trust Estate

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State Bar No. 13584200

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Attorney General

Jorge Vega
First Assistant Attorney General

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Chief, Natural Resources Division

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(512) 320-0911 FAX

Attorneys for Defendant Garry Mauro,
Commissioner of the General Land Office

By: _____
Jeffee Martinez-Vargas

counter 10972

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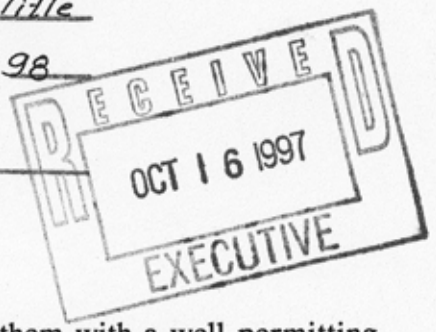
OM
Spencer/Bth

October 15, 1997

File No SketchFile 20-4
Zapata County
Request to clear Cloud on Title
Filed April 20 19 98
GARRY MAURO, Com'r
By Douglas Howard



Garry Mauro, Commissioner
General Land Office
1700 North Congress
Austin, Texas 78701

Re: Cloud on Title, Zapata County, Texas

Dear Commissioner Mauro:

The William Herbert Hunt Trust Estate asked us to assist them with a well permitting problem which arose recently at the Railroad Commission of Texas. The permitting problem was caused by certain records of the General Land Office which are inconsistent with judgments rendered against the State of Texas by the Texas Supreme Court. The judgments by the Supreme Court are reported in *Haynes v. State*, 100 S.W. 912 (1917) and *Haynes v. State*, 100 S.W. 915 (1917) (the "*Haynes* judgments"). The lands at issue are the Los Mogotes Grant, the Manuel Ramirez Grant, and Survey Nos. 427, 428, 431, and a 300-acre tract referred to as "300 acres of unsurveyed public domain" and described by metes and bounds in the Supreme Court's mandate to the Travis County District Court (hereinafter referred to as "the Lands"). In the *Haynes* judgments, the Supreme Court rendered judgment against the State of Texas and in favor of the defendants, awarding title to the Lands to the defendants. Notwithstanding the final and nonappealable ruling of the Texas Supreme Court, General Land Office records concerning the Lands suggest that some of the Lands should be included as Public School Lands. The records of the General Land Office have cast a cloud on the title of the Hunt Trust.

In June 1997, the erroneous GLO records became a serious problem for the Hunt Trust which holds the oil and gas lease covering the lands. The Hunt Trust filed applications for regular drilling permits on the Lands. The Railroad Commission's mapping staff refused to process these permits because the General Land Office's records show that the State of Texas claims title to the Lands. After numerous meetings with Railroad Commission staff extending over several weeks, the permits were finally issued. However, the delay posed a serious risk of harm to the Hunt Trust because of the scarcity of drilling rigs in the Rio Grande Valley. In addition, the erroneous GLO records pose a continuing harm to the Hunt Trust's quiet enjoyment of the property in accordance with the Supreme Court ruling.

We believe that the records of the General Land Office should be corrected so that the cloud on Hunt's title is removed and title is quieted in the successors to the defendants of the *Haynes* litigation pursuant to the *Haynes* judgments. We request that the cloud on title be

CC: OM ✓

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removed through an agreed declaratory judgment. A declaration should be sought from the Travis County District Court referencing the *Haynes* judgments (which hold that title to the Lands was vested in the defendants, their successors and assigns), and declaring that all clouds on title created by GLO records to the contrary are removed.

We would be glad to meet with you or any member of the General Land Office staff to discuss a reasonable resolution of this potentially serious problem. Thank you for your prompt attention to this matter.

Very truly yours,

Michael E. McElroy

/gs

cc: Spencer Reid

counter 40974

GENERAL LAND OFFICE
GARRY MAURO
COMMISSIONER

MEMORANDUM
DATE: August 21, 1997

TO: Spencer Reid
FROM: Kay Molina
SUBJECT: Zapata County Cases/Land Disputes

MEMORANDUM

ISSUE: You have asked me to research all existing files and case law in connection with the Texas Supreme Court case styled *Haynes v. State*, 100 S.W. 912 (1907), to determine the following: (1) Were there two cases at the Supreme Court level and, (2) What did the court grant in its decision [i.e., Does the state own the four tracts of land adjacent to the Los Mogotes and Manuel Ramirez Mexican grants].

BRIEF ANSWER: (1) After researching our files, the files from State Archives, and the Texas reporters, it is my conclusion that two cases involving Leonard Haynes existed at the Supreme Court level.

(2) Although an argument exists that Leonard Haynes only won title to the acreage of certain litigated tracts lying within two Mexican grants, the more likely result of the litigation was that the State lost, and Leonard Haynes secured title to all of the acreage of the tracts.

FACTS: In 1903, the State of Texas filed eight trespass to try title suits regarding land in Zapata County:

Leonard Haynes, et al, v. The State of Texas
Juan Vela Cuellar, et al, v. The State or Texas
Leonard Haynes v. The State of Texas
Juan Manuel Flores, et al, v. The State of Texas
Porfirio Garza, et al, v. The State of Texas
Espiridion Flores, et al, v. The State of Texas
Servando Benavides v. The State of Texas
Filiberto Pena, et al, v. The State of Texas

File No Sketch File 20-5
Zapata County
Memo - Kay Molina to Spencer Reid
Filed April 20 19 98
GARRY MAURO Com'r
By Douglas Howard

All of the above cases, except *Leonard Haynes v. The State of Texas*, involved land located in the Pedro Bustamente and Antonio Zapata Mexican land grants; *Leonard Haynes v. The State of Texas*, involved four tracts of land equaling 3500 acres of land ["Tracts 1-4"] lying either

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wholly or partially within the Los Mogotes and the Manuel Ramirez grants. Because the eight cases involved trespass to try title claims and were based on the same rules of law, they were heard together on appeal by the Court of Civil Appeals. The court limited its analysis based on *Leonard Haynes et al. v. The State of Texas*:

> The decision of this case, so far as the rules of law announced, apply to the above cases, and the facts, so far as the evidence of title is concerned, are substantially the same in each case. Of course, in each case different lands are sued for, and different parties assert title; but all the titles emanate under Decree No. 24 of Tamaulipas, and in none of the cases is the evidence of title stronger than that considered in the case in which the opinion is written.

Throughout the case, each defendant [including Leonard Haynes in both suits] alleged that the lands sued for are part of certain Mexican grants located in Zapata County, having their origin prior to 1836, by adjudication of the Ayumtameinto of Guerrero, by virtue of Decree No. 24, of October 19, 1833, of the Congress of Tamaulipas; denouncement and survey of said grants by the Surveyor General of Tamaulipas in 1835; final titles to said grants issued by the Governor of Tamaulipas on January 2, 1848; continuous possession from long prior to 1835 up to date of institution of the suits, resurvey of said grants by the surveyor of Zapata County in the 1870's and invoking the protection of the Treaty of Guadalupe Hidalgo and the Constitution of the United States.

Furthermore, each defendant alleged that the lands were purchases by tender of the original price of said grants of land as fixed by said Decree No. 24.

Both the District Court and the Appeals Court held the lands sued for to be State lands.

At the Supreme Court level, the eight cases were heard on the same day but broken down into two opinions and an order. In the first opinion styled *Haynes v. State*, 100 S.W. 912 (1907), the court ruled for the defendant Leonard Haynes granting to him 5 leagues of land in Zapata County and specifically discussing the Bustamente and Zapata grants. In the opinion, the court discussed the history of the two grants, the chain of title of the two grants, and the laws involving land granted/owned prior to statehood, and thereafter reversed and rendered on behalf of the defendant. Based on the same analysis as set forth in the opinion, an order was issued by the court granting Leonard Haynes possession to all of the acreage included in the State's Original Petition for Tracts 1-4.

The second opinion styled *Haynes, et al. v. State*, 100 S.W. 915, also reversed and rendered in favor of the defendants, holding on behalf of the defendants in the other suits. In the short opinion issued by the court, Justice Brown states the court's decision and that the ruling is based on the earlier opinion in *Leonard Haynes v. State of Texas*, 100 S.W. 912, that being that the defendants in each case be granted title to all of the lands sued for in each case.

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DISCUSSION: Did the Texas Supreme Court in *Leonard Haynes v. The State of Texas*, hold that the State take nothing and grant Leonard Haynes all 3500 acres of Tracts 1-4 described in the State's Original Petition?

A trespass to try title action is, in legal effect, a suit to recover the land described in the petition.[1] Under Texas law, the plaintiff in a trespass to try title action must establish the strength of his own title, and may not prevail by proving simply the weakness of the defendant's title.[2] Furthermore, the petition alleging trespass to try title always puts title and possession in issue.[3]

In the State's Original Petition filed in 1903 for the case styled *Leonard Haynes v. The State of Texas*, the State claimed ownership to Tracts 1-4 constituting 3500 acres of land in Zapata County and gave a metes and bounds description of each. In the Defendant's Answer, Leonard Haynes pleaded not guilty and claimed ownership of these four tracts by virtue of two Mexican grants -- the Los Mogotes and the Ramirez grant, and claimed that these four tracts were enclosed either wholly or partially within the grants. Although Haynes never claimed that he owned all of the acreage included in the State's Original Petition, throughout the case, the State claimed that Haynes did not own any of the lands sued for because he did not take rightful possession of the Mogotes and Ramirez grants under the laws of the State of Texas. At no point in the case did the State amend its claim of possession to include only the area of the four tracts lying outside of the two grants. Further, at no point in the case did the State attempt to prove its chain of title to the tracts but simply claimed that Haynes did not have title to the two grants because he had not acquired them in accordance with the law. Given the burden of proof in trespass to try title litigation, that was a serious strategic error.

If the plaintiff fails to affirmatively establish title in a trespass to try title suit, judgment must be entered for the defendant, and there is no necessity to determine whether defendant has title to the premises.[4] By including all of the acreage of Tracts 1-4 [a portion of which may have been wholly or partially included within the boundaries of two Mexican land grants claimed by Haynes] in the petition in *Leonard Haynes v. The State of Texas*, the State had the burden to prove that it was the rightful owner of all of the land. By not doing so, it lost any title it may have had to Leonard Haynes.

The Tyler Court of Appeals made a similar finding in the case *Kendrick v. Tidewater Oil Co.*[5] *Kendrick* was a trespass to try title suit to recover an undivided one-half mineral

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[1] *Joyner v. Christian*, 113 S.W.2d 1229 (Tex. 1938).

[2] *U.S. v. Denby*, 522 F.2d 1358 (C.A.Tex. 1975).

[3] *Hunt v. Heaton*, 643 S.W.2d 677 (Tex. 1982).

[4] *Trevino v. Munoz*, 583 S.W.2d 840 (Tex.Civ.App. -- San Antonio 1979, no writ).

[5] *Kendrick v. Tidewater Oil Co.*, 387 S.W.2d 122 (Tex.Civ.App. -- Tyler 1965, writ ref'd n.r.e.).

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interest in which the defendant plead not guilty. Although the suit was for an undivided one-half mineral interest, the plaintiff's petition put in issue title to the entire mineral interest. The court held for the defendant and that the plaintiff take nothing. It stated that the plaintiff's petition and the defendant's plea of not guilty put title to the entire mineral interest at issue, and the effect of a "take nothing" judgment was to divest all of the title to the interest in issue out of the plaintiffs and to vest it in the individual defendants.[6]

On this issue, the Texas Supreme Court has stated that a "take nothing" judgment in trespass to try title operates as muniment of title, and adjudges in effect, that facts were found to exist which, between parties, established in defendant all title to land, including, just as effectively as though it had passes by voluntary conveyance, such title as plaintiff had.[7]

Based on the law as stated above, the issuance of a take nothing judgment in favor of the defendant Leonard Haynes granted him title to all of the acreage of Tracts 1-4.

Based on the analysis of the Zapata County case as presented above, it can be argued that the Texas Supreme Court heard and issued a final, nonappealable ruling in the case *Leonard Haynes v. State of Texas*. Pursuant to this ruling, the State of Texas does not have title to the litigated areas: Tracts 1-4 constituting of 3500 acres in Zapata County.

Did the Texas Supreme Court hold that Leonard Haynes receive only those lands lying within the boundaries of the grants, leaving the remaining acres lying outside of those boundaries to the State of Texas?

In 1956, Mr. Bob Brooks was asked to address the issue of ownership of State Tracts 1-4. In a memo dated November 23, 1956, Mr. Brooks determined that the State retained title to those acres lying outside of the Mogotes and Ramirez grants, despite the 1907 order issued by the Texas Supreme Court. He based his determination on two arguments:

> (1) an error was made by the Supreme Court in that it gave the defendant Leonard Haynes land lying outside of the Mogotes and Ramirez grants which it had no authority to do; and/or,
>
> (2) the order by the court granting possession of the acreage of Tracts 1-4 lying outside of the two grants was an error made by the court clerk because it did not conform with the opinion and the evidence as described in the record.

With regards to the first argument as stated above, in his memo, Mr. Brooks claimed that the judgment in the *Haynes* case was in error to the extent that it gave to the defendant land lying outside of the two Mexican grants. He then stated:

---

[6] *Id.*

[7] *Periman Oil Co. v. Smith*, 107 S.W.2d 564 (Tex. 1937).

> It is well established in the law that where proof in a trespass to try title suit fails to show that the defendant's grant includes all the land described in plaintiff's petition, it is error to render judgment vesting title in the defendant to all the land sued for.

However, I could not find any Texas case to support this statement and, therefore, cannot confirm that "it is well established in the law."

With regards to the second argument as stated above, the State could argue that an error was made by the clerk of the court. In the State's Original Petition filed in the Travis County District Court in 1903, the State claimed ownership to Tracts 1-4 and gave a metes and bounds description of each. In the Defendant's Answer, Leonard Haynes claimed that these four tracts were owned by him by virtue of two Mexican grants -- the Los Mogotes and the Ramirez grant, and that these four tracts were enclosed either wholly or partially within the grants. The metes and bounds descriptions included in Defendant's Answer, in fact, include a large portion of land included in Tracts 1-4 just as the state maps show that large portions of these tracts are a part of the two grants validated by this case. However, the legal descriptions of the two grants do not include all of the land described in the State's Original Petition.

The opinion issued by the Texas Supreme Court in *Leonard Haynes v. The State of Texas*, seemed to be restricted to the question of whether or not the Bustamante and Zapata Mexican land grants at issue in *Leonard Haynes et al. v. The State of Texas* were valid. Upon finding in favor of the defendant, the court held that the two grants were valid and owned by Leonard Haynes and that the State take nothing. the court then issued an order granting to the defendant title to Tracts 1-4 on the basis of the earlier holding.

Based on the above, the State could argue that the opinion issued by the court was a holding concerning "validation" and that the order granting Haynes title to Tracts 1-4 was issued based on that holding; therefore, the court in effect validated the Los Mogotes and Ramirez grants and granted Haynes the acreage included within their boundaries. Therefore, the court clerk should have only issued an order for the acreage included within the boundaries of the two grants. By not doing so, the clerk made a clerical error not in accordance with the opinion and the evidence as described in the record.

Although this position is available, it could be difficult to argue based on the laws of trespass to try title as set forth above.

CONCLUSION: Based on the discussion as set forth above, the State must determine how to interpret the Supreme Court decision and order in the case *Leonard Haynes v. The State of Texas* regarding ownership of Tracts 1-4.

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A strong argument can be made that pursuant to the Supreme Court's position in *Leonard Haynes v. The State of Texas* and the order issued in accordance with that opinion, the State took nothing and the court granted Leonard Haynes Tracts 1-4 as described in the State's Original Petition. Texas courts have held in a trespass to try title action, the plaintiff's right to recover is based on the strength of its title, not the weakness of the defendant's title. Furthermore, it the plaintiff fails to affirmatively establish title in a trespass to try title suit, judgment must be entered for the defendant, and there is no necessity of determining whether the defendant has title to the premises. Based on the above, it can be argued that the State of Texas, by including all of the acreage of Tracts 1-4 in its pleadings, had the burden of proof to show the State had title to the land. By not proving so, Leonard Haynes was granted title to all of the land in controversy.

On the other hand, the State may be able to argue that the Supreme Court intended that Leonard Haynes receive only those lands lying within the boundaries of the grants, leaving the remaining acres lying outside of those boundaries to the State of Texas. This argument would be based on the proof that: (1) an error was made by the Supreme Court in that it gave the defendant Leonard Haynes land lying outside of the Mogotes and Ramirez grants which it had no authority to do; and/or (2) the order by the court granting possession of the acreage of Tracts 1-4 lying outside of the two grants was an error made by the court clerk because it did not conform with the opinion and the evidence as described in the record. However, as stated above, this position may be difficult to argue.

cc: Lanell Aston
Ben Thomson
Ken Mills
David Hall

counter 10980

GENERAL LAND OFFICE

GARRY MAURO
COMMISSIONER

MEMORANDUM

DATE: July 15, 1997

File No Sketch File 20-6
Zapata County
Memo - Kay Molina to Spencer Reid
Filed April 20 19 98
GARRY MAURO, Com'r
By Douglas Howard

TO: Spencer Reid

FROM: Kay Molina

SUBJECT: Zapata County Cases/Land Disputes

You have asked me to research all existing files and case law in connection with the Texas Supreme Court case styled *Haynes v. State*, 100 S.W. 912 (1907), to determine the following: (1) were there two cases at the Supreme Court level and, (2) what did the court grant in its decision [does the state own the four tracts of land adjacent to the Los Mogotes and Manuel Ramirez Mexican grants]. After researching our files, the files from State Archives, and the Texas reporters, it is my conclusion that two cases existed at the Supreme Court level, and based on the decisions of the court, the State of Texas took nothing under each.

At the district court level, eight cases involving land in Zapata County were filed:

Leonard Haynes, et al, v. The State of Texas
Juan Vela Cuellar, et al, v. The State or Texas
Leonard Haynes v. The State of Texas
Juan Manuel Flores, et al, v. The State of Texas
Porfirio Garza, et al, v. The State of Texas
Espiridion Flores, et al, v. The State of Texas
Servando Benavides v. The State of Texas
Filiberto Pena, et al, v. The State of Texas

These cases were instituted by the State of Texas in trespass to try title to recover lands claimed by the named defendants. All of the above cases, except *Leonard Haynes v. The State of Texas, et al*, involved land located in the Pedro Bustamente and Antonio Zapata Mexican grants; *Leonard Haynes v. The State of Texas, et al*, involved land in the Los Mogotes and the Manuel Ramirez grants and four other tracts laying adjacent thereto. All of the cases were heard together by the Court of Civil Appeals and were held to be State lands.

At the Supreme Court level, the eight cases were heard on the same day but broken down into two opinions. In the first opinion styled *Haynes v. State*, 100 S.W. 912 (1907), the court ruled on the seven cases involving the Bustamente and Zapata grants. In the opinion, the court discussed the history of the two grants, and based on that history, reversed and rendered on behalf of the defendants declaring the two Mexican grants valid and the State take nothing.

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The second opinion styled *Haynes, et al. v. State*, 100 S.W. 915, also reversed and rendered in favor of the defendants, validating the Los Mogotes and the Manuel Ramirez grants. In the short opinion, Justice Brown states the court's decision and that the ruling is based on the earlier opinion in *Leonard Haynes v. State of Texas*, 100 S.W. 912. Thereafter, the clerk of the Supreme Court issued an order granting the four tracts of land laying adjacent to the two validated grants to the defendants.

Based on the history of the Zapata County cases as presented above, the Texas Supreme Court heard and issued a final, nonappealable ruling in two cases: *Haynes, et al. v. State* and *Leonard Haynes v. State of Texas*. Pursuant to these rulings, the State of Texas does not have title to any lands in the litigated areas, including the four tracts laying outside of the Los Mogotes and the Manuel Ramirez grants.

counter 10982

*912 100 S.W. 912

100 Tex. 426

HAYNES
v.
STATE.

Supreme Court of Texas.
March 27, 1907.

Error from Court of Civil Appeals of Third Supreme Judicial District.

Action by the state against Leonard Haynes. Judgment for plaintiff was affirmed by the Court of Civil Appeals (85 S. W. 1029), and defendant brings error. Reversed and rendered.

1. PUBLIC LANDS--MEXICAN TITLE--UNAUTHORIZED ISSUING OF FINAL TITLE.
The issuing, by the governor of Tamaulipas, after his power to do so had ceased, of a final title to lands, formerly within the state of Tamaulipas, but by Act Dec. 19, 1836, declared part of the territory of Texas, took away no existing right of the grantee to the land, on which such unauthorized act was based.

2. PUBLIC LANDS--EVIDENCE OF RIGHT--PRESUMPTION.
The presumption from the fact that, prior to December 19, 1836, the ayuntamiento of the village of Guerrero, in the state of Tamaulipas, made up an instructive despatch, embracing all papers required by law to show the right of Z. to land, situate in such state before it became part of Texas, and a compliance by him with the requirement of the law on which the governor of Tamaulipas was authorized to issue final title--that everything required by the law as a basis for the action of the ayuntamiento, including the collection from Z. of the purchase money, and the depositing of it with the treasurer of Guerrero, so as to give Z. a right to the land, protected by the Treaty of Guadalupe Hidalgo, is not overcome by the letter of the supplemental alcalde of Guerrero to the governor of Tamaulipas, in 1847, stating that, while he sends the papers constituting the evidence of right in Z. to the land, he does not send with them the dues, because not desiring to expose the same, and directing that the same be drawn against; this not showing that the money was not collected by the ayuntamiento in 1847.

3. APPEAL--REVERSING AND RENDERING JUDGMENT.
Where, on reversal of a judgment, the facts furnish no ground for a difference of opinion as to the rights of the parties, the case will not be remanded, but judgment will be rendered.
[Ed. Note.--For cases in point, see Cent. Dig. vol. 3, Appeal and Error, s 4580.]

[100 Tex. 427] James B. Wells, for plaintiff in error.

R. V. Davidson, Atty. Gen., and Wm. E. Hawkins, Asst. Atty. Gen., for the State.

[100 Tex. 428] BROWN, J.

The state of Texas sued Leonard Haynes to recover five leagues of land situated between the Nueces river and the lower Rio Grande, which is within the limits of the territory of the state of Tamaulipas as it existed prior to the Texas Revolution. The land was surveyed for the state in 1884, and there is, of course, no question of the state's right to it, unless the plaintiff in error has shown a right to the land which originated at a date prior to the 19th day of December, 1836, and which right is protected by the treaty of Guadalupe Hidalgo between the United States and Mexico. Haynes claims by mesne conveyances under Antonio Zapata, who claimed to have acquired a right to the land by a grant made by the governor of Tamaulipas, under decree No. 24 of the Congress of that state. We copy the decree as follows:

[100 Tex. 429] 'No. 24. The Constitutional Congress of the Free State of Tamaulipas has decreed the following:

'Article 1. To the inhabitants of Camargo, Mier, Guerrero and Laredo, who may have no lands of their own, and who may possess stock to occupy them, there shall be given at once not exceeding five leagues each, and in compensation they shall pay the state $10 for each league.

'Art. 2. Those only are comprehended in the foregoing article who lived in said villages during the last Indian war now passed, and who did not emigrate previous to the year 1821.

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'Art. 3. The respective ayuntamiento shall inform itself by previous justification whether the interested party, who may present himself, has lands of his own and stock with which to occupy them.

'Art. 4. These lands shall not be alienated until twenty years have passed after the concession; and, if so alienated, the state recovers its right to them, and he who may have been the owner loses whatever advances and useful and necessary improvements that he may have made; it being sufficient for a judgment of condemnation that the alienation shall be made to appear. Upon this point the respective administering judge shall decide summarily, without prejudice to the legal remedies of the interested party.

'Art. 5. The benefits of article 1 shall continue for three years from the day of the approval of this decree, after the expiration of which term no one shall obtain lands except according to the ordinary laws.

'Art. 6. The ayuntamientos and their individual members collectively and each one for himself are responsible personally and pecuniarily of they are wanting in the truth of the inquiry exacted by article 3, and the government having heard their defense shall make their responsibility effective.

'The governor of the state shall take care that this decree be understood, and shall order its execution, having it printed, published and circulated. Wherefore, I command that it be printed, published, and circulated, and that it be duly executed.'

There is no question made of Zapata's qualification to acquire the land; that is, that he was one of those who had settled in that section of the country and remained there according to the terms of the decree. ***913** The Court of Civil Appeals (85 S. W. 1029) found the following facts which constitute the right of Zapata to the land in question: 'We conclude that the evidence in the record justifies the assumption that Zapata and Bustamente denounced the lands in controversy before the ayuntamiento of Guerrero in 1835, and that that body passed favorably upon the application; that a survey was made by Canales, the surveyor general of Tamaulipas, in 1835, of these two purported grants, and the expediente was formed and became an archive of the public records at Guerrero; and that the claimants were in possession of the land prior to the denouncement. The evidence does not show any juridical possession, but the fact that they were in possession when the lands were denounced, and continued in possession thereafter, was sufficient to dispense with juridical possession, as is decided in the case of State v. Sais, 60 Tex. 88; and they continued in possession for such length of time as would justify a presumption of grant, provided the evidence in the record did not repel such presumption. The evidence also warrants the assumption that, [100 Tex. 430] while a copy of the expediente was not introduced in evidence, the copy of the index, as stated by the facts, indicates that an expediente was formed, and such fact is also established by the parol evidence in the record. Copies of the record of the denouncement to the ayuntamiento, and the favorable action of that body upon the application, was not introduced in evidence; but the evidence in the record, which is not objected to, tends to show that such denouncement was made to the ayuntamiento, and they acted favorably upon it. The evidence in the record also shows that the public archives in the city of Victoria were destroyed by the French troops in 1864, and that the records of Guerrero were imperfect and mutilated, and many missing, which fact would justify us in assuming that the record evidence of steps taken to acquire title which was not produced was lost or destroyed. The only evidence showing that the purchase price of the land was paid is the statement contained in a letter to Canales of date November 28, 1847, found upon page 141 of the record.'

On the 28th day of November, 1847, Fabian Zapata, first supplemental alcalde of the municipality of the city of Guerrero, wrote to his honor, Gen. Don Antonio Canales, at the city of Victoria, Tamaulipas, as follows: 'I remit to you seventeen titles, which contain the vacant lands denounced and surveyed from the year 1831 until that of 1835, in order that your honor may please present them to the honorable governor of the state, to the effect that they may have the necessary validation. The amount of the dues I do not send attached to said documents so as not to expose the same, and your honor will deign also to direct in the most certain manner the mode in which they may be paid, and draw against this receiver's office. God and Liberty.'

The governor of Tamaulipas issued to Antonio Zapata the following final grant: 'Francisco Vital Fernandez, Brigadier General of the Army of the

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Mexican Republic and Governor of the State of Tamaulipas: Whereas, the citizen Antonio Zapata has paid into the treasury of the state the $50 at which were valued the five sitios of pasture land for large stock denounced by him at the point de Villa, as appears by the expediente made for the purpose, using the power that the law gives me upon this particular, I have thought proper to adjudicate to the citizen Antonio Zapata for himself, his heirs and successors the said five sitios for large stock, within the limits and boundaries made on the attached map. Therefore, I order the authorities and inhabitants of the state to recognize the said citizen Antonio Zapata as the legitimate owner of the said five sitios of pasture land for large stock which are thus granted. Given at the city of Victoria on the 2d day of the month of January, eighteen hundred and forty-eight.'

The following articles of the colonization law of 1826 of the state of Tamaulipas are pertinent to the issue involved in this case:

'Art. 7. From the very date whereon a foreigner is thus registered he acquires domiciliation, and may as such an inhabitant (denunciar) the vacant land he thinks best, presenting himself to that effect by writing to the respective alcalde, who shall decree what is proper for examining, measuring and marking out the land designated, after citing the adjoining proprietors should there be any.

[100 Tex. 431] 'Art. 8. The instructive despatch being terminated, and no opponent of right resulting, the alcalde shall pass it to the executive of the state, by whom the title of adjudication and ownership shall be issued to the person interested, ordering that the alcalde of the town of his residence put him immediately in possession of the land granted. All these proceedings shall be conducted officially, and the executive shall proceed with the audience of the fiscal of the Supreme Court of justice of the state.'

'Art. 24. The ayuntamientos, each in its limits, shall collect said funds gratis by means of a commission from within or without their own body, and shall pass them according as they are collected to the depositary or treasurer that they may be of their funds or means, who shall give the corresponding receipt; and without further interest than two and a half per cent., that shall be paid him, he shall place them at the disposal of the executive, giving him notice every month of the receipts and remittances thereof, and of any negligence of deceit he may notice in their collection. Of the management of the treasurer and that of the commission, the officers themselves and commissioners ***914** shall be responsible with their property; and moreover, the members of the ayuntamiento who choose them, and that this responsibility may at all times be effectual, the said appointments shall be made viva voce, and notice thereof shall be immediately given to the executive.'

The learned judge, who wrote the exhaustive opinion of the Court of Civil Appeals, said; in substance, that the facts found by that court would justify the presumption that a grant had been made by the governor of Tamaulipas, if it were not shown by the testimony that the governor of Tamaulipas had issued a final title to Zapata, which was void because he had not the power to do so at the time that it was granted. The issuing of the final title without authority could not affect the right which existed and upon which the unauthorized act was based. State v. Bustamente, 47 Tex. 320. Therefore, discarding the title issued by Canales, governor of Tamaulipas in the year 1848, we have the facts still existing which, if sufficient to justify a presumption of a grant, must be sufficient to establish a right to the grant. If, therefore, the evidence introduced upon the trial shows that Antonio Zapata was on the 19th day of December, 1836, entitled to have a grant issued, the state ought not to recover the land in controversy, because such a title would be protected by the Treaty of Guadalupe Hidalgo. It is true that the Attorney General insists that the facts do not establish such a title as would be embraced in the terms and protection of that treaty, but we are of opinion that the position is not well taken. State v. Sais, 47 Tex. 307.

If it be conceded that the $10 per league was the purchase price for the land, which must be paid before a right to the land accrued to Zapata, then, under the law as it then existed, it was the duty of the ayuntamiento of the village of Guerrero to collect from Antonio Zapata the $10 for each league before making up the expediente or instructive despatch, and to deposit the money in the treasury of that village subject to the order of the governor. The undisputed evidence in the case and the finding of the Court of Civil Appeals establishes the [100 Tex. 432] fact that, before the 19th day of December, 1836, the ayuntamiento of Guerrero did

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make up the instructive despatch, embracing all papers required by law to show the right of Antonio Zapata and a compliance by him with the requirement of the law upon which the governor of Tamaulipas was authorized to issue the final title. It was shown that the records of the ayuntamiento of Guerrero were multilated, and many of them destroyed or lost, and that the expediente of Zapata had at one time been in the archives of Victoria, the capital of Tamaulipas, which were destroyed in 1864 by the French soldiers. In this state of the facts, there would arise the presumption that, before the ayuntamiento made up the instructive despatch or expediente, everything was done that the law required to be done as a basis of their action, and that the $10 per league had been collected from Zapata and deposited with the treasurer in accordance with law. Olcott v. Gabert, 86 Tex. 126, 23 S. W. 985; State v. Sais, 60 Tex. 90. This presumption might have been disproved, but it is undisputed, and the concurrent facts support it, so that the presumption is entitled to the same weight as the undisputed testimony of a credible witness. It is, however, suggested in the opinion of the Court of Civil Appeals, that the letter, which was written in 1847 by the supplemental alcalde of Guerrero to the governor of Tamaulipas, shows that the money was paid in 1847. The letter does not state that the money was paid at that time, but that it was not forwarded with the expedientes which were sent in 17 cases, for the reason that it was unsafe to do so. These 17 packages of paper which constituted the evidence of right in Zapata and others to the lands granted, had remained in the archives of Guerrero from 1835 to 1847, and it is entirely consistent with the terms of the letter, and with the facts established in connection with it, that the money collected by the ayuntamiento from Zapata was still in the treasury of Guerrero, although it was collected in 1835. There is not a fact or circumstance to which we have been pointed by the counsel for the state which would in the least impair the force of the presumption of law that the money was collected at the time the land was surveyed and the title papers made up by the municipal officials. The facts of this case establish that Zapata, under whom the plaintiff in error claims, had, on the 19th day of December, 1836, done all that the law required of him, and was entitled under the laws of Tamaulipas to receive from the governor of that state a grant for the five leagues of land. It follows from this conclusion that we must reverse the judgments of the district court and of the Court of Civil Appeals.

The question arises: Shall we remand the case to the district court for another trial, or shall we render judgment for the plaintiff in error? If the facts of this case furnished any ground for a difference of opinion as to the rights of Antonio Zapata under the laws of Tamaulipas to receive a grant of the land in question, it would be our duty to remand the case for another trial. It is evident, from the opinion of the Court of Civil Appeals, that they would have reversed the judgment of the district court, but for the fact that they construed the letter from Fabian Zapata to the governor to mean that the ***914** money, $10 per league, was paid at the time that the papers were forwarded to the governor; but we are of opinion that that construction of the letter was incorrect, and [100 Tex. 433] was unsupported by the attending circumstances. Assuming that the $50 for the five leagues was collected from Zapata at the ***915.** time the surveys were made and the instructive despatch formulated, we are not able to see how there could be a difference of opinion as to the right of the plaintiff in error to the land in controversy.

It is therefore ordered that the judgment of the district court and that of the Court of Civil Appeals be reversed, and that judgment be here rendered for the plaintiff in error.

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*915 100 S.W. 915

100 Tex. 433

HAYNES et al.
v.
STATE.

Supreme Court of Texas.
March 27, 1907.

Error from Court of Civil Appeals of Third Supreme Judicial District.

Action by the state against Leonard Haynes and others. Judgment for plaintiff was affirmed by the Court of Civil Appeals (85 S. W. 1029), and defendants bring error. Reversed and rendered.

James B. Wells, for plaintiffs in error.

R. V. Davidson, Atty. Gen., and Wm. E. Hawkins, Asst. Atty. Gen., for the State.

BROWN, J.

This case is governed by the opinion this day filed in Leonard Haynes v. State of Texas (No. 1,562) 100 S. W. 912, and, for the reason given in that opinion, the judgment of the district court and that of the Court of Civil Appeals (85 S. W. 1029) are reversed, and judgment is here rendered for plaintiffs in error for the land.

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Group 1 of 20

Sketch File 20-7
Zapata County
Record for Leonard Haynes v. The St. of Tx (Bustamente & Zapata Grants)
Filed April 20 19 98
GARRY MAURO, Com'r
By Douglas Howard

No. 20,546.

The State of Texas.

Vs.

Leonard Haynes et al.

. . . . . .

Plaintiff's Original Petition.

. . . . . .

This action is brought as well to try title as for damages.

. . . . . .

FILED
IN DIST COURT, TRAVIS CO. 26 JUD. DIST.
APR 26 1898
Clerk
Deputy

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Record for Leonard Haynes et al.
v. The State of Texas
(Bustamente & Zapata grants)

Counter 70988

The State of Texas §
County of Travis §

In District Court of Travis County,
26th Judicial District of Texas.

To the Hon. R. L. Penn, Judge of said Court:

The State of Texas, plaintiff herein by and through C. K. Bell, Attorney General of said State, brings this suit and complaining of Leonard Haynes, who resides in Puebla, Republic of Mexico, and H. M. Haynes, who resides in the District of Columbia, respectfully shows to the Court:

That on the 1st day of January, A. D. 1898, the State of Texas then was and still is the owner in fee simple (the same belonging to the common free school fund of the State of Texas) of certain tracts of land situated in the county of Zapata, in the State of Texas, and particularly described as follows, to-wit:

First tract. Being survey No. 522 made for the State of Texas by virtue of certificate No. 425 issued to the T. C. Ry. Co., situated in Zapata county, Texas, and bounded as follows:

Beginning at a post, the N. corner of survey No. 521.

Thence S. 55° W. with same, 1900 varas to post for its W. corner and S. corner of this.

Thence N. 35° W. 1900 varas to post for W. corner:

Thence N. 55° E. 1900 varas to post for N. corner:

Thence S. 35° E. 1900 varas to the place of beginning, containing 640 acres.

Second tract: Being survey No. 524 made for the State of Texas by virtue of certificate No. 426 issued to the T. C. Ry. Co, situated in Zapata county, about 16 miles N. 70° E. from Carrizo, and bounded as follows:

Beginning at a post the N. corner of No. 523.

Thence S. 55° W. 1900 varas to post for S. corner:

Thence N. 35° W. 1900 varas to post for W. corner:

Thence N. 55° E. 1900 varas to post for N. corner:

Thence S. 35° E. 1900 varas to the place of beginning, containing 640 acres.

counter 70989

L. H. 2.

Third tract: Being survey No. 526 made for the State of Texas by virtue of certificate No. 427 issued to the Texas Central Ry. Co., situated in Zapata county about 17 miles N. 70° E. from Carrizo, and bounded as follows:

Beginning at a post for the N. corner of No. 523 and S. corner of 525, for the W. corner of this survey.

Thence N. 55° E. 1900 varas to post for N. corner:

Thence S. 35° E. 1900 varas to post for E. corner:

Thence S. 55° W. 1900 varas to post for S. corner:

Thence N. 35 W. 1900 varas to the place of beginning, containing 640 acres.

Fourth tract. Being survey No. 528 made for the State of Texas by virtue of certificate No. 1162 issued to the H. E. & W. T. Ry. Co., situated in Zapata county, about 18 miles N. 75° East from Carrizo, and bounded as follows:

Beginning at post, S. corner of No. 527 for the West corner of this survey.

Thence N. 55° E. 1900 varas to post for N. corner:

Thence S. 35° E. 1900 varas to post for E. corner:

Thence S. 55° W. 1900 varas to post for S. corner:

Thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

Fifth tract. Being survey No. 530 made for the State of Texas by virtue of certificate No. 1163 issued to the H. E. & W. T. Ry. Co., situated in Zapata county about 19 miles N. 71° E. from Carrizo, and bounded as follows:-

Beginning at a post the West corner of No. 529, for the S. corner hereof.

ThenceN. 55° E. 1900 varas to post for E. corner:

Thence N. 35° W. 1900 varas to post for N. corner:

Thence S. 55° W. 1900 varas to post for W. corner:

Thence S. 35 E. 1900 varas to the place of beginning, containing 640 acres.

Sixth tract. Being survey No. 532 made for the State of Texas by virtue of certificate No. 1164 issued for the H. E. & W. T. Ry. Co., situated in Zapata county, about 19 miles N. 65° E. from Carrizo, and bounded as follows:-

counter 70990

Beginning at a post, the W. corner of No. 531, for the S. corner hereof:

Thence N. 55° E. 1900 varas to a post for E. corner:

Thence N. 35° W. 1900 varas to a post for N. corner:

Thence S. 55° W. 1900 varas to a post for W. corner:

Thence S. 35° E. 1900 varas to the place of beginning, containing 640 acres.

Seventh tract. Being survey No. 534 made for the State of Texas by virtue of certificate No. 485 issued to the M. K. & T. Ry. Co., situated in Zapata county about 20 miles N. 67° E. from Carrizo and bounded as follows:-

Beginning at a post the S. corner of No. 533 for the W. corner hereof.

Thence N. 55° E. 1900 varas to a post for N. corner:

Thence S. 35° E. 1900 varas to a post for E. corner:

Thence S. 55° W. 1900 varas to a post for S. corner:

Thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

Eighth tract. Being survey No. 536 made for the State of Texas by virtue of certificate No. 486 issued to the M. K. & T. Ry. Co., situated in Zapata county, about 21 miles N. 72° E. from Carrizo, and bounded as follows:-

Beginning at a post, the S. corner of No. 535, and N. corner of 529 and the W. corner hereof:

Thence N. 55° E. 1900 varas to a post for N. corner:

Thence S. 35° E. 1900 varas to a post for E. corner:

Thence S. 55° W. 1900 varas to a post for S. corner:

Thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

Nineth tract. Being survey No. 604 made for the State of Texas by virtue of certificate No. 4/894 issued to the G. C. & S. F. Ry. Co., situated in Zapata county about 16 miles N. 65° E. from Carrizo, and bounded as follows:-

Beginning at a post, the W. corner of 524 for the S. corner hereof.

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Thence N. 55° E. with surveys525, 524 and 532, at 4173 varas, a post for E. corner:

Thence N. 35° W. 733 varas to a post for N. corner:

Thence S. 55° W, at 2600 varas S. corner of 586, at 3062 varas, post for a corner:

Thence N. 35° W., with No. 587, at 497 varas post for N. W. corner of this survey:

Thence S. 55° W. 1111 varas to a post for W. corner:

Thence S. 35° E. 1230 varas to the place of beginning, containing 640 acres.

Tenth tract. Being survey No. 563 made for the State of Texas by virtue of certificate No. 524 issued to Samuel L. Cooke, situated in Zapata county, about 16-1/2 miles N. 56° E. from Carrizo, and bounded as follows:-

Beginning at a post, the E. corner or 555, and the W. corner of 559 in the name of L. E. Jackson for the N. corner of this tract:

Thence S. 55° W. 1900 varas to a post for W. corner:

Thence S. 35° E. 1900 varas to a post for S. corner:

Thence N. 55° E. 1900 varas to a post for E. corner:

Thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

Kleventh tract. Being survey No. 564 made for the State of Texas by virtue of certificate No. 524, issued to Samuel L. Cooke, situated in Zapata county about 16 miles N. 55° E. from Carrizo, and bounded as follows:-

Beginning at a post, the S. corner of No. 563, for the E. corner of this survey:

Thence N. 35° W. 38 00 varas post for N. corner, and W. corner of No. 555:

Thence S. 55° W. 950 varas to a post for W. corner:

Thence S. 35° E. 3800 varas to a post for S. corner:

Thence N. 55° E. 950 varas to the place of beginning., containing 640 acres.

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LHB.

Twelvth tract. Being survey No. 590 made for the State of Texas by virtue of certificate No. 1017 issued to Mrs. Martha Vogles, situated in Zapata county, and bounded as follows:-

Beginning at a large post on edge of Arroyo, being the North corner of two leagues of J. M. Conales.

Thence S. 35° E. with sams 4250 varas, to post, the W. corner of No. 603 and S. W. corner hereof:

Thence N. 55° E. 620 varas to a post for corner and for N. corner of No. 603:

Thence S. 35° E. 1328 varas to a post for S. corner:

Thence N. 55° E.IIII varas to a post for E. corner:

Thence N. 35° W. 2893 varas to a post for N. E. corner and West corner of 587.

Thence S. 55° W. 975 varas to a corner, the S. corner of No. 564:

Thence N. 35° W. 3800 varas to a post for N. corner, and W. corner of No. 564:

Thence S. 55° W. 450 varas to a post for corner, and S. corner of 565:

Thence N. 35° W. 545 varas to a post for a corner;

Thence S. 55° W. 306 varas to a post for W. corner:

Thence S. 35° E. 1660 varas to the place of beginning, containing 1280 acres.

Thirteenth tract. Being survey No. 585 made for the State of Texas, by virtue of certificate No. 1586 issued to S. P. Peebles, situated in Zapata county about 18 miles N. 62 E. from Carrizo, and bounded as follows:-

Beginning at a post, the S. corner of 584, and S. 55° W. 6352 varas from the N. corner of Viela tract.

Thence S. 55° W. 2688 varas to a post for S. corner:

Thence N. 35° W. 2688 varas to a post for W. corner:

Thence N. 55° E. 2688 varas to a post for N. corner:

Thence S. 35 E. 2688 varas to the place of beginning., containing 1280 acres.

Fourteehth tract. Being survey No. 586 made for the State of Texas by virtue of certificate No. 1710 issued to E. P. Ashley, situated in Zapata county about 16 miles N. 63° E from Carrizo, and

counter 70993

bounded as follows:-

Beginning at a post in N. W. line of "La Viela" tract, S. 55° W. 9040 varas from its N. corner; for the E. corner of this survey; being the S. corner of 585, S. P. Peebles.

Thence S. 55° W. 2688 varas to a post for S. corner:

Thence N. 35° W. 2688 varas to a post for W. corner:

Thence N. 55° E. 2688 varas to a post for N. corner:

Thence S. 35° E. 2688 varas to the place of beginning, containing 1280 acres.

Fifteenth tract. Being survey No. 587 made for the State of Texas by virtue of certificate No. 1788 issued to J. T. Sedgeley, situated in Zapata county about 15-1/2 miles N. 60 E. from Carrizo, and bounded as follows:-

Beginning at a post in the N. W. line of Viela tract, S. 55° W. 11728 varas from its N. corner, being also the S. corner of 586, E. P. Ashley.

Thence N. 35° W. 2688 varas to a post for W. corner of 586;

Thence N. 55° E. 8064 varas to a post for E. corner of this and S. corner of 552, R. L. Robinson.

Thence N. 35° W. 702 varas to a post for N. corner, and E. corner of 562, Jas. Campbell:

Thence S. 55° W. 8525 varas with line of surveys Nos. 562, 561, 559 and 563 to a post for W. corner of this survey:

Thence S. 35° E. 3390 varas to a post for S. corner:

Thence N. 55° E. 461 varas to the place of beginning, containing 1280 acres.

Sixteenth tract. Being survey No. 550 made for the State of Texas by virtue of certificate 493 issued to the M. K. & T. Ry. Co., situated in Zapata county about 17 miles N. 75° E. from Carizo, and bounded as follows:-

Beginning at a post the S. corner of 549 for the W. corner hereof.

Thence N. 55° E. at 1636 varas E. corner of 549, at 1700 varas post for N. corner hereof.

Thence S. 35° E. with surveys 522 and 521at 2125 varas post for E. corner of 521.

counter 10994

LH7.

Thence S. 55° W. at 1700 varas post marked X for S.corner:

Thence N. 35° W. 2125 varas to the place of beginning, containing 640 acres.

Seventeenth tract. Being a small strip of public domain situated in Zapata county bounded as follows:-

Beginning at the N. corner of No. 549.

Thence S. 35° E. 2208 varas to E. corner of 549:

Thence N. 55° E. 64 varas to N. corner of 550:

Thence N. 35° W. 2208 varas to E. corner of 603:

Thence S. 55° W. 64 varas to the place of beginning, containing 25 acres of land more or less.

That plaintiff was in possession of said land and is now entitled to possession thereof; that on said 1st day of January 1898, the defendant, without authority of law, entered upon said land and dispossessed plaintiff thereof and held, claimed and occupied the same adversely to plaintiff and is still so doing, to plaintiff's damage three thousand dollars.

That the rental value of said land is and has at all times been five cents per acre per annum.

Premises considered, plaintiff, The State of Texas, prays that notice be served upon the defendants as required by law, of the filing of this suit; that upon hearing hereof plaintiff have judgment against defendants and each of them for the recovery of the title and possession of said land, with writ of possession for the same, and for damages and for the rental value of the use and occupation of said land, together with ten per cent thereon as attorneys fees; for costs, and for all other ad further relief to which she may be entitled both in law and in equity.

C K Bell
Attorney General, Attorney for
The State of Texas.

Counter 10995

The State of Texas
vs
In 26th Judicial District of Texas.

Now come the defendants in the above cause and demur and except to plaintiffs petition and say the same is not sufficient in law, and of this they pray judgment.

And for special exception they say

The State of Texas
vs
Leonard Haynes et al.
In 26 th District Court, Travis County, Texas.

No 20546

Now come the defendants in the above cause and demur and except to the jurisdiction of this the district court of Travis county over either the subject matter of this suit or over the persons of these defendants, and for such demurrer and exceptions say that the allegations of the petition show that the land sought to be recovered in ths suit is not nor is any part thereof situated in the said county of Travis, nor are either of these defendants citizens or residents of said county of travis. Wherefore they say that said petition does not show any cause of action gaainst these defendants or either of them in this the district court of Travis county and of this they pray judgment of the court, etc.

Nicholson & Mullally
Attys for Defendants

And in case the foregoing demurrer and exception shall be overruled come the defendants again and specially except to the jurisdiction of this the district court of travis county for this; that under the laws of Texas under which this suit is supposed to have been brought these defendants cannot be sued in this county of Travis until the expiration of two years from and after the day of 1901, and of this they pray judgment, etc.

Nicholson & Mullally
Attorneys for Defendants

Group 2 of 20

counter 70996

THE STATE OF TEXAS

To H. M. Haynes, - - - Greeting:

WHEREAS, The State of Texas

~~xxxxxx~~

~~xxxxxxx~~ xxxxxxx , did on the 26th day of May, A. D. 1903, file in the District Court of Travis County, State of Texas, within and for the 26th. Judicial District, its Original Petition in Suit No. 20,546 on the Civil Docket of said Court, being suit brought by the said

The State of Texas as Plaintiff against

H. M. Haynes and Leonard Haynes

as Defendants.

The nature of the Plaintiff's demand is as follows, to-wit:

Being an action for judgment against the defendants and each of them for the recovery of the title to and possession of certain lands situated in Zapata County, Texas, with writ of possession for the same; for damages and for the rental value of the use and occupation of said land, together with [illegible] thereon as attorney's fees; for costs of suit and general relief. - - All of which will more fully appear from the accompanying certified copy of Plaintiff's Original Petition.

AND WHEREAS, the said Petition will be heard in the said District Court of Travis County, in the City of Austin, Texas, on the First Monday in May, A. D. 1903, (being the 4th. day of said month.)

These are, therefore, to require you to appear at such time and place above stated and answer said Plaintiff's Petition, a certified copy of which accompanies this notice.

Attest: JAMES P. HART, Clerk of the District Court in and for Travis County, State of Texas. Given under my hand and seal of said Court, at office in Austin, Texas, this the 28th. day of March, A. D. 1903.

Jas. P. Hart,
Clerk District Court, Travis County, Texas.

By D. Rickle, Deputy.

counter 70997

RETURN.

THE STATE OF ~~Texas~~ District
~~County~~ OF Columbia

Personally appeared before me, the undersigned authority by me duly sworn, deposes and says, that on the 9th day of April A. D. 1903 who being at 4 o'clock P M., in the City of Wallington ~~County of~~ District ~~State of~~ Columbia, he delivered to H. M. Haynes the Defendant, in person, a true copy of this notice, with a certified copy of the Plaintiffs Petition accompanying same; and further, that he is an adult male, and is in no manner interested in the suit.

William A. Wilkerson

Sworn to and subscribed before me this 10th day of April A. D. 1903

I. Edwin Krouse
Notary Public D.C.

Fees for serving this Writ, $ 1.=
~~Officer~~
~~Mileage~~ $ .25
1.25

District Court of Columbia.

No 20,546.

DISTRICT COURT.

TRAVIS COUNTY.

The State of Texas
vs.
Leonard Haynes, et al.

Notice to Serve Non-Residents.
(H.M.Haynes.)

Issued March 28th, A. D. 1903.
[illegible]
Clerk District Court, Travis County, Texas.
By [illegible] Deputy.

Filed Jun 3 A. D. 1903
Clerk District Court, Travis County, Texas.
By [illegible] Deputy.

A. C. Baldwin & Sons, Printers, Austin

H. M. Haynes 1347 Q st.

counter 70998

District of Columbia.

No 20,546.

DISTRICT COURT.

TRAVIS COUNTY.

The State of Texas

vs.

Leonard Haynes, et al.

Notice to Serve Non-Residents.
(H.M.Haynes.)

Issued March 28th, A. D. 1903.

R. Hart
Clerk District Court, Travis County, Texas.

By D. Bickler, Deputy.

Filed Jun 3d A. D. 1903

R. Hart
Clerk District Court, Travis County, Texas.

By Deputy.

A. C. Baldwin & Sons, Printers, Austin

H. M. Haynes 1347 Q st.

Counter 70999

STATE OF TEXAS, ATTORNEY GENERAL'S OFFICE.

The State of Texas, § In the District Court of Travis
vs. No.20,546. § County, 26th Judicial District.
Leonard Haynes, et.al. §

Now comes the plaintiff, appearing herein by her Attorney General, and demurs to the defendants' answer, filed herein, and says that the same is insufficient in law because the facts therein alleged show no cause of action and constitute no grounds of defense.

Wherefore, plaintiff prays that the said answer be stricken out and held for naught, and of this plaintiff prays the judgment of the Court.

C.K. Bell
Attorney General,
Attorney for the Plaintiff.

Plaintiff denies all and singular the allegations in the answer of the defendants contained, and of this the plaintiff puts herself upon the country.

C.K. Bell
Attorney General,
Attorney for the Plaintiff.

Now comes the plaintiff and in reply to the defendant's answer shows to the Court that the plaintiff has never, at any time, recognized but that the plaintiff has always repudiated the claim which the defendants attempt to set up in this case.

Plaintiff particularly shows to the Court that heretofore, to-wit, on the 26th day of September 1871, suit was instituted in the District Court of Travis County, Texas, by Eulalio Gonzales and his wife, Petra Zapata, Bartolo Morales and his wife Rafaela Zapata, Jose Ma. Caronado and his wife, Maria Anna Zapata, and Dolores Zapata the only heirs of Antonio Zapata, against the State of Texas, in which they claimed a part of the land in controversy in this case, under the same title under which the defendants now claim, and sought to have the said title confirmed.

Group 3 of 20

Counter 4/000

That the State of Texas then and there and at all other times repudiated the said claim and denied that those under whom the defendants in this suit claim had any valid right to or interest in the land in controversy.

That said suit was prosecuted to a judgment in favor of the claimant but that the same was appealed to the Supreme Court of the State, by which Court the said cause was reversed and remanded. That thereupon the plaintiff in said case dismissed the same from the docket.

The plaintiff further says to the court that on to-wit, the 5th day of January 1872, suit was instituted in the District Court of Travis County by P. Dietrich et al against the State of Texas, in which said suit the said P. Dietrich et al, claiming a part of the land in controversy herein under the same title under which the defendants now claim, sought to have the said title confirmed.

That the State of Texas then and there and at all other times repudiated the said claim and denied that those under whom the defendants in said suit claim had any valid right to or interest in the land in controversy.

That said suit was prosecuted to a judgment in favor of the claimant but that the same was appealed to the Supreme Court of the State, by which Court the said cause was reversed and remanded. That thereupon the plaintiff in said case dismissed the same from the docket.

The plaintiff, therefore, says that if any presumption could have arisen in favor of the State, the plaintiff herein, from the possession of the land sued for, that said presumption was rebutted by the fact that the plaintiff denied that those under whom the defendants claim had any right or possession of the land, and this the plaintiff is ready to verify.

C. K. Bell

Attorney General,
Attorney for the Plaintiff.

Counter 4001

The State of Texas
No.20344 vs
Leonard Haynes et al.

In District Court of Travis County, Texas, 26th Judicial District.

Leave of court being obtained, comes the defendants Leonard Haynes and N. M. Haynes and files this first amended answer in lieu of the original answer filed on the 1st day of May 1903, and for amended answer says:-

Now comes Leonard Haynes and N. M. Haynes, defendants in the above cause, and for answer to plaintiff's petition says:

First. That they demur and except to the jurisdiction of the district court of Travis county over either the subject matter of this suit or over the persons of defendants, and for such exception says that the allegations of said petition show that the lands sued for are situated wholly in the county of Zapata and that defendants are non residents of Travis county, ~~and that no other defendant in this suit is also a non resident of Travis county~~, wherefore they say that said petition does not show a cause of action against them maintainable in the district court of Travis county, and of this they pray the judgment of the court and that they go hence with the costs.

Second. And comes again the defendants ~~Leonard Haynes~~ and for further answer herein deny all and singular the allegations in plaintiff's petition contained, in manner and form as therein alleged; and say that they are not guilty of the supposed wrongs, injuries and trespasses laid to their charge or any or either of them in manner and form as in said petition alleged, and of all this they put themselves upon the country.

Third. The defendants also say that they are the legal and equitable owners and holders of the lands in controversy, which are of the value of $15,000.00 by virtue of two certain grants acquired under the law known as decree No.24 of October 19th 1833 of the State of Tamaulipas, Republic of Mexico, then the sovereignty of the soil, both of which grants are now held and owned by the defendants (insofar as they embrace the land described in plaintiff's petition) by mesne conveyances from the original grantees thereof, to wit:

(1). A grant of five square leagues of land called "Villa" made to Antonio Zapata, having its origin prior to the 25th day of April 1835 by adjudication by the city council (Ayuntamiento) of Guerrero, in which jurisdiction the said land was then situated; survey thereof was made by Antonio Canales the surveyor general of Tamaulipas on or about the 25th day of April 1835 for said Antonio Zapata, and final title to said land was extended to said Zapata by the Governor of Tamaulipas on the 2nd day

Group 4 of 20

counter 7/002

of January 1848, the fifty dollars at which said land was valued having been paid by said Zapata. That said Zapata had been in possession of said five leagues of land since about the year 1820 up to the time of said survey, and since then he and those having his estate therein including ~~this~~ defendants have been continuously in the actual possession of said land, cultivating, using and enjoying the same and raising live stock thereon, to which latter purpose the said land is chiefly adapted, down to the present time, holding and claiming the same by virtue of the right acquired by him as aforesaid; that the same is a good and valid and legitimate title to said land and is protected by the treaty of Guadalupe Hidalgo between the United States and Mexico, and to deprive defendants of any part thereof in this suit would be a violation of the terms of said treaty. The said five leagues of land was resurveyed for said Zapata his heirs and assigns on April 20th 1876 by the special deputy surveyor for Zapata County, and the metes and bounds of the same as shown by the said resurvey are contained in Exhibit A attached to this answer.

That the tracts of land described in plaintiff's petition and therein called First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth Sixteenth and Seventeenth Tracts are located upon that part of said Villa grant belonging to defendants and which they own and claim by virtue of ~~the~~ title aforesaid.

(2). A grant of five square leagues of land called "Comitas" made to Pedro Bustamante, having its origin prior to the 25th day of April 1835 by adjudication by the city council (Ayuntamiento) of Guerrero, in which jurisdiction the said land was then situated; survey thereof was made by Antonio Canales the surveyor general of Tamaulipas on or about the 25th day of April 1835 for said Pedro Bustamante, and final title to said land was extended to said Bustamante by the Governor of Tamaulipas on the 2nd day of January 1848, the fifty dollars at which said land was valued having been paid by said Bustamante. That said Bustamante had been in possession of said five leagues of land since about the year 1828 up to the time of said survey, and since then he and those having his estate therein including ~~this~~ defendants have been continuously in the actual possession of said land, cultivating, using and enjoying the same and raising live stock thereon, to which latter purpose said land is chiefly adapted, down to the present time, holding and claiming the same by virtue of the right

coester 41003

acquired by him as aforesaid; that the same is a good and valid and legitimate title to said land and is protected by the treaty of Guadalupe Hidalgo between the United States and Mexico, and to deprive defendants of any part thereof in this suit would be a violation of the terms of said treaty. The said five leagues of land was resurveyed for said Bustamante, his heirs and assigns, on July 6th to 18th 1874 by the special deputy surveyor of Zapata county, and the metes and bounds of the same as shown by the said resurvey are contained in Exhibit B attached to this answer. That the tracts of land described in plaintiff's petition and therein called Tenth, Eleventh, Twelfth, Thirteenth, fourteenth, and Fifteenth Tracts are located upon that part of said Comitas grant belonging to defendants and which they own and claim by virtue of the title aforesaid.

That the record of the adjudication of the city council of Guerrero of the right of the said Antonio Zapata and the said Pedro Bustamante to the benefit of said decree No.24 and their denouncements of their respective lands and all copies of such proceedings have been lost, and though diligently sought for have not been found; but that such proceedings were had as hereinbefore stated.

Defendants also say that if it shall appear to the court that the right and title acquired by said Antonio Zapata and Pedro Bustamante in their respective lands as aforesaid is such a right and title as ought to be respected and protected, but that it does not satisfactorily appear that said sums of $50 each, at which said lands were respectively valued, were paid to the Government of Tamaulipas at a time when such government might lawfully receive the same, and that such sums should have been paid to the Government of Texas, then defendants here now tender and pay into court the sum of $100 in settlement of such debts.

Fourth. Defendants also say that the said Antonio Zapata, the original grantee of said Villa tract of land, and those holding and claiming the same under him down to and including defendants, have had and held the actual, open and exclusive possession of said land under claim of ownership ever since the year 1832 to this date; and that the said Pedro Bustamante, the original grantee of said Comitas tract of land and those holding and claiming the same under him down to and including defendants, have had and held the actual, open and exclusive possession of said land under claim of ownership ever since the year 1828 to this date. Wherefore defendants say that they have a good and valid title to the lands in controversy by prescription of law, said lands in controversy being upon the said Villa and Comitas grants.

And of all of which defendants put themselves upon the country.

J. F. Mu[illegible]

[illegible]

counter 71004

Exhibit A

Field notes of a survey of five leagues of land originally granted by the government of the State of Tamaulipas to Antonio Zapata. Said survey is situated in the county of Zapata 15 miles northeast of the town of Carrizo and on the waters of Veleno creek and is called "Villa." Beginning at the south corner of a survey in the name of Pedro Bustamante and called "Las Comitas," this corner being in the original title Lindero de la Lobera; thence N 55 E with the east line of said survey at 287 varas crossed derramadero de Villa, at 4230 varas an old line tree, at 4275 varas passed the east extremity of Laguna 2 ~~Lomas~~, at 7275 varas crossed road from Laredo to Rio Grande City bearing NE, at 10300 varas the road from the Teposan to the Escobar, at 10375 varas the derramadero de la Pita, at 14021 varas the east corner of the said survey in the name of Bustamante, at 15000 varas set post for the north corner called Lindero del Macho Bayo from which a mesquite marked $\overline{X}$ bears S 55 E 5 varas, also a mesquite marked $\overline{+}$ bears S 30 W 5 varas; thence S 35 E at 2084 varas a post for line mark, at 4168 a post for line mark, at 6000 varas the road from the Tanque, at 8333 1/3 varas set post for east corner from which a mesquite marked $\overline{V}$ bears S 25 W 3 varas, also a mesquite marked $\overline{V}$ bears N 37 W 29 1/2 varas; thence S 55 W at 7000 varas entered the nopalera de las calabasas, at 10000varas post for line mark I L at thePuesto de San Juan, at 10280 varas crossed road from Rio Grande City to Laredo, at 14600 varas crossed the road to the Grullo, at 15000 varas set post for the south corner called Lindero del Matambo from which a mesquite marked $\overline{\overline{X}}$ bears S 82 W 25 varas and a mesquite marked $\overline{\overline{X}}$ bears S 16 E 20 varas; thence N 35 W at 3136 varas the arroyo de Simon, at 4903 varas the road to Tanque, at 5660 varas crossed arroyo de Villa, at 7190 varas crossed road to Teposan, at 8333 1/3 varas the place of beginning.

counter 71005

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Zapata. Said sur-
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at 7190 varas
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Exhibit B

Field notes of a resurvey of five leagues of land originally granted by the State of Tamaulipas to Pedro Bustamante. Said survey is situated in the County of Zapata about 24 miles north 55 east from the town of Carrizo, beginning at the N.W.corner of a survey in the name of Jose Cuellar called La Huerta, a post on eastern boundary of a survey in the name of Andres Bautista Pareda 4646 varas from the SE. corner of said survey, a mesquite post from which a mesquite tree marked X bears N 67 1/2 E 8 1/2 varas; thence S 35 3/4 E with the north boundary of the J.Cuellar survey 2500 varas to the N.E.corner; thence S 54 1/4 W with E boundary of said survey 931 varas to a mesquite post in thicket for the extreme S.W.corner of this survey; thence S 35 3/4 E 6570 varas to the old original southeast corner designated in the original map as Lindero de la Cabra, a large sink; thence N 54 1/4 E with the east line of this survey and west line of a survey in the name of Antonio Zapata called Villa at 267 varas crossed the redamadero de Villa, at 4230 varas an old elm tree marked ∧ at 4275 varas passed the eastern extremity of the lagu.. quemada, at 5000 varas set post on line, at 7275 varas road from Rio Grande City bearing NE., at 10300 varas road to Las Escobas from Teposan, at 10375 varas redamadero de la Pita, at 13462 varas a tree marked on left of line = at 14021 varas the north east corner, a mesquite post designated in the original as Lindero del Macho Bayo, from which a mesquite tree bears south 19 west 40 varas marked X also another mesquite bears S 83 W 22 varas, another bears S 61 1/2 E 15 1/2 varas; thence N 35 3/4 W with the north boundary of this survey at 600 varas road to Las Escobas bearing NNE, at 1979 varas an old mesquite stump on line hewed square; at 9063 1/2 varas the extreme boundary of a survey in the name of Manuel Pereda, a post set for the south west corner of this survey from which a mesquite bears S 2 W 8 1/2 varas, also another bears N 14 W 20 1/4 varas; thence S 54 1/4 W with east boundary of said Manuel Pereda survey at 3118 varas passed SE corner of said survey and NE corner of a survey in the name of Andres Bautista Pareda, thence same course with east boundary of said survey at 13087 varas the place of beginning.

counter 41006

Fabian Zapata, First Supplemental Alcalde of this Municipality, acting with the witnesses of his assistance.

He certifies: That in the archives of this first court which at this time is in his charge, there is a package with the following:

"City of Guerrero in the year 1846 and 1847. Folio of papers pertaining to the second constitutional court with various authorities."

And in said folio on its 26th leaf and reverse, there is seen an official letter which literally copied is as follows:

"I remit to you seventeen titles which contain the vacant lands denounced and surveyed from the year 1831, until that of 35, in order that your Honor may please present them to the Honorable Governor of the State to the effect that they may have the necessary validation. The amount of the dues I do not send attached to said documents so as not to expose the same, and your Honor will deign also to direct in the most certain manner the mode in which they may be paid, and draw against this receiver's office. God and Liberty.

City of Guerrero, November 26th 1847.

To his Honor General Don Antonio Canales, City of Victoria."

And at the request of an interested party and for the uses which may suit his rights, the present copy is issued xx xix which I certify, in the City of Guerrero, Tamaulipas, on the 8th day of the month of August, One thousand nine hundred and two.

All before me the authorizing Alcalde and those of my assistance: we give faith.

The first supplemental Alcalde/

Fabian Zapata.

Assisting: Guadalupe Rodriguez. Assisting: Eduard Saenz.

counter 41007

Group 5 of 20

[illegible] Survey of 5 leagues of Eastern land on the
South of Jobalo [illegible] for the heirs of Pedro Bustamante by virtue
of a grant made by the Sub-Commissioners Herrera, it being
confirmation No [illegible] in Dec. 14 County and is situated about
21 miles N. 55° E. from the town of Carrizo. Beginning at the
N.W. Corner of a Survey in the name of Las Cuentas called "La
Encantada" a post on eastern boundary of a survey in the name
of Andres Bautista Pereda 11648 varas from the S.E. Cor of
said Survey a mesquite post from which a mesquite tree marked
X bears N. 75° E. 3 varas. Thence South 35 1/4 E. with the E. line of the
boundary of the J. Cuellar Survey 2500 varas to the N.E. Corner. Thence
South 54 1/2 East with east boundary of said Survey 131 varas to
a mesquite post from which [illegible] Cor of the Survey
Thence South 35 1/4 E. 5700 varas to the old original South east boun-
dary on the original map "Punta de la Cabra" a large sink
Thence N. 54 1/2 E. with east line of this survey and west line
of a survey in the name of Antonio Zapata called "Villa" at 287
varas crossed the Sebamadero de Villa at 4230 varas an old elm
tree marked X 4375 varas passed the Eastern extremity of the
Segovia survey, at 5000 varas set post on line at 7275 varas
road from Presidio de la Bahia bearing N.E. at 10300 varas road to "las
Escobas" from Segovia 10375 Sebamadero de la Pita 13462 a tree
marked on left of line = at 14621 varas the N.E. Cor a mesquite post
designated in the original as "Sendero del mucho Lago" from
which a mesquite tree bears South 17° West 40 varas marked X
also another mesquite bears South 83° West 22 varas another
bears S. 61 1/2 E. 15 1/2 varas. Thence North 35 1/4 West with the North
boundary of this Survey at 600 varas road to "Las Escobas" bearing
N.N.E. at 979 varas an old mesquite stump on line blazed square
at 7063 1/2 varas the extreme boundary of a survey in the name of
Manuel Pereda a post set for the North west Corner of this sur-
vey from which a mesquite bears E. 3° W. 8 1/2 varas also another
bears North 16° W. 20 1/2 varas. Thence South 54 1/2 West with the east
boundary of said Manuel Pereda Survey at 3118 varas passed
S.E. Corner of said Survey and N.E. Cor of a survey in the name of

Counter 41008

of Pedro Bustamante Peralta, thence same course with east boundary of said Survey at 13087 varas to the place of beginning.

Surveyed July 4 & 18 - 1871

Bearings marked ☒

Casarco delos Santos } Chain
Martin Van Wirick } Carriers

I Martin Van Wirick Special Deputy Surveyor of Fayette County do hereby certify that the foregoing Survey was made on the ground as herein stated and that the limits boundaries and corners with marks natural and artificial are truly described in the foregoing plat and field notes.

Martin Van Wirick
Special Deputy Surveyor of Fayette County.

I Fernando Wilke District Surveyor of Fayette County do hereby certify that I have examined the foregoing plat and field notes and find them correct and they are recorded in my office in Book A Vol 1 pages 26 27-28.

Given under my hand at Lagrange this 21st day of July A.D. 1871

Fernando Wilke
District Surveyor of Fayette County

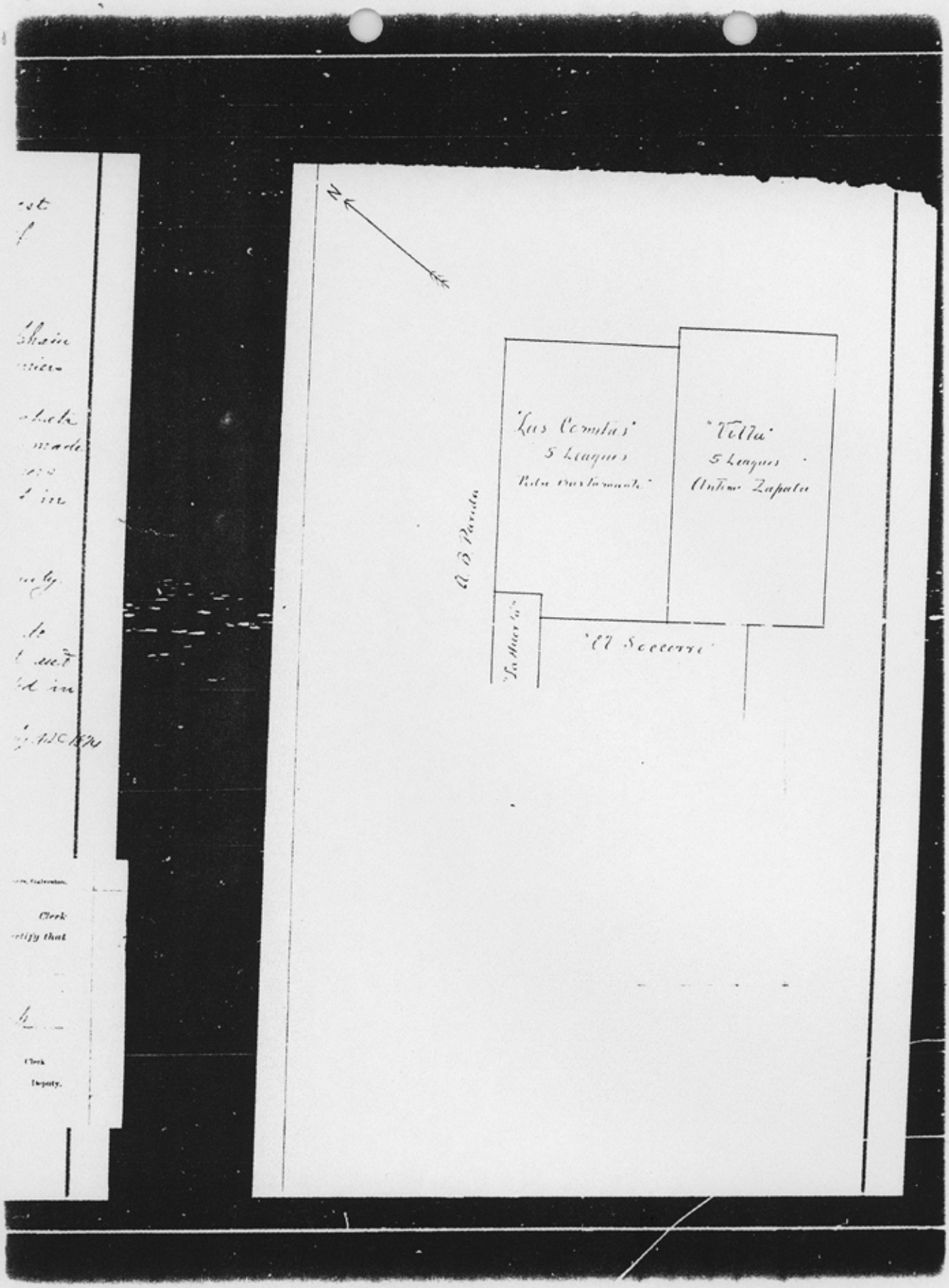
E 503 Certificate of True Copy of Papers Recorded—Class 1° Clarke & Courts, Manufacturing Stationers, Galveston.

THE STATE OF TEXAS. }
County of Fayette } I, T. C. McDermott Clerk
of the County Court of Fayette County, Texas, do hereby certify that
the foregoing is a true and correct copy of the original Field notes of
Pedro Bustamante Survey
and also recorded in Book A Vol 1 pages 26-27-28
as the same appears of record in my office in book C pages 14-16

Given Under my Hand and the Seal of said Court, at office in La Grange
this 25th day of May 1904

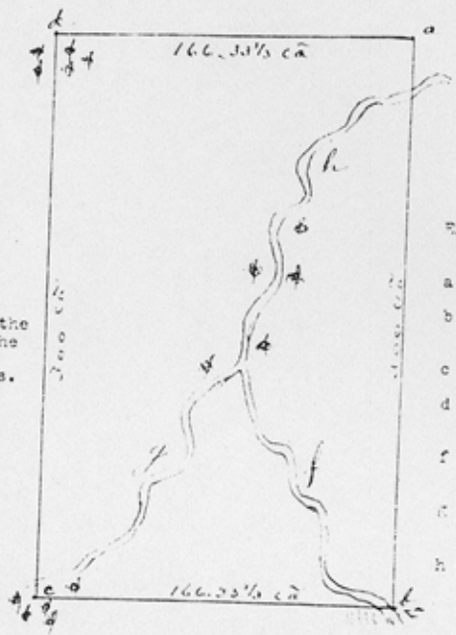
T. C. McDermott Clerk
By Frank B Green Deputy.

counter41009



Counter 71010

Pasture land of De Villa, surveyed for the Citizen Antonio Zapata.



Explanation of the demarcations.

a - Corner of La Lobera.

b - Corner of the Loma de Macho Vallo.

c - Corner of Los Huesos

d - Corner of the Seja del Cruyo.

f - Branch called

g - Branch called Calavanas.

h - Branch called Villa.

- Explanation of the Survey -

The area comprehended in the rectangle above drawn is five sitios of pasture land for large stock, surveyed to the courses indicated in the plan, after correcting the variation of ten degrees that the needle has in this land. This tract of land is bounded on the N.W. by the land of Las Comitas, on the S.W. by that of Los Chaparros Prietos, on the S.E. by that of El Grullo, and on the N.E. by vacant lands.

City of Guerrero, April 25th 1835. - Lic. Anto. Canales.

It is a copy of its original, which I certify.
City of Guerrero, Sept.15th 1851. Fernando Cuellar. (Rubric.)

Assisting: Benito Pena. (Rubric.) Assisting: Eduardo Davila. (Rubric.)

counter71011

Pasture land of De Villa, surveyed for the Citizen Antonio Zapata.

Explanation of the demarcations.

a - Corner of La Lobera.

b - Corner of the Loma de Mucho Valle.

c - Corner of Los Huesos

d - Corner of the Seja del Cuyo.

f - Branch called

g - Branch called Calavasas.

h - Branch called Villa.

- Explanation of the Survey -

The area comprehended in the rectangle above drawn is five sitios of pasture land for large stock, surveyed to the courses indicated in the plan, after correcting the variation of ten degrees that the needle has in this land. This tract of land is bounded on the N.W. by the land of Las Comitas, on the S.W. by that of Los Chaparros Prietos, on the S.E. by that of El Grullo, and on the N.E. by vacant lands.

City of Guerrero, April 25th 1835. - Lic. Anto. Canales.

It is a copy of its original, which I certify.
City of Guerrero, Sept.16th 1851. Fernando Cuellar. (Rubric.)

Assisting: Benito Pena. (Rubric.) Assisting: Eduardo Davila. (Rubric.)

counter 41012

Group 6 of 20

The State of Texas } Field notes of a survey of five leagues
County of Zapata } of land originally granted by the
government of the State of Tamaulipas to Antonio Zapata
on the 5th day of January A.D. 1835. Said survey is
situated in the County of Zapata 15 miles North east of
the town of Carrizo and on the waters of the "Veleño Creek
and is called Villa. "Beginning at the South corner
of a survey in the name of Pedro Bustamante and called
"Las Comitas" this corner being in the original title "Sendero
de la Solera." Thence North 55 E. with the east line of said survey
at 287 varas crossed Derramadero de Villa at 4730 an old line
fence at 4775 varas passed the east extremity of "Laguna Grande"
at 7275 varas crossed road from Laredo to Rio Grande City
bearing NE. at 10300 varas the road from the Peposaw to the
Escobas at 10375 varas the Derramadero de la Feta at 11021
the east corner of the said survey in the name of Bustamante
at 15000 varas set post for the North corner called "Sendero del
Macho bayo" from which a mesquite marked X bears S. 55 E
5 varas also a mesquite marked + bears S 30 W. 5 varas.
Thence S. 35 E. at 2084 post for line mark at 4168 post for
line mark at 6000 the road from the "Tanque" at 8333 1/3 set
post for east corner from which a mesquite marked V
bears S. 25 W 3 varas also a mesquite marked V bears N. 37 W.
29 1/2 varas. Thence S. 55 W. at 7000 varas entered the nopalera
de las calabazas at 10300 varas post for line mark IL at the
Puerto de San Juan at 10250 varas crossed road from Rio
Grande City to Laredo, at 11600 varas crossed the road to the
Bulls at 15000 varas set post for the South corner called
"Sendero del matamba" from which a mesquite marked X
bears S. 82 W. 25 varas and a mesquite marked X bears S. 16 E
20 varas. Thence N 35 W. at 3138 varas the arroyo de Simon
at 4703 varas the road to "Tanque" at 5680 varas crossed
arroyo de Villa at 7190 varas crossed road to Peposaw
at 8333 1/3 varas the place of beginning.

coenter 41013

Surveyed August 22nd to Sept 2nd A.D. 1874.

James McLaughlin
Surveyor Webb County Texas

Surveyed Sept. 30- 1874.

I, Felix A. Blucher Special Deputy Surveyor for Zapata County, do hereby certify that the foregoing survey was made according to law, and that the lines, boundaries and corners of the same are truly described on the foregoing plat and field notes.

Felix A. Blucher
Special Deputy Surveyor for Zapata County.

Examined and recorded Nov. 28th 1874.

E 503 Certificate of True Copy of Papers Recorded—Class 1°

THE STATE OF TEXAS,
County of Zapata
of the 66th Judicial Court of Zapata County, Texas, do hereby certify that the foregoing is a true and correct copy of the original field notes of Antonio Zapata Grant (also called Villa) as the same appears of record in my office in book C. pages 16-17 and in Drft A roll Jan 30 21
Given Under my Hand and the Seal of said Court, at office in Zapata this 28th day of May 1926
J. E. McDonald Clerk
By Inez B. Garcia Deputy.

Clarke & Courts, Manufacturing Stationers, Galveston.
Tex. Cat. #111, #28, #48, #3.

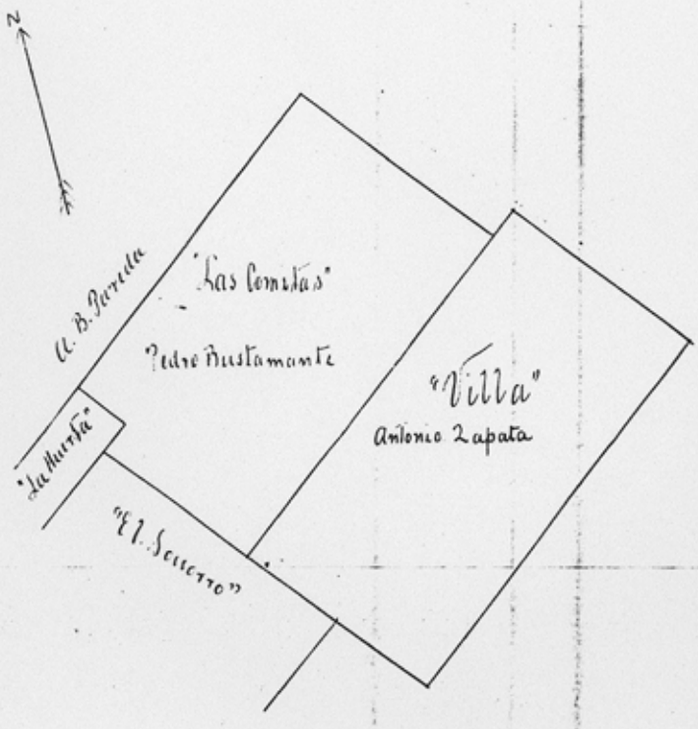
counter 41017

Surveyed August 22nd to Sept 2nd A.D. 1874.

James McLain } Chain
Gutiérrez Cantú } Carriers

Resurveyed Apr. 30-1876.

I, Felix A. Blucher Special Deputy Surveyor for Zapata County, do hereby certify that the foregoing survey was made according to law, and that the lines boundaries, and corners of the same are truly described



counter 41015

Group 1 of 20

IN DISTRICT COURT, TRAVIS COUNTY, TEXAS.

February 13th, 1873.

3189. MANUEL BUSTAMENTE ET AL. vs. THE STATE OF TEXAS.

In this cause appeared the plaintiffs by their attorneys, and the State of Texas by William Alexander Attorney General of the State of Texas, A. W. Terrill and D. Sheeks Esqrs, and the defendants submitted a motion to dismiss the cause for want of jurisdiction in the Court, which motion was overruled. Thereupon the defendant submitted exceptions to the plaintiffs petition which were also overruled by the Court, and the parties then announced themselves ready for trial, and after hearing the evidence introduced by the plaintiff, and by the defendant, and the argument of counsel, and the same having been fully considered by the Court; because it is the opinion of the Court, that the law and the facts establish the title of the plaintiffs to the land set out and described in plaintiffs petition. It is therefore ordered, adjudged and decreed by the Court that the plaintiffs Manuel Bustamente & Felix Rodrigues for themselves and the other heirs and devisees of Pedro Bustamte decd. the Original Grantee of the land described in the plaintiffs petition, do have and recover of and from the State of Texas the land sued for in this action, situated and bounded as follows: In Zapata County, Texas, about 25 miles N. 54 1/4° E. from the town of Carrizo. It begins at the N. E. corner of the confirmed grant called "La Heurta" being the S. W. corner of this tract & known as "La India". Thence N. 45° E. 13900 varas to N. E. corner called "La Lobera". Thence S. 45° E. 9000 varas to S. E. corner called "Macho Valle". Thence S. 45° W. 13900 varas to S. W. corner called "Las Escobas". Thence N. 45. W. 9000 varas to the place of beginning, and contains five leagues and 100,000 square varas of pasture land. It is bounded N. W. by lands of Andres Baptiste Pareda, called "Chanco Largo" S. W. by "La Heurta" &

counter 71016

the lands of Jose Ma. Canales, surveys of which are on file in the Land Office, and South East by "Villa", a grant to Antonio Zapata.

It is further ordered, adjudged and decreed by the Court that the State of Texas be and is by virtue of this judgment and decree divested of all right, title, interest and claim in and to the aforedescribed tract of land, and that the same is fully vested and confirmed in the plaintiffs, and the legal heirs, devisees and assigns of the Original Grantee Pedro Bustamante dead. It is further ordered, adjudged and decreed by the Court, that the State of Texas do have and recover of and from the plaintiffs and their securities, all the costs of this suit, including the Attorney General's fee, for all which execution may issue. All of which is ordered, adjudged and decreed by virtue of an act of the legislature of the State of Texas, entitled "an act to ascertain and adjudicate certain claims for land against the State, situated between the Nueces and Rio Grande rivers" approved August 15th, 1870. And thereupon the Attorney General in behalf of the State, in open Court, gave notice of appeal to the Supreme Court.

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counter 41017

Group 8 of 20

The State of Texas, | In the District Court of Travis

№ 20546 vs. | County, 261st Judicial District.

Leonard Haynes, et.al. |

Be it remembered that on the trial of the above entitled cause the following facts were proven and none others.

The State first introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on June 16, 1884, Survey No. 522, made for the State of Texas by virtue of certificate No. 425, issued to the T. C. Ry. Co., situated in Zapata County, containing 640 acres, the field notes being the same as in the first tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata County, on June 16, 1884 Survey No. 524, made for the State of Texas by virtue of certificate No. 426, issued to the T. C. Ry. Co., situated in Zapata County, containing 640 acres, the field notes being the same as in the second tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on June 16, 1884, Survey No. 526, made for the State of Texas by virtue of certificate No. 427, issued to the Texas Central Ry. Co., situated in Zapata County, containing 640 acres, the field notes being the same as in the third tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on June 16, 1884, Survey No. 528, made for the State of Texas by virtue of certificate No. 1162, issued to the H.E.& W.T.Ry.Co., situated in Zapata County, containing 640 acres, the field notes being the same as in the fourth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on June 16, 1884, Survey No. 530, made for the State of Texas by virtue of certificate No. 1163, issued to the H.E.& W.T.Ry.Co., situated in Zapata County, containing 640 acres, the field notes being the same as in the fifth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on June 17, 1884, Survey No. 532, made for the State of Texas by virtue of certificate No. 1164, issued to the H.E.& W.T.Ry.Co., situated in Zapata County, containing 640 acres, the field notes being the same as in the sixth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of

counter 1018

L. H. (2)

by Leonard Haynes, County Surveyor of Zapata Co. on June 17, 1884, Survey No. 534, made for the State of Texas by virtue of certificate No. 465, issued to [illegible], situated in Zapata County, containing 640 acres, the field notes being the same as in the seventh tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on June 17, 1884, Survey No. 536, made for the State of Texas by virtue of certificate No. 466, issued to [illegible], situated in Zapata County, containing 640 acres, the field notes being the same as in the eighth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on March 18, 1885, Survey No. 604, made for the State of Texas by virtue of certificate No. 474 issued to [illegible], situated in Zapata County, containing 640 acres, the field notes being the same as in the ninth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co., Sept. 17, 1884, Survey No. 563, made for the State of Texas by virtue of certificate No. 524, issued to Samuel L. Cooke, situated in Zapata County, containing 640 acres, the field notes being the same as in the tenth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on Sept. 12, 1884, Survey No. 564, made for the State of Texas by virtue of certificate No. 524, issued to Samuel L. Cooke, situated in Zapata County, containing 640 acres, the field notes being the same as in the eleventh tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on April 1, 1885, Survey No. 590, made for the State of Texas by virtue of certificate No. 1017, issued to Mrs. Martha Nobles, situated in Zapata County, containing 1280 acres, the field notes being the same as in the twelvth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on Nov. 6, 1884, Survey No. 565, made for the State of Texas by virtue of certificate No. 1566, issued to S. P. Nobles, situated in Zapata County, containing 1280 acres, the field notes being the same as in the thirteenth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of

counter 41019

L.H.#3.

by Leonard Haynes, County Clerk of Zapata County on Nov.6, 1884, Survey No.586, made for the State of Texas by virtue of certificate No. 1710, issued to H. P. Ashley, situated in Zapata County, containing 1280 acres, the field notes of which are the same as in the fourteenth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on Nov.6, 1884, Survey No.587, made for the State of Texas by virtue of certificate No.1788, issued to [illegible] Hedgpeth, situated Zapata County, containing 1280 acres, the field notes of which are the same as in the fifteenth tract described in plaintiff's petition.

The plaintiff next introduced in evidence the field notes of by Leonard Haynes, County Surveyor of Zapata Co. on June 19, 1884, Survey No.550, made for the State of Texas by virtue of certificate No. 443, issued to the [illegible] Ry. Co., situated in Zapata County, containing 640 acres, the field notes of which are the same as in the sixteenth tract described in plaintiffs petition.

It is agreed that the field notes in each of the foregoing described tracts of land are the same as those in the plaintiff's petition, and there being no controversy over this fact, that they need not be copied in this statement of facts.

The plaintiff next introduced the following map, which, under the order of the Court, is sent up with the transcript.

Counter #1020

2.546

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Defendants read in evidence a final grant made by the Governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Antonio Zapata, as follows: (Translation.)

Third Seal. (Years of Eighteen hundred and forty eight and Eighteen hundred and forty nine. 1848 & 1849.) Fifty Cents.

Francisco Vital Fernandez, Brigadier General of the Army of the Mexican Republic and Governor of the State of Tamaulipas. Whereas the Citizen Antonio Zapata has paid into the Treasury of the State the fifty dollars at which were valued the five sitios of pasture land for large stock denounced by him at the point de Villa, as appears by the expediente made for the purpose, using the power that the law gives me upon this particular, I have thought proper to adjudicate to the Citizen Antonio Zapata for himself, his heirs and successors the said five sitios for large stock, within the limits and boundaries made on the attached map.

Therefore I order the authorities and inhabitants of the State to recognize the said citizen Antonio Zapata as the legitimate owner of the said five sitios of pasture land for large stock which are thus granted.

Given at the City of Victoria on the second day of the month of January Eighteen Hundred and forty-eight.

Franco. V. Fernandez.

(Seal)

Andres Guerrero,

2nd Official.

counter 41021

SUPREME COURT
AUSTIN

THE STATE OF TEXAS.

To the District Court of Travis County, GREETING:

Before our Supreme Court on the 27th. day of March, A. D. 1907, the cause, upon writ of error, to revise or reverse your judgment between

Leonard Haynes, et al.,
Plaintiff in Error.

No. 1562. vs.

The State of Texas,
Defendant in Error,

was determined; and therein our said Supreme Court made its order in these words:

This cause came on to be heard on writ of error to the Court of Civil Appeals for the Third Supreme Judicial District and the original transcript in said cause being before the Court as well as the transcript showing the proceedings had in said Court of Civil Appeals and these having been duly considered because it is the Opinion of this Court that there was error in the judgment of the Court of Civil Appeals and District Court, it is therefore considered, adjudged and ordered that said judgments be reversed; And this Court proceeding to render such judgment as should have been rendered, it is therefore ordered, adjudged and decreed that the Defendant in error, the State of Texas, take nothing by its suit and that the plaintiffs in error Leonard Haynes and M. W. Haynes go hence without day and do have and recover of and from The State of Texas, certain tracts of land situated in the County of Zapata, in the State of Texas, and particularly described in plaintiff's petition as follows, to-wit: First TRACT: Being survey No. 522 made for the State of Texas, by virtue of Certificate No. 428, issued to the T.C. Ry. Co. situated in Zapata County, Texas and bounded as follows; Beginning at a post the N. corner of survey No. 521. Thence S. 55' W. with same 1900 varas to post for its W. corner and S. corner of this. Thence N. 35' W. 1900 varas to post for W. corner; Thence N. 55' E. 1900 varas to post for N. corner; Thence S. 35' E. 1900 varas to the place of beginning, containing 640 acres. Second tract: Being survey No. 524 made for the State of Texas, by virtue of certificate No. 428, issued to the T.C. Ry. Co., situated in Zapata County, about 16 miles N. 70° E. from Carrizo and bounded as follows: Beginning at a post the N. corner of No. 523. Thence S. 55' W. 1900 varas to post for S. corner; Thence N. 35' W. 1900 varas to post for W. corner; Thence N. 55' E. 1900 varas to post for N. corner; Thence S. 35' E. 1900 varas to the place of beginning, containing 640 acres. Third tract. Being survey No. 526 made for the State of Texas, by virtue of certificate No. 427, issued to the Texas Central Ry. Co. situated in Zapata County about 17 miles N. 70° E. from Carrizo and bounded as follows: Beginning at a post for the N. corner of No. 523 and S. corner of 525 for the W. corner of this survey; Thence N. 55° E. 1900 varas to post for N. corner; Thence S. 35' E. 1900 varas to post for E. corner; Thence S. 55' W. 1900 varas to post for S. corner; Thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres. Fourth tract:

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SUPREME COURT
AUSTIN

Being survey No. 528 made for the state of Texas by virtue of certificate No. 1162 issued to the M.K. & T. Ry. Co., situated in Zapata County about 18 miles N. 75° East from Carrizo and bounded as follows; Beginning at post, S. corner of No. 527 for the West corner of this survey; Thence N. 55° E. 1900 varas to post for N. corner; Thence S. 35° E. 1900 varas to post for E. corner; Thence S. 55° W. 1900 varas to post for S. corner; Thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres. Fifth tract: Being survey No. 529 made for the State of Texas by virtue of certificate No. 1163 issued to the M. K. & T. Ry. Co. situated in Zapata County about 19 miles N. 71° E. from Carrizo and bounded as follows; Beginning at a post, the West corner of No. 529, for the S. corner hereof; Thence N. 55° E. 1900 varas to post for E. corner; Thence N. 35° W. 1900 varas to post for N. corner; Thence S. 55° W. 1900 varas to post for W. corner; Thence S. 35° E. 1900 varas to the place of beginning, containing 640 acres. Sixth tract: Being survey No. 532, made for the State of Texas by virtue of certificate No. 1164, issued for the M. K. & T. Ry. Co. situated in Zapata County about 19 miles N. 68° W. from Carrizo and bounded as follows: Beginning at a post, the N. corner of No. 531, for the S. corner hereof; Thence N. 55° W. 1900 varas to a post for N. corner; Thence S. 55° W. 1900 varas to a post for W. corner; Thence S. 35° E. 1900 varas to a post for W. corner; Thence S. 35° E. 1900 varas to the place of beginning, containing 640 acres: Seventh Tract: Being survey No. 534 made for the State of Texas by virtue of certificate No. 486, issued to the M.K. & T. Ry. Co., situated in Zapata County about 20 miles N. 67° E. from Carrizo and bounded as follows: Beginning at a post, the S. corner of No. 533, for the W. corner hereof; Thence N. 35° E. 1900 varas to a post for N. corner; Thence S. 55° E. 1900 varas to a post for E. corner; Thence S. 35° W. 1900 varas to a post for S. corner; Thence N. 55° W. 1900 varas to the place of beginning, containing 640 acres. Eighth tract: Being survey No. 536, for the State of Texas by virtue of certificate No. 485 issued to the M.K. & T. Ry. Co. situated in Zapata County, about 21 miles N. 72° E. from Carrizo and bounded as follows: Beginning at a post, the S. corner of No. 535, and N. corner of 529, and the W. corner hereof; Thence N. 55° E. 1900 varas to a post for N. corner; Thence S. 35° E. 1900 varas to a post for E. corner; Thence S. 55° W. 1900 varas to a post for S. corner; Thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres. Ninth Tract; Being Survey No. 604 made for the State of Texas by virtue of certificate No. 4/304 issued to the G.C. & S.F. Ry. Co. situated in Zapata County about 16 miles N. 65° E. from Carrizo and bounded as follows; Beginning at a post, the W. corner of 524, for the S. corner hereof; Thence N. 55° E. with surveys 525, 524 and 538 at 4173 varas, a post for E. corner; Thence N. 35° W. 733 varas to a post for N. corner; Thence S. 55° W. at 2300 varas S. corner of 536 at 3032 varas, post for a corner; Thence N. 35° W. with No. 537 at 407 varas post for N. W. corner of this survey; Thence S. 55° W. 1111 varas to a post for W. corner; Thence S. 35° E. 1830 varas to the place of beginning containing 640 acres. Tenth Tract. Being survey No. 563 made for the State of Texas by virtue of certificate No. 524 issued to Samuel L. Cooke situated in Zapata County, about 16½ miles N. 56° E. from Carrizo and bounded as follows: Beginning at a post, the E. corner of 555 and the W. corner of 559, in the name of T. M. Jackson for the N. corner of this tract; Thence S. 55° W. 1900 varas to a post for W. corner; Thence S. 35° E. 1900 varas to a post for S. corner; Thence N. 55° E. 1900 varas to a post for E. corner; Thence N. 35° W. 1900 varas to the place of beginning,

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containing 640 acres. ELEVENTH TRACT. Being survey No. 564 made for the State of Texas, by virtue of certificate No. 524, issued to Samuel L. Cooke, situated in Zapata County, about 16 miles N. 55° E. from Carrizo and bounded as follows; Beginning at a post the S. corner of 563 for the E. corner of this survey; Thence N. 35° W. 3300 varas, post for N. corner and W. corner of No. 555; Thence S. 55° W. 950 varas to a post for W. corner; Thence S. 35° E. 3300 varas to a post for S. corner; Thence N. 55° E. 950 varas to the place of beginning, containing 640 acres. Twelfth Tract. Being survey No. 590 made for the State of Texas by virtue of certificate No. 1017, issued to Mrs. Martha Vogles, situated in Zapata County and bounded as follows; Beginning at a large post in edge of Arroyo, being the North corner of two leagues of the J. M. Canales; Thence S. 35° E. with same 4250 varas to post the W. corner of No. 603 and S.W. corner hereof; Thence N. 55° E. 620 varas to a post for corner and for N. corner of No. 603; Thence S. 35° E. 1723 varas to a post for S. corner; Thence N. 55° E. 1111 varas to a post for E. corner; Thence N. 35° W. 2893 varas to a post for N.E. corner and West corner of 597; Thence N. 55° W. 975 varas to a corner, the S. corner of No. 564; Thence N. 35° W. 3300 varas to a post for N. corner and W. corner of 564; Thence S. 55° W. 450 varas to a post for corner and S. corner of 565; Thence N. 35° W. 645 varas to a post for a corner; Thence S. 55° W. 305 varas to a post for W. corner; Thence S. 35° E. 1660 varas to the place of beginning, containing 1280 acres. Thirteenth Tract. Being survey No. 595 made for the State of Texas, by virtue of certificate No. 1695 issued to E. P. Peebles situated in Zapata County about 13 miles N. 62° E. from Carrizo and bounded as follows: Beginning at a post the E. corner of 594 and S. 55° W. 6352 varas from the N. corner of Viola tract; Thence S. 55° W. 2683 varas to a post for S. corner; Thence N. 35° W. 2688 varas to a post for W. corner; Thence N. 55° E. 2689 varas to a post for N. corner; Thence S. 35° E. 2688 varas to the place of beginning, containing 1280 acres. Fourteenth Tract. Being survey No. 596, made for the State of Texas, by virtue of certificate No. 1710, issued to E. P. Ashley, situated in Zapata County, about 16 miles N. 32° E. from Carrizo and bounded as follows: Beginning at a post in the N.W. line of "La Viola" tract, S. 55° W. 9040 varas from its N. corner for the E. corner of this survey, being the S. corner of 595, E. P. Peebles; Thence S. 55° W. 2689 varas to a post for S. corner; Thence N. 35° W. 2688 varas to a post for W. corner; Thence N. 55° E. 2689 varas to a post for N. corner; Thence S. 35° E. 2688 varas to the place of beginning, containing 1280 acres. Fifteenth Tract. Being survey No. 597 made for the State of Texas by virtue of certificate No. 1739, issued to J. P. Sedgley, situated in Zapata County about 15½ miles N. 60 E. from Carrizo and bounded as follows: Beginning at a post in the N.W. line of Viola tract S. 55° W. 11728 varas from its N. corner being also the S. corner of 596 E. P. Ashley; Thence N. 35° W. 2688 varas to a post for W. corner of 596; Thence N. 55° E. 9064 varas to a post for E. corner of this and S. corner of 552, J. L. Robinson; Thence N. 35° W. 702 varas to a post for N. corner and E. corner of 562, Jas. Campbell; Thence S. 55° W. 9525 varas with line of surveys Nos. 562, 561, 560 and 563 to a post for W. corner of this survey; Thence S. 35° E. 3390 varas to a post for S. corner; Thence N. 55° E. 461 varas to the place of beginning, containing 1280 acres. Sixteenth tract. Being survey No. 550, made for the State of Texas by virtue of certificate 493 issued to the M.K. & T. Ry. Co. situated in Zapata County about 17 miles N. 75° E. from Carrizo and bounded as follows: Beginning at a post the S. corner of 549 for the W. corner hereof; Thence N. 55° E. at 1636 varas

3.

counter #1027

SUPREME COURT
AUSTIN

E. corner of 549, at 1700 varas post for N. corner hereof; Thence S. 35° E. with surveys 522 and 521 at 2125 varas post for E. corner of 521; Thence S. 55° W. at 1700 varas post marked X for S. corner; Thence N. 35° W. 2125 varas to the place of beginning, containing 340 acres. Seventeenth tract. Being a small strip of public domain situated in Zapata County bounded as follows: Beginning at the N. corner of 549; Thence S. 35° E. 2208 varas to E. corner of 549; Thence N. 55° E. 64 varas to N. corner of 550; Thence N. 35° W. 2208 varas to N. corner of 607; Thence S. 55° W. 64 varas to the place of beginning, containing 25 acres of land more or less. It is further ordered that the plaintiffs in error, Leonard Haynes and H. M. Haynes do have and recover of and from the Defendant in Error, the State of Texas, all costs in this behalf expended in this Court, in the Court of Civil Appeals and in the District Court and this decision be certified to the District Court for observance.

WHEREFORE WE COMMAND YOU to observe the order of our said Supreme Court in this behalf, and in all things to have it duly recognized, obeyed and executed.

WITNESS, the Hon. R. R. GAINES, Chief Justice of our said Supreme Court, with the seal thereof annexed, at the City of Austin, this the 4th. day of October, A. D. 1907.

J. J. [illegible]
Clerk.

4.

counter 1025

(L.S.) (A revenue stamp, cancelled.)

City of Guerrero, February 20, 1904.

Number 6.

Antonio G.Martinez, Municipal President of the City of Guerrero, Tamaulipas,

Certifies: that in the archive of this Presidency there is a parcel of inventories attached together, which is endorsed, -

"Common Book containing the inventories of the Ayuntamientos and Alcaldes, and delivery and receipt of their archives, which date from the year 1823," - There being on folios 23 reverse, and front of 24, an inventory subscribed the year 1835 by the 1st Alcalde, Citizen Rafael Uribe, in the folios of which appears an entry of the following tenor:-

Affairs pending.

1 Expediente upon the measurements of pasture land for large stock denounced by the Citizen Antonio Martinez Gutierrez.

Delivered to him. 1 Idem. of the Citizen Eduardo Davila.

1 Id., of the Citizen Ygnacio Gutierrez.

1 Id., of the Citizen Ysidro Gutierrez.

1 Id., of the Citizen Simon de Ynojosa.

1 Id., of Dona Tomasa de la Pena.

1 Id., of the Citizen Mariano Ariepe.

Delivered to him. 1 Id., of the Citizen Luis Vela.

Delivered to him. 1 Id., of the Citizen Trinidad Vela.

1 Id., of Dona Josefa Cuellar.

That of Don Felipe Pena was delivered to him and he sent it to Victoria.

Delivered to him on Nov.7,1836. 1 Expediente of Don Antonio Zapata.

1 Id., of Don Jose Ma. Canales.

1 Id., of Don Anastacio Garcia.

1 Id., of Don Pedro Bustamante.

1 Id., of Don Jesus Cuellar.

1 Id., of Don Onofre Garcia.

1 Expediente upon the measurements of pasture lands for large stock denounced by Don Jesus Benavides.

1 Id., of Don Mariano Garcia.

1 Id., of Don Jesus Mesa."

And at request of an interested party and for such use as he may

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rightfully make of it, this copy is issued to him on the 20th day of February Nineteen hundred and four.

Antonio G. Martinez.

R. R. Jimenez,
Secretary.

Counter 71027

No 20546

State

vs

Leonard Koppenhafer

18574

Filed June 16 1904

John H. Hart Clerk.

Clerk's Office
Fourth Judicial
District Court

STATE OF TEXAS.
ATTORNEY GENERAL'S OFFICE.

The State of Texas §
County of Travis §

In District Court of Travis County,
26th Judicial District of Texas.

To the Hon. R. L. Penn, Judge of said Court:

The State of Texas, plaintiff herein, by and through C. K. Bell, Attorney General of said State, brings this suit, and complaining of Leonard Haynes, R. A. Haynes, Sabas Mesa and James J. Haynes, represents and shows to the court that the defendant Leonard Haynes resides in Puebla, in the Republic of Mexico; that the defendant R. A. Haynes resides in Celoya, in the Republic of Mexico, and that the defendant James J. Haynes resides in Webb county, in the State of Texas, and that defendant Sabas Mesa resides in the county of Zapata, in the State of Texas.

That on the 1st day of January, 1898, the State of Texas, plaintiff herein, then was and still is the owner in fee simple (the same belonging to the common free school fund of the State of Texas) of certain tracts of land situated in the county of Zapata, in the State of Texas, and particularly described as follows, to-wit:-

First tract. Being survey No. 427 made for the State of Texas by virtue of scrip No. 142 issued to B. J. Baldwin situated in Zapata county, about 15 miles N. 30° E. from Carrizo, and bounded as follows:-

Beginning at a large mesquite post, the S. corner of a so called grant in the name of Ignacio Guttierrez, from which a mesquite marked X bears S. 28 varas, and another bears S. 13° W. 14 varas.

Thence S. 45° E. 1320 varas, post in line of Charco de La India, for E. corner:

Thence S. 55° W. with said India tract at 1872 varas, large stone S. W. or W. corner of same, at 2089 a post on N. E. line of survey No. 313.

Thence N. 35° W. with 313 and 429, at 4205 varas, post in prarie for W. corner of this survey:

Group 11 of 20

counter #1029

RH2.

Thence N. 55° E. at 1348 varas a post in the S. W. line of "Mogotes".

Thence S. 45° E. 2950 varas to the beginning, containing 1280 acres.

Second tract. Being survey No. 428 made for the State of Texas by virtue of scrip No. 410 to J. O. Thomas, situated in Zapata county about 15 miles N. 20 E. from Carrizo, and bounded as follows:-

Beginning at a post on the S. W. line of a so called grant of "Los Mogotes" to Ignacio Gutterrez 2950 varas N. 45° W. from its S. corner, said post being the N. corner of No. 427, and E. corner of this.

Thence N. 45° W. with said Mogotes at 4303 varas, post for N. corner of this survey:

Thence S. 55° W. at 923 varas a post on N. E. line of ~~xx~~ porcion No. 5.

Thence S. 35° E. with Porcion No. 5,744 varas to its E. corner:

Thence S. 55° W. with Porcion No. 5,479 varas to the N. corner of Porcion No. 4:

Thence S. 35° E. with Porcion No. 4, 1960 varas to its N. E. corner:

Thence N. 55° E. 68 varas to a post for corner:

Thence S. 35° E. 1750 varas to a post for corner:

Thence N. 55° E. 733 varas, to post on line of No. 427:

Thence N. 35° W. 216 varas to a post, W. corner of 427:

Thence N. 55° E. 1348 varas to the beginning, containing 1280 acres.

Third tract. Being survey No. 431 made for the State of Texas by virtue of scrip 1190 issued to James K. Lummus, situated in Zapata county, about 14 miles N. 14° E. from Carrizo, and bounded as follows:-

Beginning at a post the N. corner of porcion No. 6 in the name of Miguel Alegna de Lascano, from which a mesquite marked X bears S. 36°15' W. 86 varas.

Thence S. 35 E. with said porcion at 1245 varas to large

counter 41030

KH3.

post supposed to be the W. corner of the Mogotes tract, at 2665 varas a post for S. corner of this survey.

Thence N. 45 E. 1696 varas to a post on the S. W boundary of survey No. 430, for the E. corner of this survey:

Thence N. 45° W. 1399 varasto a post, W. corner of 430;

Thence S. 45° W. 190 varas to a post:

Thence N. 35 W. 1032 varas to a post on the S. E. boundary of Borrego grant for the N. corner of this survey:

Thence S. 55° W. with said Borrego grant 1233 varas to the beginning, containing 640 acres.

Fourth tract. Being 300 acres of unsurveyed public Zapata County domain, in about 13 miles N. 14-1/2° E. from Carrizo, and bounded and described as follows:

Beginning at the S. corner of survey No. 431.

Thence N. 45° E. 1696 varas with said No. 431, J. M. Luemus State section:

Thence S. 45° E. 500 varas to the S. corner of No. 430, J. M. Luemus individual section:

Thence N. 45° E. 850 varas to the W. corner of 607, M. M. Hall, individual section:

Thence S. 45° E. 100 varas to the N. corner of 610, J. R. Christian individual section:

Thence S. 45° W. 2250 varas to W. corner of 610, J. R. Christian individual section:

Thence S. 45° E. 800 varas to N. corner of No. 428, J. O Thomas, State section:

Thence S. 55° W. 952 varas to N. W. corner of 428 J. O. Thomas State section.

Thence N. 35° W. 1200 varas to N. corner of porcion No. 5:

Thence N. 55° E. 400 varas to E. corner of porcion No. 6:

Thence N. 35° W. 170 varas to the beginning, containing 300 acres.

counter 41031

Copy of petition of District Attorney concerning Surveys 427 & 428

RH4.

That plaintiff was in possession of said land and is now entitled to possesd on thereof; that on the said 1st day of January, 1898, the defendants, without authority of law entered upon said land and dispossessed plaintiff thereof and held, claimed and occupied the same adversely to plaintiff and are still so doing, to plaintiff's damage two thousand dollars.

That the rental value of said land is, and at all times has been five cents per acre per annum.

Premises considered, plaintiff prays that the defendants be cited to answer hereto as required by law; that upon final hearing hereof plaintiff have judgment against the defendants and each of them for the recovery of the title and possession of said land, with writ of possession for the same, and for damages, and for the rental value of the use and occupation of said land, with ten per cent thereon as attorney's fees; for costs, and for all other and further relief to which she may be entitled either in law or in equity.

C. K. Bell

Attorney General, Attorney for

The State of Texas.

counter 41032

Copy of petition of Dist. Ct. concerning surveys: 427, 428, 431 and file #150238
Files: San Pat. S. 3491-3494 & 3544 Also concerns two mexican grants contained in files San Pat. 1st Class 657 & 806
Filed 8/15/41 Bascom Giles Comm.
By P. O.

3

No. 20,547.

The State of Texas.

Vs.

Jas. J. Haynes et al.

* * * * * * * * * * * * * * * * * * *

Plaintiff's Original Petition.

* * * * * * * * * * * * * * * * * * *

This action is brought as well to try title as for damages.

* * * * * * * * * * * * * * * * * * *

FILED
IN DIST COURT, TRAVIS CO. 26 JUD. DIST.
AUG 15 1941
Jas. Hall Clerk
By Deputy

1

3

counter 41033

STATE

The State of Texas, §
Vs. No. §
James J. Haynes, et.al. §

In the District Court of Travis County, 26th Judicial District.

Now comes the plaintiff, appearing herein by her Attorney General, and demurs to the defendants' answer, filed herein, and says that the same is insufficient in law because the facts therein alleged show no cause of action and constitute no grounds of defense.

Wherefore, plaintiff prays that the said answer be stricken out and held for naught, and of this plaintiff prays the judgment of the Court.

C. K. Bell

Attorney General,
Attorney for the Plaintiff.

Plaintiff denies all and singular the allegations in the answer of the defendants contained, and of this the plaintiff puts herself upon the country.

C. K. Bell

Attorney General,
Attorney for the Plaintiff.

Now comes the plaintiff and in reply to the defendants' answer shows to the Court that the plaintiff has never, at any time, recognized but that the plaintiff has always repudiated the claim which the defendants attempt to set up in this case.

Plaintiff particularly shows to the Court that heretofore, to-wit, on the 9th day of January 1872, suit was instituted in the District Court of Travis County by Pedro Gutierrez, claiming to be one of the heirs of Ygnacio Gutierrez, for himself and for the other heirs of the said Ygnacio Gutierrez, against the State of Texas, in which the said Pedro Gutierrez, claiming a part of the land in controversy in this case under the same title under which the defendants now claim, sought to have the said title confirmed.

Group 12 of 20

counter 41034

That the State of Texas then and there and at all other times repudiated the said claim and denied that those under whom the defendants in this suit claim had any valid right to or interest in the land in controversy.

That said suit was prosecuted to a judgment in favor of the claimant but that the same was appealed to the Supreme Court of the State, by which Court the said cause was reversed and remanded. That thereupon the plaintiffs in said case dismissed the case from the docket.

Plaintiff further shows to the Court that on to-wit, the 9th day of January 1872, suit was instituted in the District Court of Travis County by Manuel Ramirez for himself against the State of Texas, in which suit the said Manuel Ramirez, claiming the land in controversy in this case under the same title under which the defendants now claim, sought to have the said title confirmed.

That the State of Texas then and there and at all other times repudiated the said claim and denied that those under whom the defendants in this case claim had any valid right to or interest in the land in controversy.

That said suit was prosecuted to a judgment in favor of the claimant but that the same was appealed to the Supreme Court of the State, by which Court the said cause was reversed and remanded. That thereupon the plaintiffs in said case dismissed the same from the docket.

The plaintiff, therefore, says that if any presumption could have arisen against the State, the plaintiff herein, from the possession of the lands sued for, that said presumption was rebutted by the fact that the plaintiffs denied that they ever took from the defendants claim and any right or possession of the land, and this the plaintiff is ready to verify.

C. K. Bell

Attorney General,

Attorney for the Plaintiff.

counter 41035

Copy of Supplemental Petition Dist Ct concerning surveys 427-428-431 and file 150238. Files San Pat.S.3491-3494 &3544 also concerns two mexican grants in files San Pat 1st class 657 & 806

Filed 8/15/41 Bascom Giles Comm.

By L. D.

1054

The State of Texas,

VS.

James C. Haynes, et.al.

FIRST SUPPLEMENTAL PETITION.

Filed June 16-1904

Thos. Ochiltree Clerk

(6)

counter 41036

The State of Texas
No. 20547 vs
Jas.J.Haynes et al.

In Dist.Court of Travis County,Texas,26th Judicial District.

Leave of court being obtained, comes the defendant Leonard Haynes and files this his first amended answer in lieu of his original answer filed herein on the 15th day of June 1903, and for amended answer says:-

Now comes Leonard Haynes, defendant in the above cause and for answer to plaintiff's petition says:

First. That he demurs and excepts to the jurisdiction of the district court of Travis county over either the subject matter of this suit or over the person of defendant, and for such exception says that the allegations of said petition show that the lands sued for are situated wholly in the county of Zapata and that defendant is a non resident of Travis County, and that none of the other defendants resides in Travis county and they have all disclaimed any interest in the land in controversy; wherefore he says that said petition does not show a cause of action against him maintainable in the district court of Travis County, and of this he prays the judgment of the court, and that he go hence with his costs.

Second. And comes again the defendant Leonard Haynes and for further answer herein denies all and singular the allegations in plaintiff's petition in manner and form as therein alleged; and says that he is not guilty of the supposed wrongs, injuries and trespasses laid to his charge or any or either of them in manner and form as in said petition alleged, and of all this he puts himself upon the country.

Third. This defendant also says that he is the legal and equitable owner and holder of the lands in controversy which are of the value of $5000.00 by virtue of two certain grants, one of the grants acquired under the law known as decree No.24 of October 19th 1833 of the State of Tamaulipas, Republic of Mexico, then the sovereignty of the soil, both of which grants are now held and owned by this defendant by mesne conveyances from the original grantees thereof, the one acquired under said decree No 24 being as follows, viz:

~~(1)~~ A grant of two square leagues of land, called Los Mogotes, made to Ignacio Gutierrez, having its origin on or about the 29th day of August 1834 by adjudication by the city council (Ayuntamiento) of Guerrero, in which jurisdiction the said land was then situated; survey thereof was made on or about January 5th 1835 by Antonio Canales the surveyor general of Tamaulipas for said Ignacio Gutierrez the original grantee, and final title to said land was extended to said Gutierrez by the Governor of Tamaulipas

Group 13 of 20

counter 41037

and would be also a violation of the 14th Amendment to the Constitution of the United States in that such action would be a deprivation by the State of Texas of the property of defendants without due process of law, and that any and all laws of the State of Texas authorizing or commanding such action are in conflict with Artl, Sec.10, Subdivision 1, of the said Constitution of the United States which forbids the States to pass any law impairing the obligation of contracts, and insofar as any such laws undertake to impair the obligation or binding force of such grants, they x are unconstitutional and void.

on the 2nd day of January 1848, the $20.00 at which said land was valued having been paid by said Gutierrez. That said Gutierrez had been in possession of said two leagues of land since about the year 1828 up to the time of said survey, and since then he and those having his estate therein including this defendant have been continuously in the actual possession of said land, cultivating, using and enjoying the same and raising live stock thereon, to which latter purpose the said land is chiefly adapted, down to the present time, holding and claiming the same by virtue of the right acquired by him as aforesaid; that the same is a good and valid and legitimate title to said land and is protected by the treaty of Guadalupe Hidalgo between the United States and Mexico, and to deprive defendant of any part thereof in this suit would be a violation of the terms of said treaty. The said two leagues of land was resurveyed by the district surveyor of Zapata land district on April 20th 1876, and the metes and bounds of the same as shown by said resurvey are as follows,

[illegible] about 14 miles N 20 W of the town of Carrizo and in the rear of the porciones fronting on the Rio Grande, beginning at a post marked V 25000 varas N 55 3/4 E of the upper corner of the lands given as porciones in the Jurisdiction of Guerrero, a stone placed 178 varas N 55 E from the bank of the Rio Grande for the north corner of this survey and from which a mesquite marked X bears N 21 1/2 W 29 varas; thence S 45 E at 2500 varas set post in prairie for line mark, at 4800 varas crossed road leading from the Ovejas ranch to Carrizo, at 5000 varas placed a large stone for line mark in prairie, at 7500 varas set post for line mark entered mesquite timber, at 10000 varas set post in timber for the east corner from which a mesquite marked X bears N 51 E 4 varas, also mesquite marked X bears N 83 W 13 varas; thence

S 45 W at 1250 varas marked mesquite for line tree, at 2500 varas post for line mark, at 3070 varas marked two large mesquite trees in line, at 3670 varas crossed derramadero running SSE, at 5000 varas set post for the south corner from which a mesquite marked X bears S 28 varas, also a mesquite marked ‡ bears S 13 W 14 varas; thence N 45 W through scattering mesquital at 185 varas passed through a group of mesquite trees marked and \\\ on each side of line, at 2500 varas post in prairie for line mark, at 3895 varas the said road from the Ovejas ranch to Carrizo bears SSW, at 5000 varas set post for line mark, at 6120 varas passed well situated 40 varas to the east of line, at 6180 varas passed well 60 varas

counter 41038

to the east of same, at 6360 varas passed well 20 varas to the east of line, at 6732 varas a mesquite marked ≡ ten varas to the east of line, at 7310 varas crossed arroyo Blanco running southwest, at 7500 varas set post for line mark, at 8503 varas marked stump in line, at 8669 varas mesquite marked 1 vara west of line, at 10000 varas set post for the west corner, from which a large mesquite marked + on a hill bears S 53 E 120 varas; thence N 45 E 5000 varas to the place of beginning.

That the lands referred to in plaintiff's petition as "Third Tract" and "Fourth Tract" are located either partly or wholly upon defendant's said land, and he claims title to so much of them as is upon the said Mother tract or grant, by virtue of his title aforesaid.

~~(2)~~ The other of said grants, is a grant of three square leagues of land called La Laguna de los Venados made to Manuel Ramirez, in said jurisdiction of Guerrero, having its origin prior to the 19th day of December 1836, the said land having been prior thereto segregated from the public domain and separated from other public lands by surrounding surveys made for other persons and enclosing it, and also by a survey thereof made by the Surveyor General of Tamaulipas in 1835, and final title to such land was extended to said Ramirez by the Governor of Tamaulipas on the 2nd day of January 1848, the $30.00 at which said land was valued having been paid by said Ramirez. That said Ramirez had been in possession of said three leagues of land from about the year 1828 up to the time of the extension of said final title, ~~he having been adjudged entitled to the benefits of the said decree No. 24 of Oct. 19th 1833 by the city council of Guerrero, in which jurisdiction the said land was situated, and having owned the same and having had it surveyed for him by the official surveyor prior to said 19th of December 1836;~~ and since the extension of final title as aforesaid down to the present time he and those having his estate therein including this defendant have been continuously in the actual possession of said land, cultivating, using and enjoying the same and raising live stock thereon (to which latter purpose the said land is chiefly adapted) holding and claiming the same by virtue of the right acquired by him as aforesaid; that the same is a good and valid and legitimate title to said land and is protected by the treaty of Guadalupe Hidalgo between the United States and Mexico, and to deprive defendant of any title thereof in this suit would be a violation of the terms of said treaty. That said land was surveyed for the said Manuel Ramirez, his heirs and assigns, by the county surveyor of Zapata County on the 28th day of October [illegible], and the metes and bounds thereof as shown by said survey are as fol-

lows, to wit: Two and a fraction leagues of land situated in Zapata County about 15 miles north 30 east from the town of Carrizo, made for Manuel Ramirez, his heirs and legal assigns, known as Los Venados, beginning at the west corner of a patented survey called Charco de la India in the name of Andres B.Pareda, from which corner a large mesquite ≡ bears S 67 E 32 varas, another marked ≡ bears N 24 45 W 34 varas; thence N 55 E with line of said Pereda survey at 980 varas a marked mesquite 20 in.dia. marked ⁄\ at 2400 varas crossed Carrizo and Venados road, at 5655 varas struck Flores fence; thence on same course along said fence at 5783 varas other corner of said fence, at 9350 varas to the S corner of Mira Flores in the name of Eduardo Davila and also E corner of this survey and from which a mesquite 11 in.dia. marked X bears S 30 E 16 varas; thence N 45 W with line of said Mira Flores survey at 424 varas a mesquite marked ⁄\ old marks of survey etc., at 8730 varas a forked mesquite line tree 2 1/2 feet dia. marked ⁄\ at 9850 varas to corner also east corner of location in the name of J.Zapata, no trees; thence S 45 W at 2360 varas put W corner of this survey on line of Los Mogotes in the name of I. Gutierrez and from which a mesquite marked ⁄\ bears N 47 1/4 W 68 varas; thence S 45 E with line of Mogotes at 4330 put a corner from which a mesquite marked ⁄\ bears N 13 15 W 25 varas, another marked X bears S 28 W 39 varas; thence S 55 W over prairie at 5325 varas a large mesquite marked ⁄\ on ~~said~~ side of San Bartolo and Ovejas road; at 6070 to the extreme west corner of this survey; thence S 35 E 5026 varas to large stone and post, which is the place of beginning, being Survey No 198.

That the lands referred to in plaintiff's petition as "First Tract" and "Second Tract" are located on defendantas said land, and he claims title to the same by virtue of the said grant to Manuel Ramirez.

That the record of the ~~adjudication by the city council of Guerrero of the rights of said Manuel Ramirez to the lands of said tract No. 84~~ By said Manuel Ramirez and his ~~denoun~~cement of the said land and survey thereof by the proper authorities of the State of Tamaulipas and ~~the expediente~~ forms thereon and all copies of such proceedings have been lost, and though diligently sought for have not been found; but that such proceedings were had as hereinbefore stated.

Defendant also says that if it shall appear to the court that the right and title acquired by Ignacio Gutierrez and Manuel Ramirez in their respective lands as aforesaid is such a right and title as ought to be respected and protected, but that it does not satisfactorily appear that

counter 41070

said sums of $20 and $30 at which said lands were respectively valued were paid to the government of Tamaulipas at a time when such government might lawfully receive the same, and that such sums should have been paid to the government of Texas, then defendant here now tenders and pays into court the sum of $50.00 in settlement of such debts.

Wherefore defendant prays that he go hence hereof without day, with his costs.

J. F. McCauley

Attorney for said defendant.

counter 41041

No 20547

The State of Texas

vs

Jack J Haynes et al

Amended Answer of

Leonard Haynes

Filed June 16-1942

Jess C Hart Clerk

5

Copy of amended answer in Dist Ct.Concerning
surve s 427-428-431 and file 150238. Files
San Pat S. 3491-3494 & 3544 also concerns
two mexican grants in files San Pat. 1st
class 657 & 806.

Filed 8/15/41 Bascom Giles Comm.

By L.D.

counter 41012

See Minute Book of Supreme Court, pages 355-6-7-8 for reversal and final judgment against State rendered March 27, 1907.

85 S.W. - 1029
Haynes et al vs State
Jan 25 - 1905

100 SW Page 915

IN DISTRICT COURT, TRAVIS COUNTY, TEXAS.

June 16th, 1904.

NO. 345

20,546. THE STATE OF TEXAS vs. LEONARD HAYNES et al.

And now on this the 16th day of June, 1904, this cause coming on for trial the plaintiff appeared by her Attorney General, and bothparties announced ready; whereupon came on to be heard the exceptions and demurrers of the defendants to plaintiffs pleadings and the same having been considered and the Court having heard the argument of counsel is of the opinion that the same should be overruled;

IT IS THEREFORE ordered, adjudged and decreed by the Court that the defendants exceptions and demurrers be and the same are in all things overruled; to which ruling of the Court the defendants except:

Thereupon, on the same day this cause coming on to be heard on its merits, and a jury having been waived, and all matters of fact as well as of law having been submitted to the Court and the Court having heard the pleadings read, the evidence introduced, and the argument of counsel, is of the opinion that the plaintiff is entitled to recover.

IT IS THEREFORE ordered, adjudged and decreed by the Court, that the State of Texas, do have and recover of and from the defendants Leonard Haynes and H. M. Haynes the title and possession of the following described tracts of land, to-wit:

S-3511
First Tract. Being survey No. 522 made for the State of Texas by virtue of certificate No. 425 issued to the T. C. Ry. Co. situated in Zapata County, Texas, and bounded as follows: Beginning at a post, the N. corner of survey No. 521, thence S. 55° W. with same, 1900 varas to post for its W. corner and S. corner of this; thence N. 35° W. 1900 varas to post for W. corner; thence N. 55° E. 1900 varas to post for N. corner; thence S. 35° E. 1900 varas to the place of beginning, containing 640 acres.

Group 14 of 20

coexter 41043

S-3512

Second Tract. Being survey No. 524, made for the State of Texas by virtue of Certificate No. 426, issued to the T. C. Ry. Co. situated in Zapata County, about 16 miles N. 70° E. from Carrizo, and bounded as follows: Beginning at a post the N. corner of No. 523; thence S. 55° W. 1900 varas to post for S. corner; thence N. 35° W. 1900 varas to post for W. corner; thence N. 55° E. 1900 varas to post for N. corner; thence S. 35° E. 1900 varas to the place of beginning containing 640 acres.

S-3513

Third Tract. Being survey No. 526 made for the State of Texas by virtue of certificate No. 427, issued to the Texas Central Ry. Co., situated in Zapata County, about 17 miles N. 70° E. from Carrizo, and bounded as follows: Beginning at a post for the N. corner or No. 523 and S. corner of 525 for the W. corner of this survey; thence N. 55° E. 1900 varas to post for N. corner; thence S. 35° E. 1900 varas to post for E. corner; thence S/. 55° W. 1900 varas to post for S. corner; thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

S-3514

Fourth Tract. Being survey No. 528 made for the State of Texas by virtue of certificate No. 1162, issued to the H. E. & W. T. Ry. Co. situated in Zapata County, about 18 miles N. 75° East from Carrizo, and bounded as follows: Beginning at post, S' corner of No. 527 for the West corner of this survey; thence N. 55° E. 1900 varas to post for N. corner; thence S. 35° E. 1900 to post for E. corner; thence S. 55° W. 1900 varas to post for S. corner; thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

S-3515

Fifth Tract. Being survey No. 530 made for the State of Texas, by virtue of certificate No. 1163 issued to the H. E. & W. T. Ry. Co. situated in Zapata County, about 19 miles N. 71° E. from Carrizo, and bounded as follows: Beginning at a post the West corner of No. 529, for

counter 41044

the S. corner hereof; thence N. 55° E. 1900 varas to post for E. corner; thence N. 35° W. 1900 varas to post for N. corner; thence S. 55° W. 1900 varas to post for W. corner; thence S. 35° E. 1900 varas to the place of beginning, containing 640 acres.

S-3516

Sixth Tract. Begin survey No. 532 made for the State of Texas by virtue of certificate No. 1164 issued for the H. E. &. W. T. Ry. Co. situated in Zapata County, about 19 miles N. 65° E. from Carrizo, and bounded as follows; Beginning at a post, the W. corner of No. 531, for the S. corner hereof; thence N. 55° E. 1900 varas to a post for E. corner; thence N. 35° W. 1900 varas to a post for N. corner; thence S. 55° W. 1900 varas to a post for W. corner; thence S. 35° E. 1900 varas to the place of beginning, containing 640 acres.

S-3517

Seventh Tract. Being survey No. 534 made for the State of Texas, by virtue of certificate No. 485, issued to the M. K. & T. Ry. Co. situated in Zapata County, about 20 miles N. 67° E. from Carrizo, and bounded as follows: Beginning at a post the S. corner of No.533 for the W. corner hereof; thence N. 55° E. 1900 varas to a post for N. corner; thence S. 35° E. 1900 varas to a post for E. corner; thence S. 55° W. 1900 varas to a post for S. Corner; thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

S-3518

Eighth Tract. Being survey No. 536, made for the State of Texas by virtue of certificate No. 486, issued to the M. K. & T. Ry. Co. situated in Zapata County, about 21 miles N. 72° E. from Carrizo, and bounded as follows: Beginning at a post, the S. corner of No. 535 and N. corner of 529 and the W. corner hereof; thence N. 55° E. 1900 varas to a post for N. corner; thence S. 35° E. 1900 varas to a post for E. corner; thence S. 55° W. 1900 varas to a post for S. corner; thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

counter 41045

S-3438

Ninth Tract. Being survey No. 604, made for the State of Texas, by virtue of Certificate No. 4/894, issued to the G. C. & S. F. Ry. Co. situated in Zapata County, about 16 miles N. 65° E. from Carrizo, and bounded as follows: Beginning at a post, the W. corner of 524 for the S/ corner hereof; thence N. 55° E. with surveys 525, 524, and 532, at 4173 varas, a post for E. corner; thence N. 35° W. 733 varas to a post for N. corner; thence S. 55° W. at 2600 varas S. corner of 586, at 3062 varas, post for corner; thence N. 35° W. with No. 587, at 497 varas post for N. W. corner of this survey; thence S. 55° W. 1111 varas to a post for W. corner; thence S. 35° E. 1230 varas to the place of beginning, containing 640 acres.

S-3504

Tenth Tract. Being survey No. 563, made for the State of Texas, by virtue of certificate No. 524, issued to Samuel L. Cooke, situated in Zapata County, about 16 1/2 miles N. 56° E. from Carrizo and bounded as follows: Beginning at a post, the E. corner of 555, and the W. corner of 559 in the name of T. M. Jackson, for the N/ corner of this tract; thence S. 55° W. 1900 varas to a post for W. corner; thence S. 35° E. 1900 varas to a post for S. corner; thence N. 55° E. 1900 varas to a post for E. corner; thence N. 35° W. 1900 varas to the place of beginning, containing 640 acres.

S-3504

Eleventh Tract. Being survey No. 564 made for the State of Texas, by virtue of certificate No. 524, issued to Samuel L. Cooke, situated in Zapata County, about 16 miles N. 55° E. from Carrizo, and bounded as follows: Beginning at a post, the S. corner of No. 563, for the E. corner of this survey; thence N. 35° W. 3800 varas post for N. corner and W. corner of No. 555; thence S. 55° W. 950 varas to a post for W. Corner; thence S. 35° E. 3800 varas to a post for S. corner; thence N. 55° E. 950 varas to the place of beginning, containing 640 acres.

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counter 41046

S-3499

Twelfth Tract. Being survey No. 590 made for the State of Texas by virtue of certificate No. 1017, issued to Mrs. Martha Vogles, situated in Zapata County, and bounded as follows: Beginning at a large post on edge of Arroyo, being the North corner of two leages of J. M. Canales; thence S. 35° E. with same 4250 varas to post, the W. corner of No. 603 and S. W. corner hereof; thence N. 55° E. 620 varas to a post for corner and for N. corner of No. 603; thence S. 35° E. 1328 varas to a post for S. corner; thence N. 55° E. 1111 varas to a post for E. corner; thence N. 35° W. 2893 varas to a post for N. E. corner and West corner of 587; thence S. 55° W. 975 varas to a corner, the S. corner of No. 564; thence N. 35° W. 3800 varas to a post for N. corner; and W. corner of No. 564; thence S. 55° W. 450 varas to a post for corner, and S. corner of 565; thence N. 35° W. 545 varas to a post for a corner; thence S. 55° W. 306 varas to a post for W. corner; thence S. 35° E. 1660 varas to the place of beginning, containing 1280 acres.

294559 S-3506

Thirteenth Tract. Being survey No. 585, made for the State of Texas, by virtue of Certificate No. 1586, issued to S. P. Peebles, situated in Zapata County, about 18 miles N. 62 E. from Carrizo, and bounded as follows: Beginning at a post, the S. corner of 584, and S. 55° W. 6352, varas from the N. corner of Viela tract; thence S. 55° W. 2688 varas to a post for S. corner; thence S. 35° W. 2688 varas to a post for W. corner; thence N. 55° E. 2688 varas to a post for N. corner; thence S. 35° E. 2688 varas to the place of beginning, containing 1280 acres.

F-92829. S-3508

Fourteenth Tract. Being survey No. 586, made for the State of Texas by virtue of certificate No. 1710, issued to E. P. Ashley, situated in Zapata County, about 16 miles N. 63° E. from Carrizo, and bounded as follows: Beginning at a post in N. W. line of "La Viela" tract S.

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55° W. 9040 varas from its N. corner; for the E. corner of this survey, being the S. corner 585, S. P. Peebles; thence S 55° W. 2688 varas to a post for S. corner; thence N. 35° W. 2688 varas to a post for W. corner; thence N. 55° E. 2688 varas to a post N. corner; thence S. 35° E. 2688 varas to the place of beginning, containing 1280 acres.

F-92323 S-3510

Fifteenth Tract. Being survey No. 587, made for the State of Texas by virtue of Certificate No. 1788, issued to J. T. Sedgeley, situated in Zapata County, about 15 1/2 miles N. 60 E. from Carrizo, and bounded as follows: Beginning at a post in the N. W. line of Viela tract, S. 55° W. 11728 varas from its N. corner, being also the S. corner of 586, E. P. Ashley; thence N. 35° W. 2688 varas to a post for W. corner of 586; thence N. 55° E. 8064 varas to a post for E. corner of this and S. corner of 552, R. L. Robinson,; thence N. 35° W. 702 varas to a post for N. corner, and E. corner of 562, Jas. Campbell; thence S. 55° W. 8525 varas with line of surveys Nos. 562, 561, 559 and 563, to a post for W. corner of this survey; thence S. 35° E. 3390 varas to a post for S. corner; thence N. 55° E. 461 varas to the place of beginning, containing 1280 acres.

S-3525

Sixteenth Tract. Being survey No. 550, made for the State of Texas, by virtue of certificate 493, issued to the M. K. & T. Ry. Co. situated in Zapata County, about 17 miles N. 75° E. from Carrizo, and bounded as follows: Beginning at a post the S. corner of 549 for the W. corner hereof; thence N. 55° E. at 1636 varas E. corner of 549, at 1700 varas post for N. corner hereof; thence S. 35° E. with surveys 522 and 521 at 2125 varas post for E. corner of 521; thence S. 55° W. at 1700 varas post marked X for S. corner; thence N. 35° W. 2125 varas to the place of beginning, containing 640 acres.

Seventeenth Tract. Being a small strip of public domain situated in Zapata County, bounded as follows: Beginning at the N.

counter 1/078

corner of No. 549; thence S. 35° E. 2208 varas to E. corner of 549; thence N. 55° E. 64 varas to N. corner of 550; thence N. 35° W. 2208 varas to E. corner of 603; thence S. 55° W. 64 varas to place of beginning, containing 25 acres of land, more or less; and for which land writ of possession may issue.

It is further ordered, adjudged and decreed by the Court that the plaintiff have and recover of and from the defendants Leonard Haynes and H. M. Haynes, all costs in this behalf expended for which execution may issue; to which judgment the said defendants then and there excepted and in open Court give notice of appeal to the Court of Civil Appeals for the 3rd. Supreme Judicial District of Texas, at Austin.

It is further ordered that the original sketches and maps introduced in evidence, on the trial of this case may be detached from the Statement of facts and files and attached to the record on appeal in this cause.

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THE STATE OF TEXAS,)
)
)
COUNTY OF TRAVIS.)

I, D. J. PICKLE, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of Judgment in cause No. 20546, The State of Texas vs. Leonard Haynes et al, as same appears of record in Minute Book 10, page 469 et seq., of the records of this office.

Given under my hand and seal of office,
at Austin, Texas, this the 15th
day of April, A. D. 1907.

D. J. Pickle

Clerk District Court, Travis County, Texas.

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counter 41050

IN DISTRICT COURT, TRAVIS COUNTY, TEXAS.

June 16th, 1904.

20,547. THE STATE OF TEXAS vs. JAMES J. HAYNES et al.

And now on this the 16th day of June, A. D. 1904, this cause coming on for trial, the plaintiff appeared by her attorney General, and the defendants by counsel, and all parties announced ready for trial. Whereupon came on to be heard and considered the exceptions of the defendant Leonard Haynes to the jurisdicition to try and determine this cause and also his demurrer and exceptions of said defendant to plaintiff's pleadings all of which having been duly considered by the Court, were overruled, to which ruling of the Court the defendant then and there in open Court excepted. Thereupon came on to be heard the disclaimer of the defendants James J. Haynes, R. A. Haynes and Sabas Mesa, and said disclaimer having been considered, it is ordered by the Court that the plaintiff, the State of Texas, have and recover of said defendants James J. Haynes, R. A. Haynes, and Sabas Mesa any and all title or interest they or either of them may have or claim in and to the lands hereinafter described, but that said defendants go hence on their disclaimer and recover their costs in this behalf expended against the defendant Leonard Haynes, for which execution may issue. Thereupon a jury was waived and the matters of fact as well as of law were submitted to the Court, and the Court having heard the pleadings, evidence and argument of counsel, and having duly considered the case is of the opinion that the plaintiff is entitled to recover.

IT IS THEREFORE considered, ordered, adjudged and decreed by the Court that the State of Texas, plaintiff, herein, do have and recover of and from the defendant Leonard Haynes, R. A. Haynes, Saba Mesa and James J. Haynes, severally the title and possession of the following described tracts of land situated in the Court of Zapata,

Group 15 of 20

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Third Tract. Being survey No. 431 made for the State of Texas by virtue of scrip 1190 issued to James M. Summers, situated in Zapata County, about 14 miles, N. 14° E. from Carrizo, and bounded as follows: Beginning at a post the N. corner of porcion No. 6 in the name of Miguel Alegna de Lascano, from which a mesquite marked X bears S. 36° 15' W. 86 varas; thence S. 35 E. with said porcion at 1245 varas to large post supposed to be the W. corner of the Mogotes tract, at 2665 varas a post for S. corner of this survey; thence N. 45 E. 1696 varas to a post on the S. W. boundary of survey No. 430, for the E. corner of this survey; thence N. 45° W. 1399 varas to a post, W. corner of 430; thence S. 45° W. 190 varas to a post; thence N. 35 W. 1032 varas to a post on the S. E. Boundary of Borrego, grant, for the N. corner of this survey; thence S. 55° W. with said Borrego grant 1233 varas to the beginning, containing 640 acres.

Fourth Tract. Being 300 acres of unsurveyed public domain in Zapata County, about 13 miles N. 14-½° E. from Carrizo, at the S. corner of survey No. 431; thence N. 45° E. 1696 varas with said No. 431, J. M. Lummus, state section; thence S. 45° E. 500 varas to the S. corner of No. 430, J. M. Lummus, individual section; thence N. 45° E. 850 varas to the W. corner of 607, M. M. Hall, individual section thence S. 45° E. 100 varas to the N. corner of 610, J. R. Christian individual section; thence S. 45° W. 2250 varas to W. corner of 610, J.R. Christian, individual section; thence S. 45° E. 800 varas to N. corner of No. 428, J. O. Thomas, State section; thence S. 55° W. 953 varas to N. W. Corner of 428, J. O. Thomas, State section. Thence N. 35° W. 1200 varas to N. corner of porcion No. 5; thence N. 55° E. 400 varas to E. corner of Porcion No. 6; thence N. 35° W. 170 varas to the beginning, containing 300 acres.

And that plaintiff have its writ of possession.

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IT IS FURTHER ordered by the Court that the plaintiff have and recover of and from the defendant Leonard Haynes all cost in this behalf expended for which execution may issue to which judgment the defendant, Leonard Haynes then and there excepted and in open court gave notice of appeal to the Court of Civil Appeals for the 3rd. Supreme Judicial District of Texas.

It is further ordered by the Court that the parties be and they are hereby allowed 20 days after the adjournment of the present term of this court in which to prepare and file a statement of facts and bills of exceptions in this case.

It is further ordered that the maps introduced as evidence in the trial of this cause to be attached to the transcript of the record on appeal.

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THE STATE OF TEXAS,)
)
COUNTY OF TRAVIS.)

I, D. J. P I C K L E, Clerk of the District Court in and for said County and State, do hereby certify that the within and foregoing is a true and correct copy of Judgment in cause No. 20,547, The State of Texas vs. James J. Haynes et al, as same appears of record in Minute Book "V", page 492 et seq. of the records of this office.

Given under my hand and seal of office, at Austin, Texas, this the day of A. D. 1907.

Clerk District Court, Travis County, Texas.

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(S.3500)

J.M.Lummus

S.3544

J.M.Lummus

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Thomas Burton

D.403

Mrs. Martha Hall

Magotes"

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Manuel Ramirez

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J.M.Baldwin

(S.3491)

J.M.Su

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Geographical center

Zavala County

2050 Vs.

"Chor

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"La Huerta"

Jose Cuellar

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"El Socorro"

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SF.13351 ptd

SF.16216 ptd

SA.586 in S.A.F.

SA.III (S.3500)

Louis Volpendesta

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HEIDELBERG et al. v. BEHRENS.

(Court of Civil Appeals of Texas. March 10, 1905.)

HUSBAND AND WIFE — OWNERSHIP OF PROPERTY—ADVERSE POSSESSION—LIFE ESTATES—IMPROVEMENTS — LIABILITY OF REMAINDERMEN.

1. Where a wife claimed and occupied certain lots as her separate property for the period of limitations, and denied the community interest of her husband therein, and the rights of plaintiff and defendant as his heirs, they were not entitled to recover any part thereof after her death.

2. Improvements made by a life tenant cannot be charged against the remainderman.

Appeal from District Court, Harris County; Chas. E. Ashe, Judge.

Action by Lena Heidelberg and others against F. M. Behrens. From a judgment in favor of defendant, plaintiffs appeal. Reformed and affirmed.

Coleman & Abbott, for appellants. Brashear & Dannenbaum, for appellee.

GARRETT, C. J. This action was brought in the district court of Harris county for the Eleventh Judicial District by Lena Heidelberg, joined by her husband, against F. M. Behrens, for the recovery of an undivided one-half interest in lots 3, 4, and 5 of block 12 of Seneschal's Addition to the city of Houston, and for the adjustment of equities therein, and for partition. The plaintiff and the defendant were children of Fred and Minna Behrens, who acquired the property during their coverture. The husband died in 1879, and the surviving wife, Minna, died in 1903, after having conveyed to the defendant the three lots above mentioned, which she claimed in her own right. The defendant also made claim for improvements put on the property by his mother with money advanced by himself. Lots 4 and 5 had been conveyed to the wife, Minna Behrens, and lot 3 had been conveyed to the husband, Fred Behrens, but all were so acquired and conveyed as to make them community property; but Minna Behrens, after the death of her husband, claimed lots 4 and 5 as her separate property, and improved them, and let them to tenants. The plaintiff married in 1884, and moved off the premises. The cause was tried by the court without a jury, and resulted in a judgment in favor of the plaintiff for one-fourth of lot 3 charged with one-fourth of $230, the value of the improvements made by the mother, less $20 found to be due by the defendant for one-fourth of the rental value during his occupancy of the land since the death of his mother. The other two lots, 4 and 5, were adjudged to the defendant on the title acquired by Minna Behrens by limitation. The findings of fact made by the trial court are adopted by this court.

The evidence fully supports the finding of the court that Minna Behrens claimed the lots 4 and 5 as her separate property, and denied the community interest of her husband therein and of the plaintiff and the defendant as his heirs, and that she occupied and used them in such manner as to acquire the interest of the plaintiff by limitation. Lot 5 was not a part of the homestead at the date of the death of Fred Behrens, and the court did not err in not so finding. It was not inclosed, as were lots 3 and 4, and not used in any manner in connection with the home; but that is immaterial, as Minna Behrens claimed, improved, and occupied lots 4 and 5 in such manner as to acquire them by limitation. As to lot 3 she was a life tenant, and improvements made by her on it should not be charged to the plaintiff as remainderman. Clift v. Clift, 72 Tex. 144, 10 S. W. 338; Elam v. Parkhill, 60 Tex. 581.

There are no other questions that require decision. The judgment of the court below will be reformed so as to deny any claim for improvements against the plaintiff, and, as reformed, will be affirmed.

Reformed and affirmed.

[redacted] v. STAGE GUILLAR et al. [redacted] v. SAME. FLORES et al. v. SAME (two cases). GARZA et al. v. SAME. BENAVIDES v. SAME. PENA v. SAME.*

(Court of Civil Appeals of Texas. Jan. 25, 1905.)

LANDS — MEXICAN GRANTS — CONFIRMATION—TREATIES—CONSTRUCTION—EVIDENCE—ADMISSIBILITY.

1. Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, is not limited in its application to perfect legal titles, but authorizes the adjudication of imperfect or equitable titles having their origin in a grant of the Mexican government.

2. Equitable rights claimed by virtue of a treaty in the ceded territory cannot be adjudicated and established by the courts until the political department provides the remedy.

3. The provision of the protocol of the treaty of Guadalupe Hidalgo that Mexican grants in ceded territory shall preserve their legal value, and that the grantees may cause their "legitimate titles" to be acknowledged before the American tribunals, is not restricted to titles that had prior to the treaty become absolute and legal, but includes also equitable titles, which, if there had been no change of sovereignty, would have become perfect, or could have been made perfect if the proper steps had been taken.

4. The protocol of the treaty of Guadalupe Hidalgo, stating that the suppression of the tenth article of the treaty was not intended to annul the Mexican grants in ceded territories, but that these should preserve the legal value which they possess, etc., refers solely to titles existing in Texas at the time of the treaty, and not to titles to lands embraced in the treaty, and hence does not affect the provision of article 8 of the

*Rehearing denied March 8, 1905.

treaty that property of every kind belonging to Mexicans in the territory ceded shall be inviolably respected.

5. In an action by the state, in trespass to try title, brought under Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, the lands in question having been surveyed by the state for the common school fund, the state was entitled to recover as against defendants having at the time of the location neither a valid legal title nor equitable title, within the protection of the treaty of Guadalupe Hidalgo, or the laws of Texas existing at the time, or within the protection of the act of 1901.

6. In an action by the state, under Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, evidence considered, and *held* sufficient to show that the grantee in the Mexican grant under which defendants claimed denounced the land before the ayuntamiento of Guerrero; that that body passed favorably on the application; that a survey was made by the Surveyor General of the state of Tamaulipas; that expediente was formed, and became an archive of the public records at Guerrero; and that the alleged grantee was in possession of the land prior to the denouncement.

7. The fact that an applicant for a Mexican grant was in possession when the lands were denounced was sufficient to dispense with juridical possession.

8. Where, in trespass to try title by the state under Sess. Laws 1901, p. 4, c. 4, providing a method for confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, defendants claimed under a Mexican grant lands denounced before the ayuntamiento of Guerrero in 1835, it appearing that the archives of the city of Victoria, the capital of Tamaulipas, was destroyed by the French troops in 1864, and that the records were incomplete, it would be assumed that record evidence of the steps necessary to acquire title which was not produced, was destroyed.

9. In determining whether steps had been taken to acquire title in accordance with the laws of Tamaulipas then existing, it was proper to introduce parol evidence as to what was done, when the record evidence, by loss or destruction, could not be produced.

10. The Governor of Tamaulipas had no authority to make a grant to land east of the Rio Grande, January 2, 1848, under the treaty of Guadalupe Hidalgo.

11. Recitals in a grant by the Governor of Tamaulipas to land east of the Rio Grande, January 2, 1848, were not evidence of the facts recited in behalf of those claiming under such grant.

12. Decree No. 24 of the state of Tamaulipas decreed that the inhabitants of Guerrero might have five leagues of land each in recompense for which they were to pay the state $10 per league. Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, did not contain any provision for payment by a claimant of such sum as the claimant would have had to pay, had not the sovereignty of the soil changed. *Held* that, where one who had denounced land before the ayuntamiento of Guerrero did not pay the amount required by the decree, those claiming under him had no title protected by the treaty of Guadalupe Hidalgo or by the act of 1901, even though the amount demanded by the decree was tendered.

13. A presumption of grant cannot be indulged in, in order to authorize a confirmation under the act of 1901.

14. In trespass to try title by the state, under Sess. Laws 1901, p. 4, c. 4, against defendants claiming under a Mexican grant, a presumption of grant might be considered under defendant's plea of not guilty.

15. Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, provides for a consideration of the usages and customs prevailing in Mexico at the time the right was attempted to be acquired. *Held*, that the right must be adjudicated according to the laws then in existence, of which the courts of Texas take judicial notice, and that evidence of witnesses claiming to have knowledge of such laws and customs could not be considered as establishing the fact that some of the essential requirements of the laws were dispensed with, and could not afford a basis for an opinion as to the validity of the title in question.

16. Sess. Laws 1901, p. 4, c. 4, provides that any person who may be the original grantee, heir, or claimant of any grant within certain territory emanating from the Mexican government, and having its origin at such time as to be within the protection of the treaty of Guadalupe Hidalgo, may file a petition for confirmation of the title, and that the district court shall investigate and try the cause, and, if plaintiff shows his title by a preponderance of the evidence, judgment shall be given in his favor. *Held*, that the statute does not in itself confirm any grant.

Appeal from District Court, Travis County; V. L. Brooks, Judge.

Actions of trespass to try title by the state against Leonard Haynes and others, against Juan Vega Cuellar and others, against Leonard Haynes, against Juan Manuel Flores and others, against Espiridion Flores and others, against Porfiria Garza and others, against Servando Benavides and others, and against Filiberto Pena and others. From judgments in favor of plaintiff, defendants appeal. Affirmed.

J. F. Mullally, B. Coopwood, F. W. Seabury, and James B. Wells, for appellants. C. K. Bell, Atty. Gen., for the State.

FISHER, C. J. The first-named is an action, in the form of trespass to try title, brought by the state, under the act of the Legislature of Texas approved September 3, 1901, on pages 4 and 5, c. 4, of the Session Laws, in which judgment was rendered by the court in favor of the plaintiff. The state sued for 17 surveys, aggregating 12,825 acres of land, as alternate sections located and surveyed for the common school fund of the state of Texas. These locations were made upon surveys that were claimed to have been granted to Antonio Zapata and Pedro Bustamente by the state of Tamaulipas under decree No. 24, of date October 19, 183[illegible]. Appellants in this case (de-

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fendants below) pleaded a general denial and not guilty, and also alleged that the lands sued for are part of the two Mexican grants above stated, both having their origins prior to the 25th day of April, 1835, by adjudication of the ayuntamiento of the city of Guerrero, by virtue of decree 24; that a proper denouncement was made, and favorably passed upon by the ayuntamiento, followed by a survey made about April 25, 1835, by the Surveyor General of Tamaulipas upon which final title to the grants was issued by the Governor of Tamaulipas on the 2d day of January, 1838; continuous possession long prior to 1835, up to the date of the institution of this suit; and the re-survey of these grants by the county surveyor of Zapata county in 1871 and 1876. And they also pleaded the protection afforded by the treaty of Guadalupe Hidalgo. They also referred in their pleading the original price of these grants as fixed by decree No. 24, and pleaded presumption of grants based on more than 70 years' possession. Plaintiff, by supplemental petition, and for the purpose of showing that the state of Texas never recognized the grants, pleaded the record of two suits brought against the state for the confirmation of these grants under the law of 1870, in which suits the claimants recovered judgment in the district court of Travis county, which was reversed by the Supreme Court, and the cases finally dismissed by the plaintiffs. The case was tried before the court without a jury, and judgment, as before stated, rendered in favor of the state, and denying appellants' confirmation as prayed for.

We find the following facts:

Subsequent to the date upon which the Supreme Court reversed the judgment for the claimants for confirmation of titles to these lands under the act of 1870, the surveys sued for by the state were surveyed and located, in 1884, embracing the land in controversy, the field notes of which were introduced in evidence, as stated in the plaintiff's petition, and these locations were made upon the grants as set out and described and claimed by appellants in their answer. We find that this evidence upon the part of the state is sufficient to entitle it to recover, unless defeated by the testimony coming from the defendants, as hereinafter set out. There is no controversy about the facts, but the principal question to be considered is the sufficiency of the evidence offered by the appellants to show that they are entitled to recover.

Defendants read in evidence a final grant made by the Governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Antonio Zapata, as follows (translation):

"[Third Seal.] Years of eighteen hundred and forty eight and eighteen hundred and forty nine. 1848 & 1849. Fifty cents.

"Francisco Vital Fernandez, Brigadier General of the Army of the Mexican Republic and Governor of the State of Tamaulipas. Whereas, the citizen Antonio Zapata has paid into the Treasury of the State the fifty dollars at which were valued the five sitios of pasture land for large stock denounced by him at the point de Villa, as appears by the expediente made for the purpose, using the power that the law gives me upon this particular, I have thought proper to adjudicate to the citizen Antonio Zapata for himself, his heirs and successors the said five sitios for large stock, within the limits and boundaries made on the attached plan.

"Therefore, I order the authorities and inhabitants of the State to recognize the said citizen Antonio Zapata as the legitimate owner of the said five sitios of pasture land for large stock which are thus granted. Given at the city of Victoria on the second day of the Month of January, Eighteen Hundred and Forty eight.

"Franco. V. Fernandez

"[Seal.] Andres Guerrero, 2nd official.

"Pasture land of De Villa, surveyed for the citizen Antonio Zapata:

SW.
SE. NW.
NE.

"[Place of the seal of the State of Tamaulipas.]

Explanation of the demarcations:

a. Corner of La Lobera.
b. Corner of the Loma de Macho Vallo.
c. Corner of Los Huesos.
d. Corner of the Seja del Gruyo.
f. Branch called
g. Branch called Calavasas.
h. Branch called Villa.

"Explanation of the Survey.

"The area comprehended in the rectangle above drawn is five sitios of pasture land for large stock surveyed in the courses indicated in the plan, after correcting the variation of ten degrees that the needle has in this land, this tract of land is bounded on the northwest by the land of Las Comitas, on the S. W. by that of Los Chapparros Prieto, on the S. E. by that of J. Grullo and on the N. E. by vacant lands.

"City of Guerrero, April 25th, 1835. Lic. Antonio Canales."

Defendants introduced in evidence a certified copy of the survey and plat of said land made by the special deputy surveyor of Zapata county, as follows:

"The State of Texas, County of Zapata. Field notes of a survey of five leagues of land originally granted by the government of the state of Tamaulipas to Antonio Zapata on the 5th day of January, A. D. 1835. Said survey is situated in the county of Zapata 15 miles northeast of the town of Carrizo and on the waters of Veleno Creek, and is called Villa. Beginning at the south corner of a survey in the name of Pedro Bustamente and called Las Comitas, this corner being in

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the original title Lindero de la Lobera; thence N. 55 E. with the east line of said survey at 287 varas crossed derremadero de Villa, at 4230 varas an old line tree, at 4275 varas passed the eastern extremity of Laguna Quemada, at 7275 varas crossed road from Laredo to Rio Grande City bearing N. E., at 10300 varas the road from Teposan to the Escobas, at 10375 varas the derramadero de la Pita, at 14021 varas the east corner of said survey in the name of Bustamante, at 15000 varas set post for the north corner called Lindero del Macho Bayo, from which a mesquite marked X bears S. 55 E. 5 varas; also a mesquite marked ☓ bears S. 30 W. 5 varas; thence S. 35 E. at 2084 varas a post for line mark, at 4168 varas the road from the Tanque, at 8333⅓ varas set post for east corner from which a mesquite marked V bears S. 25 W. 3 varas, also a mesquite marked V bears N. 37 W. 29½ varas; thence S. 55 W. at 7000 varas entered the Nopalera de las Calabasas, at 10000 varas post for line mark I L at the Puesto de San Juan, at 10280 varas crossed road from Rio Grande City to Laredo, at 14000 varas crossed road to the Grullo, at 15000 varas set post for the south corner called Lindero del Macho from which a mesquite marked X bears S. 82 W., 25 varas, and a mesquite marked X bears S. 15 E. 20 varas; thence N. 35 W., at 3128 varas the arroyo de Simon, at 4003 varas the road to Teposan, at 8333⅓ varas to the place of beginning. Surveyed August 22nd to Sept. 2nd, 1874. James McLain, Santiago Cantu, chain carriers. Resurveyed April 20th, 1875.

"I, Felix A. Blucher, special deputy surveyor for Zapata County, do hereby certify that the foregoing survey was made according to law, and that the lines, boundaries and courses of the same are truly described in the foregoing plat and field notes. Felix A. Blucher, Special Deputy Surveyor for Zapata County.

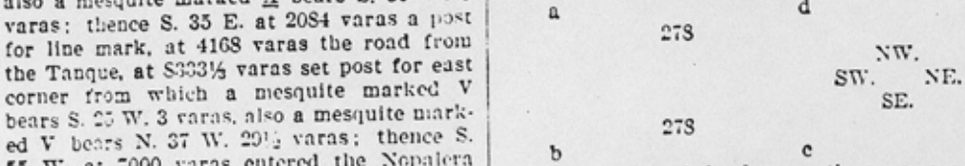
"Examined and recorded Nov. 28th, 1874."

Defendants read in evidence a final grant made by the governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Pedro Bustamente, as follows (translation):

"[Third Seal.] National Coat of arms for the years. Fifty Cents.

"Francisco Vital Fernandez, Brigadier General in the Army of the Mexican Republic, and Governor of the State of Tamaulipas; whereas the citizen Pedro Bustamente has paid into the treasury of the State the fifty dollars, at which were valued the five leagues of pasture land that he had denounced in the place called Las Comitas as appears from the expediente made to that effect, using the powers conferred upon me by the law upon the subject, I have resolved to grant to the citizen Pedro Bustamente, for himself, his heirs and successors, the indicated five leagues of pasture land according to the limits and demarcations appearing in the annexed map. Wherefore, I command the authorities and inhabitants of the state to hold and recognize the said citizen Pedro Bustamente as the legitimate master and owner of the said five leagues of pasture land that have been granted to him. Given at the city of Victoria on the 2nd day of January, Eighteen Hundred and Forty eight. Franco. V. Fernandez. [Rubric.] Andreas Guerrero, [Rubric.] 2nd official. [State seal of Tamaulipas.]

"Pasture land of Las Comitas, surveyed for the citizen Pedro Bustamente.



"Explanation of the demarcations: a, corner of La India. b, corner of La Lobera. c, corner of Mocho Valo. d, corner of Las Escobas. f, Waterhole called Rotamitas. g, ranch of Comitas. h, branch called Comitas. i, branch called Lobetas. j, branch called Villa. m, branch called Socoro.

"[Seal of the State of Tamaulipas.]

"Explanation of the Survey.

"The area comprehended in the rectangle above drawn contains five leagues of pasture land, surveyed to the courses indicated in the plan after correcting the variation of ten degrees that the needle has in this land to the northeast. This tract of land is bounded on the N. W. by the tract of Charco Largo, on the S. W. by those called Humarado and La Huerta, on the S. E. by the tract of Villa, and on the N. E. by vacant land. City of Guerrero, April 25th, 1835. Lic. Anto. Canales. [Rubric.]"

Defendants introduced in evidence a certified copy of a survey and plat of said land in the name of Pedro Bustamente, made by the district surveyor of Zapata county, as follows:

"The State of Texas, County of Zapata. Resurvey of five leagues of pasture land made for the heirs of Pedro Bustamente by virtue of a grant made by the state of Tamaulipas, Mexico, it being confirmation No. ——— in Zapata County and is situated about 24 miles N. 65 E. from the town of Carrizo. Beginning at the N. W. corner of a survey in the name of Jose Canales, called La Huerta, a post on eastern boundary of a survey in the name of Andreas Bautista Pareda, 4646 varas from the S. E. corner of said survey a mesquite post from which a mesquite tree marked X bears N. 67½ E. 8½ varas; thence S. 55¼ E. with the north boundary line of the J. Cuellar survey 2560 varas to the N. E. corner; thence S. 34¼ W. with the E. boundary of said survey 931 varas to a mesquite post in thicket for the

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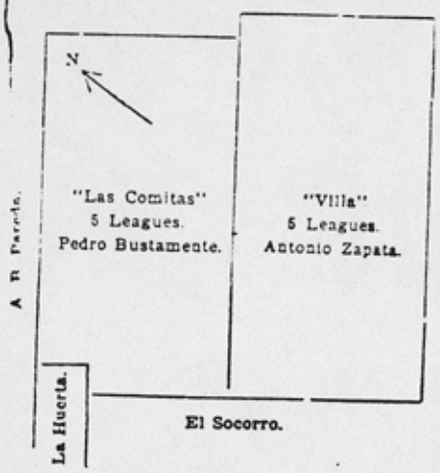
extreme S. W. corner of this survey; thence S. 35¾ E. 6570 varas to the old original southeast corner designated in the original map as Lindero de la Cabra, a large sink; thence N. 54¼ E. with the east line of this survey and west line of a survey in the name of Antonio Zapata called Villa at 287 varas crossed the redemadera de Villa, at 4230 varas an old elm tree marked A at 4275 varas passed the eastern extremity of the laguna Quemada, at 5000 varas set post in line, at 7275 varas road from Rio Grande City, bearing N. E. at 10300 varas road to Las Escobas from Teposan, at 10375 varas redamadero de la Pita, at 13462 varas a tree marked ≡ on left of line, at 14021 varas the northeast corner a mesquite post designated in the original as Lindero del Macho Bayo, from which a mesquite tree bears S. 19 W. 40 varas, marked ⅄, also another mesquite bears S. 83 W. 22 varas, another bears S. 61½ E. 15½ varas; thence N. 35¾ with the north boundary of this survey at 600 varas road to Las Escobas bearing N. N. E. at 1979 varas an old mesquite stump on line hewed square, at 9063½ varas the extreme boundary of a survey in the name of Manuel Pareda, a post set for the northwest corner of this survey, from which a mesquite bears S. 2 W. 2[illegible] varas; thence S. 54¼ with the east boundary of said Manuel Pareda survey at 3118 varas passed S. E. corner of said survey and N. E. corner of a survey in the name of Andreas Bautista Pareda, thence same course with eastern boundary of said survey at 13087 varas the place of beginning.

"Surveyed July 6th to 15th, 1874.

"Bearings marked ⅄

"Cesareo de las Santos, Martin Van Merick, Chain Carriers.



"I, Martin Van Merick, special deputy surveyor of Zapata county, do hereby certify that the foregoing survey was made according to the law and that the limits, boundaries and corners, with marks natural and artifial, are truly described in the foregoing plat and field notes. Martin Van Merick, Special Deputy Surveyor of Zapata County.

"I, Fernando Uribe, district surveyor of Zapata county, do hereby certify that I have examined the foregoing plat and field notes and find them correct, and they are recorded in my office in Book A. No. 1, pages 26, 27th, and 28. Given under my hand at Carrizo this 21st day of July, A. D. 1874. Fernando Uribe, District Surveyor of Zapata County."

Defendants introduced in evidence a translated extract from an inventory of the office of the ayuntamiento of Guerrero made in 1835, as follows:

"[L. S. A revenue stamp canceled.] City of Guerrero, February 20th, 1904. Number 9. Antonio G. Martinez, Municipal President of the city of Guerrero, Tamaulipas. Certified: That in the archives of this Presidency there is a parcel of inventories attached together, which is endorsed: 'Common book containing the inventories of the Ayuntamientos and Alcaldes, and delivery and receipt of their archives, which date from the year 1823.' There being on folios 23 reverse and front of 24 an inventory subscribed in the year 1835 by the 1st Alcalde citizen Rafael Uribe, in the folios of which appear an entry of the following tenor:

"Affairs pending:

1 expediente upon the measurement of pasture land for large stock denounced by the citizen Antonio Martinez Guiterrez.

Delivered to him — 1 idem of the citizen Eduardo Davila.

1 id. of the citizen Ygnacio Gutierrez.

1 id. of the citizen Yaidro Gutierrez.

1 id. of the citizen Simon de Ynojosa.

1 id. of Dona Tomasa de la Pena.

1 id. of the citizen Mariano Arispo.

Delivered to him — 1 id. of the citizen Luis Vola.

1 id. of the citizen Trinidad Vola.

Delivered to him — 1 id. of Dona Josefa Cuellar.

That of Don Felipe Pena was delivered to him and he sent it to Victoria.

Delivered to him on Nov. 7, 1836. — 1 expediente of Don Antonio Zapata.

1 id. of Don Jose Ma Canales.

1 id. of Don Anastacio Garcia.

1 id. of Don Pedro Bustamente.

1 id. of Don Jesus Cuellar.

1 id. of Don Onefre Garcia.

1 expediente upon the measurements of pasture lands for large stock denounced by Jesus Benavides.

1 id. of Don Hariano Garcia.

1 id. of Don Jesus Mesa."

"And at request of an interested party and for such use as he may rightfully make of it,

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this copy is issued to him on the twentieth day of February Nineteen Hundred and Four.

"E. R. Jiminez, Secretary.

"Antonio G. Martinez."

Defendants read in evidence the following certified copy of a letter:

"Fabian Zapata, First Supplemental Alcalde of this Municipality, acting with the witnesses of his assistance. He testified: That in the archives of this first court, which at this time is in his charge, there is a package with the following: 'City of Guerrero in the year 1840 and 1847. Folio of papers pertaining to the second constitutional court with various authorities.' And in said folio on its 26th leaf and reverse there is seen an official letter, which literally copied is as follows:

"'I remit to you seventeen titles, which contain the vacant lands denounced and surveyed from the year 1831, until that of 1835, in order that your honor may please present them to the Honorable Governor of the State, to the effect that they may have the necessary validation. The amount of the dues I do not send attached to said documents so as not to expose the same, and your Honor will deign also to direct in the most certain manner, the mode in which they may be paid, and draw against this receiver's office. God and Liberty.

"'City of Guerrero, November 28th, 1847.

"'To his Honor General Don Antonio Canales, City of Victoria.'

"'And at the request of an interested party and for the uses which may suit his rights, the present copy is issued, which I certify in the city of Guerrero, Tamaulipas, on the 8th day of month of August, one thousand nine hundred and two. All before me the authorizing alcalde and those of my assistance: we give faith.

"'The First Supplemental Alcalde.

"'Fabian Zapata.

"'Assisting, Guadalupe Rodiquez. Assisting, Eduardo Senz.'"

Andres Garcia testified by deposition in the year 1878 in the case of Eulalio Gonzales v. The State of Texas, then pending in the district court of Travis county for confirmation of the title to said Villa tract of land, which deposition was introduced in evidence by the defendants in this case. Said witness testified in substance as follows:

"I was municipal commissioner of Guerrero, Mexico, in 1855, alderman in 1857 and 1859, and second alcalde in 1861. I have known the Villa tract of land described in the title issued to Antonio Zapata since 1829, and I know he was then in possession of said land as a raiser of small stock. I am familiar with the law known as decree No. 24, of October 19, 1833, for denouncing lands. When said decree was published, all parties denouncing modified their denouncements to take advantage of the privileges granted by said decree No. 24, without destroying the ones they had already made; and, to have that right with more force by the antiquity of their ownership, the title of Antonio Zapata was issued under said decree No. 24. I have seen Antonio Zapata's denouncement of said land with the approval of the ayuntamiento of Guerrero, and the plat and field notes of the survey made by Lic. Antonio Canales, and the expediente formed thereon, all in accordance with said decree No. 24. That expediente was destroyed by the French troops in Victoria about 1865."

Defendants, by consent, read in evidence certain answers of the following witnesses to the interrogatories propounded to them in cause No. 3,289 (district court of Travis county), entitled Manuel Bustamente et al. v. The State of Texas, 47 Tex. 321 (said answers having been taken in the year 1872), as follows:

Jose Maria Canales: That he was then 72 years old. Had been regidor in 1830 and 1831, and first alcalde in 1846. That he knew the Comitas tract of land, hereinbefore mentioned, in 1828, and that it was then occupied by said Pedro Bustamente, with horses and cattle. That said Bustamente petitioned for a grant of said land through the alcalde of Guerrero, and that witness was one of the witnesses to the act of the alcalde approving said petition, and that said land was denounced by and surveyed for said Pedro Bustamente previous to the year 1836, in accordance with decree No. 24, of October 19, 1833, passed by the Congress of Tamaulipas.

Jose Maria Martinez: That he was then 54 years of age, and had always lived in the jurisdiction of Guerrero, Mexico, and had been regidor in 1860, constitutional second alcalde in 1861, and constitutional first alcalde and president of the Ayuntamiento in 1863 and 1864. That the title extended to Pedro Bustamente for the Comitas tract of land, as hereinbefore described, was, to his knowledge, issued on an original denuncio made previous to December 19, 1836, and on the decree of the ayuntamiento of Guerrero. That said Bustamente was entitled to the benefits of decree No. 24.

Jose Maria Benavidas: That he was then 62 years old, and had always lived in Guerrero, where he was regidor several times, and first alcalde in 1868; that the right of said Pedro Bustamente to said Comias tract was based upon a denuncio or seleccion of said land by said Bustamente previous to December 19, 1836; and that Bustamente had improvements and stock on said land long prior to that date, and was entitled to the benefits of said decree No. 24 by settles against Indians, etc.

Andreas Garcia: That he was then 56 years old, and had lived most of his life in the jurisdiction of Guerrero, where he was commissario, or justice of the peace, in 55,

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regidor in 1837 and 1839, and second alde in 1861; that in November, 1847, witness and two others left Guerrero for Victoria, the capital of Tamaulipas, carrying with them many expedientes of surveys belonging to different persons, each expediente containing the denuncio of the land, the certificate by the ayuntamiento of Guerrero that the applicant was entitled to the land under said decree No. 24, and all other proceedings had before the ayuntamiento in relation thereto; that these expedientes were by them deposited in the state department; that witness was present on January 2, 1848, and saw the Governor and Secretary of State of Tamaulipas sign all the titles or grants issued on that date, and that this Comitas tract was one of those whose expedientes were so filed and title issued thereon in his presence; that the said denuncio was made by said Bustamente prior to the year 1836.

It was proven on behalf of the defendants that Antonio Zapata, to whom the tract of five leagues called "Villa" was finally granted by the Governor of Tamaulipas on January 2, 1848, first settled on said land about the year 1822; that the records of the ayuntamiento or city council of Guerrero, as existing in the archives of said city, are incomplete and imperfect, and many parts thereof missing; that the archives of Victoria, Tamaulipas, were destroyed by French troops under Col. Dupin in the year 1864; that said Zapata, from the time he first settled on said land in 1822, continued in possession thereof until the same was surveyed for him in the year 1835, and thereafter under claim of right and ownership by virtue of said proceedings he remained in the actual, open, and peaceable possession of said land, cultivating the same, and raising his live stock thereon, with his servants, houses, stock pens, cultivated fields, and other improvements, until he died, about the year 1840, and thereafter his children and heirs continued in said possession and use of said land, and they and their assigns, including defendants, have so held the actual, open, and uninterrupted possession of said land, claiming to be the owners thereof, down to the present time; that no other persons have ever held possession of any part of said land adversely to said title; that during the years from 1836 until about 1852, the incursions of hostile Indians occasionally drove said Zapata and his heirs and their servants off said land, but they always returned to it as soon as it was safe to do so; that said Zapata and his children and heirs were Mexican citizens, and said heirs were the owners of his right and title to said land by inheritance from him during the year 1848, and for some years before and after that time, until they sold their interests, and defendants now hold and own and claim the same by mesne conveyances from said heirs; that said land has been assessed for taxes, and taxes have been paid thereon as land originally granted to Antonio Zapata ever since it was first put upon the assignment rolls, about the year 1871, and that all taxes thereon have been paid by the defendants and their grantors under the said title of Antonio Zapata; that the said land is dry grazing land, and not well adapted to stock raising, except during seasons when there is sufficient rainfall to supply the natural water holes; that a few small fields have always existed on the land, which have been cultivated by the owners during favorable seasons; that there are various ranches on the land, most of them very old, placed there by the heirs of Zapata at different times, besides the improvements made by said Antonio Zapata, and all have been inhabited by said heirs and their assigns since the death of the original grantee, with their servants and employés; that the defendants are the owners, through mesne conveyances from the heirs of Antonio Zapata, of all the right and title had or acquired by him or them in the western half or more of said Villa grant, and have had the same inclosed by a barb-wire fence about six years; that the whole of said Villa tract is covered by railroad certificates and their alternates, and that, after purchasing from and under the heirs of Zapata, defendants acquired the individual certificate locations; that there are ranch houses, pens, tanks, and wells on defendants' part of said land so inclosed, and that the tracts of said land described in plaintiff's petition as surveys No. 522, No. 524, No. 526, No. 528, No. 530, No. 532, No. 534, No. 536, No. 604, and No. 550, and the strip of 20 acres of public domain, are all from the land so held and possessed by defendants in the Villa tract or grant; and that the lands in controversy are reasonably worth $1.25 per acre.

It was proven that said Villa tract of land in the name of Antonio Zapata had been delineated on the official maps in the General Land Office of Texas since about the year 1870.

It was proven on behalf of defendants that Pedro Bustamente, to whom the tract of five leagues called "Comitas" was finally granted by the Governor of Tamaulipas on January 2, 1848, first settled on said land about the year 1822; that the records of the ayuntamiento of the city council of Guerrero are existing in the archives, and all other archives of said city are incomplete and imperfect, and many parts thereof missing; that the archives of Victoria, Tamaulipas, were destroyed by French troops under Col. Dupin in the year 1864; that said Bustamente was a Mexican citizen, and that from the time he first settled on said land, about the year 1822, he continued in possession thereof until his denouncement and the survey thereof for him in the year 1835, and thereafter, under claim of right and ownership by virtue of the proceedings had thereon, he remained in the actual, open, and peaceable possession of said land, cultivating

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the same, and raising his live stock thereon, with his servants and his houses, stock pens, and other improvements, until he died, about the year 1855; that although there were many incursions of hostile Indians during the time from the year 1836 until about 1874 into the territory where said land is situated, which caused the other settlers to temporarily leave their lands from time to time, yet the said Bustamente, who had built himself a blockhouse or fort upon said land, was never driven off by the Indians, and valiantly held his ground against them; that from his death, about the year 1855, his children and heirs, of whom there were many, continued in the open, peaceable, and uninterrupted possession and enjoyment of said land, cultivating small fields thereon during favorable seasons, and using the said land for general stock-raising purposes, it being dry grazing land, claiming the said land as their property, and holding the same; that while so holding and possessing the said land some of said heirs sold and conveyed their interest therein to other persons, who thereupon went into possession of the part so purchased by them, and such purchasers and their assigns, including the defendants in this suit, have continuously and uninterruptedly held, occupied, and possessed the parts of said Comitas tract so purchased by them up to the present time; that some of the heirs of said Bustamente, his children and grandchildren, have never sold their interest in said Comitas tract, and have always lived and still live upon it, holding and claiming by virtue of said title, with their servants and their houses, stock pens, and general ranch improvements; that the said land is reasonably worth the sum of $1.25 per acre; that since the time Pedro Bustamente acquired his right and title thereto no person has ever lived upon or possessed any part of the said Comitas tract or grant without the consent of said Bustamente, or those holding under him; that the improvements upon said Comitas tract consist of substantial rock dwelling houses, stock pens, wells, tanks, cleared and inclosed fields, and so forth, placed there at different times by said owners during the period of their said occupancy, and that during all of said time there have been about 40 or 50 persons constantly living upon said land, they being the said owners and their servants, and that the greater part of said land has been inclosed with substantial barb-wire fences for the past six or seven years.

That the said Comitas tract or grant has always been assessed for taxation, and taxes have always been paid thereon by said owners, as land originally granted to Pedro Bustamente ever since about the year 1874, when the same was first put upon the tax rolls; that defendants Leonard Haynes and H. M. Haynes are the owners, by purchase through mesne conveyances from and under certain of the heirs of said Pedro Bustamente, of a part of the western portion of said Comitas tract or grant which is inclosed by a barb-wire fence, with other lands belonging to them; and that the land sued for in this cause, and described in plaintiff's petition as surveys Nos. 563, 564, 590, 585, 586, and 587, are located upon said part of said land claimed by defendants to be the Comitas grant.

Defendants introduced in evidence a copy of a map of the four internal provinces of the east, and accompanying documents, fixing the boundaries of said provinces as shown thereon, taken from the archives at Saltillo, Mexico. This map was approved by the Viceroy of Mexico on October 15, 1815, and shows the boundary line between the provinces of Texas and Coahuila as being at the source of the Medina river, thence down the Medina to a point on the same directly south of Bejar (San Antonio), and thence southwesterly to the Nueces river. From this latter point the Nueces river to its mouth formed the boundary line between the provinces of Texas and Nuevo Santander. The latter province afterwards became the state of Tamaulipas, with the same boundaries.

It was agreed that the land in controversy is in that part of Texas which was formerly a part of Tamaulipas, and was within the jurisdiction of Guerrero. It was proven that said Comitas tract was first delineated on the official map in the General Land Office of Texas about the year 1870.

Defendants read in evidence article 6 of the Constitution of Coahuila and Texas, as follows: "Article 6. The territory of the state is the same as that embraced in the provinces formerly known by the names Coahuila and Texas. A constitutional law shall mark out its limits in respect to the adjoining states of the Mexican Confederacy." (Dated March 11, 1827.)

Defendants also read in evidence articles 7 and 8 of the colonization law of the state of Tamaulipas, of December 15, 1825, as follows:

"Article 7. From the very date wherein a foreigner is thus registered, he acquires domiciliation, and may as such an inhabitant denounce the vacant land he thinks best, presenting himself to that effect by writing to the respective alcalde, who shall decree what is proper for examining, measuring, and marking out the land designated after citing the adjoining proprietors, should there be any.

"Article 8. The instructive despatch being terminated and no opponent right resulting, the alcalde shall pass it to the executive of the state, by whom the title of adjudication and ownership shall be issued to the person interested, ordering that the alcalde of the town of his residence put him immediately in possession of the land granted. All of these proceedings shall be conducted officially, and the executive shall proceed with the audience of the fiscal of the Supreme Court of Justice of the state."

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Defendants also read in evidence decree No. 24 of October 19, 1833, of the state of Tamaulipas, as follows:

"No. 24. The Constitutional Congress of the free state of Tamaulipas, has decreed the following:

"Article 1. To the inhabitants of Carmago, Mier, Guerrero and Laredo, who may have no lands of their own, and who may possess stock to occupy them, there shall be given at once, not exceeding five leagues each, and in compensation they shall pay the state ten dollars for each league.

"Art. 2. Those only are comprehended in the foregoing article who lived in said villages during the last Indian war now passed, and who did not emigrate previous to the year 1821.

"Art. 3. The respective ayuntamiento shall inform itself by previous justification, whether the interested party, who may possess himself has lands of his own and stock with which to occupy them.

"Art 4. These lands shall not be alienated until twenty years have passed after the concession; and if so alienated the state recovers its right to them, and he who may have been the owner loses whatever advances and useful and necessary improvements that he may have made; it being sufficient for a judgment of condemnation that the alienation shall be made to appear. Upon this point the respective administering judge shall decide summarily, without prejudice to the legal remedies of the interested party.

"Art. 5. The benefits of article 1 shall continue for three years from the day of the approval of this decree, after the expiration of which term no one shall obtain lands, except according to the ordinary laws.

"Art. 6. The ayuntamientos and their individual members collectively and each one for himself are responsible personally and pecuniarily, if they are wanting in the truth of the inquiry exacted by article 3, and the government having heard their defense shall make their responsibility effective.

"The Governor of the state shall take care that this decree be understood, and shall order its execution, having it printed, published and circulated. Wherefore, I command that it be printed, published and circulated, and that it be duly executed.

"City of Victoria, October 19th, 1833, 10th of the installation of the Congress of the State.

"Francisco Vital Fernandez.
"Gabriel Arcos, Secretary of State."

Leonard Haynes testified as follows: "I am familiar with the land in controversy in this case. I have had the lands which are shown on the map exhibited to me inclosed for as much anyhow as three years. I as county surveyor of Zapata county located the certificates and alternate sections, copies of which have been read in evidence by the state. They were located for my brother, J. J. Haynes. There is a small strip of vacant land on the eastern edge of my pasture, as shown by the map; that is, the land is vacant, unless it has been appropriated by the Zapata grant. The rental value of the land is as much as three cents per acre per annum when they can be rented, but it frequently happens, as it has of late years, that it is so dry in that country that they cannot be rented at any price."

Plaintiff next introduced in evidence a certified copy of a petition filed in the district court of Travis county on the 26th day of September, 1871, by Eulalio Gonzales and his wife, Petra Zapata, Bartolo Moralos and his wife, Rafaela Zapata, Jose Ma. Coronado and his wife, Maria Anna Zapata, and Dolores Zapata, the only heirs of Antonio Zapata, to which the state of Texas was defendant. The plaintiffs in that suit claimed that part of the land in controversy which was then and is now claimed to have been granted to Antonio Zapata, and sought to have the title confirmed. Plaintiff also introduced in evidence the answer of the defendant, the state of Texas, in said case, which consisted of a general denial. Plaintiff then introduced the judgment of the district court of Travis county in favor of the plaintiffs, and notice of appeal therefrom to the Supreme Court, and the judgment of the Supreme Court of the state of Texas reversing and remanding said case, and a copy of the judgment of the district court of Travis county dismissing said cause from the docket on March 7, 1884. Plaintiff next introduced in evidence a certified copy of a petition filed in the district court of Travis county on the 9th day of January, 1872, by Manuel Bustamente and Felix Rodriguez, as the heirs of Pedro Bustamente, to which the state of Texas was defendant. The plaintiffs in that suit claimed that part of the land in controversy which was then and is now claimed to have been granted to Pedro Bustamente, and sought to have the title confirmed. The plaintiff also introduced in evidence the answer of the defendant, the state of Texas, in said cause, which consisted of a general denial. Plaintiff then introduced the judgment of the district court of Travis county in favor of the plaintiffs, and notice of appeal therefrom to the Supreme Court, and the judgment of the Supreme Court of the state of Texas reversing and remanding said case, and a copy of the judgment of the district court of Travis county dismissing said case from the docket on March 7, 1884.

Before considering the merits of the appellants' claim, it is necessary to pass upon certain questions raised by the state. It is contended by the state that the act of 1901, under which this suit is brought and the appellants assert their right to confirmation, does not provide for the adjudication of imperfect or equitable titles; that the purpose and intention of the act was to only apply

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to legal titles emanating from the government of Mexico prior to the 2d day of March, 1836; that the protocol of the treaty of Guadalupe Hidalgo restricts and limits the general scope of the eighth article of that treaty, and affords protection only to complete legal titles existing on the 2d day of March, 1836; that the courts have no power to adjudicate equitable titles emanating from the government of Mexico, unless the law that provides for confirmation of titles expressly authorizes such titles to be adjudicated by the courts; that, if the treaty does afford protection to imperfect titles, such protection can only be accorded where the political department of the government provides the remedy. In the recent case of the State of Texas v. Russell (decided by this court, and which is not yet officially reported) 87 S. W. 288, we had occasion to pass upon these questions adversely to the contention of the state. The territory where the land embraced in that suit is situated was a part of the state of Tamaulipas on the 2d day of March, 1836, and the lands embraced in this suit and the companion cases that go with it, which are disposed of by this case, are located in the same territory, which was a part of Tamaulipas on the date named. In view of the fact that the case cited is not yet reported, and of the importance of the questions involved as applying to the case before us, and in order to make the opinion in this and the companion cases complete, we deem it necessary not to be content with a bare reference to the unreported case, but to copy so much from the opinion of the court as is there relevant to these questions, in order that this opinion may be complete on all the questions of law raised in the case:

"It is provided in the first section of the act of the Special Session of 1901, p. 5, c. 4, providing for the confirmation and for testing the validity of titles within the boundaries of Texas, where the tracts in controversy are located: 'That any person or persons who may be the original grantee, heir, legal assign or in any manner the owner or claimant of any grant, tract or survey of land or part, situated between the Nueces and Rio Grande rivers, and below a line drawn from the northern boundary of Webb county to the mouth of Moros creek, where the same empties into the Nueces river, and emanating or claimed to have emanated from the Spanish or Mexican governments, and having its origin at such time as to be and being within the protection guarantied by the treaty of Guadalupe Hidalgo, entered into between the United States and Mexico and proclaimed on the 4th day of July, 1848, may file a petition in the district court of Travis county, Texas, against the state of Texas as defendant, for the confirmation of the title thereto, and also for the adjudication of his, her or their title, right, interest or claim therein and thereto, as against the state; which petition shall be filed with the district clerk of the county in which suit is brought, at least twenty days before the time of holding the next succeeding term of the district court in and for such county, and shall contain a full description of the grant, tract or survey of land claimed, setting forth particularly its situation, boundaries and extent, and the ownership, right, interest or claim of the plaintiff or plaintiffs and each of them in and to said land, and the source from which such ownership, right, interest or claim emanates, and shall accompany and file with such petition the titles or evidences of title or right, or true copies thereof, and if in a foreign language, in addition, true translations thereof, under which the same is held or claimed, or if such ownership, right, interest or claim of plaintiff does not have its origin in or is not based upon such written evidences of title, right, interest or claim, then a statement in writing, setting forth substantially the facts upon which said ownership, right, interest or claim is based and of which it consists; and the district court shall thereafter, at a regular term thereof investigate the right and try said cause in accordance with the laws of nations, the laws, usages and customs of the government from which said ownership, right, interest or claim emanates or is derived, and the Constitution, laws, and treaties of the United States of America, and of this the state of Texas, and the principles of equity, so far as the same are applicable and if in accordance therewith, the plaintiff or plaintiffs as the case may be, shall by a preponderance of the testimony show that he is entitled thereto, shall give judgment in favor of such plaintiff or plaintiffs against the state in favor of and for the confirmation of the title to said land, describing the same by metes and bounds, or in favor of the state against such claimant or claimants, as the facts may warrant.'

"There are other provisions of the act, one of which authorizes the state to bring suit. It is insisted that this act does not permit the adjudication of imperfect or equitable titles asserted by the claimant, which had its origin under the Mexican government. It is true that this statute in question, as was the case in the acts of 1860 and 1870, does not in express terms authorize the adjudication and confirmation of imperfect titles. But the language of the act in effect declares that the court may determine and adjudicate the right or title of a claimant relying upon a title purporting to emanate from the Mexican government. The language here is about the same as that contained in the act of Congress of March 3, 1851 [9 Stat. 631, c. 41], passed for the purpose of ascertaining and settling claims to lands, existing in California, derived from the Mexican government. Chief Justice Taney, in the case of Fremont v. The United States, 17 How. 542, 15 L. Ed. 241, in construing this act, uses

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this language: 'It will be seen from the quotation we have made that the eighth section embraces not only the inchoate or equitable titles, but legal titles also, and requires them all to undergo examination and be passed upon by the court.' As said before, the language used in the act of 1901, in its terms, substantially employs, so far as designating the character of title that might be adjudicated, similar language to that used in the eighth section of the act of Congress of 1851 [9 Stat. 632], and the construction placed upon that act by the Supreme Court of the United States in the Fremont Case is applicable to the act of the Legislature under which this present claim was adjudicated. As bearing out this construction, it is not reasonable to suppose that the Legislature would limit the jurisdiction of the court to passing upon merely legal titles which became perfect and absolute prior to the time that Texas declared her independence, for it is well settled that titles that had reached the point that they could be considered as final and legal needed no protection at the time of change of government from the treaty. Fremont Case, 17 How. 542, 15 L. Ed. 241; Dent v. Emmeger, 14 Wall. 308, 20 L. Ed. 838; Ainsa v. M. M. Railway, 175 U. S. 76, 20 Sup. Ct. 28, 44 L. Ed. 78.

"If, as contended by the state, the title was merely equitable, and was not embraced in the act of 1901, the courts would have no power to adjudicate and establish that title, for it is too well settled now to admit of contradiction that equitable rights claimed by virtue of a treaty in the territory ceded cannot be adjudicated and established by the courts until the political department provides the remedy. Trimble v. Smithers, 1 Tex. 790; League v. De Young, 2 Tex. 500; Jones v. Borden, 5 Tex. 412; McMullen v. Hodge, 5 Tex. 77; Paschal v. Perez, 7 Tex. 366.

"In Astiazaran v. Santa Rita Land & Mining Company, 148 U. S. 81, 13 Sup. Ct. 457, 37 L. Ed. 376, the court says: 'Undoubtedly, private rights of property within the ceded territory were not affected by the change of sovereignty and jurisdiction, and were entitled to protection, whether the party had full and absolute ownership of the land, or merely an equitable interest therein which required some further act of the government to vest in him a perfect title. But the duty of providing the mode of securing these rights and of fulfilling the obligations imposed upon the United States by the treaties belong to the political department of the government, and Congress might either itself discharge that duty, or delegate it to the judicial department'—citing many cases.

"The Supreme Court of the United States, also, in the case of United States v. Santa Fé, 165 U. S. 675, 17 Sup. Ct. 472, 41 L. Ed. 874, states that the duty of protecting imperfect rights of property under treaties, such as those by which the territory was ceded by Mexico to the United States, in existence at the time of the cession, rests upon the political, and not the judicial, department of the government; and to the extent only that Congress had vested them with authority to determine and protect such rights can courts exercise jurisdiction. Where, therefore, a tribunal of limited jurisdiction is created by Congress to determine such rights of property, a party seeking relief must present for adjudication a case clearly within the act, or relief cannot be given; citing authorities. This doctrine is maintained in many recent decisions of that court, among which is United States v. Sandoval, 167 U. S. 292, 17 Sup. Ct. 868, 42 L. Ed. 168, and Ainsa v. The United States, 161 U. S. 218, 16 Sup. Ct. 544, 40 L. Ed. 673.

"In the construction of those provisions of a treaty that provide for the protection of property of owners within the ceded territory, it has been uniformly held that the term 'property' embraces all rights, whether legal, equitable, or imperfect. Strother v. Lucas, 12 Pet. 435, 9 L. Ed. 1137; Hornsby v. United States, 10 Wall. 224, 19 L. Ed. 900. It could not seriously be contended that on the 2d day of March, 1836, the date of the declaration, that the territory where the property is situated was within the limits of Texas, or that the mere declaration announced upon that date could affect the territory where these lands were situated, because at that time that portion of the state which is now embraced within its boundaries was a part of the state of Tamaulipas. Texas up to that time had not, and did not prior to the 19th day of December, 1836, ever seriously assert any claim or right that her boundaries included the territory where is situated the land in controversy. Then, if this be true, we must ascertain and determine what effect the protocol of the treaty of Guadalupe Hidalgo had upon the territory where the lands in question are situated; for, if it should be determined that it was not the intention of the protocol to control the eighth article of the treaty, or to affect titles to lands emanating from the state of Tamaulipas prior to the time that Texas had ever asserted any right to any part of the territory of the state of Tamaulipas, or if we should determine that the expression 'legitimate titles,' mentioned in subdivision 2 of the protocol, was not intended solely to apply to legal titles existing prior to the 2d day of March, 1836, then, under the principles of law as stated, that should apply to equitable titles, the title in controversy should be protected, whether the grant was complete or imperfect on the 2d day of March, 1836.

"The facts detailed in the record with reference to the steps taken to acquire the grants from the government of Mexico clearly show that everything necessary to be done was done at a time when the state of Tamaulipas had sole and exclusive jurisdic-

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tion of the territory where the lands are located, and the title became perfect at a time when such jurisdiction existed. Under the view expressed, and heretofore stated, and hereafter to be stated, whether we regard the title as legal or equitable, it is entitled to protection under the facts as found by this court.

"By the eighth article of the treaty of Guadalupe Hidalgo, it is provided that property of every kind belonging to Mexicans in the ceded territory shall be inviolably respected. In the protocol agreed to between the two governments upon the suppression of the tenth article of the treaty as originally submitted, and which protocol was an agreement reached by the government upon the suppression of that article, it is provided that: 'The American government, by suppressing the 10th article of the treaty of Guadalupe Hidalgo, did not in any way intend to annul the grants of land made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the treaty preserve the legal value which they may possess and the grantees may cause their legitimate titles to be acknowledged before the American tribunals. Conformably to the law of the United States legitimate titles to every description of property, personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th day of May, 1846, and in Texas up to the second day of March, 1836.'

"It is contended that this provision of the protocol is a limitation upon the general terms of the eighth article of the treaty; that, so far as Texas is concerned, it was the intention, by the use of the expression 'legitimate titles,' to only protect perfect legal titles that existed in Texas on the 2d day of March, 1836. We have not been able to find any case in which such a construction has ever been placed upon the treaty; but, to the contrary, it has been inferentially held in State v. Bustamente, 47 Tex. 321, State v. Sais, 47 Tex. 309, and other Texas cases on the same lines that might be mentioned, that steps taken to acquire title subsequent to the 2d day of March, 1836, could be considered in determining whether such equities were shown as would authorize the court to decree confirmation in favor of the claimant. The court evidently in those cases had before them the treaty between this government and Mexico, and the protocol which is a part of the treaty. And in the Bustamente Case it is stated that the title offered by the claimant in that case was excluded upon the ground that it was executed at a time at which Mexico had lost her jurisdiction over the territory where the lands were situated, and the location of the lands considered in those cases and other similar cases was within the state of Tamaulipas; and in that case the intimation is clear that if the equitable steps had been complete, or the title had been finally issued prior to the 19th day of December, 1836, or possibly prior to 1846, when the American government by its armed occupation assumed jurisdiction over that portion of the country where the land is situated, such title would have been confirmed.

"In cases brought before the Supreme Court of the United States, in passing upon titles emanating from the Mexican government to lands situated in California, we have found no instance in which the expression 'legitimate titles,' used in the protocol, was held to mean a perfect grant existing on the 13th day of May, 1846; but, upon the contrary, that court has held that protection would be afforded to titles emanating subsequent to that date up to the 7th day of July, 1846, the time when the American troops captured Monterey, the then capital of California, and by virtue of such occupancy became the masters of that territory and assumed jurisdiction over it. Stearns v. United States, 73 U. S. 594, 18 L. Ed. 843; Hornsby v. United States, 10 Wall. 224, 19 L. Ed. 900; More v. Steinbach, 127 U. S. 70, 8 Sup. Ct. 1067, 32 L. Ed. 51; United States v. Pena, 175 U. S. 500, 20 Sup. Ct. 165, 44 L. Ed. 251.

"The terms 'grants' and 'legitimate titles,' employed in the protocol, we do not think mean an absolute perfect grant existing on the 2d day of March, 1836, in Texas, and on the 13th day of May, 1846, in California. The meaning conveyed by the expression 'legitimate titles' could not be held to mean that it related to a stronger title than would be implied from the use of the word 'grants.' Now, the expression 'grants' that is employed in treaties comprehends, says the Supreme Court of the United States in Strother v. Lucas, 12 Pet. 435, 9 L. Ed. 1137, 'not only those which are made in form, but also any concession, warrant, order, or permission to survey, possess, or settle, whether evidenced by writing or parol, or presumed from possession.' Citing authorities.

"The article quoted in the protocol expressly states that it is not the purpose, by the suppression of the tenth article, to annul grants, and that those grants, notwithstanding the suppression of the article of the treaty, preserve the legal value which they may possess, and the grantees may cause their legitimate titles to be acknowledged in the American tribunals. The words 'legitimate titles,' as here used in the subsequent portion of the protocol quoted, mean titles that are comprehended in the term 'grant'; and when we have ascertained that the construction of the term 'grant,' as employed in treaties, embraces all character of titles, legal or equitable, it reflects the sense and meaning in which the term 'legitimate titles' was intended to be employed. The case cited was decided by the Supreme Court of the United States in 1838, about

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ten years prior to the execution of the treaty of Guadalupe Hidalgo; and it is reasonable to assume that the term 'grant,' employed in the treaty, would be and should be given a construction and application that had been previously determined by the Supreme Court. Therefore we reach the conclusion that the expression 'legitimate titles' does not mean merely to embrace titles that had become absolute and legal, but also was intended to apply to equitable titles existing at that date, which, if there had been no change of sovereignty, would thereafter have become perfect, if the steps had been taken to acquire the legal title, and the equities had become so perfect that the claimant could have demanded the legal title prior to the time that Texas or the United States government assumed jurisdiction over the territory where the lands may be situated. The fact is too well settled now to admit of dispute but that the eastern boundary of Tamaulipas extended to the Nueces river, including the land in controversy, at least up to the 19th day of December, 1836, when Texas by an act undertook to extend her boundaries to the Rio Grande river. It is not necessary for us to determine whether her mere paper title to such extension was valid, and whether Tamaulipas did not, prior to the occupation by the American troops in 1846, lose her jurisdiction over the territory lying between the Rio Grande and the Nueces, for all of the proceedings in this case, the equitable steps taken to acquire title, as well as the issuance of the legal title, occurred prior to the 19th of December, 1836."

In appellants' second assignment of error it is contended that the state failed to prove its title to the land in controversy by a preponderance of the evidence, and that, as the defendants were in possession under a title emanating from the state of Tamaulipas, the mere proof of the location of surveys by the state for the common school fund was not sufficient evidence of title to overcome the right asserted by the appellants. The solution of this question depends upon the fact whether the appellants had, at the time that the locations were made, either a valid legal or equitable title that was within the protection of the treaty of Guadalupe Hidalgo, or the laws of this state existing at that time, or within the protection afforded by the act of 1901. If no such title then existed in the appellants or those under whom they claim, then the land could be regarded as public domain, and was subject to location; and the state, by reason of its sovereign ownership of all untitled lands, could recover from any one in possession, independent of the fact whether it had made surveys for the common school fund or not. If, as a fact, such locations were so made, it would also vest title in the state upon which it could base an action of trespass to try title. If, in disposing of this case for the reasons hereinafter stated, the conclusion should be reached that the appellants did not have a title to the land, then it is clear that the state would be entitled to recover.

We have examined the evidence in the record in the Bustamente Case that was decided by the Supreme Court in 47 Tex. 321, which involved part of the land in controversy in this case, and wherein similar facts and similar ruling was made as to the Zapata grant. The opinion in that case does not set out the facts, but, as said before, we have examined the record, and find the facts in the case before us a little stronger than was originally urged in the case referred to; and we conclude that the evidence in the record justifies the assumption that Zapata and Bustamente denounced the lands in controversy before the ayuntamiento of Guerrero in 1835, and that that body passed favorably upon the application; that a survey was made by Canales, the surveyor general of Tamaulipas, in 1835, of these two purported grants, and the expediente was formed and became an archive of the public records at Guerrero; and that the claimants were in possession of the land prior to the denouncement. The evidence does not show any juridical possession, but the fact that they were in possession when the lands were denounced, and continued in possession thereafter, was sufficient to dispense with juridical possession, as is decided in the case of State v. Sais, 60 Tex. 88; and they continued in possession for such length of time as would justify a presumption of grant, provided the evidence in the record did not repel such presumption.

The evidence also warrants the assumption that, while a copy of the expediente was not introduced in evidence, the copy of the index, as stated by the facts, indicates that an expediente was formed, and such fact is also established by the parol evidence in the record. Copies of the record of the denouncement to the ayuntamiento, and the favorable action of that body upon the application, was not introduced in evidence; but the evidence in the record which is not objected to tends to show that such denouncement was made to the ayuntamiento, and they acted favorably upon it. The evidence in the record also shows that the public archives in the city of Victoria were destroyed by the French troops in 1864, and that the records of Guerrero were imperfect and mutilated, and many missing, which fact would justify us in assuming that the record evidence of steps taken to acquire title which was not produced was lost or destroyed.

The only evidence showing that the purchase price of the land was paid is the statement contained in a letter to Canales of date November 28, 1847, found upon page 41 of the record. That is merely a statement to the effect that the amount of dues were received, but were not remitted for fear that it would expose the same, which

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was doubtless intended to mean that the dues would become lost in transmission. Thereafter, on the 2d day of January, 1848, the Governor of Tamaulipas issued what purported to be the final grant. In determining whether steps had been taken to acquire title in accordance with the law of Tamaulipas then existing, it was proper to introduce parol evidence as to what was done when the record evidence, by loss or destruction, could not be produced. State v. Cuellar, 47 Tex. 296; State v. Sais, 47 Tex. 318; and Castro's Case, 24 How. 349, 16 L. Ed. 659.

In the Bustamente Case, in 47 Tex. 321, it seems, and some of the other cases that were decided at that time involving some of the grants now before the court, evidence was not introduced showing the loss or destruction of, or the inability to produce, the record evidence of title, but the omission in that respect is supplied by the evidence in the cases now before us.

In the case of State v. Bustamente, 47 Tex. 321, the same final grant that we are now considering, which was undertaken to be issued by the Governor of Tamaulipas on the 2d day of January, 1848, was passed upon by the Supreme Court, and it was there held that: "The proof was therefore not sufficient, unless the Governor of Tamaulipas had on the 2d day of January, 1848, the right to grant this land east of the Rio Grande under the treaty of Guadalupe Hidalgo, concluded one month thereafter, to wit, on the 2d day of February, 1848. We are of opinion that he had no such right. Texas claimed the territory in defining its boundaries on the 19th of December, 1836. In 1846 the claim was perfected by possession and the actual exercise of exclusive jurisdiction, and from that time it was lost by the state of Tamaulipas in Mexico, for all purposes whatever, whether of judicial action or the exercise of powers relating to eminent domain. And it never afterwards recovered such lost powers. The action of the Governor in making concession was without authority, and neither advanced nor prejudiced the imperfect title to the land, which may have been acquired previous to the 19th day of December, 1836."

In the case of Stearns v. The United States, 73 U. S. 594, 18 L. Ed. 843, it is held that the Mexican authorities in the state of California undertaking to exercise authority subsequent to the 7th day of July, 1846, were without jurisdiction, for at that time the American troops had acquired possession of that territory. The same doctrine is announced in United States v. Pena, 175 U. S. 509, 20 Sup. Ct. 165, 44 L. Ed. 251. These decisions are conclusive upon the point that in November, 1847—the time that it appears the purchase price of the land was paid to the government of Tamaulipas—and at the time that the Governor, on January 2, 1848, issued the grant, that the government of Mexico had lost jurisdiction over the territory where these lands are situated, and that such payment and grant could not be considered as evidence of any right acquired against the government of Texas. It is true that the document evidencing the payment of the purchase price of the land and the grant issued by the Governor of Tamaulipas were not objected to when introduced in evidence; but the court, in passing upon their validity and the extent of the facts recited, could only give them such weight as evidence as they would be legally entitled to. These documents, under the decisions quoted, were not serviceable as evidence of title upon the ground stated, because the officers that issued them were lacking in authority. And if this is true they could not, by recital of facts contained in these documents, make evidence serviceable for the claimants, when the power to make such recitals was lacking. In other words, if these papers were invalid as evidence of title, they do not become legal evidence of any fact recited in them. Consequently the conclusion must be reached that we cannot judicially consider, in passing upon the merits of this case, any facts recited or undertaken to be established by the contents of these instruments.

Now, this leads us to the question as to what effect should be given to the failure of the evidence to establish the fact that the purchase price of these lands was paid by the claimants prior to the time that Mexico lost her jurisdiction over the territory where the lands are situated. The first section of decree 24, under which these lands were attempted to be acquired, is as follows: "$10 for each league. To the inhabitants of Carmago, Mier, Guerrero and Laredo, who may have no lands of their own, and who may possess stock to occupy them, there shall be given at once as much as five leagues each, and in recompense they shall pay to the state ten dollars for each league." 1 Sayles' Early Laws, art. 19. Under other colonization laws of the state of Tamaulipas the minimum price for a league of land of the character of these in controversy was $30 per league. Decree 24 reduced the price to $10 per league, to some extent, it seems, on account of services rendered by the inhabitants of these towns in repelling Indian invasions. But it is apparent from a reading of the section in question that it was intended that the parties taking the benefit of this statute should pay a compensation for the land, which was fixed at $10 per league, and that this payment evidently should be made before he could demand or would be entitled to a final grant or title issued by the Governor of the state. And in investigating this question we have found no case where a price was fixed on land by the law under which it should be granted, where such payment has been dispensed with. The Supreme Court, in the case of State v. Sais, 47 Tex. 315, in passing upon a grant that was then confirmed, says: "The act of putting the

party in possession and the final concession of the Governor, which he had ordered should be made, are not found in the title presented for adjudication and filed with the petition, and it is to that extent an imperfect title to the land claimed. It shows, however, the adjudicated right of the applicant, and the setting apart and survey of the land with defined boundaries, and its locality and extent, and that the money at which it was valued under the law, $30, was paid into the treasury of the state, with the regularity and legality of the proceedings, and direction for their completion by the attorney of the treasury, sanctioned by order of the Governor. Under these circumstances, although the title is imperfect, 'the principles of equity contemplated by the act of 1870, authorizing this suit, may properly be invoked to relieve the applicant from again paying the price of the land, it having been paid into the treasury of the state of Tamaulipas at the proper time. This would seem to be proper, also, in consideration of the fact that this grant of land was made, partly at least, on the ground that the inhabitants of Camargo and of the other towns on the Rio Grande named in the decree No. 24 of 1833, which constituted the frontier Mexican settlements of that region, had valiantly held their position against the hostile savages, which, as to those who needed lands there, caused the government of the state to reduce the price from the ordinary minimum valuation of thirty to ten dollars per league. Such reduction was doubtless intended as a partial remuneration for the losses sustained by the frequent and long-continued depredations of the Indians that had kept them poor. This branch of the subject, however, under the terms of the law, may address itself for determination more appropriately to other departments of the government than to this court." In State v. Sais, 60 Tex. 88, payment of the purchase price was regarded as essential; but, in order to maintain the title there presented for adjudication, the court presumed from the long lapse of time that the payment was made at the proper time to the proper parties. In the case of State v. De Leon, 64 Tex. 556, all of the sum required by the law was not paid at the time that the claimants undertook to acquire their title from the state of Tamaulipas. Payment was held essential in that case, for as a condition to the confirmation of title the Supreme Court required the claimants to pay into court within 12 months from the date of its judgment the sum that the laws of Tamaulipas required to be paid per league for the land in controversy. All of these cases were adjudicated under the act of August 15, 1870, which provided for the confirmation of titles to land located within the territory where the lands in controversy in this case are situated. In the Sais Case in 47 Tex. 315, the evidence shows that payment was made while the government of Tamaulipas had jurisdiction over the lands; but the intimation is clear that payment was essential in order to complete the equity, and that it could not be dispensed with by the courts, but that such power, if it existed, could only be exercised by the legislative branch of the government. Payment, as stated in the Sais Case in 60 Tex. 87, is only supported by the presumption. The power exercised in the De Leon Case, in 64 Tex., was provided for by section 7 of the act of 1870, which is as follows: "When the judgment of a court shall be given in favor of claimants of any public grant, no other fee or costs shall be taxed, except such as provided for in the 5th section of this act. But in any case in which judgment shall be given in favor of the claimant under an imperfect grant, the court shall condemn the claimant to the payment of such amount as the claimant would have had to pay had not the sovereignty of the soil changed, in addition to the costs taxed by section 5 of this act; and it shall be the duty of the clerk of the district court to enter the judgment in full on the docket, which shall show the amount to be paid by each claimant." The act authorizing the confirmation of titles, passed in 1879, contained a similar provision. The present law —that is, the statute of 1901, under which this suit and the defense thereto is predicated—contains no such provision of law. In Ely v. United States, 171 U. S. 220, 18 Sup. Ct. 840, 43 L. Ed. 142, and Cannon v. United States, 171 U. S. 282, 18 Sup. Ct. 855, 43 L. Ed. 163, the court, in passing upon the validity of Mexican grants, says that they will be confirmed only to the extent paid for.

Now, when it was shown that no legal grant was issued at a time at which Mexico had jurisdiction over this territory, was it contemplated by the act of 1901, or by the protection afforded by the treaty of Guadalupe Hidalgo, that a mere fragment of title should be protected, or an imperfect grant confirmed, when it is apparent that one of the essential elements of the law in order to acquire title was not complied with at a time when that government had jurisdiction of the territory where the lands are situated, and no obstacle or impediment existed that could be equitably considered that prevented the claimant from doing the thing required. There is nothing in the act of 1901 that justifies the assumption that the Legislature intended to donate the lands to the claimant, or that it was intended that any and every character of imperfect title should be protected, but only such titles should be confirmed that were within the protection of the treaty of Guadalupe Hidalgo, or were valid under the laws of Mexico or of this state at the time that Mexico lost her jurisdiction. State v. Cuellar, 47 Tex. 296; State v. Cardinas, 47 Tex. 250. The treaty, in effect, only protected such interests as the claim-

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ant had when the territory changed hands: and if, under the conditions then existing, the steps taken as required by law did not create an equity that was perfect, or if some essential feature of the law, as a condition of the title, was not observed, when there existed no impediment to the performance by the claimant before the Mexican government lost jurisdiction of the territory, then no duty is imposed upon this government to recognize such imperfect equity. Menard v. Massey, 8 How. 293, 12 L. Ed. 1085; United States v. Castro, 24 How. 346, 16 L. Ed. 659; McMicken v. United States, 97 U. S. 204, 24 L. Ed. 947. The laws, usages, and customs of Mexico provided for in the statute, and the principles of equity there mentioned, may be considered in determining a right, but a title must be shown. Perrin v. United States, 70 U. S. 449, 18 L. Ed. 221. This does not necessarily mean a legal title, but that at the time when the territory changed hands the customs and usages prevailing in Mexico and the principles of equity might be considered in determining whether a party has acquired a right; or some equitable ground might be considered in excusing the claimant of complete performance. But under the guise of applying the principles of equity it was never intended that one of the essential requirements of the law with reference to the acquisition of title should be dispensed with when no good reason is shown why its requirements were not observed. An imperfect title, when urged, only affects the conscience of the new government. Dent v. Emmeger, 14 Wall. 308, 20 L. Ed. 838. And it is not supposed that this government, in providing a remedy looking to the protection of such class of titles, would do more in that direction than could and should be expected of the former government, under which it is claimed the title originated.

Now, if we have correctly construed decree No. 24, that payment of the purchase price was essential as one of the equities that must be established in order to demand a grant from the Mexican government, it must be assumed that the government of Tamaulipas would never have issued the final title, or recognized it as of any validity, until the purchase price was paid. Without some good excuse being shown why this was not done before that government lost its jurisdiction, it would practically be asking a denotation by this government that it should confirm a grant which the claimant was not entitled to under the laws of the government that formerly owned the ceded territory. In this case no evidence is offered such as would address itself to the exercise of the equitable jurisdiction of this court, tending to excuse or give any good reason why the purchase price was not paid at a time when decree No. 24 was in effect, or at a time when the government of Mexico had jurisdiction over the territory where these lands are situated. It might be said that there is no express limitation in decree No. 24 that prescribed a time in which such payment should be made; but it is clearly contemplated by the decree that payment was essential, and was absolutely required, before the government of Tamaulipas could be called upon or required to issue the grant. If it should be determined—which we are inclined to think is the proper rule—that Tamaulipas exercised jurisdiction over this territory to 1846, over 10 years elapsed from the time of the attempted acquisition of title to the loss of this territory by Mexico in which the claimants could pay the purchase price. While time may be considered in creating a presumption of payment, as was determined in State v. Sais, 60 Tex. 87, and as the general principle is announced in Mills v. Alexander, 21 Tex. 154, and Weems v. Masterson, 80 Tex. 56, 15 S. W. 580, such presumption ought not to be indulged in in this case, because it is disproved and negatived by the facts in the record. Baldwin v. Goldfrank, 88 Tex. 249, 31 S. W. 1064; Hays v. United States, 175 U. S. 262, 20 Sup. Ct. 80, 44 L. Ed. 159. The excluded evidence of witnesses, as shown in the record as stated in the bill of exceptions, shows that payment was regarded as essential; and the evidence shows that in November, 1847, the expediente was carried to the Governor at Victoria, and all the evidence of payment that is shown is stated in the letter of date November, 1847, at a time in which the officer, so far as this government is concerned, was not authorized to receive payment, for the reason that Mexico had lost her jurisdiction over the territory. There is no pretense that payment was made at any other time. This is sufficient to show that whatever payment was made was not made to the government that was entitled to receive it. The state, as shown by the record in this case, has contested this title; and it has never been urged, as we have been able to discover, that the state has recognized this title, or that any other payment was ever made than that above stated. Consequently we are of the opinion that presumption of payment cannot arise.

The appellants have tendered the payment of the original purchase price demanded by decree No. 24, and insist that, if payment is regarded as essential, this court may render judgment for the purchase price fixed by the law. This jurisdiction was exercised in the De Leon Case in 64 Tex. 553, but that was, as before said, by virtue of an express provision of the act of 1870. There is no such provision in the present law, and we are of the opinion that this court, in view of the construction which usually applies to this character of statute, is lacking in jurisdiction to enter a decree in equity requiring payment of the purchase price. Statutes of this character, where the jurisdiction of the court is limited, will not be extended by construction, but will be confined to the terms stated. Texas Mexican Ry. Co. v. Jarvis, 80

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Tex. 463, 15 S. W. 1089. In Astiazaran v. Santa Rita, 148 U. S. 81, 13 Sup. Ct. 457, 37 L. Ed. 376, it is said that when the title is imperfect it can only be enforced in the manner provided by the act which authorizes the confirmation. And, as said in United States v. Sandoval, 167 U. S. 292, 17 Sup. Ct. 868, 42 L. Ed. 168, when a tribunal of limited jurisdiction is authorized to act, the claim must come clearly within the terms of the law. Those decisions were under act of Congress authorizing the confirmation of titles emanating from the Mexican government. It is true they were based upon the court of claims act, which was not as liberal in favor of the claimant as the act of 1851, passed by Congress authorizing the confirmation of titles emanating from the Mexican government to lands located in California; but the principle involved in the cases is applicable to the construction of the statute under which these suits were brought, and to the exercise of jurisdiction under the statute. The acts of 1870 and 1860 passed by the Legislature of this state authorize the court to consider the principles of equity in decreeing confirmation; but the Legislature evidently, in passing those statutes, did not mean that that provision conferred general equitable powers upon district courts as courts of general jurisdiction, for they expressly provided for just such a contingency as arises in this case; that is, that those courts, when payment had not been made to the government of Mexico, could, as a condition to confirmation, require the claimants to pay the price of the land. The present law does not contain such provision, and the previous legislation upon this subject is persuasive of the idea that it was not intended by the Legislature, in using the expression "according to principles of equity," as contained in the present statute, to confer general equitable jurisdiction upon district courts in passing upon the question whether titles emanating from Mexico should be confirmed according to general principles of equity. Furthermore, if we could concede that the expression used in the statute, "principles of equity," confers jurisdiction upon this court to apply the general principles of equity in determining whether the title should be confirmed, the offer of the appellants to do equity is not sufficient. They have merely offered to pay the original purchase price. If we are to exercise the jurisdiction of a court of equity, and determine the rights of the appellants and the state according to the principles of equity, it would be just and proper, in order to accomplish that purpose, that, as the appellants have been in continual use and occupation of the land, reaping its revenues, fruits, and benefits, they should at least, in addition to the original purchase price as fixed by decree No. 24, pay interest upon that sum from the time that it was due up to the present time. There is no offer of this kind made. But, however, we are firm in the conviction that the expression "equitable principles" does not mean that we can go outside of the provisions of the statute, and apply a principle of equity which is not provided for in the terms of the law. The meaning of the expression "equitable principles," as used in the statute, has been adverted to in another part of this opinion, and we do not think it should be given such an application as to create an additional jurisdiction in the court under this special statute that creates and limits its powers.

It is also contended that we should indulge, from the lapse of time, in a presumption of grant from the Mexican government. This cannot be done in this case. The presumption is disproved by the facts. The evidence affirmatively shows that the only grant that was ever issued was by the Governor in 1848, after Mexico ceased to exercise jurisdiction over this territory. Baldwin v. Goldfrank, 88 Tex. 249, 31 S. W. 1064; Hays v. United States, 175 U. S. 262, 20 Sup. Ct. 80, 44 L. Ed. 120; Chavez v. United States, 175 U. S. 535, 20 Sup. Ct. 291, 44 L. Ed. 969—the same cases cited in discussing the question as to presumption of payment. It is not pretended that this presumption should be indulged in as applied to any grant issued by the state of Texas, and it is apparent that the state has always disputed the title of these parties to the land in controversy. Furthermore, it is held in State v. Cardenas, 47 Tex. 294, and Railway v. Jarvis, 69 Tex. 542, 7 S. W. 210, that a presumption of grant cannot be indulged in in order to authorize a decree of confirmation under the act of 1870. And we think that in this respect there is no difference between that act and the one that was passed in 1901. But, while this is true—that is, that the statute would not authorize a confirmation to be based upon a presumption of grant—such a presumption might be considered under the defendants' plea of not guilty. The state brought the suit, and any legal title that the defendants could urge that would defeat the action of the state could be presented under a plea of not guilty, independent of any reliance upon that branch of the statute that authorizes a decree of confirmation in favor of the claimant. In State v. Sais, 47 Tex. 313, 314, it is held that the act permitting suits to be brought did not defeat a title which could be maintained under the general law. In United States v. Pillerin, 13 How. 10, 14 L. Ed. 28, it is held that possession that would lay the foundation for a presumption of grant would be a legal title. If the defendants had a legal title of any character, they could urge it under their plea of not guilty, not as a basis for confirmation, but as defeating a recovery by the state. But, however, this view of the law does not help their

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cause, because, as said before, the facts in the record clearly negative and disprove the existence of a grant.

There is also in the record a bill of exceptions, which complains of the action of the court in refusing to admit the testimony of certain witnesses by whom the appellants had expected to prove the construction that the Mexican authorities had placed upon the law, as stated in decree No. 24; and that they regarded that the steps taken by the claimants, as shown in this case, amounted to a perfect or legal title, concerning which the witnesses purported to express their opinion as to the validity of the title asserted by the appellants. The purported evidence, as stated in the bill of exceptions, in some respects was admitted and was testified to, and the court has appended to the bill an explanation stating why it was the evidence was not admitted. We are of the opinion that no error was committed in excluding this evidence. Notwithstanding the provision of the law of 1870, which is similar to the act of 1901 in this respect, which provides for considering usages and customs that prevailed in Mexico at the time the right was attempted to be acquired, it is held that the right must be adjudicated according to the laws then in existence, and which laws the courts of this state must take judicial notice of; and that evidence of witnesses to the effect who claimed to have a knowledge of these laws and customs there prevailing could not be considered as establishing the fact that some of the essential requirements of the law were dispensed with, and from this state the opinion or conclusion that the titles claimed to exist were regarded as legal or perfect titles. This principle is decided in State v. Cuellar, 47 Tex. 296.

The views expressed dispose of the important questions in the case, and, finding no error in the record, the judgment will be affirmed.

In connection with this case, and as companion cases with it, and which were so submitted, are No. 3,450, Juan Vella Cuellar et al. v. The State of Texas; No. 3,455, Leonard Haynes v. The State of Texas; No. 3,452, Juan Manuel Flores et al. v. The State of Texas; No. 3,453, Porfiria Garza et al. v. The State of Texas; No. 3,457, Espiridion Flores et al. v. The State of Texas; No. 3,454, Servando Benavides v. The State of Texas; and No. 3,458, Filiberto Pena et al. v. The State of Texas. The decision of this case, so far as the rules of law announced, apply to the above cases, and the facts, so far as the evidence of title is concerned, are substantially the same in each case. Of course, in each case different lands are sued for, and different parties assert title; but all the titles emanate under decree No. 24 of Tamaulipas, and in none of the cases is the evidence of title stronger than that considered in the case in which the opinion is written.

Except in the cases No. 3,450, Juan Vella Cuellar v. The State of Texas, and No. 3,452, Juan Manuel Flores v. The State of Texas, patents were issued in favor of the appellants in 1891. These patents recite that they are based upon a grant issued in 1835, and by virtue of a judgment of the district court of Webb county of July [illegible], 1880. The proof establishes the fact that no such grant was issued in 1835, and that the judgment of the district court of Webb county referred to in the patents was not binding upon the state, because the state was not a party to it; and that that court had no authority to adjudicate the facts that the appellants were entitled to patents, or to preclude the right of the state. The trial court properly, under the facts, treated the patents as void, as the officers who issued it had no authority, because the facts did not exist upon which it could be based.

In all of the cases possession of the land was shown for a number of years, in some from the time that the land was conveyed and in some before then. It is contended in these cases where the patents are treated void that the suit of the state is barred by the statute of four years limitation. We do not think this is a case in which limitation would run against the state, but anyhow the patents can be treated as void, and would not affect the remedy of the state to recover the land in an action of trespass to try title.

In these cases it is also contended that the district court of Travis county had no jurisdiction. This question was practically passed upon by this court in the case of the State v. O'Connor, 71 S. W. 964. It is a well-settled that the act of 1901 confirmed the grants. There is nothing in the act that authorizes this construction.

In some of the cases there are intimations in the briefs that the state is estopped by virtue of the facts shown in favor of the appellants, and further intimation that in some of the cases the appellants are innocent purchasers, and also that they are entitled to judgment for the value of the improvements shown to exist on the land. Without particularly discussing these questions, we overrule the assignments of error in which they are raised. No power is given the court to render a judgment against the state for the value of the improvements.

For the reasons stated, the judgment rendered in the main case, as well as the companion cases, as above stated, is affirmed.

Affirmed.

MISSOURI, K. & T. RY. CO. OF TEXAS et al. v. BUMPAS et al.

(Court of Civil Appeals of Texas. March 4, 1905.)

CONNECTING CARRIERS — CATTLE SHIPMENT — DAMAGES — ACTIONS — VENUE — STATUTES.

Where cattle were shipped over the roads of three connecting carriers, and the initial carrier was not sued for damages thereto, and was

Thomas Burrows
D. 403
ptd. 628
Eliza Rozell
S 2778
ptd.
J.M. Lummus
S.3544
Tract 3
Tract 4
Magotes
S.3564
Gutierrez
I-657
Los
S.3567
Ignacio
Decree
J.C. Thomas
S.3493
"La Laguna de los Venados"
Manuel Ramirez
I-806
S.3569
S.3563
S.3492
Juan Antonio Vidaurri
I-777
Juan Antonio Vidaurri
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Juan Antonio Vidaurri
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Geographical center
Zavala County
"La Huerta"
Jose Cue
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FILED IN
SUPREME COURT
APR 27 1906
F. T. Connesy
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REPRODUCED FROM THE
HOLDINGS OF THE
TEXAS STATE ARCHIVES

No. 3452

IN THE COURT OF CIVIL APPEALS OF TEXAS

THIRD SUPREME JUDICIAL DISTRICT.

LEONARD HAYNES ET AL., APPELLANTS,

VS.

THE STATE OF TEXAS, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF TRAVIS COUNTY.

BRIEF FOR APPELLANTS.

J. F. MULLALLY,
Attorney of Record for Leonard Haynes and H. M. Haynes, Appellants.

Gammel-Statesman Publishing Co., Austin, Texas.

FILED IN COURT OF CIVIL APPEALS
3rd Supreme Judicial District
AUSTIN, TEXAS
NOV 1 1906
R. E. L. [illegible] Clerk

Group 18 of 20

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No. ——

IN THE COURT OF CIVIL APPEALS OF TEXAS

THIRD SUPREME JUDICIAL DISTRICT.

LEONARD HAYNES ET AL., APPELLANTS,

VS.

THE STATE OF TEXAS, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF TRAVIS COUNTY.

BRIEF FOR APPELLANTS.

STATEMENT OF THE NATURE AND RESULT OF THE SUIT.

This was an action in the form of trespass to try title, brought by the State under the act of the Legislature of Texas approved September 3, 1901 (General Laws of the First Called Session of the Twenty-seventh Legislature, pages 4 to 7), in which judgment was rendered for the plaintiff for the recovery of the lands sued for.

Plaintiff alleged in its petition, filed March 26, 1903, that on the 1st day of January, 1898, the State of Texas then was and still is the owner in fee simple (the same belonging to the common free school fund of the State) of seventeen tracts of land in Zapata County, therein described, aggregating 12,825 acres, and was in possession of said lands, and on said day was dispossessed by defendants, and prayed for the recovery of the lands, and damages. (Tr. 1-9.)

Defendants answered to the merits:

(1) By plea of general denial and not guilty. (Tr. 10.)

(2) By plea alleging that the lands sued for are parts of two certain Mexican grants, both having their origin prior to the 25th day of

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April, 1835, by adjudication of the Ayuntamiento or city council of Guerrero, by virtue of Decree No. 24. of October 19, 1833, of the Congress of Tamaulipas; denouncement and survey of said grants about April 25, 1835, by the Surveyor General of Tamaulipas, final titles to said granted lands issued by the Governor of Tamaulipas on January 2, 1848; continuous possession from long prior to 1835 up to date of institution of this suit, resurvey of said grants by the surveyor of Zapata County in 1874 and 1876, respectively, and invoking the protection of the treaty of Guadalupe Hidalgo and the Constitution of the United States. (Tr. 10-13.)

(3) By tender of the original price of said grants of land as fixed by said Decree No. 24. (Tr. 13.)

(4) By plea of presumption of said two grants from more than seventy years possession. (Tr. 13, 14.)

Plaintiff, by supplemental petition, and for the purpose of showing that the State of Texas never recognized said grants, pleaded the record of two certain suits brought against the State for confirmation of said grants under the law of August 15, 1870, which suits were finally dismissed by the claimants. (Tr. 16-18.)

This cause was tried without a jury and judgment was rendered for plaintiff for the recovery of the lands sued for; defendants excepted and gave notice of appeal (Tr. 19-26), filed bond (Tr. 64) and assigned errors. (Tr. 66.)

SECOND ASSIGNMENT OF ERROR.

The court erred in adjudging to plaintiff the lands sued for, it not having proved its case as alleged, and having failed to prove its title to the land by a preponderance of the evidence. (Tr. 66.)

FIRST PROPOSITION UNDER SECOND ASSIGNMENT.

The parties sued being in possession, their title and possession are presumed to be consistent, and both rightful and lawful, until the contrary is shown by a preponderance of the evidence on the part of the plaintiff who seeks to disturb the same; and in this case where the State is the claimant, the presumption that its title is valid does not apply to lands formerly in Tamaulipas and acquired by treaty while in possession of individuals under claim of right, and it must show title.

STATEMENT.

Plaintiff introduced in evidence the field notes of seventeen surveys of land in Zapata County, aggregating 12,825 acres, surveyed for the State by Leonard Haynes, county surveyor of Zapata County, between June 16, 1884, and April 1, 1885, by virtue of land certificates; which field

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notes are the same as described in the petition. Plaintiff next introduced in evidence a sketch map of a part of Zapata County (which is inserted in the transcript between pages 30 and 31 by order of the trial court) showing delineated thereon the surveys of land sued for; shows a five-league tract of land in the name of Antonio Zapata, and another adjoining it of equal size in the name of Pedro Bustamante, both of which are covered by smaller surveys, among them the lands in controversy; this map also shows, in red lines, the boundaries of lands claimed by defendants and under fence, such lands being parts of said Zapata and Bustamante tracts and including the surveys sued for either in whole or in part. (Tr. 30 and next.) Plaintiff then rested.

Defendants read in evidence a final grant made by the Governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Antonio Zapata, as follows. (Translation.)

Third Seal.	Years of eighteen hundred and forty-eight and eighteen hundred and forty-nine. 1848 & 1849.	Fifty cents.

Francisco Vital Fernandez, Brigadier General of the army of the Mexican Republic and Governor of the State of Tamaulipas: Whereas, the citizen Antonio Zapata has paid into the Treasury of the State the fifty dollars at which were valued the five sitios of pasture land for large stock denounced by him at the point de Villa, as appears by the expediente made for the purpose, using the power that the law gives me upon this particular, I have thought proper to adjudicate to the citizen Antonio Zapata, for himself, his heirs and successors, the said five sitios for large stock, within the limits and boundaries made on the attached map.

Therefore I order the authorities and inhabitants of the State to recognize the said citizen Antonio Zapata as the legitimate owner of the said five sitios of pasture land for large stock which are thus granted.

Given at the city of Victoria on the second day of the month of January, eighteen hundred and forty-eight.

(Seal.) FRANCO. V. FERNANDEZ,
ANDRES GUERRERO,
Second Official.

(Tr. 31.)

The map attached to said title showed a tract of land lying diagonally with the points of the compass, 166 2-3 cordeles in width and 300 cordeles in length, entitled "Pasture land of De Villa, surveyed for the citizen Antonio Zapata." giving the name of the north corner as Loma de Macho Vallo, the east corner Los Huesos, the south corner

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Seja del Gruyo and the west corner La Lobera, and beneath the plat the following explanation and signature: Explanation of the survey. The area comprehended in the rectangle above drawn is five sitios of pasture land for large stock, surveyed in the courses indicated in the plan, after correcting the variation of ten degrees that the needle has in this land. This tract of land is bounded on the northwest by the land of Las Comitas, on the southwest by that of Los Chapparos Prietos, on the southeast by that of El Grullo, and on the northeast by vacant lands. City of Guerrero, April 25, 1835. Lic. Antonio Canales. (Tr. 32.)

Defendants next read in evidence a certified copy of a survey of said land made by the special deputy surveyor of Zapata County on September 2, 1874, and recorded November 28, 1874, and resurveyed by him April 20, 1876, which survey recited that said land was originally granted by the State of Tamaulipas to Antonio Zapata. (Tr. 33-35.)

Defendants then introduced in evidence a final grant made by the Governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Pedro Bustamante, as follows: (Translation.)

"Third Seal.	National Coat of Arms of the years.	Fifty cents.

Francisco Vital Fernandez, Brigadier General in the Army of the Mexican Republic and Governor of the State of Tamaulipas: Whereas, the citizen Pedro Bustamante has paid into the Treasury of the State the fifty dollars at which were valued the five leagues of pasture land that he had denounced in the place called Las Comitas as appears from the expediente made to that effect, using the powers conferred upon me by the law upon the subject, I have resolved to grant to the citizen Pedro Bustamante, for himself, his heirs and successors, the indicated five leagues of pasture land according to the limits and demarcations appearing in the annexed map. Wherefore I command the authorities and inhabitants of the State to hold and recognize the said citizen Pedro Bustamante as the legitimate master and owner of the said five leagues of pasture land that have been granted to him. Given at the city of Victoria on the 2d day of January, eighteen hundred and forty-eight.

(Seal.) FRANCO. V. FERNANDEZ (Rubric.)
ANDRES GUERRERO (Rubric.)
(Tr. 35.) Second Official."

The map attached to said title showed a tract of land lying diagonally with the points of the compass, 180 cordeles in width and 278 cordeles in length, estitled "Pasture land of Las Comitas, surveyed for the citizen Pedro Bustamante," giving the name of the north corner as

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Las Escobas, the east corner as Macho Valo, the south corner as La Lobera and the west corner as La India, and showing the Comitas ranch in the center of the tract, and beneath the plat the following explanation and signature: Explanation of the survey. The area comprehended in the rectangle above drawn contains five leagues of pasture land, surveyed to the courses indicated in the plan after correcting the variation of ten degrees that the needle has in this land to the northeast. This tract of land is bounded on the northwest by the tract of Charco Largo, on the southwest by those called Humaran and La Huerta, on the southeast by the tract of Villa, and on the northeast by vacant land. City of Guerrero, April 25, 1835. Lic. Antonio Canales. (Rubric.) (Tr. 36.)

Defendants next read in evidence a certified copy of a survey of said land made by the district surveyor of Zapata County on July 6, 1874, and recorded in his office July 21, 1874, which survey recited that said land was so surveyed for the heirs of Pedro Bustamante by virtue of a grant made by the State of Tamaulipas. (Tr. 37-39.)

It was proven that Antonio Zapata first settled upon said "Villa" tract about the year 1822 (Tr. 44), and that Pedro Bustamante first settled on said "Comitas" tract about the same year, 1822 (Tr. 46); that under Decree No. 24 of October 19, 1833, of the Congress of the State of Tamaulipas they were both adjudicated entitled to the benefits of said decree (Tr. 42-44); that each denounced the tract so settled upon by him (Tr. 42-44), and had the same surveyed for him on April 25, 1835, by Antonio Canales, Surveyor General of Tamaulipas (Tr. 32, 36, 37); that the respective expedientes of Antonio Zapata and Pedro Bustamante for said tracts of land were in existence in the archives of Guerrero at the close of the year 1835 (Tr. 39, 40), and that they were remitted with fifteen other "titles which contain the vacant lands denounced and surveyed from the year 1831 until that of 1835," by the second constitutional alcalde of Guerrero, to Antonio Canales, at Victoria, the capital of Tamaulipas, for presentation to the Governor, in November, 1847. (Tr. 41, 43, 44.) That these expedientes, then containing "the denouncements of the lands, the certificate by the Ayuntamiento of Guerrero that the applicant was entitled to land under said Decree No. 24 and all other proceedings had before the Ayuntamiento in relation thereto," were deposited in the State Department in Victoria in the latter part of 1847 (Tr. 44), and that all the records there were destroyed by the French troops in 1864 (Tr. 44). Upon said expedientes the Governor and Secretary of State on January 2, 1848, issued final titles to said Antonio Zapata and Pedro Bustamante as above copied.

It was proved that the records of the Ayuntamiento or city council of Guerrero as now existing in the archives of said city are incomplete and imperfect, and many parts thereof missing. (Tr. 44, 46.) That

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said Antonio Zapata was a Mexican, and from the time he first settled on said Villa land in 1822 continued in possession thereof until the same was surveyed for him in 1835, and thereafter under claim of right and ownership by virtue of said proceedings he remained in the actual, open and peaceable possession of said land, cultivating the same and raising his live stock thereon, until his death, and, after him, his heirs and their assigns, including these defendants, have so remained in such open and peaceable possession of said land under claim of right and ownership, down to the present time (Tr. 44-46), paying all taxes assessed against said property as so titled ever since it was first put upon the tax rolls about the year 1874. (Tr. 45.) It was proved that said Pedro Bustamante was a Mexican, and from the time he first settled on said Comitas tract of land in 1822 continued in possession thereof until the same was surveyed for him as aforesaid in 1835, and thereafter under claim of right and ownership by virtue of said proceedings he remained in the actual, open and peaceable possession of said land, cultivating the same and raising his live stock thereon until his death, and, after him, his heirs and their assigns, including these defendants, have so remained in such open and peaceable possession of their said land under claim of right and ownership, down to the present time (Tr. 46-48), paying all taxes assessed against said property as so titled ever since it was first put upon the tax rolls about the year 1874 (Tr. 48); and that defendants under such title are in possession of such parts of said Villa and Comitas tracts of land as embrace the lands sued for in this cause. (Tr. 46, 48.)

Defendants introduced in evidence a copy of a map of the Four Internal Provinces of the East and accompanying documents, fixing the boundaries of said provinces as shown thereon, taken from the archives at Saltillo, Mexico. This map was approved by the Viceroy of Mexico on October 15, 1815, and shows the boundary line between the provinces of Coahuila and Texas as beginning at the source of the Medina River, thence down the Medina to a point on the same, directly south of Bejar (San Antonio) and thence southwesterly to the Nueces River. From this latter point the Nueces River to its mouth formed the boundary line between the provinces of Texas and Nuevo Santander. The latter province afterwards became the State of Tamaulipas, with the same boundaries. (Tr. 48.)

It was agreed that the lands in controversy are in that part of Texas which was formerly a part of Tamaulipas, and were within the jurisdiction of Guerrero; and it was proved that both the Villa and Comitas tracts were first delineated on the official map of the county in the General Land Office about the year 1870. (Tr. 49.)

Defendants read in evidence article 6 of the Constitution of Coahuila and Texas, as follows: Article 6. The territory of the State is the same as that embraced in the provinces formerly known by the names of Coahuila and Texas. A constitutional law shall mark out its limits

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in respect to the adjoining States of the Mexican Confederacy. (Dated March 11, 1827.) (Tr. 49.)

Defendants also introduced and read in evidence the said Decree No. 24 of October 19, 1833. (Tr. 50-51.) This decree is set out in full in State v. Cardinas, 47 Texas, 254, 255.

Plaintiff, in rebuttal, introduced the testimony of Leonard Haynes, as follows:

I am familiar with the lands in controversy in this case, and shown on the map exhibited to me; I have had them enclosed three years or more. As county surveyor of Zapata County I located the certificates and alternate sections, copies of which have been read in evidence by the State. They were located for my brother J. J. Haynes. There is a small strip of vacant land on the eastern edge of my pasture, as shown on the map, that is, the land is vacant unless it had been appropriated by the Zapata grant. The rental value of the land is as much as three cents per acre per annum when they can be rented, but it frequently happens, as it has of late years, that it is so dry in that country that they can not be rented at any price. (Tr. 51.)

Plaintiff next introduced in evidence the record of a suit brought in the District Court of Travis County in 1871 by Eulalio Gonzales and others as sole heirs of Antonio Zapata, against the State of Texas, for confirmation of title to said Villa tract. Also the record of a suit brought in the same court by Manuel Bustamante and others as heirs of Pedro Bustamante, against the State of Texas, for confirmation of title to said Comitas tract. Both of said suits were brought under the Act of August 15, 1870. In each of said suits the State filed answer of general denial; judgment for plaintiffs was rendered in the trial court in both cases, and on appeal were reversed, and afterwards both suits were dismissed by plaintiffs on March 7, 1884. (Tr. 51, 52.)

AUTHORITIES.

Clark v. Hills, 67 Texas, 141.
Byers Bros. v. Wallace, 87 Texas, 503.
Scott v. Pettigrew, 72 Texas, 329.
Treaty of Guadalupe Hidalgo, arts. 8 and 9.
Strother v. Lucas, 12 Peters, 410, 436-438.
Soulard v. United States, 4 Peters, 511-513.
Soulard v. United States, 10 Peters, 104-106.
Leitendorfer v. Webb, 20 Howard, 176.
United States v. Perchman., 7 Peters, 86-88.
The People v. The Rector of Trinity Church, 30 Barb., 537.
Hornsby v. United States, 10 Wallace, 242.
Carpenter v. Runnels, 19 Wallace, 141.
Bryan v. Kennett, 113 U. S., 179.

SECOND PROPOSITION UNDER SECOND ASSIGNMENT.

The equitable title to the land having passed out of Tamaulipas while

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that State held the undisputed sovereignty and possession of the territory where it is situated. the succeeding sovereignty acquired nothing but the naked legal title charged in conscience "with a trust," and the equitable is the superior title.

STATEMENT.

Same as under first proposition.

AUTHORITIES.

Thompson v. Langden. 87 Texas, 259.
Hume v. Ware, 87 Texas, 383.
Strother v. Lucas, 12 Peters, 436, and authorities there cited.

THIRD PROPOSITION UNDER SECOND ASSIGNMENT.

The introduction in evidence, by defendants, of the final grant by Tamaulipas, dated January 2, 1848, to the land in suit, based, as it was, upon prior proceedings, made a prima facie case for the defendants, and cast upon the State of Texas the burden of proving that the State of Tamaulipas had then lost the power to issue such final grant.

Statement and authorities same as under first proposition.

FOURTH PROPOSITION UNDER SECOND ASSIGNMENT.

To protect Mexicans in their property rights within the territory in question, claimed and asserted under the treaty of Guadalupe Hidalgo, the court will not be bound by the declaration of the Congress of the Republic of Texas on December 19, 1836, that the Rio Grande was the boundary line, and presume the invalidity of final grants made subsequently by the State of Tamaulipas, but before the treaty.

STATEMENT.

Same as under first proposition.

AUTHORITIES.

Act of Congress of Texas, Approved Dec. 19, 1836, defining the boundaries of the Republic.
Arts. 8 and 9 of the treaty of Guadalupe Hidalgo.
Mitchell v. United States, 9 Peters, 738, 739.

FIFTH PROPOSITION UNDER SECOND ASSIGNMENT.

Whether or not the boundary declaration of Texas in December, 1836, was ever binding on the courts, it ceased to be so under the Articles of Annexation in 1845, which referred questions of boundary to the United States for settlement; the only subsequent legislation on the subject binding on the court was (1) the treaty of Guadalupe Hidalgo by which the United States acquired the territory between the Nueces and the

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Rio Grande rivers, and (2) the Compromise Act of 1850 giving it to Texas, this latter being the first and only acquisition of the territory by Texas, either de jure or de facto.

STATEMENT.

Same as under first proposition.

AUTHORITIES.

Articles of Annexation of Texas, sec. 2 (Paschal's Digest of Laws, 1866, vol. 1, p. 44).

Joint Resolution of Texas Congress of June 23, 1845 (Paschal's Digest, p. 45).

Joint Resolution of U. S. Congress of Dec. 29, 1845 (Paschal's Digest, p. 46).

Act of Congress approved Sept. 9, 1850, fixing the boundaries of Texas.

Act of the Leg. of Texas, approved Nov. 25, 1850, accepting the boundaries as fixed by the act of Congress.

Legislative Journals of Texas, 1858. (Journal of the House, p. 702. Senate Journal, pp. 328, 329.)

The Quarterly of the Texas State Historical Association, vol. 7, pp. 176-195.

SIXTH PROPOSITION UNDER SECOND ASSIGNMENT.

Under the treaty of Guadalupe Hidalgo it is not only the right but the duty of the courts of Texas, regardless of political declarations, to examine into the origin of property rights set up in defense and claimed to be protected by such treaty, and to inviolably respect the same if duly emanating from the legitimate sovereign at the time claimed; and the judgment for plaintiff violated the rights of defendants as proved by the evidence.

STATEMENT.

Same as under first proposition.

AUTHORITIES.

Mitchell v. United States, 9 Peters, 734, 735, 738, 739.

Treaty of Guadalupe Hidalgo, arts. 5, 8 and 12.

THIRD ASSIGNMENT OF ERROR.

The court erred in rendering judgment for the plaintiff, because the

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facts proved by defendants under the third paragraph of their answer showed that valid inchoate grants of the lands in controversy had been made by a former government to those under whom they claim, and rights of property in said lands accrued at the time of the treaty of Guadalupe Hidalgo between the United States and Mexico which were and are protected by the terms of such treaty, and which grants were confirmed thereby. (Tr. 66.)

FOURTH ASSIGNMENT OF ERROR.

The court erred in rendering judgment for plaintiff for the lands sued for herein, because the evidence showed that the defendants held lgitimate title to said lands under a former government and possessed rights of property thereto protected by the terms of the treaty of Guadalupe Hidalgo and the law of nations; and such judgment violated the terms of said treaty as well as the law of nations. (Tr. 67.)

FIRST PROPOSITION UNDER THESE TWO ASSIGNMENTS.

Where a right amounting to "property" became attached to land under the Mexican government, the treaty of Guadalupe Hidalgo protected and confirmed it, and the title to the land was not conveyed thereby, but remained to the grantee or his assigns.

STATEMENT.

The adjudication of the rights of the original grantees by the Ayuntamiento of Guerrero to the benefits of Decree No. 24, of October 19, 1833, the denouncement of the lands and survey thereof by the Surveyor General of Tamaulipas, and expediente thereon, were all made prior to the year 1836. Final title was issued by the Governor of Tamaulipas one month before date of the treaty. See statement under first proposition under second assignment, in this brief.

AUTHORITIES.

Soulard v. United States, 4 Peters, 511; 10 Peters, 100-106.
Strother v. Lucas, 12 Peters, 476, and authorities there cited.
Mitchell v. United States, 9 Peters, 734, 735.

SECOND PROPOSITION UNDER THIRD AND FOURTH ASSIGNMENTS.

Defendants' rights of property in the lands being protected by the terms of the treaty and the law of nations, it was a violation of both, as well as a disregard of the law of Texas of September 3, 1901, to render the judgment for plaintiff.

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STATEMENT.

Same as under foregoing first proposition.

AUTHORITIES.

Same as last above; also
Bryan v. Kennett, 113 U. S., 179.
Hornsby v. United States, 10 Wallace, 242.
Carpenter v. Runnels, 19 Wallace, 141.

THIRD PROPOSITION UNDER THIRD AND FOURTH ASSIGNMENTS.

The act of the Legislature of Texas approved September 3, 1901, authorized the District Court of Travis County to take cognizance of and adjudicate upon inchoate as well as perfect titles emanating from a former government, and under such law the judgment should have been for defendants.

STATEMENT.

Same as under first proposition under these assignments.

AUTHORITIES.

Act of September 3, 1901 (Acts of the First Called Session of the 27th Leg., pp. 4 to 7), sec. 1 of which authorized the court to adjudicate in favor of all kinds of claims established in accordance with the "laws of nations, the laws, usages and customs of the government from which such ownership, right, interest or claim emanates or is derived, and the Constitution, laws and treaties of the United States of America and of this, the State of Texas, and the principles of equity."

FIFTH ASSIGNMENT OF ERROR.

The court erred in not rendering judgment for the defendants on the facts proved under the third paragraph of their answer, possession under claim of title to the land in controversy having been shown unquestioned by the former Mexican government or by the governments succeeding, since the year 1834; a time sufficient to confer a title by prescription or presumption of a grant. (Tr. 67.)

FIRST PROPOSITION UNDER FIFTH ASSIGNMENT.

A grant is presumed against the State by long and uninterrupted possession under a claim of ownership; the presumption is that the

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possession began in right, and that all that might lawfully have been done to perfect the legal title was in fact done, and in the form prescribed by law.

STATEMENT.

See statement under first proposition under second assignment.

AUTHORITIES.

Jones v. Borden, 5 Texas, 410, 411-413.
Herndon v. Casiano, 7 Texas, 322.
Paul v. Perez, 7 Texas, 338.
State v. Cardinas, 47 Texas, 293, 294.
Daingerfield v. Paschal, 11 Texas, 579.
Sheppard v. Harrison, 54 Texas, 96.
Barclay v. Howell's Lessee, 6 Peters, 498, 512.
United States v. Chavez, 175 U. S., 509, 523, 524.

SECOND PROPOSITION UNDER FIFTH ASSIGNMENT.

The rule that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for twenty years, is applicable wherever, by possibility, a right may be acquired in any manner known to the law. Where, as in this case, the possession continued over sixty-five years, the presumption ought to be conclusive.

STATEMENT.

Both original grants involved in this case were first possessed by the original grantees in 1822; the lands were surveyed for them by the Surveyor General of Tamaulipas in April, 1835, after their right to land under Decree No. 24, of 1833, had been duly adjudicated. (Tr. 32, 36, 42, 43, 44, 46.) Possession has been continuous up to the present time.

AUTHORITIES.

United States v. Chavez, 175 U. S., 509, and authorities cited on page 522.
Sheppard v. Harrison, 54 Texas, 96.

SEVENTH ASSIGNMENT OF ERROR.

The court erred in not holding that the final titles to the land in controversy, issued by the Governor of Tamaulipas on the 2d day of January, 1848, were good and valid titles, because the Governor had the

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power at that time to issue final titles to lands where the rights of the grantees originated prior to December 19, 1836.

FIRST PROPOSITION UNDER SEVENTH ASSIGNMENT.

The issuance of the final titles by the Governor of Tamaulipas was but a ministerial act, to vest the legal title in the party who had the equitable title to the land prior to any claim of Texas to the territory, and did not impair the value of the ceded territory to the new sovereign; and being done by the proper officer, before either the date or the exchange of ratifications of the treaty of cession, such title is legitimate and valid.

SECOND PROPOSITION UNDER SEVENTH ASSIGNMENT.

The general rule is that a sovereign can not, by granting lands in a conquered territory, impair the value of the conquest after it is apparent that the territory is lost. But where, as in this case, the final grant only conveyed the legal title, the equity having long prior thereto existed in the grantees, and was made before either the date of the treaty of cession or exchange of ratifications and while the former government was the only one exercising the functions of government in the territory, such grant was valid and effectual to convey the legal title.

STATEMENT UNDER THESE TWO PROPOSITIONS.

The right of the original grantees to the benefits of Decree No. 24, of October 19, 1833, was adjudicated by the Ayuntamiento of Guerrero in 1834, the lands were surveyed for them by the Surveyor General of Tamaulipas in 1835, they continuously remained upon the lands, having first taken possession of them in 1822, the expedientes were made in 1835, and the Governor issued the final titles by virtue of the expedientes on January 2, 1848; the treaty was signed February 2, 1848, and ratifications were exchanged July 4, 1848. See full statement in this brief under first proposition under second assignment.

AUTHORITIES.

State v. De Leon, 64 Texas, 556.
Secs. 8 and 9 of the Colonization Laws of Tamaulipas of Dec. 15, 1826 (Sayles' Early Laws, art. 89).
Art. 1 of Decree No. 24 of Tamaulipas, of Oct. 19, 1833.
Haver v. Yaker, 9 Wallace, 32.

SIXTH ASSIGNMENT OF ERROR.

The court erred in not rendering judgment for defendants for the

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lands in controversy, because they proved a good and valid title in themselves by a preponderance of the evidence.

Propositions, statements and authorities same as under second, third, fourth, fifth and seventh assignments.

EIGHTH ASSIGNMENT OF ERROR.

The court erred in not rendering judgment for the defendants on their tender of the original price or value of the lands in controversy as fixed by Decree No. 24 of October 19, 1833, under which they hold; no time limit having been fixed by law within which such payment should be made.

This assignment is submitted as a proposition.

STATEMENT.

A tender of the original price was pleaded. (Tr. 13.) The price was $10 per league. (Tr. 50.)

AUTHORITIES.

Decree No. 24 of Oct. 19, 1833, art. 1.
State v. Sais, 47 Texas, 307, 316.

NINTH ASSIGNMENT OF ERROR.

The court erred in excluding the testimony of Jose Maria Martinez and others, offered by defendants as tending to establish an official construction and a usage and custom of the authorities of Tamaulipas by which the law known as Decree No. 24 of October 19, 1833, of the State of Tamaulipas, in connection with a favorable adjudication by the Ayuntamiento of any of the municipalities named therein upon an application by an inhabitant made thereunder, and a denouncement and survey of the land designated by the inhabitant, operated as vesting in the interested party the full legal title to such land, and that the issuance of a final title by the Governor was not regarded as necessary, and also to show why final titles had been issued by the Governor in 1848 in some cases—as shown by Bill of Exceptions No. 1, because such construction, usage and custom is a part of the law of this case when proved, and under the same the defendants were entitled to judgment; and also for the other reasons set out in said Bill of Exceptions.

FIRST PROPOSITION UNDER NINTH ASSIGNMENT.

The construction and application of laws of a foreign country may be

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proved in our courts by the testimony of witnesses who have duly qualified themselves as experts

STATEMENT UNDER THIS PROPOSITION.

First. Defendant offered to prove by the depositions of Jose Maria Martinez, Jose Maria Canales, Jose Maria Benavides, Andres Garcia and Jesus Pena Vela the official construction, and the usages and customs in connection therewith, of the contemporary authorities of the State of Tamaulipas, of the law of that State known as Decree No. 24 of October 19, 1833. (Tr. .)

Second. Said witnesses testified that they had held official and judicial positions in the town of Guerrero, Mexico, as follows:

Jose Maria Canales, Regidor in the years 1830 and 1831, and first alcalde in the year 1846. (Tr. .)

Jose Maria Martinez, Regidor or councilman in the year 1860, constitutional second alcalde in the year 1861, and constitutional first alcalde or president of the city council (Ayuntamiento) in the years 1863 and 1864. (Tr. .)

Jose Maria Benavides, Regidor several times (does not remember in what years), and first alcalde in 1868. (Tr. .)

Andres Garcia, comisario, or justice of the peace, in 1855; Regidor or councilman in the years 1857 and 1859, and second alcalde in 1861. (Tr. .)

Jesus Pena Vela. Regidor or councilman in the years 1860 and 1862 and constitutional first alcalde in the year 1871. (Tr. .)

All of said witnesses testified that they were well acquainted with the provisions of said Decree No. 24. (Tr. .)

Third. Plaintiff objected to the introduction of this evidence, because "it was incompetent and irrelevant, and also that it called for an opinion of the witnesses on matters concerning which they were not competent to give an opinion," which objection was sustained by the court and all of said evidence was excluded, and defendants excepted to this ruling on the grounds stated in Bill of Exceptions No. 1. (Tr. .)

Fourth. Article 1 of said decree is as follows:

"To the inhabitants of Camargo, Mier, Guerrero and Laredo who may have no lands of their own and who may possess stock to occupy them, *there shall be given at once* not exceeding five leagues each, and in compensation they shall pay the State ten dollars for each league." (Tr. .) Said decree contains no reference to a final title to be issued by the Governor. See the decree in full on pages of transcript.

Fifth. The excluded evidence was, in substance, as follows:

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Jose Maria Canales:

"That by said law (Decree No. 24) a concession of lands was made to the inhabitants of Camargo, Mier, Guerrero and Laredo, not to exceed five leagues to each inhabitant who had served in defense of the Rio Grande frontier against the Indians, witness himself having received a grant of two leagues of land under the decree. That upon examination of the title by witness, he further says that the land in question, which was known as the 'Comitas,' was originally occupied by Pedro Bustamante, who had a ranche and stock thereon; that it was denounced by and surveyed for the said Pedro Bustamante, and the said title was extended to him in accordance with said Decree No. 24, and it has always been held by the authorities of the State of Tamaulipas as a full and complete legal title, and the said right was based upon the denuncio or selection of said land by Pedro Bustamante made long previous to the year 1836. That the original grantee, Pedro Bustamante, was entitled to the land conceded by Decree No. 24, for services rendered by him against Indians."

Jose Maria Martinez:

"That in the year 1835 the licentiate (lawyer) Antonio Canales was Surveyor General of the said State, and they had under the laws of the State of Tamaulipas authority to extend the said title to Pedro Bustamante. * * * That he has examined the title attached to the interrogatories in this suit and extended to Pedro Bustamante, and to his knowledge it is extended in accordance with said Decree No. 24. By the provisions of said Decree No. 24, a special concession was made of not more than five leagues of pasture land to each inhabitant of the frontier towns of Camargo, Mier, Guerrero and Laredo who should present himself before the Ayuntamiento of any of said towns, with proofs that he was entitled under the law to the concession, the conditions being that he had lived in one of said towns during the Indian war last past before the date of said decree, had not emigrated therefrom previous to the year 1821 (when many Spaniards left the country), had no lands of his own and was the owner of live stock. When an applicant made his petition and presented the proofs required by the law aforesaid, it was the duty of the Ayuntamiento, under the personal responsibility of each member thereof, to certify the fact, and make the concession; and from the date of the concession thus made, it has always been held by the Mexican authorities that the law itself conferred on and passed to the grantee a perfect legal title to the land, and that the same was not thereafter subject to denuncio by other parties, but was thenceforth separated from the public domain of the State. There was but one condition (beside the payment to the State of ten dollars per league) imposed upon the grantee: He could not sell the

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land for twenty years after he received the grant, under pain of confiscation to the State, which penalty could only be enforced by due process of law in the manner provided for in the said decree. In the city of Guerrero many persons who had expedientes or concessions under the provisions of said Decree No. 24, made between the 19th of October, 1833, and the 19th of October. 1836, by the Ayuntamiento of said city, were persuaded about the close of the Mexican and American war in 1848 to send their original expedientes to the capital of Tamaulipas at Victoria and to demand of the government the titles to the lands conceded by the expedientes, they being under the impression that the title from the State would be better respected and held more valid by the succeeding government than the original concession of the Ayuntamiento; the State issued titles to all who deposited their original expediente; and this, the witness says, is the reason why the attached years from the date thereof), and on the decree of the Ayuntamiento as is clearly shown by the title, where it says: "segun consta del espediente instruido al efecto," according to the dispatch executed to that effect. And witness says that he knows these things. because he himself, as one of the sons of the deceased Antonio Martinez Gutierrez, did obtain in the District Court of Zapata County, at the term thereof held in the winter of 1860-1861, a decree of confirmation of two leagues of land granted to the said Antonio Martinez Gutierrez, whose title to said land was in all respects like the one attached to these interrogatories. * * * Witness further says that the title extended to said Pedro Bustamante had always been held by the authorities of the State of Tamaulipas as a full and legal title from the date of the concession of the authorities of Guerrero, and his right to the same is based upon his denuncio or selection made previous to the 19th day of December, 1836. That the deceased Pedro Bustamante was entitled to the benefits of Decree No. 24 in every respect, and particularly for his services against the Indians. Besides the said land has always been considered as belonging to the family, and their title to the same has never been questioned."

Jose Maria Benavides:

"That the licentiate (lawyer) Antonio Canales was in 1835 Surveyor General of said State, and they had, under the laws of the State of Tamaulipas, authority to extend said title to Pedro Bustamante. * * * That he has heard the witness Jose Maria Martinez make in answer to this interrogatory a full explanation of the provisions of Decree No. 24, the proceedings under the same and their legal effect, has also heard his account of how many persons of Guerrero sent their expedientes to Victoria, * * * and this witness does answer in respect to these things the same as the said Jose Maria Martinez has answered; that he had examined the title annexed to the interrogatories

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in this suit, extended to Pedro Bustamante, and to the knowledge of this witness the same was extended in accordance with the said Decree No. 24, and it has always been held by the authorities of the State of Tamaulipas as a full and complete legal title from the date of the original concession by the authorities of the city of Guerrero and the said right was based on the denuncio or selection of said land made by said Pedro Bustamante previous to the 19th of December, 1836. That the deceased Pedro Bustamante was entitled under the law to the benefits of Decree No. 24, and besides, he was a man who did good service against the Indians, his ranche on this land being an outpost against the Indians, because the deceased would never entirely abandon it to the Indians; and he held it by block house or wooden fort which he had built there and where he defended himself successfully many times against the barbarous foe."

Andres Garcia:

"That in 1835 the licentiate Antonio Canales was Surveyor General of the State of Tamaulipas, and they had authority under the laws of the said State to extend the said title to Pedro Bustamante. * * * The said Decree No. 24 made a special concession of lands to the four frontier towns of Camargo, Mier, Guerrero and Laredo; it gave to each inhabitant as much as five leagues of pasture land, provided he had no lands and had live stock, he having to pay ten dollars per league to the State; it embraced only those who had lived in said towns during the last Indian war before the date of said decree. It stipulated that if the lands were sold within twenty years after the concession the State should by process of law, provided in the said decree, recover her right to the same; the benefits of the act were limited to three years from the date thereof; and it provided that the respective ayuntamiento should make due inquiry whether or not the applicant had no lands and had live stock, under the personal and pecuniary responsibility of every member thereof and all collectively. When an applicant made his petition and presented the proofs required by the said decree, it was the duty of the ayuntamiento to certify the fact, and make the concession; and from the date of such concession thus made, it has always been held by the Mexican authorities that the law itself conferred on and passed to the grantee a full and complete and legal title (because, having furnished the proofs, by the law he was entitled to the land) and the land was not thereafter subject to denuncio by other parties, but was thenceforth separated from the public domain of the State. The proceedings had before the ayuntamiento, and all reduced to writing, were attached together, and when finished were called 'El Expediente Instruido,' or 'Executed Dispatch;' this was delivered to the grantee, and upon it he could demand from the State the perfected title by paying into the State Treasury $10 per league for the land granted.

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That on the 9th or 10th of November, 1847, the witness left Guerrero and went to Victoria, the capital of the State of Tamaulipas, Mexico, carrying with him twenty-one expedientes belonging to as many different persons. Crispen Flores and Apolinaro Hamesgueta also went to Victoria about the same time, also taking with them many expedientes. All these expedientes were, to the knowledge of the witness, deposited in the State Department of said State, and after a delay of nearly two months (during which time this witness helped to print the skeleton titles) the titles were issued by the State authorities on the second day of January, 1848, upon the said expedientes for the lands conceded therein. The witness was present on the second day of January, 1848, and saw the Governor and Secretary in the act of signing the titles issued on that day; remembers nearly all the names of the grantees. The title extended to Pedro Bustamante was brought home by Crispin Flores aforesaid. That he has examined the title annexed to the interrogatories in this suit extended to Pedro Bustamante, and from his knowledge of the same, it was extended in accordance with the provisions of Decree No. 24, and it has always been held by the authorities of the State of Tamaulipas as a full and complete title from the date of the original concession by the authorities of the city of Guerrero, and the said right was based upon the denuncio or selection of said land by the said Pedro Bustamante made previous to the year 1836."

Jesus Pena Vela:

"That in 1835 the licentiate Antonio Canales was Surveyor General of the State, and they had under the laws of the State of Tamaulipas authority to extend the said title to Pedro Bustamante. * * * That he was present and heard the witness Andres Garcia, in answer to this interrogatory, give his explanation of the provisions of said Decree No. 24, the proceedings under it had before the ayuntamiento, and their legal effect, and he says that the same is a true interpretation of said decree, as this witness understands it. That he has examined the title attached to the interrogatories in this suit, extended to Pedro Bustamante, and from his general knowledge of these titles, the same was extended in accordance with the said Decree No. 24, and it has always been held by the authorities of the State of Tamaulipas as a full and complete legal title from the date of the original concession by the authorities of the city of Guerrero, and the said right was based upon the denuncio or selection of said land by the said Pedro Bustamante previous to the 19th of December, 1836." (Tr. .)

Sixth. The testimony of said witnesses was taken by deposition in answer to interrogatories, in May, 1872, in cause No. 3189, Manuel Bustamante et al. v. The State of Texas, and were agreed to be used as evidence in the trial of this cause. (Tr. .)

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AUTHORITIES UNDER THIS PROPOSITION.

Sierra Madre Const. Co. v. Brick (Texas Civ. App.), 55 S. W.

SECOND PROPOSITION UNDER NINTH ASSIGNMENT.

The testimony of a witness that he had held a judicial or other official position under the former government and was familiar with its laws and the construction and application thereof by the contemporary authorities of such government, qualifies him to testify as an expert in relation thereto, and to give his opinion of the true meaning, as well as the said construction and application of such laws.

STATEMENT.

Same as under first proposition under this assignment.

AUTHORITIES UNDER THIS PROPOSITION.

State v. Cuellar, 47 Texas, 304, 305.
State v. De Leon, 64 Texas, 558.
Hancock v. McKinney, 7 Texas, 384.

THIRD PROPOSITION UNDER NINTH ASSIGNMENT.

The construction and application of the laws of the former government by the then authorities thereof, and its usages and customs, are matters of fact concerning which any person having knowledge thereof may testify, and such evidence is not opinion evidence.

STATEMENT.

Same as under first proposition under this assignment.

AUTHORITIES UNDER THIS PROPOSITION.

State v. Cuellar, 47 Texas, 305.
State v. De Leon, 64 Texas, 558.

FOURTH PROPOSITION UNDER NINTH ASSIGNMENT.

Under the civil law then in force in Mexico, the decisions and opinions of its courts were not collected and published, and the testimony of witnesses is the best and only evidence thereof now available.

STATEMENT.

Same as under first proposition under this assignment.

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AUTHORITIES UNDER THIS PROPOSITION.

M. N. Ry. Co. v. Jackson, 89 Texas, 113.

FIFTH PROPOSITION UNDER NINTH ASSIGNMENT.

The decisions of the courts of the former government and the construction by them of its statutes become a part of the law itself, and are binding upon the courts of the succeeding government, particularly when property rights have been acquired thereunder.

STATEMENT.

Same as under first proposition under this assignment.

title, bearing date of the year 1848, is accompanied by the map to which it refers, bearing the date it was surveyed in 1835. The witness further says that the title extended to Pedro Bustamante, to his knowledge, was issued on an original denuncio made previous to December 19, 1836 (because the law of October 19, 1833, was limited to three

AUTHORITIES UNDER THIS PROPOSITION.

Powell v. De Blanc, 23 Texas, 75, 76.
State v. Smith, 55 Texas, 451.
Escriche, Diccionario Razonado de Legislacion y Jurisprudencia *in verbis* "Interpretacion de las Leyes." IV. "Interpretacion Usual."

SIXTH PROPOSITION UNDER NINTH ASSIGNMENT.

The construction and application given by the political authorities of the former government to its laws in relation to grants of land out of its public domain, may be proved in evidence, and, when proved, will be presumed, after this great lapse of time and in the absence of evidence clearly showing error, to have been the proper construction and application thereof.

STATEMENT.

Same as under first proposition under this assignment.

AUTHORITIES UNDER THIS PROPOSITION.

Hancock v. McKinney, 7 Texas, 384.
Ruis v. Chambers, 15 Texas, 590.
Cavazos v. Trevino, 35 Texas, 165.
City of Brownsville v. Basse, 36 Texas, 502, 503.
State v. De Leon, 64 Texas, 557.

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SEVENTH PROPOSITION UNDER NINTH ASSIGNMENT.

The laws enacted by the former government concerning the alienation of land out of its public domain, as construed and applied by its judicial and political authorities, and the usages and customs of such government, are admissible in evidence in suits filed under the act of September 3, 1901.

STATEMENT.

Same as under first proposition under this assignment.

AUTHORITIES UNDER THIS PROPOSITION.

Chap. 4, General Laws of Texas, First Called Session, 27th Legislature, pp. 4-7.

Mitchell v. United States, 9 Peters, 736.

EIGHTH PROPOSITION UNDER NINTH ASSIGNMENT.

Such laws, with their construction and application, and the usages and customs of the former government, were the laws, usages and customs under which the rights of the defendant in this controversy accrued and were created, and at that time vested in defendant the property, title and right to the land in controversy. Evidence thereof, whether authorized or not by any law of Texas, is admissible for the purpose of giving effect to the guarantee of the treaty of Guadalupe Hidalgo that property of Mexicans in this territory should be inviolably respected, etc.

STATEMENT.

Same as under first proposition under this assignment.

AUTHORITIES UNDER THIS PROPOSITION.

Same as above.

NINTH PROPOSITION UNDER NINTH ASSIGNMENT.

To deny to defendant the right of introducing evidence of the laws of the State of Tamaulipas, with the construction and application thereof by the contemporary authorities of said State, and of the usages and customs of said government, under which his ownership and right to said land was derived, was to impair the obligation of his contract with the former government and its successor, the State of Texas, and to deprive him of vested rights of property in said land in violation of the law of nations, the principles of equity, the guarantees of the treaty

counter 91097

of Guadalupe Hidalgo, and the Constitution of the United States. And any law of this State, organic, legislative or arising from judicial decisions, that requires or authorizes the exclusion of such evidence, is violative of said treaty and the Constitution of the United States, and therefore void.

STATEMENT.

Same as under first proposition under this assignment.

AUTHORITIES UNDER THIS PROPOSITION.

Tex. Mex. Ry. Co. v. Locke, 74 Texas, 399, 400.

J. F. MULLALLY,

Attorney of Record for Leonard Haynes and H. M. Haynes, Appellants.

counter 41098

See assignment - mfile 0 Cons with
a book of mine & b/s & Stub = Rental
Int Sales Ent L 10/88 - 0 5-7
Jim Ry & Land 74 & 400
Stub = Dickson 64 & 5-5-6

Counter 41096

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

LEONARD HAYNES ET AL.,
Appellants,

vs.

THE STATE OF TEXAS,
Appellee.

BRIEF FOR APPELLEE.

FILED IN COURT OF CIVIL APPEALS
3rd Supreme Judicial District
AUSTIN, TEXAS.
NOV 9 1904
R. L. Connelly, Clerk

REPRODUCED FROM THE
HOLDINGS OF THE
TEXAS STATE ARCHIVES

Group 19 of 20

counter 41100

STATE OF TEXAS, ATTORNEY GENERAL'S OFFICE

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

LEONARD HAYNES ET AL.,
Appellants,

vs.

THE STATE OF TEXAS,
Appellee.

****

Appeal from the District Court of Travis County.

****

BRIEF FOR APPELLEE.

****

STATEMENT OF THE NATURE AND RESULT OF THE SUIT.

This suit was brought under authority of the Act of the Legislature of Texas approved February 23rd, 1900, for the recovery of several tracts of land surveyed and set apart for the public free schools. The defense of the defendants is correctly set forth in their brief. The appellee by supplemental petition set up the fact that those under whom ~~Haynes~~ defendants claimed title to the land had instituted a suit under the act of 1870, and that the decision of the Supreme Court had been adverse to the title under which defendants now assert ownership of the land. The evidence established the fact that under the act of 1870 suit was instituted by Eulalio Gonzales and his wife Petra Zapata, Bartolo Morales and his wife Rafaela Zapata, Jose Ma. Coronado and his wife Maria Anna Zapata, and Dolores Zapata, the heirs of Antonio Zapata, against the State for the purpose of having the grant to the land described in their petition (it being a part of the land sued for in this case) confirmed; and also that suit was instituted by Manuel Bustamente and Felix Roderiguez, heirs of Pedro Bustamente, under the Act of 1870 against the State for the purpose of having confirmed to them the title to the land described in their petition, it being a part of the land sued for in this case. In each case judgment was rendered in favor of the claimant in the trial court, but on appeal the judgment was reversed and remanded by the Supreme Court, (47 Tex. 322); that thereafter the cases were dismissed

counter 41101

from the docket of the District Court of Travis County where they had been pending.

The evidence further showed that thereafter the lands covered by what was claimed to be a grant were located, ~~an~~ alternate sections being surveyed for the school fund. It was for the recovery of these alternate sections that the suit was brought. The trial resulted in a judgment for appellee, from which this appeal was taken.

FIRST COUNTER-PROPOSITION UNDER APPELLANT'S SECOND, SIXTH AND EIGHTH ASSIGNMENTS OF ERROR.

The court did not err in adjudging to plaintiff the land sued for, the plaintiff having made out its case by showing that the lands had been located for the benefit of the common free school fund.

S T A T E M E N T.

The plaintiff introduced in evidence the field-notes of the surveys of the land sued for, and thereby made out its case. The defendants' defense consisted in a claim of a grant made by the State of Tamaulipas to Antonio Zapata and Pedro Bustamente in the year 1848.

A U T H O R I T I E S.

State of Texas vs. Manuel Bustamente, 47 Tex. 320.

State of Texas vs. Gonzales et al., 47 Tex. 322.

A R G U M E N T.

The appellants who had located the certificates after the judgment of the Supreme Court in the cases which are referred to as being reported in the 47th Texas Supreme Court Report, located railroad certificates upon the land and is holding the land located by virtue of the railroad certificates under such locations, and is claiming the remainder of the land under the alleged grants to Antonio Zapata and Pedro Bustamente.

SECOND COUNTER-PROPOSITION UNDER APPELLANTS' SECOND ASSIGNMENT OF ERROR, AND COUNTER-PROPOSITION UNDER THIRD AND FOURTH ASSIGNMENTS OF ERROR.

An imperfect title emanating from a former, and unrecognized by the existing government, forms no foundation for an action, and con-

counter 71102

stitutes no defense against one.

S T A T E M E N T.

The documents read in evidence by the appellants constitute nothing more than an inchoate claim to the land which had never been recognized or validated by the legislature of the Republic or State of Texas. (Tr. p. 65). The treaty of Guadalupe Hidalgo was by its terms expressly limited to the protection of titles which were complete.

A U T H O R I T I E S.

Paschal vs. Perez, 7 Tex. 347.

Trimble vs. Smithers, 1 Tex. 789.

League vs. DeYoung, 2 Tex. 500.

Land Commissioner vs. Bell, Dallam 368.

Houston vs. Robertson, 2 Tex. 16.

Norton's Succession vs. Commissioners, 2 Tex. 358.

Kempner vs. Victoria, 3 Tex. 138.

1 Sayles Real Estate Laws, Sec. 514.

A R G U M E N T.

There was no claim that the defendant had a complete grant from the State of Tamaulipas prior to 1848, and the act of the governor of Tamaulipas of the date mentioned has been held to be void by our Supreme Court. It is within the power of the legislature to confirm or to refuse to confirm inchoate grants. Under the Act of 1870 inchoate grants were authorized to be confirmed. The Act of 1901 differed from the Act of 1870 in this respect, and the courts under the last mentioned act were not authorized to consider inchoate or incomplete grants. By the terms of the Treaty of Guadalupe Hidalgo as originally made provision was made for the protection of inchoate grants, but the Senate of the United States struck from the treaty the provision which would have had that effect, and in lieu thereof, by virtue of a protocol, subsequently entered into, and which was consented to by the Mexican government, limited the effect of the treaty to the confirmation of such grants as were complete on the 2nd day of March, 1836.

counter 41103

COUNTER-PROPOSITION UNDER APPELLANTS' FIFTH ASSIGNMENT OF ERROR.

Limitation will not avail as against the State.

S T A T E M E N T.

The State of Texas was the plaintiff in the suit.

A U T H O R I T I E S.

Brown vs. Sneed, 77 Tex. 471.

A R G U M E N T.

The State had not recognized the right of the defendant or those under whom he claimed the land sued for. On the contrary, the State had repudiated such claim time and again, first by the suits which have already been referred to, and also by patenting the land on locations by virtue of certificates.

COUNTER)PROPOSITION UNDER APPELLANTS' SEVENTH ASSIGNMENT OF ERROR.

The governor of Tamaulipas had no authority to grant lands in Texas on the 2nd day of January, 1848.

S t a t e m e n t

What purports to have been a grant of the land in controversy by the governor of Tamaulipas was executed on the 2nd day of January, 1848.

A U T H O R I T I E S.

State of Texas vs. Bustamente, 47 Tex. 320.

COUNTER-PROPOSITION UNDER APPELLANTS' NINTH ASSIGNMENT OF ERROR.

The court did not err in excluding the testimony of witnesses Jose Maria Martinez and others to the effect that the documents introduced in evidence vested title to the land.

S T A T E M E N T.

The appellant sought to prove by the witnesses that the legal effect of certain documents and acts was to vest title in the claimant of the land. (Tr. p. 36).

A U T H O R I T I E S.

State vs. De Leon, 64 Tex. 558.

State vs. Cuellar, 48 Tex. 305.

A R G U M E N T.

The law speaks for itself and needs no interpretation, and it has been well settled by numerous decisions, which have already been referred to, that a final title must be issued before a grant can be complete.

C. K. Bell

Attorney General,

Attorney for the State of

Texas, Appellee.

counter 41105

***915** 100 S.W. 915

100 Tex. 433

HAYNES et al.
v.
STATE.

Supreme Court of Texas.
March 27, 1907.

Error from Court of Civil Appeals of Third Supreme Judicial District.

Action by the state against Leonard Haynes and others. Judgment for plaintiff was affirmed by the Court of Civil Appeals (85 S. W. 1029), and defendants bring error. Reversed and rendered.

James B. Wells, for plaintiffs in error.

R. V. Davidson, Atty. Gen., and Wm. E. Hawkins, Asst. Atty. Gen., for the State.

BROWN, J.

This case is governed by the opinion this day filed in Leonard Haynes v. State of Texas (No. 1,562) 100 S. W. 912, and, for the reason given in that opinion, the judgment of the district court and that of the Court of Civil Appeals (85 S. W. 1029) are reversed, and judgment is here rendered for plaintiffs in error for the land.

Group 20

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counter 41106

NO.1561.

Leonard Haynes et al

vs

The State of Texas

OPINION

Reversed and Rendered for

Plaintiffs in Error.

Filed in Supreme Court of Texas

March 27th, 1907.

F. T. Connerly

Clerk.

BROWN, Asso.Jus.

REPRODUCED FROM THE
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TEXAS STATE ARCHIVES

counter 91107

SUPREME COURT.
AUSTIN.

Leonard Haynes, et al., Plaintiffs in Error,
No.1561. -vs-
The State of Texas, Defendant in Error.

This case is governed by the opinion this day filed in Leonard Haynes vs. The State of Texas, No. 1562, and for the reasons given in that opinion the judgment of the district court and that of the Court of Civil Appeals are reversed and judgment is here rendered for plaintiffs in error for the land.

J. J. Brown
Associate Justice.

counter 41108

Group 1 of 10

No 1561.

(TRANSCRIPT COVER.)

No. 3455 — Assignment.

(No 1561)

Leonard Haynes
Appellant.

vs.

The State of Texas
Appellee.

From the District Court of Travis County,
for the 26th Judicial District of Texas,
at Austin, Texas.

Applied for by J. F. Mullally

Attorney, for appellant on the 5th

day of July A.D. 1904, and delivered to

By the above named Attorney

on the 27th day of September 1904.

J. D. Nash
Clerk of the District Court of Travis County.

3rd Dist

No 1561
Filed in Supreme Court
Apl. 27. 1906.
F. J. Connelly Clerk
By J. Hollyfield Deputy

File No. 20-8
Sketch File 20-8
Zapata County
Record for Leonard Haynes v. The St. of Tx. [Tracts 1-4]
Filed April 20 1908
GARRY MAURO, Com'r
Douglas Howard

REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES

No petition - only for
a writ of error
Brief filed 10-10

affirmed
1-25-05
2

overruled
3-8-05
2

Reversed & Rendered
Mch 27. 1907.

Gaylord 41109

THE STATE OF TEXAS

No. 20,547. vs.

JAS. J. HAYNES ET AL.

counter 41110

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counter 41111

Caption.

C A P T I O N .

T H E S T A T E O F T E X A S,)

C O U N T Y O F T R A V I S.)

At a term of the District Court of the 26th Judicial District of Texas, begun and holden at Austin, within and for the County of Travis, before the H o n. V. L. B r o o k s, and ending on the 25th. day of June, A.D. 1904, the following case came on for trial, to-wit:-

T H E S T A T E O F T E X A S

N o. 2 0, 5 4 7. vs.

J A S. J. H A Y N E S E T A L.

Plaintiff's Original Petition.

P L A I N T I F F'S O R I G I N A L P E T I T I O N .

Filed March 26, 1903.

The State of Texas) In District Court of Travis County, 26th.
County of Travis.) Judicial District of Texas.

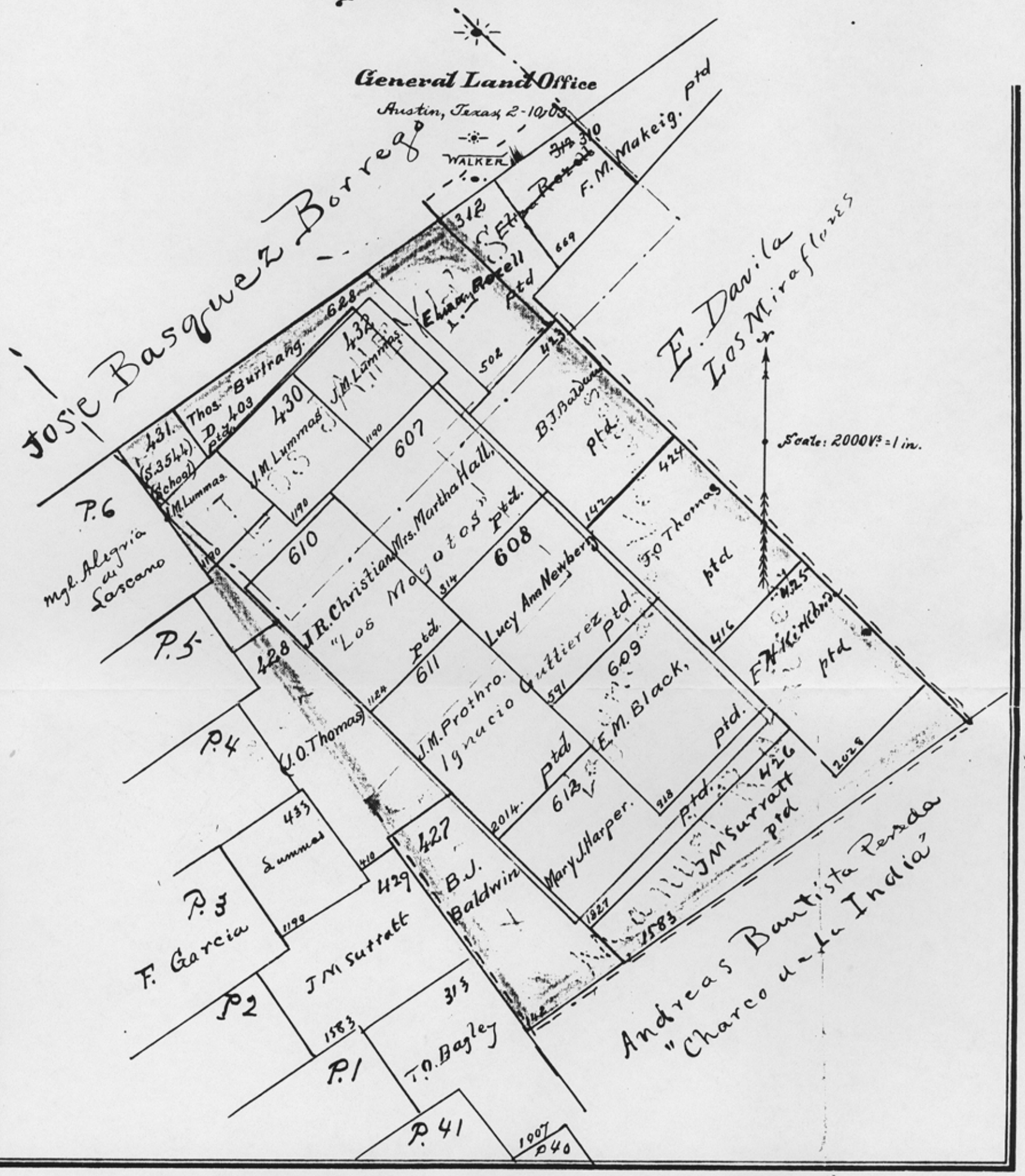
To the Hon. R.L. Penn, Judge of said Court:-

The State of Texas, plaintiff herein, by and through C.K. Bell, Attorney General of said State, brings this suit, and complaining of Leonard Haynes, R.A. Haynes, Sabas Mesa and James J. Haynes, represents and shows to the Court that the defendant Leonard Haynes resides in Peubla, in the Republic of Mexico; that

1. the defendant R.A. Haynes resides in Caloya, in the Republic of

counter #1112

Zapata Co. Sketch,



counter 1113

Mexico, and that the defendant James J. Haynes resides in Webb County, in the State of Texas, and that defendant Sabas Mesa resides in the County of Zapata, in the State of Texas.

That on the 1st day of January, 1898, the State of Texas, plaintiff herein, then was and still is the owner in fee simple (the same belonging to the common free school fund of the State of Texas) of certain tracts of land situated in the County of Zapata, in the State of Texas, and particularly described as follows, to-wit:-

First tract . Being survey No. 427 made for the State of Texas by virtue of scrip No. 142 issued to B.J. Baldwin situated in Zapata County, about 15 miles N. 30° E. from Carrizo, and bounded as follows:-

Beginning at a large mesquite post, the S. corner of a so called grant in the name of Ignacio Guttierrez, from which a mesquite marked X bears S. 28 varas, and another bears S. 13° W. 14 varas;

Thence S. 45° E. 1320 varas, post in line of Charco de le India, for E. corner;

Thence S. 55° W. with said India tract at 1872 varas, large stone S.W. or W. corner of same, at 2089 a post on N.E. line of survey No. 313;

Thence N. 35° W. with 313 and 429 at 4205 varas, post in prairie for W. corner of this survey;

Thence N. 55° E. at 1348 varas a post in the S.W. line of "Mogotes."

Thence S. 45° E. 2950 varas to the beginning, containing 1280 acres.

Second tract . Being survey No. 428 made for the State of Texas by virtue of scrip No. 410 to J.O. Thomas, situated in Zapata County about 16 miles N. 20 E. from Carrizo, and bounded

2. as follows:-

counter 41114

Beginning at a post on the S.W. line of a so called grant of "Los Mogotes" to Ignacio Gutterrez 2950 varas N. 45° W. from its S. corner, said post being the N. corner of No. 427, and E. corner of this.

Thence N. 45° W. with said Mogotes at 4303 varas, post for N. corner of this survey;

Thence S. 55° W. at 923 varas a post on N.E. line of porcion No. 5;

Thence S. 35° E. with porcion No. 5, 744 varas to its E. corner;

Thence S. 55° W. with porcion No. 5, 479 varas to the N. corner of porcion No. 4;

Thence S. 35° E. with porcion No. 4, 1960 varas to its N.E. corner;

Thence N. 55° E. 68 varas to a post for corner;

Thence S. 35° E. 1750 varas to a post for corner;

Thence N. 55° E. 733 varas, to post on line of No. 427;

Thence N. 35° W. 216 varas to a post, W. corner of 427;

Thence N. 55° E. 1348 varas to the beginning, containing 1280 acres.

Third tract. Being survey No. 431 made for the State of Texas by virtue of scrip 1190 issued to James M. Lumms, situated in Zapata County, about 14 miles N. 14° E. from Carrizo, and bounded as follows:-

Beginning at a post the N.,corner of porcion No. 6 in the name of Miguel Alegna de Lascano, from which a mesquite marked X bears S. 36° 15' W. 86 varas.

Thence S. 35 E. with said porcion at 1245 varas to large post supposed to be the W. corner of the Mogotes tract, at 2665 varas a post for S. corner of this survey.

Thence N. 45 E. 1696 varas to a post on the S.W. boundary of survey No. 430, for the E. corner of this survey;

counter 41115

Thence N. 45° W. 1399 varas to a post, W. corner of 430;

Thence S. 45° W. 190 varas to a post;

Thence N. 35 W. 1032 varas to a post on the S.E. boundary of Borrego grant for the N. corner of this survey;

Thence S. 55° W. with said Borrego grant 1233 varas to the beginning, containing 640 acres.

Fourth tract. Being 300 acres of unsurveyed public domain in Zapata County about 13 miles N. 14 1/2° E. from Carrizo, and bounded and described as follows:-

Beginning at the S. corner of Survey No. 431;

Thence N 45° E. 1696 varas with said No. 431, J M. Lummus State section;

Thence S. 45° E. 500 varas to the S. corner of No. 430 J.M. Lummus individual section;

Thence N. 45° E. 850 varas to the W. corner of 607, M.M. Hall, individual section;

Thence S. 45° E. 100 varas to the N corner of 610, J.R. Christian individual section;

Thence S. 45° W. 2250 varas to W. corner of 610, J.R. Christian individual section;

Thence S. 45° E. 800 varas to N. corner of No. 428, J.O Thomas, State section;

Thence S. 55° W. 952 varas to N.W. corner of 428 J.O. Thomas State section;

Thence N. 35° W. 1200 varas to N. corner of porcion No. 5;

Thence N. 55° E. 400 varas to E. corner of porcion No.6;

Thence N. 35° W. 170 varas to the beginning, containing 300 acres.

That plaintiff was in possession of said land and is now entitled to possession thereof; that on the said 1st. day of

4. January, 1898, the defendants, without authority of law entered

counter 71116

upon said land and dispossessed plaintiff thereof and held, claimed and occupied the same adversely to plaintiff and are still so doing, to plaintiff's damage two thousand dollars.

That the rental value of said land is and at all times has been five cents per acre per annum.

Premises considered, plaintiff prays that the defendants be cited to answer hereto as required by law; that upon final hearing hereof plaintiff have judgment against the defendants and each of them for the recovery of the title and possession of said land, with writ of possession for the same, and for damages, and for the rental value of the use and occupation of said land, with ten per cent thereon as attorney's fees; for costs, and for all other and further relief to which she may be entitled either in law or in equity.

C. K. B e l l,

Attorney General, Attorney for

The State of Texas.

(Endorsed) No. 20547. The State of Texas vs. Jas J. Haynes et al. Plaintiff's Original Petition. This action is brought as well to try title as for damages. Filed in Dist Court. Travis Co. 26 Jud. Dist. Mar. 26, 1903, Jas. P. Hart, Clerk.

Disclaimer of R.A. Haynes.

D I S C L A I M E R O F R. A. H A Y N E S.

Filed June 3, 1903.

The State of Texas) In the District Court, 26th. Judicial

No. 20547. vs.)

R.A. Haynes et al) District of Texas .

Now comes R.A. Haynes, one of the defendants in the above styled and numbered cause and shows to the Court that he disclaims any title to or right in any of the lands sued for and described

5 in plaintiff's petition, and claimed no such right or title at the

counter 71117

time of this institution of this suit.

Wherefore he prays that he be discharged with his costs.

R. A. H a y n e s.

(Endorsed) 20547. State vs. Jas. J. Haynes. Disclaimer of R.A. Haynes. Filed June 3, 1903, Jas. P. Hart, Clerk.

Dis-claimer of Sabas Mesa.

D I S C L A I M E R O F S A B A S M E S A .

Filed June 3, 1903.

The State of Texas) In the District Court, 26th. Judicial

No. 20547. vs.)

Sabas Mesa et al.) District of Texas.

Now comes Sabas Mesa, one of the defendants in the above and numbered cause and shows to the Court that he disclaims any title to or right in any of the lands sued for and described in plaintiff's petition, and claimed no such right or title at the time of this institution of this suit.

Wherefore he prays that he be discharged with his costs.

S a b a s M e s a.

(Endorsed) No. 20547. State vs. Jas. J. Haynes et al. Disclaimer of Sabas Mesa. Filed June 3, 1903, Jas. P. Hart, Clerk.

Dis-claimer of Jas. J. Hay-nes.

D I S C L A I M E R O F J A S. J. H A Y N E S.

Filed June 3, 1903.

The State of Texas) In the District Court, 26th. Judicial

No. 20547. vs.)

James J.Haynes et al) District of Texas.

Now comes James J. Haynes, one of the defendants in the above styled and numbered cause and shows to the Court that he disclaims any title to or right in any of the lands sued for and

counter 41118

described in plaintiff's petition, and claimed no such right or title at the time of this institution of this suit.

Wherefore he prays that he be discharged with his costs.

J a m e s J. H a y n e s.

(Endorsed) No. 20547. The State of Texas vs. James J. Haynes et al. Disclaimer of James J. Haynes. Filed June 3, 1903, Jas. P. Hart, Clerk.

- -

Amended Answer of Leonard Haynes.

A M E N D E D A N S W E R O F L E O N A R D H A Y N E S

Filed June 16, 1904.

- -

The State of Texas) In Dist. Court of Travis County, Texas,
No. 20547. vs.)
Jas.J.Haynes et al) 26th. Judicial District .

Leave of Court being obtained, comes the defendant Leonard Haynes and files this his first amended answer in lieu of his original answer filed herein on the 15th day of June, 1903 , and for amended answer says:-

Now comes Leonard Haynes, defendant in the above cause and for answer to plaintiff's petition says:-

First. That he demurs and excepts to the jurisdiction of the district court of Travis County over either the subject matter of this suit or over the person of defendant, and for such exception says that the allegations of said petition show that the lands sued for are situated wholly in the County of Zapata and that defendant is a non resident of Travis County, and that none of the other defendants resides in Travis County and they have all disclaimed any interest in the land in controversy; wherefore he says that said petition does not show a cause of action against him maintainable in the district court of Travis County, and of

7. this he prays the judgment of the Court, and that he go hence

counter 11119

with his costs.

Second. And comes again the defendant Leonard Haynes and for further answer herein denies all and singular the allegations in plaintiff's petition in manner and formas therein alleged; and says that he is not guilty of the supposed wrongs, injuries and trespasses laid to his charge or any or either of them in manner and form as in said petition alleged, and of all this he puts himself upon the country.

Third. This defendant also says that he is the legal and equitable owner and holder of the lands in controversy which are of the valve of $5000.00, by virtue of two certain grants , one of them acquired under the law known as Decree No. 24 of October 19th. 1833 of the State of Tamaulipas, Republic of Mexico- then the sovereignty of the soil, both of which grants are now held and owned by this defendant by mesne conveyances from the original grantees thereof, the one acquired under said decree No. 24, being as follows, viz:-

A grant of two square leagues of land, called Los Mogotes made to Ignacio Gutierrez, having its origin on or about the 29th. day of August 1834 by adjudication by the City Council (Ayuntamiento) of Guerrero in which jurisdiction the said land was then situated; survey thereof was made on or about January 5th 1835 by Antonio Canales the surveyor general of Tamaulipas for said Ignacio Gutierrez, the original grantee, and final title to said land was extended to said Gutierrez by the Governor of Tamaulipas on the 2nd day of January, 1848, the $20.00 at which said land was valued having been paid by said Gutierrez. That said Gutierrez had been in possession of said two leagues of land since about the year 1828 up to the time of said survey, and since then he and those having his estate therein including this defendant have been continuously in the actual possession of said land, cultivating, using and enjoying the same and raising

counter 7/1120

live stock thereon, to which latter purpose the said land is chiefly adapted, down to the present time, holding and claiming the same by virtue of the right acquired by him as aforesaid; that the same is a good and valid and legitimate title to said land and is protected by the treaty of Guadalupe Hidalgo between the United States and Mexico, and to deprive defendant of any part thereof in this suit would be a violation of the terms of said treaty; and would be also in violation of the 14th Amendment to the Constitution of the United States in that such action would be a deprivation by the State of Texas of the property of defendants without due process of law, and that any and all laws of the State of Texas authorizing or commanding such action are in conflict with Art. 1, Sec. 10, Subdivision 1, of the said Constitution of the United States which forbids the States to pass any law impairing the obligation of contracts, and insofar as any such laws undertake to impair the obligation or binding force of such grants, they are unconstitutional and void.

The said two leagues of land was resurveyed by the district surveyor of Zapata land district on April 20th, 1876, and the metes and bounds of the same as shown by said resurvey are as follows, to-wit:-

Situated in the County of Zapata about 15 miles N. 20 E. of the town of Carrizo and in the rear of the porciones fronting on the Rio Grande, beginning at a post marked V 25000 varas N. 55 3/4 E. of the upper corner of the lands given as porciones in the jurisdiction of Guerrero, a stone placed 178 varas N. 55 E. from the bank of the Rio Grande for the north corner of this survey and from which a mesquite marked $\overline{X}$ bears N. 21 1/2 W. 29 varas; thence S. 45 E. at 2500 varas set post in prairie for line mark, at 4800 varas crossed road leading from the Ovejas ranch to Carrizo, at 5000 varas placed a large stone for line

mark in prairie, at 7500 varas set post for line mark entered

counter 41121

mesquite timber, at 10000 varas set post in timber for the east corner from which a mesquite marked X bears N. 51 E. 4 varas, also mesquite marked X bears N. 83 W. 13 varas; thence S. 45 W. at 1250 varas marked mesquite for line tree, at 2500 varas post for line mark, at 3070nvaras marked two large mesquite trees in line , at 3670 varas crossed derramadero running SSE at 5000 varas set post for the south corner from which a mesquite marked $\bar{X}$ bears S. 28 varas, also a mesquite marked ≠ bears S. 13 W. 14 varas; thence N. 45 W. through scattering mesquital at 185 varas passed through a group of mesquite tress marked /// and \\\ on each side of line, at 2500 varas post in prairie for line mark, at 3895 varas the said road from Dvejas ranch to Carrizo bears SSW at 5000 varas set post for line mark, at 6120 varas passed well situated 40 varas to the east of line, at 6180 varas passed well 60 varas to the east of same, at 6370 varas passed well 20 varas to the east of line, at 6732 varas a mesquite marked ≡ ten varas to the east of line, at 7310 varas crossed arroyo Blanco running southwest, at 7500 varas set post for line mark, at 8503 varas marked stump in line, at 8669 varas mesquite marked /// 1 vara west of line, at 10000nvaras set post for the west corner; from which a large mesquite marked + on a hill bears S. 53 E. 120 varas; thence N. 45 E. 5000 varas to the place of beginning.

That the lands referred to in plaintiff's petition as "Third Tract" and "Fourth Tract" are located either partly or wholly upon defendants said land, and he claims title to so muhh of them as is upon the said Mogotes tract or grant, by virtue of his title aforesaid.

The other of said grants is a grant of three square leagues of land called La Laguna de los Venados made to Manuel
10. Ramirez, in said jursidiction of Guerrero, having its origin

counter 7/122

prior to the 19th day of December 1836, the said land having been prior thereto segregated from the public domain and separated from other public lands by surrounding surveys made for other persons and enclosing it, and also by a survey thereof made by the surveyor General of Tamaulipas in 1835, and final title to such land was extended to said Ramirez by the Governor of Tamaulipas on the 2nd day of January, 1848, the $30.00 at which said land was valued having been paid by said Ramirez. That said Ramirez had been in possession of said three leagues of land from about the year 1828 up to the time of the extension of said final title, and since the extension of said final title as aforesaid down to the present time he and those having his estate therein including this defendant have been continuously in the actual possession of said land, cultivating, using and enjoying the same and raising live stock thereon (to which latter purpose the said land is chiefly adapted) holding and claiming the same by virtue of the right acquired by him as aforesaid; that the same is a good and valid and legitimate title to said land and is protected by the treaty of Guadalupe Hidalgo between the United States and Mexico, and to deprive defendant of any part thereof in this suit would be a violation of the terms of said treaty. The said land was surveyed for the said Manuel Ramirez his heirs and assigns, by the County Surveyor of Zapata County on the 28th. day of October 1879, and the metes and bounds thereof as shown by said survey are as follows, to-wit -

Two and a fraction leagues of land situated in Zapata County about 15 miles north 30 east from the town of Carrizo, made for Manuel Ramirez, his heirs and legal assigns, known as Los Venados, beginning at the west corner of a patented survey called Charco de la India in the name of Andres B. Pareda, from which corner a large mesquite ≈ bears S. 67 E. 32 varas, another marked ≈ bears N. 24 45 W. 34 varas; thence N. 55 E.

11. with line of said Pareda survey at 980 varas a marked mesquite

counter 71123

20 in. dia marked M at 2400 varas crossed Carrizo and Venados road, at 5655 varas struck Flores fence; thence on same course along said fence at 5783 varas other corner of said fence, at 9350 varas to the S. corner of Mira Flores in the name of Eduardo Davila and also E. corner of this survey and from which a mesquite 11 in. dia. marked X bears S. 30 E. 16 varas; thence N. 45 W. with line of said Mira Flores survey at 424 varas a mesquite marked X old marks of survey etc. at 8730 varas a forked mesquite line tree 2 1/2 feet dia. marked ≡ X ≡ at 9850 varas to corner also east corner of location in the name of J. Zapata, no tress; thence S. 45 W. at 2360 varas put W. corner of this survey on line of Los Mogotes in the name of I. Gutierrez and from which mesquite marked ≡ ≡ bears N. 47 1/4 W. 68 varas; thence S. 45 E. with line of Mogotes at 4330 varas put a corner from which a mesquite marked ≡ bears N. 13 15 W. 25 varas , another marked ≡ X bears S. 28 W. 39 varas; thence S . 55 W. over prairie at 5325 varas a large mesquite marked ≡ on side of San Bartolo and Ovejas road; at 6070 to the extreme west corner of this survey; thence S. 35 E. 5026 varas to large stone and post which is the place of beginning, being survey No. 198.

That the lands referred to in plaintiff's petition as "First Tract and "Second Tract" are located on defendant's said land, and he claims title to the same by virtue of the said grant to Manuel Ramirez.

That the record of the denouncement of said land by said Manuel Ramirez and survey thereof by the proper authorities of the State of Tamaulipas and the expediente formed therein and all copies of such proceedings have been lost, and though diligently sought for have not been found; but that such proceedings were had as hereinbefore stated.

counter 41127

Defendant also says that if it shall appear to the Court that the right and title acquired by Ignacio Gutierrez and Manuel Ramirez in their respective lands as aforesaid is such a right and title as ought to be respected and protected, but that it does not satisfactorily appear that said sums of $20.00 and $30 at which said lands were respectively valued were paid to the government of Tamaulipas at a time when such government might lawfully receive the same, and that such sums should have been paid to the Government of Texas, then defendant here now tenders and pays into court the sum of $50.00 in settlement of such debts.

Wherefore defendant prays that he go hence hereof without day, with his costs.

J. F. M u l l a l l y,

Attorney for said defendants.

(Endorsed) No. 20547. The State of Texas vs. Jas. J. Haynes et a l. Amended Answer of Leonard Haynes. Filed June 16, 1904, Jas. P. Hart, Clerk.

- -

First Supplemental Petition.

F I R S T S U P P L E M E N T A L P E T I T I O N.

Filed June 16, 1904.

- -

The State of Texas) In the District Court of Travis County,

No. vs.)

James J.Haynes et al) 26th. Judicial District.

Now comes the plaintiff, appearing herein by her Attorney General, and demurs to the defendants' answer, filed herein, and says that the same is insufficient in law because the facts therein alleged show no cause of action and constitute no grounds of defense.

13. Wherefore plaintiff prays that the said answer be stricken

counter 71125

out and held for naught, and of this plaintiff prays the judgment of the Court .

C. K. B e l l,

Attorney General, attorney for

the plaintiff.

Plaintiff denies all and singular the allegations in the answer of the defendants contained, and of this the plaintiff puts herself upon the Country.

C. K. B e l l,

Attorney General, Attorney for

the plaintiff.

Now comes the plaintiff and in reply to the defendants' answer shows to the Court that the plaintiff has never, at any time, recognized but that the plaintiff has always repudiated the claim which the defendants attempt to set up in this case.

Plaintiff particularly shows to the Court that heretofore, to-wit,on the 9th day of January 1872 suit was instituted in the District Court of Travis County by Pedro Gutierrez, claiming to be one of the heirs of Ygnacio Gutierrez, for himself and for the other heirs of the said Ygnacio Gutierrez, against the State of Texas, in which the said Pedro Gutierrez, claiming a part of the land in controversy in this case under the same title under which the defendants now claim, sought to have the said title confirmed.

That the State of Texas then and there and at all other times repudiated the said claim and denied that those under whom the defendants in this suit claim had any valid right to or interest in the land in controversy.

That said suit was prosecuted to a judgment in favor of the claimant but that the same was appealed to the Supreme Court of the State, by which Court the said cause was reversed and remanded. That thereupon the plaintiff in said case dismissed

14.

counter 71126

the same from the docket.

Plaintiff further shows to the Court that on to-wit, the 9th. day of January 1872, suit was instituted in the District Court of Travis County by Manuel Ramirez for himself against the State of Texas, in which suit the said Manuel Ramirez, claiming the land in controversy in this case under the same title under which the defendants now claim, sought to have the said title confirmed.

That the State of Texas then and there and at all other times repudiated the said claim and denied that those under whom the defendants in this case claim had any valid right to or interest in the land in controversy.

That said suit was prosecuted to a judgment in favor of the claimant but that the same was appealed to the Supreme Court of the State, by which Court the said cause was reversed and remanded. That thereupon the plaintiffs in said case dismissed the same from the docket.

The plaintiff therefore says that if any presumption could have arisen against the State, the plaintiff herein, from the possession of the lands sued for, that said presumption was rebutted by the fact that the plaintiffs denied that those under whom the defendants claim had any right or possession of the land, and this the plaintiff is ready to verify.

C. K. B e l l,

Attorney General, Attorney for

the plaintiff.

(Endorsed) 20547. The State of Texas vs. James J. Haynes et al. First Supplemental Petition. Filed June 16, 1904, Jas. P. Hart, Clerk.

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counter 71127

Judgment.

J U D G M E N T.

June 16,1904.

T H E S T A T E O F T E X A S

2 0,5 4 7. vs.

J A M E S J. H A Y N E S E T A L.

And now on this the 16th day of June, A.D. 1904, this cause coming on for trial the plaintiff appeared by her Attorney General and the defendant by Counsel and all parties announce ready for trial. Whereupon came on to be heard and considered the exceptions of the defendant Leonard Haynes to the jurisdiction to try and determine this cause and also his demurrer and exceptions of said defendant to plaintiff's pleadings all of which having been duly considered by the Court were overruled, to which ruling of the Court the defendant then and there in open Court excepted; thereupon came on to be heard the disclaimer of the defendants James J. Haynes, R.A. Haynes and Sabas Mesa, and said disclaimers having been considered, It is ordered by the Court that the plaintiff the State of Texas have and recover of said defendants James J. Haynes, R.A. Haynes and Sabas Mesa any and all title or interest they or either of them may have or claim in and to the lands hereinafter described, but that said defendants go hence on their disclaimer and recover their costs in this behalf expended against the defendant Leonard Haynes for which Execution may issue.

Thereupon a jury was waived and the matters of fact as well as of law were submitted to the Court, and the Court having heard the pleadings, evidence and argument of Counsel, and having

16.

counter 41128

duly considered the case is of the opinion that the plaintiff is entitled to recover;

I t I s T h e r e f o r e considered, ordered, adjudged and decreed by the Court that the State of Texas, plaintiff, herein do have and recover of and from the defendants Leonard Haynes, R.A. Haynes, Sabas Mesa and James J. Haynes severally the title and possession of the following described tracts of land situated in the County of Zapata, State of Texas, to-wit:-

First tract. Being survey No. 427 made for the State of Texas by virtue of scrip No. 142 issued to B.J. Baldwin situated in Zapata County, about 15 miles N. 30° E. from Carrizo, and bounded as follows:-

Beginning at a large mesquite post, the S. corner of a so called grant in the name of Ignacio Guttierrez, from which a mesquite marked X bears S. 28 varas, and another bears S. 13° W. 14 varas.

Thence S. 45° E 1320 varas, post in line of Charco de le India, for E. corner;

Thence S. 55° W with said India tract at 1872 varas, large stone S.W. or W. corner of same, at 2089 a post on N.E. line of survey No. 313;

Thence N. 35° W. with 313 and 429, at 4205 varas, post in prairie for W. corner of this survey;

Thence N. 55° E. at 1348 varas a post in the S.W. line of "Mogotes".

Thence S. 45° E. 2950 varas to the beginning, containing 1280 acres.

Second tract. Being survey No. 428 made for the State of Texas by virtue of scrip No. 410 to J.O. Thomas, situated in Zapata County about 16 miles N. 20 E. from Carrizo, and bounded as follows:-

Beginning at a post on the S.W. line of a so called

counter 41129

grant of "Los Mogotes" to Ignacio Gutterrez 2950 varas N. 45° W. from its S. corner, said post being the N. corner of No. 427, and E. corner of this.

Thence N. 45° W. with said Mogotes at 4303 varas, post for N. corner of this survey;

Thence S. 55° W. at 923 varas a post on N.E. line of porcion No. 5.

Thence S. 35° E. with porcion No. 5, 744 varas to its E. corner;

Thence S. 55° W. with porcion No. 5, 479 varas to the N. corner of porcion No. 4;

Thence S. 35° E. with porcion No. 4, 1960 varas to its N.E. corner;

Thence N 55° E. 68 varas to a post for corner;

Thence S. 35° E. 1750 varas to a post for corner;

Thence N. 55° E. 733 varas, to post on line of No. 427;

Thence N. 35° W. 216 varas to a post, W. corner of 427;

Thence N. 55° E. 1348 varas to the beginning, containing 1280 acres.

Third tract. Being survey No. 431 made for the State of Texas by virtue of scrip 1190 issued to James M. Lummus, situated in Zapata County, about 14 miles N. 14° E. from Carrizo, and bounded as follows:-

Beginning at a post the N. corner of porcion No. 6 in the name of Miguel Alegna de Lascano, from which a mesquite marked X.bears S. 36° 15' W. 86 varas;

Thence S. 35 E. with said porcion at 1245 varas to large post supposed to be the W. corner of the Mogotes tract, at 2665 varas a post for S. corner of this survey;

18. Thence N. 45 E. 1696 varas to a post in the S.W. boundary

counter 41130

of survey No. 430, for the E. corner of this survey;

Thence N. 45° W. 1399 varas to a post W. corner of 430;

Thence S. 45° W. 190 varas to a post;

Thence N. 35 W. 1032 varas to a post on the S.E. boundary of Borrego grant for the N. corner of this survey;

Thence S. 55° W. with said Borrego grant 1233 varas to the beginning, containing 640 acres.

Fourth tract. Being 300 acres of unsurveyed public domain in Zapata County about 13 miles N. 14 1/2° E. from Carrizo, and bounded and described as follows:-

Beginning at the S. corner of survey No. 431;

Thence N. 45° E. 1696 varas with said No. 431, J.M. Lummus State Section;

Thence S. 45° E. 500 varas to the S. corner of No. 430 J.M. Lummus individual section;

Thence N. 45° E. 850 varas to the W. corner of 607, M.M. Hall, individual section;

Thence S. 45° E. 100 varas to the N. corner of 610, J.R. Christian individual section;

Thence S. 45° W. 2250 varas to W. corner of 610, J.R. Christian individual section;

Thence S. 45° E. 800 varas to N. corner of No. 428, J.O. Thomas, State section;

Thence N. 55° W. 953 varas to N.W. corner of 428, J.O. Thomas State section;

Thence N. 35° W. 1200 varas to N. corner of porcion No. 5;

Thence N. 55° E. 400 varas to E. corner of porcion No.6;

Thence N. 35° W. 170 varas to the beginning, containing 300 acres.

counter 41131

And that plaintiff have its writ of possession.

I t I s F u r t h e r ordered by the Court that the plaintiff have and recover of and from the defendant Leonard Haynes all cost in this behalf expended, for which execution may issue;

To which judgment the defendant Leonard Haynes then and there excepted and in open Court gave notice of appeal to the Court of Civil Appeals for the 3rd. Supreme Judicial District of Texas.

I t I s F u r t h e r ordered by the Court that the parties be and they are hereby allowed 30 days after the adjournment of the present term of this Court in which to prepare and file a statement of facts and bills of exceptions in this case.

It is further ordered that the maps introduced as evidence in the trial of this cause be attached to the transcript of the record on appeal.

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counter 41132

Statement of Facts.

S T A T E M E N T O F F A C T S.

Filed July 5, 1904.

The State of Texas) In the District Court of Travis County,
No.20547. vs.)
Jas.J. Haynes et al) 26th. Judicial District.

Be it remembered that on the the trial of the above entitled cause the following facts were proven and none others:-

The plaintiff first introduced in evidence the field notes of survey No. 427, made for the State of Texas by Leonard Haynes County Surveyor of Zapata County, on May 3, 1884, by virtue of certificate No. 142, issued to B.J. Baldwin, situated in Zapata County, containing 1280 acres, the field notes being the same as in the first tract described in plaintiff's petition.

Of survey No. 428, made for the State of Texas by Leonard Haynes County Surveyor of Zapata County, on May 3, 1884, by virtue of certificate No. 410, issued to J.O. Thomas, situated in Zapata County, containing 1280 acres, the field notes being the same as in the first tract described in plaintiff's petition.

Of survey No. 431, made for the State of Texas by Leonard Haynes, County Surveyor of Zapata County, on Sept 13, 1884, by virtue of certificate No. 1190, issued to James M. Lummus, situated in Zapata County, containing 640 acres, the field notes being the same as in the third tract described in plaintiff's petition.

It is agreed that the field notes in each of the foregoing described tracts of land are the same as those in plaintiff's petition, and there being no controversy over this fact

21.

counter 71133

that they need not be copied in this Statement of Facts.

The plaintiff next introduced the following map, which, under the direction of the Court, is sent up with the transcript.

counter 41134

Defendant Leonard Haynes read in evidence a translation of a certified copy of certain proceedings of the Ayuntamiento of Guerrero, as follows:-

Seal of the Municipal
Presidency of the City of Guerrero.

No. 39. October 10, 1903.

Jose Ma.Vela Cuellar, Municipal President of the City of Guerrero, Tamaulipas, and its jurisdiction, certifies:- That in the archive of this Presidency there exists a book of resolutions of the Hon. Ayuntamiento for the year 1834, in which book, and upon the back of folio 18, there is found what follows, literally:-

"Regular session of Friday the 29th of August. Presidency of the Citizen Eduardo Davila, sole Constitutional Alcalde. The Illustrious Ayuntamiento having met in regular session of this day, the record of the anterior session was read and approved. Following this, attention was given to the representations regarding lands, made by the citizens Ygnacio Gutierrez, Rafael Uribe, Felipe de la Pene, Antonio Martinez Gutierrez, Ysidro Gutierrez, and Eduardo Davila with the declarations which each of them presented, for the purpose of obtaining the lands which they are about to dencunce; and after having considered such applications and proofs, the Hon. Ayuntamiento resolved to give to each one the decree of the following tenor: After due consideration given to the foregoing representation and other papers accompanying the same, the Illustrious Ayuntamiento in regular session of this day resolved to comply with the requirement specified in Art. 3 of the law No. 24 of the 19th of October, 1833, certifying it to be true that the aforesaid citizens, although they have some live stock, do not possess proper and sufficient pasture lands upon which to maintain them, as is established by the proofs and declarations which have been examined.

23.

counter 71135

And to make proper record thereof the same was signed by all the members and recorded in the proceedings of the day before me its Secretary, the present session then closing. Eduardo Davila, Damacio Benavides, Antonio Zapata. Fernando Cuellar. Jose Ma. Flores. Secretary." Five rubrics.

And at the request of an interested party and for the uses which he may properly make of it this copy is issued to him this 10th day of October 1906.

Defendant read in evidence a final grant made by the Governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Ignacio Gutierrez, as follows: (translation)

National Coat

Third seal. of arms Years 1848 Fifty cents

and 1849.

Francisco Vital Fernandez, General of Brigade in the Army of the Mexican Republic, and Governor of the State of Tamaulipas:

In consideration of the fact that the Citizen Igno. Gutierrez has paid into the Treasury of the State the twenty Dollars at which were valued the two sitios of pasture land that he has denounced at the place of Los Mogotes, as appears by the Dispatch containing the authoritative information of the fact, using the power conferred upon me by the law governing the subject, I have determined to adjudge to the Citizen Igno. Gutz. for himself, his heirs and successors the indicated two sitios of pasture land according to the limits and demarcations manifest in the map annexed.

Wherefore I command the authorities and inhabitants of the State to hold and recognize the said Citizen Ingo. Gutierrez as the legitimate master and owner of the aforesaid two

24. leagues of pasture land that have been granted to him.

counter 4/136

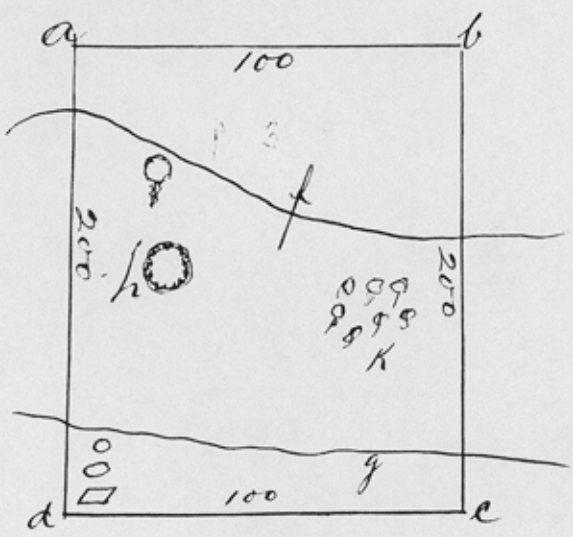
Given at the City of Victoria on the second day of January eighteen hundred and forty eight.

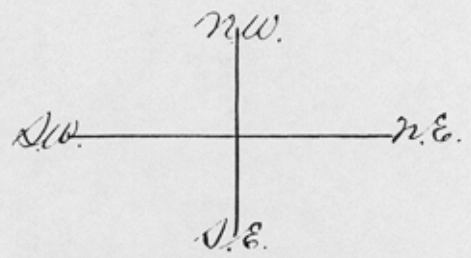
Franco. V. Fernandez.Rubric.

Andres Guerrero,

2nd Official. Rubric.

Pasture land of Los Mogotes, surveyed for the Citizen Ignacio Gutierrez.





Explanation of the demarcations.

a-corner of the league of Las Bacas.

b-corner of the glen of Borrego

c-Corner of the Camino.

d.Corner of the Mesquite.
f.Cabeceras Creek.
g. Blanco creek.

The State seal of Tamaulipas.

h-Lagoon of Palanguna.

k-Los Mogotes-the Motts .

Explanation of the Survey.

The area contained in the foregoing rectangle is of two sitios of pasture land, surveyed to the points indicated in the map, after correcting the ten degrees variation to the northeast which the needle has in this region. This tract of land is bounded on the southwest with the back lines of the lands of the Rio Grande and on all other directions by vacant lands .

City of Guerrero . Jany.5th. 1835.

Lic. Anto. Canales,

Rubric.

counter 41137

Defendants read in evidence the following extracts from inventories of the archives of the Juzgado of Guerrero: taken at the beginning and the end of the year 1835, viz:-

Inventory of the archive and other effects existing in the care of this Juzgado, of which I make delivery.

Affairs of the Juzgado pending.

1 exped. of survey of land belonging to the Citizen Anto. Martinez Gutierrez.

1 id. id. id. of the citizen Ygnacio Gutierrez..

1 id. id. of the citizen Eduardo Davila.

1 id. id. of Dona Tomasa de la Pena, widow.

1 id. id. of the Citizen Ysidro Gutierrez.

1 id. id. of Dona Josefa Cuellar, widow.

1 id. id of the Citizen Trinidad Vela.

1 id. id. of the Citizen Mariano Arispe.

1 id. id. of the Citizen Simon Ynojosa.

1 id. id of the Citizen Luis Vela.

1 id. id. of the Citizen Felipe Pena.

This inventory being finished in the manner set forth, I, the Citizen Rafael Uribe, only Alcalde named for this year, acknowledge receipt of what is set forth in it, the Citizen Eduardo Davila who has made delivery to me signing also with me, in the City of Guerrero on the 2nd day of January 1835.
Legajo No. 28) Rafael Uribe (scroll) Eduardo Davila(scroll).

The above(in Spanish) is found on pages 21, 22, and 23 of a bundle of documents found together in the archives of Guerrerro, Mexico, entitled "Common Book which contains the inventories of the Ayuntamientos and Alcaldes, and delivery and receipt of their archives, which dates from the year 1823." It is compared by us with the original this 30th. day of March 1904,

counter 41138

and the above is a correct translation of same.

Regulo Flores.

F.W. Seabury.

(L.S.) (A revenue stamp,cancelled)

City of Guerrero, February 20,1904.

Number 6.

Antonio G. Martinez, Municipal President of the City of Guerrero, Tamaulipas.

Certifies: that in the archive of this Presidency there is a parcel of inventories attached together, which is endorsed:

"Common Book containing the inventories of the Ayuntamiento and Alcaldes, and delivery and receipt of their archives, which date from the year 1823". There being on folios 23 reverse, and front of 24, an inventory subscribed the year 1835 by the 1st Alcalde, Citizen Rafael Uribe, in the folios of which appears an entry of the following tenor:-

Affairs pending.

1 expediente upon the measurements of pasture land for large stock denounced by the Citizen Antonio Martinez Gutierrez.

Delivered to him. 1 idem of the Citizen Eduardo Davila.

1 id. of the Citizen Ygnacio Gutierrez.

1 id. of the Citizen Ysidro Gutierrez.

1 id. of the Citizen Simon de Ynojosa

1 id. of Dona Tomasa de la Pena.

1 id. of the Citizen Mariano Arispe.

Delivered to him. 1 id of the Citizen Luis Vela.

Delivered to him 1 id of the Citizen Trinidad Vela.

1 id. of Dona Josefa Cuellar.

That of Don Felipe Pena was delivered to him and he sent it to Victoria.

counter #1139

Delivered to him) 1 expediente of Don Antonio Zapata.
on Nov. 7,1836.) 1 id. of Don Jose Ma. Canales.
1 id. of Don Anastacio Garcia.
1 id. of Don Pedro Bustamante.
1 id. of Don Jesus Cuellar.
1 id. of Don Onofre Garcia.
1 expediente upon the measurements of pasture lands for large stock denounced by Don Jesus Benavides.
1 id. of Don Mariano Garcia.
1 id. of Don Jesus Mesa."

And at request of an interested party and for such use as he may rightfully make of it, this copy is issued to him on the 20th. day of February, nineteen hundred and four.

Antonio,G. Martinez,
E.R. Jiminez,
Secretary.

Defendants then introduced in evidence the following field notes and plat.

The State of Texas)
County of Zapata.)

Field notes of a survey of two leagues of land called "Los Mogotes" originally surveyed by order of the Government of the State of Tamaulipas on the 5th day of January A.D. 1835 for Ignacio Gutierrez. Said survey is situated in the County of Zapata about 15 miles N. 20 E. of the town of Carrizo and in the rear of the porciones fronting on the Rio Grande. Beginning at a post marked V 25000 varas N. 55 3/4 E. of the upper corner of the lands given as porciones in the Jurisdiction of Camargo, a stone placed 178 varas N. 55 E. from the bank of the Rio Grande

28. for the north corner of this survey and from which a mesquite

counter 41140

marked $\bar{X}$ bears N. 21 1/2 W. 29 varas; thence S. 45 E. at 2500 varas set post in prairie for line mark, at 4800 varas crossed road leading from the Ovejas ranch to Carrizo, at 5000 varas placed a large stone for line mark in prairie, at 7500 varas set post for line mark entered mesquite timber, at 10000 varas set post in timber for the east corner from which a mesquite marked + bears N. 51 E 4 varas, also mesquite marked X bears N. 83 W. 13 varas; thence S. 45 W. at 1250 varas marked mesquite for line tree, at 2500 varas post for line mark, at 3070 varas marked two large mesquite tress in line, at 3670 varas crossed derramadero running SSE, at 5000 varas set post for the south corner from which a mesquite marked $\bar{X}$ bears S. 28 varas, also a mesquite marked $\neq$ bears S. 13 W. 14 varas; thence N. 45 W. through scattering mesquital at 185 varas passed through a group of mesquite tress marked /// and \\\ on each side, at 2500 varas post in prairie for line mark, at 3895 varas the said road from the Ovejas ranch to Carrizo bears SSW. at 5000 varas set post for line mark, at 6120 varas passed well situated 40 varas to the east of line, at 6180 varas passed well 60 varas to the east of same, at 6360 varas passed well 20 varas to the east of line, at 6732 varas a mesquite marked $\equiv$ ten vars to the east of line, at 7310 varas crossed arroyo Blanco running southwest, at 7500 varas set post for line mark, at 8503 varas marked stump in line, at 8669 varas Mesquite marked /// 1 vara west of line, at 10000 varas set post for the west corner, from which a large mesquite marked + on a hill bears S. 53 E. 120 varas; thence N. 45 E. 5000 varas to the place of beginning.

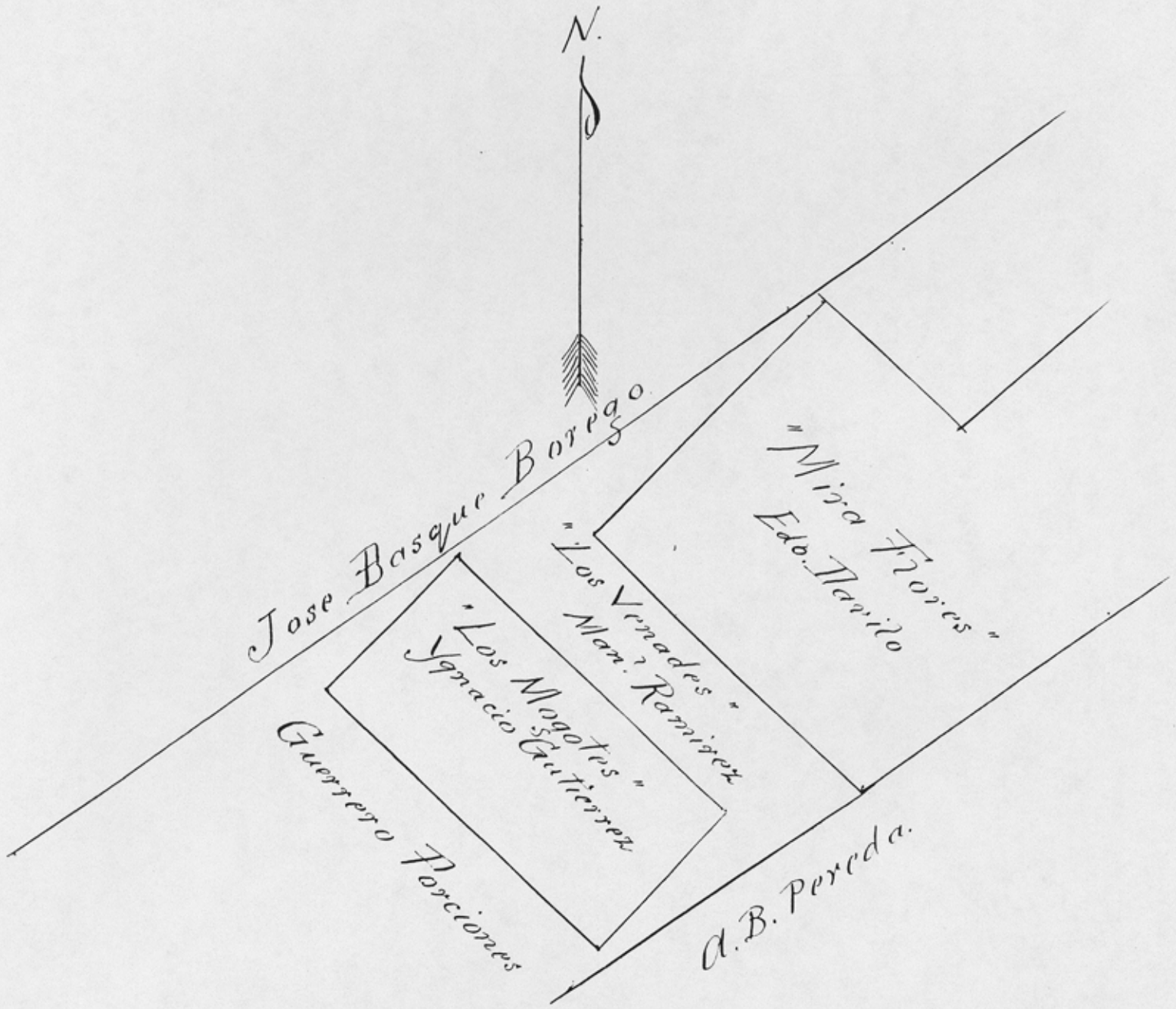
James McLain,
Tomas Cuellar. Chain carriers.

Surveyed December 10th, 11th and 12th 1874.

Resurveyed April 20th. 1876.

29.

counter 41171



I, Felix A. Blucher, Surveyor for Zapata District, do hereby certify that the foregoing survey was made according to law, and that the lines, boundaries and corners, with the marks natural and artificial, are truly described in the foregoing plat and field notes.

Felix A v. Blucher.

Surveyor Zapata Dist.

Examined and recorded December 21st. A.D. 1876.

Felix A. Blucher,

S.D.S.Z.Co.

30.

counter 41142

Defendants then introduced in evidence the following final title issued to Manuel Ramirez, viz:- (Translation)

Third seal — National Coat of arms — four reals
For the years 1848 & 1849.

Francisco Vital Fernandez, General of Brigade of the Army of the Mexican Republic and Governor of the State of Tamaulipas.

Whereas the Citizen Manuel Ramirez has paid into the Treasury of the State the thirty dollars at which were appraised the three leagues of pasture land that he had denounced in the place called La Laguna de los Venados, as appears from the Dispatch made to that effect; using the powers that the H. Congress has pleased lately to concede me and those that the law upon this particular confer upon me, I have resolved to adjudicate to the citizen Manuel Ramirez, for himself, his heirs and successors, the aforesaid three leagues of pasture land according to the limits and demarcations that shall be placed at the time of making the survey.

Therefore I command the authorities and inhabitants of the State to hold and recognize the aforesaid citizen Manuel Ramirez as the legitimate master and owner of the three leagues of pasture land that are granted to him.

Given at the City of Victoria on the second day of the month of January eighteen hundred and forty eight.

Franco. V. Fernandez,

Rubric.

State seal. Andres Guerrero.

Second official.

Counter 1/143

Defendant then introduced in evidence the field notes of a resurvey of said Laguna de los Venados tract of land made for Manuel Ramirez by the County Surveyor of Zapata County on October 28th. 1879, which field notes were duly recorded in said County Surveyor's office in Book D. on pages 1, 2, and 3 on December 18th. 1879. Said field notes describe the land as shown in defendant's answer.

Defendant read in evidence the following certified copy of a letterFabian Zapata, First Supplemental Alcalde of this Municipality, acting with the witnesses of his assistance:-

He certified: That in the archives of this first court which at this time is in his charge, there is a package with the following:-

"City of Guerrero in the year 1846 and 1847. Folio of papers pertaining to the second constitutional court with various authorities."

And in said folio on its 26th leaf and reverse, there is seen an official letter which literally copied is as follows:-

"I remit to you seventeen titles which contain the vacant lands denounced and surveyed from the year 1831, until that of 35, in order that your Honor may please present them to the Honorable Governor of the State to the effect that they may have the necessary validation. The amount of the dues I do not send attached to said documents so as not to expose the same, and your honor will deign also to direct in the most certain manner the mode in which they may be paid, and draw against this receiver's office. God and Liberty.

City of Guerrero, November 28th. 1847.

To his Honor General Don Antonio Canales, City of Victoria."

And at the request of an interested party and for the uses

 which may suit his rights, the present copy is issued which I

counter 4/144

certify, in the City of Guerrero, Tamaulipas, on the 8th. day of the month of August, one thousand nine hundred and two.

All before me the authorizing Alcalde and those of my assistance: we give faith.

The first Supplemental Alcalde,

Fabian Zapata.

Assisting: Guadalupe Rodriquez.

Assisting: Eduardo Saenz.

Andres Garcia also testified by deposition in the year 1878 in the case of Pedro Gutierrez vs The State of Texas then pending in the district Court of Travis County for confirmation of the title to los Mogotes tract of land, which deposition in part was introduced in evidence by the defendant in this case. Said witness testified in substance as follows:- " I was municipal commissioner of Guerrero, Mexico, in 1855, alderman in 1857 and 1859, and 2nd. Alcalde in 1861; I have known the Los Mogotes tract of land described in the plat attached to the final title issued to Ignacio Gutierrez since 1830 or 1831, and I know that he was then in possession of said land. I am familiar with the law known as Decree No. 24 of October 19th. 1833 for denouncing lands; when said decree was published all parties denouncing modified their denouncements to take advantage of the privileges granted by said decree No. 24, without destroying the ones they had already made and to have that right with more force, by the antiquity of their ownership; the title of Ignacio Gutierrez was issued under said Decree No. 24. I have seen Ignacio Gutierrez's denouncement of said land with the approval of the ayuntamiento of Guerrero, and the plat and field notes of the survey made by Lic. Antonio Canales, and the expediente formed thereon, all in accordance with said decree No. 24; that expediente was destroyed by the French troops in Victoria about 1865."

counter 41145

Manuel Ramirez testified by deposition in the year 1878 in the case of Manuel Ramirez vs. The State of Texas then pending in the district Court of Travis County for confirmation of the title to said Laguna de los Venados tract of land, which deposition in part was introduced in evidence by the defendant in this case . Said witness testified in substance as follows:-

"I am Manuel Ramirez, the person to whom the final title to the Laguna de los Venados tract of land was issued; I denounced the said land under the law known as Decree No. 24 of October 19th. 1833; made my denouncement to the ayuntamiento of Guerrero; and expediente upon my denouncement was made and I sent it to Victoria by Pedro Mayne, who brought me back the final title issued in 1848 ; I have occupied said land since 1829; in 1839 the Indians killed two of my men and drove me off, but I went back to it as soon as circumstances permitted, and have occupied it ever since."

Andres Garcia testified by deposition in the year 1878 in the same case, which deposition in part was introduced in evidence in this case: Said witness testified in substance as follows:-

"I was municipal commissioner of Guerrero, Mexico in 1855, alderman in 1857 and 1859, and 2nd Alcalde in 1861; I have known the Laguna de los,Venados tract of land since the year 1832, and it was then occupied by Manuel Ramirez; the final title to this land extended to him was issued under the law known as Decree No. 24, of October 19th 1833; he denounced it before Dec. 19th 1836 under said Decree No. 24 with the approval of the ayuntamiento of Guerrero; I have seen the expediente that was made upon such denouncement and know that it was made under said law, and everything was done in accordance with said law."

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It was proven on behalf of defendant that Ignacio Gutierrez, to whom the tract of two leagues called Los Mogotes was finally granted by the Governor of Tamaulipas on January 2nd. 1848, first settled on said land about 1830;; that the records of the ayuntamiento of Guerrero as existing in the archives, and all other archives of said city, are incomplete and imperfect, and many parts thereof missing; that the archives of Victoria, Tamaulipas, were destroyed by French troops under Col. Dupin in the year 1864; that from the time said Gutierrez first settled on said land about the year 1830 he continued in possession thereof until the same was surveyed for him in January 1835, and thereafter under claim of right and ownership by virtue of said proceedings he remained in the actual, open and peaceable possession of said land, cultivating the same and raising his live stock thereon, with his stockpens, houses and other improvements, and with his servants, until his death about the year 1860; except that from the year 1836 until about 1852 the incursions of the hostile Indians occasionally drove him and his servants off the land; that he was a Mexican citizen; that since his death his heirs and their assigns, including the defendant Leonard Haynes, have continuously held actual and open and peaceable possession of said land by virtue of said title and proceedings, cultivating the same and raising live stock thereon, with their houses, stock pens and other improvements, and their servants, down to the present time; that said land has been assessed for taxes, and taxes have been paid thereon, as land originally granted to Ignacio Gutierrez, ever since it was first put upon the assessment roll about the year 1874; and that all taxes thereon have been paid by the defendant and his grantors, the heirs of said Ignacio Gutierrez. It was also proved that the south half of the tract of land described in plaintiff's petition

35. as survey No. 431, and the east half of the tract described in

counter 4/147

said petition as 300 acres of unsurveyed public domain, are upon what the defendant claims to be the said Los Mogotes tract of land.

It was proven on behalf of defendant that Manuel Ramirez, to whom the tract of three leagues called Laguna de los Venados was finally granted by the Governor of Tamulipas on January 2nd 1848, first settled on said land in 1829; that the records of the ayuntamiento or city council of Guerrero as existing in the archives and all other archives of said city, are incomplete and imperfect, and many parts thereof missing; that the archives of Victoria, Tamaulipas, were destroyed by French troops under Col. Dupin in the year 1864; that said Ramirez was a Mexican citizen, and that from the time he first settled on said land in 1829 he continued in possession thereof until the same was surveyed for him in the year 1835, and thereafter under claim of right and ownership by virtue of said proceedings he remained in the actual, open and peaceable possession of said land, cultivating the same and raising his live stock thereon, with his stock pens, houses and other improvements, until he died about the year 1880, except that from the year 1836 until about 1852 the incursions of the hostile Indians occasionally drove him and his servants off the land; and that since his death his heirs and their assigns, including the defendant Leonard Haynes, have continually held actual and open possession thereof by virtue of said title and proceedings, cultivating the same and raising live stock thereon, with their houses, stock pens, and other improvements, and their servants, down to the present time; that said land has been assessed for taxes and taxes have been paid thereon, as land originally granted to Manuel Ramirez, ever since

36. it was first put upon the assessment rolls about the year 1874;

counter 7/1/48

and that all taxes thereon have been paid by the defendant and his grantors, the heirs of said Ramirez; that in the month of October 1879 the said Manuel Ramirez caused the said land to be resurveyed by the County Surveyor of Zapata County, and a plat thereof with the field notes of such resurvey was duly recorded by said surveyor in Book D on pages 1, 2 and 3 of the records of his office on the 18th day of December 1879. It was also proved that the tract of 1280 acres sued for and described in plaintiff's petition as survey No. 427 is located wholly upon what deft. claims to be the said Ramirez tract, and that the land sued for and described in plaintiff's petition as survey No. 428 is located partially upon said Ramirez tract or grant, the conflict being about 240 acres in the southeast corner of said survey No. 428.

It was also proved that the defendant Leonard Haynes is the present owner of all the title and interest had or acquired by Ignacio Gutierrez and Manuel Ramirez, the original grantees, and their heirs, in said respective tracts of land called Los Mogotes and Laguna de los Venados, by purchase from their heirs; that after so acquiring such interests other parties located certificates upon all of said two tracts except such parts thereof as are here in controversy, and he purchased the interests of the locators; that he has had said two original grants including the lands in controversy under fence for about twelve years; that the lands in controversy in this suit are worth about $1.25 per acre; that they are dry grazing lands and not well adapted to stockraising except during seasons when there is sufficient rainfall to supply the natural waterholes.

Defendant introduced in evidence a copy of a map of the Four internal Provinces of the East and accompanying documents,

37. fixing the boundaries of said provinces as shown thereon, taken

counter 71179

from the archives at Saltillo, Mexico. This map was approved by the Viceroy of Mexico on October 15th. 1815, and shows the boundary line between the provinces of Texas and Coahuila as beginning at the source of the Medina river, thence down the Medina to a point in the same directly south of Bejar(San Antonio) and thence southwesterly to the Nueces river. From this latter point the Nueces river to its mouth formed the boundary line between the provinces of Texas and Nuevo Santander. The latter province afterwards became the State of Tamaulipas, with the same boundaries.

It was agreed that the land in controversy is in that part of Texas which was formerly a part of Tamaulipas, and was within the jurisdiction of Guerrero.

It was proven that said two tracts, Los Mogotes and Laguna de los Venados, had been delineated on the official maps in the general land office of Texas since about the year 1870.

It was agreed that the land in controversy is in that part of Texas which was formerly a part of Tamaulipas, and was within the jurisdiction of Guerrero.

Defendants read in evidence Article 6 of the Constitution of Coahuila and Texas, as follows:-

"Article 6. The territory of the State is the same as that embraced in the provinces formerly known by the names of Coahuila and Texas. A constitutional law shall mark out its limits in respect to the adjoining States of the Mexican Confederacy. " (dated March 11, 1827)

Defendants also read in evidence Articles 7 and 8 of the Colonization Law of the State of Tamaulipas of December 15th. 1826, as follows:-

"Article 7. From the very date whereon a foreigner is thus registered, he acquires domiciliation, and may as such an

counter 41/150

inhabitant denounce the vacant land he thinks best, presenting himself to that effect, by writing to the respective alcalde who shall decree what is proper for examining, measuring and marking out the land designated, after citing the adjoining proprietors, should there be any."

"Article 8. The instructive dispatch being terminated, and no opponent right resulting, the alcalde shall pass it to the Executive of the State, by whom the title of adjudication and ownership shall be issued to the person interested, ordering that the alcalde of the town of his residence put him immediately in possession of the land granted. All of these proceedings shall be conducted officially, and the executive shall proceed with the audience of the fiscal of the Supreme Court of Justice of the State."

Defendants also read in evidence Decree No. 24 of October 19th. 1833, of the State of Tamaulipas, as follows:-

"No. 24. The Constitutional Congress of the free State of Tamaulipas has decreed the following:-

"Article 1. To the inhabitants of Camargo, Mier, Guerrero, and Laredo, who may have no lands of their own, and who may possess stock to occupy them, there shall be given, at once, not exceeding five leagues each, and, in compensation, they shall pay the State ten dollars for each league.

"Art. 2. Those only are comprehended in the foregoing article who lived in said villages during the last Indian war, now passed, and who did not emigrate previous to the year 1821.

"Art. 3. The respective ayuntamiento shall inform itself, by previous justification, whether the interested party who may present himself has lands of his own, and stock with which to occupy them.

"Art. 4. These lands shall not be alienated until twenty

counter 7/151

years have passed after the concession; and if so aliented, the State recovers its rights to them, and he who may have been the owner loses whatever advances and useful and necessary improvements that he may have made; it being sufficient for a judgment of condemnation that the alienation shall be made to appear. Upon this point the respective administering judge shall decide summarily, without prejudice to the legal remedies of the interested party.

"Art. 5. The benefits of Article 1 shall continue for three years, from the day of the approval of this decree, after the expiration of which term no one shall obtain lands except, according to the ordinary laws.

Art. 6. The ayuntamientos and their individual members, collectively, and each one for himself, are responsible, personally and pecuniarily, if they are wanting in the truth of the inquiry exacted by article third; and the Government, having heard their defense, shall make their responsibility effective.

"The Governor of the State shall take care that this decree be understood, and shall order its execution, having it printed, published and circulated."

"Wherefore I command that it be printed, published and circulated, and that it be duly executed.

"City of Victoria, October 19, 1833, 10th of the installation of the Congress of the State.

Francisco Vital Fernandez.

"Gabriel Arcos,

Secretary of State."

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counter 1152

Leonard Haynes testified as follows:-

I am familiar with the land in controversy in this case occupied by myself and James J. Haynes. We have had the lands, which are shown on the map exhibited to me, enclosed for as much as anyhow three years. The lands sued for were located by me as County Surveyor of Zapata County . They are enclosed in one pasture and have been for more than three years. The rental value of the lands is as much as three cents per acre per annum when they can be rented, but it frequently happens, as it has of late years, that it is so dry in that country that they cannot be rented at any price. The piece of vacant land is as shown on the map; that is, it is vacant unless it be a part of the Gutierrez grant. The grant does not extend as far as my pasture fence to the East. That is, if the Gutierrez grant was a valid grant, a part of the land enclosed by my fence is not on the grant. Perhaps as much as 80 acres of the vacant land shown on the map is off of what I claim to be the Gutierrez grant anyhow, and no part of section 428 is on the Gutierrez grant. I have only one half of that grant enclosed.

The plaintiff next introduced in evidence a certified copy of a petition filed in the District Court of Travis County on the 9th day of January 1872 by Manuel Ramirez, for himself, to which the State of Texas was defendant. The plaintiff in that suit claimed that part of the land in controversy which was then and is now claimed to have been granted to himself, and sought to have the title confirmed.

The plaintiff also introduced in evidence the answer of the defendants, the State of Texas, in said case, which consisted of a general denial.

Plaintiff then introduced the judgment of the District

 court of Travis County in favor of the plaintiffs and notice

counter 71153

of appeal therefrom to the Supreme Court, and the judgment of the Supreme Court of the State of Texas reversing and remanding said case and a copy of the judgment of the District Court of Travis County dismissing said case from the docket on March 7, 1884.

The plaintiff next introduced in evidence a certified copy of a petition filed in the District Court of Travis County on the 9th day of January 1872, by Pedro Gutierrez, one of the heirs of Ignacio Bustimente, to which the State of Texas was defendant. The plaintiff in that suit claimed that part of the land in controversy which was then and is now claimed to have been granted to Ignacio Gutierrez, and sought to have the title confirmed.

The plaintiff also introduced in evidnce the answer of the defendant, the State of Texas, in said case, which consisted of a general denial.

Plaintiff then introduced the judgment of the District Court of Travis County in favor of the plaintiff and notice of appeal therefrom to the Supreme Court, and the judgment of the Supreme Court of the State of Texas reversing and remanding said case and a copy of the judgment of the District Court of Travis County dismissing said case from the docket on March 7, 1884.

We hereby agree that the foregoing is a true and correct statement of all the facts proved, and all the evidence introduced, upon the trial of the above numbered and entitled cause.

C. K. B e l l,
Atty. for plff.

J. F. M u l l a l l y,
Atty. for deft.

Examined and approved,

V. L. B r o o k s, Judge.

(Endorsed) No. 20547. The State of Texas vs. Jas. J. Haynes et al. Statement of facts. Filed July 5, 1904, Jas. P. Hart, Clerk.

counter 71157

Bill of Exceptions No.1.

B I L L O F E X C E P T I O N N O. 1.

Filed July 5th. 1904.

The State of Texas) In the District Court of Travis County,
No. 20547. vs.)
Jas.J.Haynes et al.) Twenty sixth Judicial District of Texas.

Be it remembered: That on the trial of this cause on the sixteenth say of June, A.D. 1904, the defendants offered to rpove by the depositions of Jose Maria Martinez, Jose Maria Canales, Jose Maria Benavides, Andres Garcia and Jesus Pena Vela residents of the City of Guerrero, Tamaulipas, Mexico, certain facts testified to by them in their depositions, taken in the month of May, A.D. 1872, in cause No. 3189, Manuel Bustamante et al versus The State of Texas, and agreed to be used as evidence in the trial of this cause as showing the official construction, and the usages and customs in connection therewith, of the authorities of the State of Tamaulipas, Mexico, by which law, known as Decree No. 24 of Octiber 19th. 1833, of the State of Tamaulipas, in connection with the favorable adjudication as to the right of the applicant, by the Ayuntamiento of any of the municipalities named in said decree No. 24, upon an application of an inhabitant made thereunder, and a denouncement and an official survey of the land designated by the inhabitant or applicant, operated as vesting in the interested party applying for such land, the full legal title to and property in such land, and that the issuance of a final title by the Governor was merely a ministerial act, not regarded as necessary to vest title in the applicant; and also to show why such final titles had been issued by the Governor in 1848, upon the instructive dispatch and expedientes in such cases being presented to him.

43.

counter 71/55

The testimony so offered is as follows:-

By the deposition of the witness, Jose Maria Canales: That he held the office of Regidor in the years 1830 and 1831, and that of First Alcalde in the year 1846, in the town of Guerfero, Mexico. That he is well acquainted with the provisions of the Decree No. 24, of the nineteenth of Octiber, 1833, passed by the Congress of the State of Tamaulipas. That by said law, a concession of lands was made to the inhabitants of Camargo, Mier, Guerrero and Laredo, not to exceed five leagues to each inhabitant who had served in defense of the Rio Grande frontier against the Indians, witness himself having received a grant of two leagues of land under the decree. That upon examination of the title by witness, he, further says, that the land in question, which is known as the "Comitas" was originally occupied by Pedro Bustamante who had a rancho and stock thereon; that it was denounced by and surveyed for the said Pedro Bustamante, and the said title was extended to Pedro Bustamante in accordance with said Decree No. 24, and it has always been held by the authorities of the State of Tamaulipas as a full and complete legal title, and the said right was based upon the denuncio or selection of said land, by Pedro Bustamante made long previous to the year 1836. That the original grantee, Pedro Bustamante, was entitled to the land conceded by Decree No. 24, for services rendered by him against Indians, and that his title to the tract of land described, was never heretofore questioned; is known as the Comitas and is situated in the County of Zapata, Texas, about five leagues Northeast of Carrizo in said County.

By the depositions of the witness Jose Maria Martinez, to-wit: That he has held the following offices in the City of Guerrero, Mexico: That of Regidor or Councilman, in the year

44. 1860; that of Constitutional Second Alcalde in 1861, and that

counter 4/156

of Constitutional First Alcalde or President of the City Council (Ayuntamiento) in the years 1863 and 1864. That in the year 1835, the Licentiate (Lawyer) Antonio Canales, was surveyor General of the said State, and they had under the laws of the State of Tamaulipas authority to extend the said title to Pedro Bustamante. That he is well acquainted with the provisions of Decree No. 24 of the nineteenth of October, 1833, passed by the Congress of the State of Tamaulipas. That he has examined the title attached to the interrogatories in this suit and extended to Pedro Bustamante, and to his knowledge, it is extended in accordance with the said Decree No. 24. By the provisions of said Decree No. 24, a special concession was made of not more than five leagues of pasture land to each inhabitant of the frontier towns of Camargo, Mier, Guerrero, and Laredo, who should present himself before the Ayuntamiento of any of said towns, with proofs that he was entitled under the law to the concession, the conditions being that he had lived in one of said towns during the Indian War last past before the date of said Decree, had not emigrated therefrom previous to the year 1821(when many Spaniards left the country) had no lands of his own and was the owner of livestock. When an applicant made his petition and presented the proofs required by the law aforesaid, it was the duty of the Ayuntamiento under the personal responsibility of each member thereof, to certify the facts and make the concession, and from the date of the concession thus made, it has always been held by the Mexican authorities that the law itself conferred on and passed to the grantee, a perfect legal title to the land, and that the same was not thereafter subject to denuncio by other parties, but was thenceforth separated from the public domain of the State There was but one condition (besides the payment to the State of ten dollars per league) imposed upon the grantee; he could not sell the land for twenty years after he received the grant, under pain of confiscation to the State,

counter 71157

which penalty could only be enforced by due process of law in the manner provided for in the said Decree. In the City of Guerrero, many persons who had expedientes or concessions under the provisions of said decree No. 24 made between the nineteenth of October 1833 and the nineteenth of October 1836 by the Ayuntamiento of said City, were persuaded about the close of the Mexican and American war, in 1848 , to send their original expedientes to the Capital of Tamaulipas at Victoria, and to demand of the Government, the titles to the lands conceded by the expedientes, they being under the impression that the title from the State would be better respected and held more valid by the succeeding Government than the original concession of the Ayuntamiento; the State issued titles to all who deposited their original expediente, and this, the witness says, is the reason why the attached title bearing date of the year 1848, is accompanied by the Map to which it refers, bearing the date it was surveyed in 1835. The witness says further that the title extended to Pedro Bustamante, to his knowledge, was issued on an original denuncio made previous to December 19th. 1836 (because the law of October 19th. 1833 was limited to three years from the date thereof) and on the decree of the Ayuntamiento, as is clearly shown by the title, where it says:" Segen consta del espediente instruedo al efecto", according to the dispatch executed to that effect. And witness says he knows these things, because he himself, as one of the sons of the deceased, Antonio Martinez Gutierrez, did obtain in the District Court of Zapata County, at the term thereof held in the winter of 1860-1861, a decree of confirmation of two leagues of land granted to the said Antonio Martinez Gutierrez, whose title to the said land was in all respects like the one attached to these interrogatories. Witness further says that it is a notorious fact that the French troops

46. under Colonel Dupin, destroyed a portion of the archives of the

State of Tamaulipas, Mexico, when they occupied the Capital of said State in 1865; and witness has seen a certificate of the Governor of Tamaulipas to the effect that the expedientes belonging to Guerrero could not be found in the archives of the State and that they were undoubtedly among the papers destroyed. Witness further says that the title extended to said Pedro Bustamante, had always been held by the authorities of the State of Tamaulipas as a full and complete legal title from the date of the concession of the authorities of Guerrero, and his right to the same is based upon his denuncio or selection made previous to the nineteenth day of December, 1836. That the deceased, Pedro Bustamante, was entitled to the benefits of Decree No. 24, in every respect, and particularly for his services against the Indians. Besides the said land has always been considered as belonging to the family, and their title to the same has never been questioned.

By the depositions of the witness Jose Maria Benavides, to-wit: That he has held the following offices in the City of Guerrero, Mexico: That of Regidor several times, does not remember in what years, and that of First Alcalde in 1868. That the Licentiate (Lawyer) Antonio Canales, was in 1835, Surveyor General of said State, and they had, under the laws of the State of Tamaulipas, authority to extend said title to Pedro Bustamante. That he is well acquainted with the provisions of Decree No. 24 of the nineteenth of October, 1833, passed by the Congress of the State of Tamaulipas, Mexico. That he has heard the witness Jose Maria Martinez, make in answer to this interrogatory, a full explanation of the provisions of Decree No. 24, the proceedings under the same and their legal effect, and has also heard his account of how many persons of Guerrero sent their expedientes to Victoria, and has also heard what he has said about the de-

47. struction of a portion of the State archives, and this witness

counter 41159

does answer in respect to these things, the same as the said Jose Maria Martinez has answered; that he had examined the title annexed to the interrogatories in this suit, extended to Pedro Bustamante, and to the knowledge of this witness, the same was extended in accordance with the said decree No. 24, and it has always been held by the authorities of the State of Tamaulipas as a full and complete legal title from the date of the original concession by the authorities of the City of Guerrero, and the said right was based upon the denuncio or selection of said land made by said Pedro Bustamante previous to the nineteenth of December, 1836. That the deceased, Pedro Bustamante, was entitled under the law to the benefits of Decree No. 24, and besides, he was a man who did good service against the Indians, his rancho on his land being an outpost against the Indians, because the deceased would never entirely abandon it to the Indians; and he held it by block house or wooden fort which he had built there and where he defended himself successfully many times against the barbarous foe.

By the depositions of the witness Andres Garcia, to-wit: That he has held the following offices in Guerrero, Mexico: That of Comisario or Justice of the Peace, in 1855, that of Regidor or Councilman in the years 1857 and 1859, and that of Second Alcalde in 1861. That in 1835, the Licentiate, Antonio Canales, was surveyor general of the State of Tamaulipas and they had authority under the laws of the said State to extend the said title to Pedro Bustamante. That he is well acquainted with the provisions of Decree No. 24 of the ningteenth of October, 1833, passed by the Congress of the State of Tamaulipas, Mexico. The said Decree No. 24 made a special concession of lands to the four frontier towns of Camargo, Mier, Guerrero and Laredo; it gave to each inhabitant as much as five leagues of pasture land, provided he had no lands and had live stock, he having

counter 41160

to pay ten dollars per league to the State; it embraced only those who had lived in said towns during the last Indian War before the date of said decree. It stipulated that if the lands were sold within twenty years after the concession, the State should by process of law, provided in the said Décree, recover her right to the same; the benefits of the Act were limited to three years from the date thereof; and it provided that the respective Ayuntamiento should make due inquiry whether or not the applicant had no lands and had livestock under the personal and pecunairy responsibility of every member thereof and all collectively. When an applicant made his petition and presented the proofs required by the said decree, it was the duty of the Ayuntamiento to certify the fact, and make the concession; and from the date of such concession thus made, it has always been held by the Mexican authorities that the law itself conferred on and passed to the grantee, a full and complete legal title(because having furnished the proofs by the law, he was entitled to the land) and the land was not thereafter subject to denuncio by other parties, but was thenceforth separated from the public domain of the State. The proceedings had before the Ayuntamiento, and all reduced to writing, were attached together and when finished, were called "El expediente Instruido" or "Executed Dispatch"; this was delivered to the grantee, and upon it, he could demand from the State the perfected title by paying into the State Treasury ten dollars per league for the land granted. That on the ninth or tenth of November, 1847, the witness left Guerrero and went to Victoria, the Capital of the State of Tamaulipas, Mexico, carrying with him twenty one expedientes belonging to as many different persons. Crispen Flores and Apolinaro Hamesgueta also went to Victoria about the same time, also taking with them many expedientes. All these expedientes were, to the knowledge of the witnes, deposited in the State

counter 41161

Department of said State, and after a delay of nearly two months (during which time, this witness helped to print the skeleton titles) the titles were issued by the State authorities on the second day of January, 1848, upon the said expedientes for the lands conceded therein. This witness was present on the second day of January, 1848, and saw the Governor and Secretary in the act of signing the titles issued on that day; remembers nearly all the names of the grantees. The title extended to Pedro Bustámante was brought him by Crespin Flores aforesaid. That he has examined the title next to the interrogatories in this suit, extended to Pedro Bustamante, and from his knowledge of the same, it was extended in accordance with the provisions of Decree No. 24, and it had always been held by the authorities of the State of Tamaulipas as a full and complete legal title from the date of the original concession by the authorities of the City of Guerrero, and the said right was based upon the denuncio or selection of said land by the said Pedro Bustamante made previous to the year 1836.

By the depositions of the witness, Jesus Pena Vela, to-wit: That he has held the following offices in Guerrero, Mexico: That of Regidor or Councilman, in the years of 1860 and 1862, and that of Constitutional First Alcalde in the year 1871. That in 1835, the Licentiate, Antonio Canales, was surveyor General of the State, and they had under the laws of the State of Tamaulipas, authority to extend the said title to Pedro Bustamante. That he is well acquainted with the provisions of Decree No. 24 of the nineteenth of October, 1833, passed by the Congress of the State of Tamaulipas, Mexico. That he was present and heard the witness Andres Garcia, in answer to this interrogatory, give his explanation of the provisions of said Decree No. 24, the proceedings under it had before the Ayuntamiente, and

50. their legal effects, and he says that the same is a true inter-

counter 41162

pretation of said Decree, as this witness understand it. That he has examined the title attached to the interrogatories in this suit, extended to Pedro Bustamante, and from his general knowledge of these titles, the same was extended in accordance with the said Decree No. 24, and it has always been held by the authorities of the State of Tamaulipas, as a full and complete legal title from the date of the original concession by the authorities of the City of Guerrero, and the said right was based upon the denuncio or selection of said land made by the said Pedro Bustamante previous to the nineteenth of December, 1836.

To all of which evidence of said witnesses, and each of them, the plaintiff objected, on the ground that all of said testimony so offered, was incompetent and irrelevant, and also that it called for an opinion of the witness on matters concerning which they were not competent to give an opinion, and that for said reasons, the said testimony was inadmissible; which objections were sustained by the Court and all of said evidence excluded. To all of which ruling and action of the Court, the defendants then and there in open Court excepted for the following reasons, to-wit:-

1. Because the said testimony and all of it, was competent and relevant.

2. Because each and all of said witnesses, as shown in their said testimony, had fully qualified themselves to express an opinion touching the construction and application in the State of Tamaulipas, of the Mexican laws and the usages and customs then in force, and as to which they spoke, by stating the many and different official positions which they had held in the said City of Guerrero and State of Tamaulipas, the discharge of the duties of which official position necessarily involved a knowledge and administration of the laws and the usages and customs then

Counter 71163

in force and being applied and enforced in said City of Guerrero and in the State of Tamaulipas.

3. Because the construction given said laws, and the usages and customs of the State of Tamaulipas, by the Mexican authorities charged with the construction and enforcement of said laws, at the time and under which the defendants in this cause derived and claim their title and right to the land in controversy, furnishes and is the law, and the only law, by which should or could be determined the right and title of the defendants to the land in controversy herein on the trial of this case.

4. Because the testimony of the witnesses, showing the construction and application of the then laws and the usages and customs of the State of Tamaulipas by the then proper authorities of such State, was and is the only manner by which construction of said laws and the usages and customs, and their application and enforcement by the proper Mexican authorities, could be shown upon the trial of this cause and the rights of the defendants determined thereby.

5. Because the construction of the laws of their country and their application, and of its usages and customs in the premises by the then officers and Tribunals of the State of Tamaulipas then charged with that duty, was and is the lawunder which the rights of the defendants in this controversy accrued and were created, and which alone should govern the Court in the trial of this cause in determining their right and title to the land in controversy.

6. Because the said laws, together with the construction and application thereof, and the usages and customs of the State of Tamaulipas, as testified to by the said witnesses, and each of them at the time vested in the defendants the property, title and right to the land in controversy herein.

52. 7. Because the said testimony of the said witnesses as to

counter #1164

such construction and application of the laws, and as to such usages and customs, were matters of fact within their knowledge, to which they could testify, even though it should be admitted they were not experts in the construction and application of such laws, and the usages and customs;

And now here present this, their bill of exception to all such ruling and action of the Court, and pray that the same here now be made a part of the record in this cause, which is accordingly here now so done.

The foregoing bill of exception is allowed with this explanation: There is set out in the bill many things that were proven without being objected to, and which are inserted in the bill merely for the purpose of explaining the portion of the testimony which was excluded, The testimony which was objected to and which was excluded was that of the witnesses to the effect that the title which the witnesses testified about, as well as all similar titles, was a complete title, and that it was regarded by the authorities of Tamaulipas as being a complete title, and that under the decree No. 24, of October 19,1833, an application for land and an adjudication by the Ayuntamiento that the applicant was entitled to the benefits of said decree, followed by a survey of the land denounced, vested a complete title in the applicant.

Examined and approved,

V. L. B r o o k s, Judge.

(Endorsed) No. 20547. The State of Texas vs. Jas. J. Haynes et al. Defendants' Bill of Exceptions No. 1. Filed July 5, 1904, Jas. P. Hart, Clerk.

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counter 41165

Appeal Bond.

A P P E A L B O N D.

Filed July 8,1904.

The State of Texas) In the District Court of Travis County,
No. 20547. vs.)
Jas.J. Haynes et al) Texas, 26th. Judicial District.

Whereas on the 16th day of June, A.D. 1904, The State of Texas, plaintiff in the above entitled cause, recovered a final judgment in said cause in the District Court of Travis County for all the land sued for and in said judgment described, and for a writ of possession thereof, and for costs of suit, against the defendants James J. Haynes, Leonard Haynes, R. A. Haynes, and Sabas Mesa, severally, all of whom reside out of Travis County, the co-defendants of said Leonard Haynes also recovering of him their costs, which judgment appears of record in the minutes of said Court in Book V on pages 492 et seq., from which judgment the defendant Leonard Haynes has appealed and desires to perfect his said appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas:

Now, therefore, we, the said defendant Leonard Haynes, as principal and S.V. Edwards and M.T. Cogley, as sureties, acknowledge ourselves indebted and bound to pay to the State of Texas, plaintiff, and to James J. Haynes, R.A. Haynes and Sabas Mesa, defendants, the sum of two hundred dollars (such sum being double the probable amount of the costs in the Court of Civil Appeals, Supreme Court and the Court below, as fixed by the Clerk) conditioned that the appellant shall prosecute his appeal with effect, and shall pay all the costs which have accrued in the

54. Court below, and which may accrue in the Court of Civil Appeals

counter 41166

and the Supreme Court.

Witness our hands this 5th day of July, A.D. 1904.

Leonard Haynes,

Defendant, Appellant,

By J. F. M u l l a l l y,

his attorney.

S. V. E d w a r d s,

M. T. C o g l e y.

The State of Texas)

County of Webb.)

I, B.J. Leyendecker, Clerk of the District Court of Webb County, Texas, do hereby certify that the sureties on the within bond are residents of Webb County and are good and sufficient, and that if such bond were offered in a proceeding in this Court I would approve it.

Given under my hand and the seal of said Court at office in Laredo, Texas, this 5th. day of July, A.D. 1904.

B J. L e y e n d e c k e r,

(seal) Clerk District Court of Webb County, Texas.

Approved, July 8, 1904.

J a s. P. H a r t,

Clerk.

(Endorsed) No. 20547. The State of Texas vs. Jas. J. Haynes et al. Appeal Bond. Filed July8,1904, Jas. P. Hart, Clerk.

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counter 41167

Assign-
ment
of
Errors.

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A S S I G N M E N T O F E R R O R S .

Filed September 19,1904.

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The State of Texas) In District Court of Travis County, Texas
No. 20547. vs.)
Jas.J.Haynes et al) 26th. Judicial District.

Now comes the defendant Leonard Haynes, appellant, and assigns as errors commited upon and during the trial of this cause the following:-

First. The Court erred in its judgment overruling the exceptions of defendant to plaintiff's petition, questioning the jurisdiction of the Court over the persons of defendants and over the subject matter of the suit,- it appearing from plaintiffs petition that none of the defendants reside in Travis County and that the land in controversy is situated in Zapata County, and no fact is alleged in the petition to bring within the jurisdiction of the Court either the persons of the defendants or the subject matter of the suit.

Second. The Court erred in adjudging to plaintiff any of the lands sued for and claimed by this defendant in the third paragraph of his answer, plaintiff not having proved its case as alleged, and having failed to prove its title to the same by a preponderance of the evidence.

Third. The Court erred in rendering judgment for plaintiff for the lands claimed by this defendant in the third paragraph of his answer, because the facts proved by this defendant under said paragraph of his answer showed that valid inchoate grants of such lands had been made by a former government to those under whom he claims, and rights of property in said lands accrued at the time of the treaty of Guadalupe Hidalgo between the United States and Mexico which were and are protected by the terms of

56. such treaty, and which grants were confirmed thereby.

Counter 71168

Fourth. The Court erred in rendering judgment for plaintiff for the lands claimed by defendant in the 3rd. paragraph of his answer, because the evidence showed that this defendant held legitimate title to said lands under a former government and possessed rights of property thereto protected by the terms of the treaty of Guadalupe Hidalgo and the law of nations; and such judgment violated the terms of said treaty as well as the law of nations.

Fifth. The Court erred in not rendering judgment for this defendant on the facts proved under the third paragraph of his answer for the land therein claimed, because possession under claim of title to such land was shown, unquesticned by the former Mexican government or by the governments succeeding, since the year 1834; a time sufficient to confer a title by prescription or presumption of a grant.

Sixth. The Court erred in not rendering judgment for this defendant for the lands claimed in the third paragraph of his answer, because he proved a good and valid title thereto in himself by a preponderance of the evidence.

Seventh. The Court erred in not holding that the final titles to the lands embracing those claimed by this defendant in the third paragraph of his answer, issued by the Governor of Tamaulipas on the 2nd. day of January, 1848, were good and valid titles, because the governor had the power at that time to issue final title to lands where the rights of the grantees originated prior to the 19th day of December, 1836.

Eighth. The Court erred in not rendering judgment for this defendant for the lands claim by him in the third paragraph of his answer, on his tender of the original price or value of such lands as fixed by Decree No. 24, of October 19th, 1833, under which he holds; no time limit having been fixed by law within which such payment should be made.

57.

counter 41169

Ninth. The Court erred in excluding the testimony of Jose Ma. Martinez and others, offered by defendants as tending to establish an official construction and a usage and custom of the authorities of Tamaulipas by which the law known as Decree No. 24 of October 19th 1833 of the State of Tamaulipas, in connection with a favorable adjudication by the Ayuntamiento of any of the municipalities named therein upon an application of an inhabitant made thereunder, and a denouncement and survey of the land designated by the inhabitant, operated as vesting in the interested party the full legal title to such land, and that the issuance of a final title by the Governor was not regarded as necessary; and also to show why final titles had been issued by the Governor in 1848 in some cases,- as shown by Bill of Exceptions No. 1; because such construction, usage and custom is a part of the law of this case when proved, and under the same the defendant was entitled to judgment for the land claimed by him in paragraph third of his answer; and also for the other reasons set out in said bill of exceptions.

J. F. M u l l a l l y,

Attorney for said defendant.

(Endorsed) No. 20547. The State of Texas vs. Jas.J. Haynes et al. Assignment of Errors. Filed Sept. 19, 1904, Jas. P.Hart, Clerk.

Order Granting Twenty Days.

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O R D E R G R A N T I N G T W E N T Y D A Y S.

June 18, 1904.

- -

The State of Texas)

20,547. vs.) On this the 18th day of June, 1904, it is

Jas. J. Haynes et al ordered by the Court that the parties hereto be and they are hereby allowed twenty days from and after final adjournment of this term of Court in which to prepare and file a statement of facts and bills of exceptions in this case.

58.

counter 41170

Bill of Costs.

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B I L L O F C O S T S.

- -

The State of Texas) In the District Court of Travis County,

20,547. vs.)

Jas.J. Haynes et al.) Texas.

Clerk's Costs.

Docketing Suit	$ .20
Issuing Citations etc	3.50
Issuing Notice & Duplicate	1.75
Issuing Copies of Petition & Certificates	9.00
Entering Appearances	.75
Entering Continuances	.40
Entering Orders	1.50
Filing papers	3.30
Entering Judgment	4.25
Approving Bond	1.50
Transcript	35.00
Filing and Certifying Brief	.90
Taxing Costs	.35
Clerk's Costs forwarded	$62.30

Sheriff's and Miscellaneous Costs.

Clerk's Costs brought forward	$62.30
Shff. Zapata County, cit. & mil	3.25
Shff. Webb County, cit. & mil	1.50
Stenographer Fee	3.00
F.H. Smith, Stenographer	10.00
Service of 2 notices	4.00
G.S. Matthews, venire fee	.50
Total Costs	$84.55

59.

counter 41171

Clerk's Certif-icate.

C L E R K'S C E R T I F I C A T E.

T H E S T A T E O F T E X A S)

C O U N T Y O F T R A V I S.)

I, J a s. P. H a r t, Clerk of the District Court of Travis County, Texas, do hereby certify that the above and foregoing on 59 pages is a true and correct Transcript of all the proceedings had in cause No. 20,547 of The State of Texas vs. James J. Haynes et al as the same appear of record and on file in this office.

In witness whereof I hereunto set my hand and seal of office at Austin, Texas, this September 27th A.D. 1904.

Jas. P. Hart

Clerk District Court, Travis County, Texas.

counter 41172

Record for Leonard Harris
v. The State of Texas

[- Tracts 1-4]

counter #1173

WCO 3455 2129.

In the Court of Civil Appeals of Texas, Third District With App. No 4628.

Leonard Haynes
Appellant
vs
The State of Texas
Appellee

Appellant's Motion for a Rehearing

File No Sketch File 20-8
Zapata County
Record for Leonard Haynes v. St. of Tx.
Ctr. 1-47
Filed April 20 19 98
GARRY MAURO, Com'r
By Douglas Howard

Filed in Court of Civil Appeals
3rd Supreme Judicial District,
AUSTIN, TEXAS.
FEB 9 1995
R.H. Connerly, Clerk.

FILED IN
SUPREME COURT
FEB 13 1995

REPRODUCED FROM THE
HOLDINGS OF THE
TEXAS STATE ARCHIVES

Group 2 of 10

counter 41174

Leonard Haynes

Appellant,

vs

The State of Texas,

Appellee.

No. 3455

In the Court of Civil Appeals, 3rd Supreme Judicial District of Texas.

- Motion for a Rehearing -

Now comes the appellant in the above styled and numbered cause, and moves the court to set aside the judgment rendered herein on the 25th day of January 1905, and to grant a rehearing in this cause, for the following reasons, viz:-

First. This court erred in its conclusion of law that the $10.00 per league provided by Decree No.24 of October 1833 must have been paid to the State of Tamaulipas prior to the occupation of the American troops in 1846 in order to vest such an equitable title to the land in the grantee as is protected by the treaty of Guadalupe Hidalgo; because the true and real consideration for such grants had been given by the meritorious service of the grantee in defending the frontier against the hostile Indians, and such grants were intended as compensation for such service. State vs Bais, 47 Texas 316.

The $10.00 per league was evidently an office fee for issuance of the grants, a less sum than the patent fee required to be paid by the State of Texas.

Second. This court erred in its ruling that the $10.00 per league must have been paid to the State of Tamaulipas prior to 1847 in order to create an equity in the grantees protected by the treaty of Guadalupe Hidalgo, and in holding in effect that there was no impediment shown to the making of such payment; because it appears by the record that the country was in an unsettled condition and exposed to the constant ravages of hostile Indians who destroyed the stock and property of the settlers and kept them poor, and the fair presumption at this distance of time is that such losses made it impossible for them to pay. State vs Bais, 47 Texas 316.

Third. This court erred in holding that the presumption of the grants as contended for by appellant is disproved and negatived by the facts in the record, and in refusing to presume such grants; because there is no evidence in the record repelling such presumption, and all the facts proved, coupled with possession for over sixty-five years, require the grants to be presumed.

counter 41175

If it be true, as held by this court, that the letter of November 1847 reciting payment is not competent to prove the fact of payment because the officer had then no legal right to receive the money, and that the final titles of January 1848 are not competent to prove any fact stated in them because the Governor of Tamaulipas then had no power to issue the grants, then such documents cannot be considered for any purpose, and the record remains clear and free of any evidence repelling the presumption of a grant.

Fourth. This court erred in its conclusion of law, that the letter of November 1847 and the final grants of January 1848 repel the presumption of grants at a proper time; because the true rule requires in favor of long possession "the presumption of all that may be necessary to the repose of the title, - to the absolute assurance and quietude of the possession." "It assumes that all that might lawfully have been done to perfect the legal title was in fact done and in the form prescribed by law." United States vs Chavez, 175 U.S.,509, 523. Sheppard vs Harrison, 54 Texas 96.

In connection with the possession for over 65 years and the proof of all the other requirements except payment of the money and issuance of final titles within the proper time, the rule requires the presumption of such payment and issuance of title within the proper time. It should even be presumed, if necessary, that the titles so issued had been lost, and that those issued in January 1848 were issued to supply the loss.

Fifth. This court erred in holding that it could not apply the general principles of equity under the law of 1901 under which the suit was tried, and in holding that its equity jurisdiction is limited by the said law, and that therefore it could not render judgment for the price fixed by the law of October 1833 upon the tender of appellants; because the law of 1901 expressly empowers the court to adjudicate according to the principles of equity "so far as the same are applicable;" and because in the investigation of land titles emanating from a former government the court has general power to apply the principles of equity. Fly vs United States, 171 U.S.,220.

Sixth. This court erred in holding that appellants' tender of the ten dollars per league was insufficient in that interest was not also tendered; because the payment of interest in such case under the facts proved is not required by the principles of equity; and because neither

counter 41176

the law of 1860 nor that of 1870 for confirmation of Mexican grants required the payment of interest, nor does the law of 1901; and because the evidence showed that the payment had been innocently made once before as early as if not prior to November 1847 to the State of Tamaulipas under the belief that that State was authorized to receive it; and because the facts proved show that taxes have been levied and assessed on the land as titled land by the authorities of Texas ever since about the year 1875 or earlier, and that all such taxes have been paid; and because appellants had no sufficient earlier opportunity to pay or tender said price; and because it would be a miscarriage of justice if men should lose their land possessed by them for over 65 years for failure to tender interest on so small an amount when the principal was never before claimed to be due or owing.

It is respectfully submitted that the law of 1860 for confirmation of such titles gave appellants no sufficient opportunity to establish their rights and pay the money due, if any, because it was enacted on the eve of the civil war and expired at the termination of the war, and during the time of its operation the courts of the territory in question were rarely held, if held at all, and the distracted condition of the country made it impracticable to establish or enforce a right through such courts. It is public history that the records of the district court of Zapata County, which then embraced the lands in question, disappeared during that war, and have never since been found. It is also submitted that under the construction given to the law of 1870 in the cases reported in 47th Texas the proof then obtainable by appellants was insufficient to give them the benefit of that law and therefore they had no opportunity to pay the $10.00 per league at that time. There was no other time prior to the law of 1901 when the money could have been paid to anyone authorized to receive it, and consequently equity cannot exact payment or tender of interest at the earliest fair opportunity had for payment of the debt.

Seventh. This court erred in its conclusion of law that appellants failed to establish ~~their~~ right to the land by a preponderance of the evidence; because the evidence showed that appellants had been in possession of the land for over sixty-five years prior to the filing of this suit under circumstances raising the presumption of a grant; and were in possession also under good and valid final titles or grants issued on January 2nd 1848 by the Governor of Tamaulipas based upon prior proceed-

counter 41177

ings had in 1834 and 1835 which vested the equitable title in them at that time, and bound the conscience of the sovereignty of Tamaulipas and now binds the State of Texas to respect the same, - while the appellee proved nothing except that it is the present successor of Tamaulipas.

Eighth. This court erred in holding that the final titles issued in January 1848 were void for want of authority in the Governor of Tamaulipas at that time to grant lands in the territory in question; because the issuance of such final titles at that time was but the performance of a ministerial act to vest the legal title in the party who had long prior thereto become the equitable owner of the land, and was within the scope of his authority and therefore valid.

State vs DeLeon/64 Texas 556.

Haver vs Yaker, 9 Wallace 32.

Appellant respectfully shows to the court that C.K.Bell, who now resides in Fort Worth, Texas, was Attorney General of Texas and attorney of record for appellee in this suit; and that R.V.Davidson, who resides in the City of Austin, Texas, is the present Attorney General of Texas, and is regarded as the proper attorney of record for appellee at the present time.

Wherefore appellant prays that the said judgment of this court be set aside and a rehearing granted, and judgment be here rendered for appellant.

J.F.McCauley

Attorney of record for appellant.

counter 71178

Group 3 of 10

REPRODUCED FROM THE HOLDINGS OF THE TEXAS STATE ARCHIVES

No.

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

LEONARD HAYNES,
Appellant,

vs.

THE STATE OF TEXAS,
Appellee.

BRIEF FOR APPELLEE.

FILED IN
SUPREME COURT
APR 27 1906
E. T. Connersy

counter 41179

STATE OF TEXAS, ATTORNEY GENERAL'S OFFICE

In the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

LEONARD HAYNES, Appellant,

vs.

THE STATE OF TEXAS, Appellee.

****

Appeal from the District Court of Travis County.

****

BRIEF FOR APPELLEE.

****

STATEMENT OF THE NATURE AND RESULT OF THE SUIT.

This suit was brought under authority of the Act of the Legislature of Texas approved February 23rd, 1900, for the recovery of several tracts of land surveyed and set apart for the public free schools. The defendants other than Leonard Haynes disclaimed. The defense of the defendant Leonard Haynes is correctly set forth in his brief. The appellee by supplemental petition set up the fact that those under whom Haynes claimed title to the land had instituted a suit under the act of 1870, and that the decision of the Supreme Court had been adverse to the title under which Haynes now asserts ownership of the land. The evidence established the fact that under the act of 1870 suit was instituted by Pedro Gutierres, claiming to be one of the heirs of Ygnacio Gutierres, against the State for the purpose of having the grant to the land described in hi petition (being part of the land sued for in this case) confirmed; and also that suit was instituted by Manuel Ramirez under Act of 1870 against the State for the purpose of having confirmed to him the title to the land described in his petition, it being a part of the land sued for in this case. In each case judgment was rendered in favor of the claimant in the trial court, but on appeal the judgment was reversed and remanded by the Supreme Court, (47 Tex. 322); that thereafter the cases were dismissed from the docket of the District Court of Travis County where they had been pending.

counter 41180

The evidence further showed that thereafter the lands covered by what was claimed to be a grant were located, alternate sections being surveyed for the school fund. It was for the recovery of these alternate sections that the suit was brought. The trial resulted in a judgment for appellee, from which this appeal was taken.

FIRST COUNTER-PROPOSITION UNDER APPELLANT'S SECOND, SIXTH AND EIGHTH ASSIGNMENTS OF ERROR.

The court did not err in adjudging to plaintiff the lands sued for, the plaintiff having made out its case by showing that the lands had been located for the benefit of the common free school fund.

S T A T E M E N T .

The plaintiff introduced in evidence the field-notes of the surveys of the land sued for, and also of the 320 acres of unsurveyed public domain in Zapata County, and thereby made out its case. The defendant's defense consisted in a claim of a grant made by the State of Tamaulipas to one Manuel Ramirez in the year 1848.

A U T H O R I T I E S .

State of Texas vs. Manuel Bustamente, 47 Tex. 320.

State of Texas vs. Manuel Ramirez, 47 Tex. 322.

State of Texas vs. Pedro Guiterrez, 47 Tex. 322.

A R G U M E N T .

The appellant who had located the certificates after the judgment of the Supreme Court in the cases which are referred to as being reported in the 47th Texas Supreme Court Report, located railroad certificates upon the land and is holding the land located by virtue of the railroad certificates under such locations, and is claiming the remainder of the land under the alleged grants to Ramires and Guiterrez. These grants have been expressly held to be void, in the cases already referred to.

SECOND COUNTER-PROPOSITION UNDER APPELLANT'S SECOND ASSIGNMENT OF ERROR, AND COUNTER-PROPOSITION UNDER THIRD AND FOURTH ASSIGNMENTS OF ERROR.

An imperfect title emanating from a former, and unrecognized by the existing government, forms no foundation for an action, and constitutes no defense against one.

S T A T E M E N T .

The documents read in evidence by the appellant constitute nothing more than an inchoate claim to the land which had never been eecognized or validated by the legislature of the Republic or State of Texas. (Tr. p. 65). The Treaty of Guadalupe Hidalgo was by its terms expressly limited to the protection of titles which were complete.

A U T H O R I T I E S.

Paschal vs. Perez, 7 Tex. 347.

Trimble vs. Smithers, 1 Tex. 789.

League vs. DeYoung, 2 Tex. 500.

Land Commissioner vs. Bell, Dallam 368.

Houston vs. Robertson, 2 Tex. 16.

Norton's Succession vs. Commissioners, 2 Tex. 358.

Kempner vs. Victoria, 3 Tex. 138.

1 Sayles Real Estate Laws, Sec. 514.

A R G U M E N T.

There was no claim that the defendant had a complete grant from the State of Tamaulipas prior to 1848, and the act of the governor of Tamaulipas of the date mentioned has been held to be void by our Supreme Court. It is within the power of the legislature to confirm or to refuse to confirm inchoate grants. Under the Act of 1870 inchoate grants were authorized to be confirmed. The Act of 1901 differed from the Act of 1870 in this respect, and the courts under the last mentioned act were not authorized to consider inchoate or incomplete grants. By the terms of the Treaty of Guadalupe Hidalgo as originally made provision was made for the protection of inchoate grants, but the Senate of the United States struck from the treaty the provision which would have had that effect, and in lieu thereof, by virtue of a protocol, subsequently entered into, and which was consented to by the Mexican government, limited the effect of the treaty to the confirmation of such grants as were complete on the 2nd day of March, 1836.

counter 41182

COUNTER-PROPOSITION UNDER APPELLANT'S FIFTH ASSIGNMENT OF ERROR.

Limitation will not avail as against the State.

S T A T E M E N T .

The State of Texas was the plaintiff in the suit.

A U T H O R I T I E S.

Brown vs. Sneed, 77 Tex. 471.

A R G U M E N T.

The State had not recognized the right of the defendant or those under whom he claimed the land sued for. On the contrary, the State had repudiated such claim time and again, first by the suits which have already been referred to, and also by patenting the land on locations by virtue of certificates.

COUNTER-PROPOSITION UNDER APPELLANT'S SEVENTH ASSIGNMENT OF ERROR.

The governor of Tamaulipas had no authority to grant lands in Texas on the 2nd day of ~~March~~ January, 1848.

S T A T E M E N T.

What purports to have been a grant of the land in controversy by the governor of Tamaulipas was executed on the 2nd day of January, 1848.

A U T H O R I T I E S.

State of Texas vs. Bustamente, 47 Tex. 320.

C. K. Bell

Attorney General, for the State of Texas, Appellee.

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REPRODUCED FROM THE
HOLDINGS OF THE
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SUPREME COURT

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No. 3455.

IN THE COURT OF CIVIL APPEALS OF TEXAS

THIRD SUPREME JUDICIAL DISTRICT.

LEONARD HAYNES, Appellant,

v.

THE STATE OF TEXAS, Appellee.

APPEAL FROM THE DISTRICT COURT OF TRAVIS COUNTY.

BRIEF FOR APPELLANT.

J. F. MULLALLY,
Attorney of Record for Leonard Haynes, Appellant.

Gammel-Statesman Publishing Co., Austin, Texas.

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No. 3455.

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APPEAL FROM THE DISTRICT COURT OF TRAVIS COUNTY.

BRIEF FOR APPELLANT.

STATEMENT OF THE NATURE AND RESULT OF THE SUIT.

This was an action in the form of trespass to try title, brought by the State under the act of the Legislature of Texas approved September 3, 1901 (General Laws of the first called session of the Twenty-seventh Legislature, pages 4 to 7), in which judgment was rendered for the plaintiff for the recovery of the land sued for. Appellant and three others were named as defendants; the three others filed disclaimers and appellant defended.

Plaintiff alleged in its petition, filed March 26, 1903, that on the first day of January, 1898, the State of Texas then was and still is the owner in fee simple (the same belonging to the common free school fund of the State) of four tracts of land in Zapata County, therein described, aggregating 3500 acres, and was in possession of said lands, and on said day was dispossessed by defendants, and prayed for the recovery of the lands and damages. (Tr. 1-5.)

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Appellant answered to the merits:

(1) By plea of general denial and not guilty. (Tr. 8.)

(2) By plea alleging that the lands sued for are parts of two certain Mexican grants, both having their origin prior to the 19th of December, 1836, by adjudication of the ayuntamiento or municipal council of Guerrero, by virtue of Decree No. 24 of October 19, 1833, of the Congress of Tamaulipas; denouncement and survey of said grants by the Surveyor General of Tamaulipas in 1835; final titles to said grants issued by the Governor of Tamaulipas on January 2, 1848; continuous possession since about 1828 and 1829 up to date of institution of this suit, resurvey of said grants by the district surveyor of Zapata land district in 1876 and 1879, respectively, and invoking the protection of the treaty of Guadalupe Hidalgo and the Constitution of the United States. (Tr. 8-13.)

(3) By tender of the original price of said grants of land as fixed by said Decree No. 24. (Tr. 13.)

Plaintiff, by supplemental petition, and for the purpose of showing that the State of Texas never recognized said grants, pleaded the record of two certain suits brought against the State for confirmation of said grants under the law of August 15, 1870, which suits were finally dismissed by the claimants. (Tr. 13-15.)

This cause was tried without a jury and judgment was rendered for plaintiff for the recovery of the lands sued for; defendant excepted and gave notice of appeal (Tr. 16-20), filed bond (Tr. 54), and assigned errors. (Tr. 56-59.)

SECOND ASSIGNMENT OF ERROR.

The court erred in adjudging to plaintiff any of the lands sued for and claimed by this defendant in the third paragraph of his answer, plaintiff not having proved its case as alleged, and having failed to prove its title to the same by a preponderance of the evidence. (Tr. 56.)

FIRST PROPOSITION UNDER SECOND ASSIGNMENT.

The party sued being in possession, his title and possession are presumed to be consistent, and both rightful and lawful, until the contrary is shown by a preponderance of the evidence on the part of the plaintiff who seeks to disturb the same; and in this case where the State is the claimant the presumption that its title is valid does not apply to lands formerly in Tamaulipas and acquired by treaty while in possession of individuals under claim of right, and it must show title.

STATEMENT.

Plaintiff introduced in evidence the field notes of three surveys of land

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and of 300 acres of unsurveyed public domain (so claimed), all in Zapata County, aggregating 3500 acres, the three surveys surveyed for the State by Leonard Haynes, county surveyor of Zapata County, in May and September, 1884, by virtue of land certificates; which field notes are the same as described in the petition. Plaintiff next introduced in evidence a sketch map from the General Land Office of a part of Zapata County (which is inserted in the transcript between pages 22 and 23 by order of the trial court) showing delineated thereon the two original grants claimed by defendant, and a number of smaller surveys covering the same; among these smaller surveys, the "first tract" mentioned in the petition, being survey No. 427 of 1280 acres, and 240 acres of the "second tract," which is survey No. 428, are upon the land claimed by defendant as originally granted to Manuel Ramirez; and the south half of survey 431 (third tract) of 640 acres, and the east half of the 300 acres of unsurveyed land (fourth tract) are upon the land claimed by defendant as originally granted to Ignacio Gutierrez. (Tr. 21-23.) Plaintiff then rested.

Defendant read in evidence a final grant made by the Governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Ignacio Gutierrez, as follows:

"Third seal. National Coat of Arms, Years 1848 and 1849. Fifty cents.

"Francisco Vital Fernandez, General of Brigade in the Army of the Mexican Republic, and Governor of the State of Tamaulipas:

"In consideration of the fact that the citizen Igno. Gutierrez has paid into the treasury of the State the twenty dollars at which were valued the two sitios of pasture land that he has denounced at the place of Los Mogotes, as appears by the despatch containing the authoritative information of the fact, using the power conferred upon me by the law governing the subject, I have determined to adjudge to the citizen Igno. Gutz., for himself, his heirs and successors, the indicated two sitios of pasture land according to the limits and demarcations manifest in the map annexed.

"Wherefore, I command the authorities and inhabitants of the State to hold and recognize the said citizen Igno. Gutierrez as the legitimate master and owner of the aforesaid two leagues of pasture land that have been granted to him.

"Given at the city of Victoria on the second day of January, eighteen hundred and forty-eight.

"FRANCO. V. FERNANDEZ,

"Rubric.

"ANDRES GUERRERO,

"Second Official. Rubric." (Tr. 24.)

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The map attached to said title showed a plat of two leagues of land with the names of the corners, the creeks and other natural marks, was entitled "Pasture land of Los Mogotes, surveyed for the citizen Ignacio Gutierrez," and ended with the following explanation and signature: "Explanation of the survey. The area contained in the foregoing rectangle is of two sitios of pasture land, surveyed to the points indicated in the map, after correcting the ten degrees variation to the northeast which the needle has in this region. This tract of land is bounded on the southwest with the back lines of the lands of the Rio Grande and on all other directions by vacant lands. City of Guerrero, Jany. 5, 1835. Lic. Anto. Canales. Rubric." (Tr. 25.)

Defendant introduced in evidence a certified copy from the records of the municipal council of Guerrero, Tamaulipas, Mexico, showing that on the 29th of August, 1834, said council, upon the application of Ignacio Gutierrez, determined that he possessed the qualifications entitling him to receive land according to the provisions of Decree No. 24 of October 19, 1833, of the Congress of Tamaulipas. (Tr. 23, 24.)

It was proved that the expediente of Ignacio Gutierrez for the land denounced by him was in existence in the archives of Guerrero in the year 1835, it being one among about twenty expedientes (Tr. 26-28), and that in November, 1847, the second alcalde of Guerrero transmitted seventeen titles "which contain the vacant lands denounced and surveyed from the year 1831 to that of 1835," to Antonio Canales, at Victoria, for presentation to the Governor. (Tr. 32.)

Defendant then introduced in evidence a copy of a plat and field notes of a survey of said tract of two leagues called Los Mogotes, made by Felix A. Blucher, district surveyor of Zapata land district, in December, 1874, and resurveyed and recorded in Zapata County in 1876, in which field notes the land is described as two leagues called Los Mogotes, originally surveyed by order of the government of Tamaulipas, on the 5th day of January, 1835, for Ignacio Gutierrez. (Tr. 28-30.)

Defendant introduced in evidence the following final title issued by the Governor of Tamaulipas to Manuel Ramirez:

"Third Seal. National Coat of Arms for the Years 1848 and 1849. Fifty cents.

"Francisco Vital Fernandez, General of Brigade of the Army of the Mexican Republic and Governor of the State of Tamaulipas:

"Whereas, the citizen Manuel Ramirez has paid into the treasury of the State the thirty dollars at which were appraised the three leagues of pasture land that he had denounced in the place called La Laguna de los Venados, as appears from the dispatch made to that effect, using the powers that the Congress has pleased lately to concede me and those that the law upon this particular confer upon me, I have resolved to adjudicate to the citizen Manuel Ramirez, for himself, his heirs and suc-

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cessors, the aforesaid three leagues of pasture land according to the limits and demarcations that shall be placed at the time of making the survey.

"Therefore, I command the authorities and inhabitants of the State to hold and recognize the aforesaid citizen Manuel Ramirez as the legitimate master and owner of the three leagues of pasture land that are granted to him.

"Given at the city of Victoria on the second day of the month of January, eighteen hundred and forty-eight.

(State Seal) "FRANCO. V. FERNANDEZ,
(Rubric.)
"ANDRES GUERRERO,
"Second Official. (Rubric.)" (Tr. 31.)

Defendant then introduced in evidence the field notes of a resurvey of said Laguna de los Venados tract of land made for Manuel Ramirez by the county surveyor of Zapata County on October 28, 1879, which field notes were duly recorded in said county surveyor's office on December 18, 1879. Said field notes describe the land as shown in defendant's answer. (Tr. 32.)

Defendant then introduced in evidence, by consent, the deposition of Andres Garcia taken in 1878 in the case of Pedro Gutierrez v. The State of Texas, then pending in the District Court of Travis County for confirmation of the title to said Los Mogotes tract of land. Said witness testified in substance, as follows: "I was Municipal Commissioner of Guerrero, Mexico, in 1855, alderman in 1857 and 1859, and second alcalde in 1861. I have known the Los Mogotes tract of land described in the plat attached to the final title issued to Ignacio Gutierrez since 1830 or 1831, and I know that he was then in possession of said land. I am familiar with the law known as Decree No. 24 of October 19, 1833, for denouncing lands; when said decree was published all parties denouncing modified their denouncements to take advantage of the privilege granted by said Decree No. 24, without destroying the ones they had already made and to have that right with more force, by the antiquity of their ownership; the title of Ignacio Gutierrez was issued under said Decree No. 24. I have seen Ignacio Gutierrez's denouncement of said land with the approval of the ayuntamiento of Guerrero, and the plat and field notes of the survey made by Lic. Antonio Canales, and the expediente formed thereon, all in accordance with said Decree No. 24; that expediente was destroyed by the French troops in Victoria about 1865." (Tr. 33.)

Defendant, by consent, also introduced in evidence the deposition of this same witness (Andres Garcia) taken in 1878 in the case of Manuel Ramirez v. The State of Texas, then pending in the District Court of

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Travis County for confirmation of the title to said Laguna de los Venados tract of land. This witness, after stating the various official positions he had held in Guerrero, as above set out, further testified: "I have known the Laguna de los Venados tract of land since the year 1832, and it was then occupied by Manuel Ramirez; the final title to this land extended to him was issued under the law known as Decree No. 24 of October 19, 1833; he denounced it before December 19, 1836, under said Decree No. 24 with the approval of the ayuntamiento of Guerrero. I have seen the expediente that was made upon such denouncement and know that it was made under said law, and everything was done in accordance with said law." (Tr. 34.)

Defendant, by consent, also introduced in evidence the deposition of Manuel Ramirez taken in 1878 in said case of Manuel Ramirez v. The State of Texas, who testified in substance as follows: "I am Manuel Ramirez, the person to whom the final title to the Laguna de los Venados tract of land was issued; I denounced the said land under the law known as Decree No. 24 of October 19, 1833; made my denouncement to the ayuntamiento of Guerrero; an expediente upon my denouncement was made; I sent it to Victoria by Pedro Reyna, who brought me back the final title issued in 1848; I have occupied said land since 1829; in 1839 the Indians killed two of my men and drove me off, but I went back to it as soon as circumstances permitted, and have occupied it ever since." (Tr. 34.)

It was proven on behalf of defendant that Ignacio Gutierrez, to whom the tract of two leagues called Los Mogotes was finally granted by the Governor of Tamaulipas on January 2, 1848, first settled on said land about 1830 and continued in possession of it until it was surveyed for him in 1835, and thereafter under claim of right and ownership he remained in the actual, open and peaceable possession of said land, cultivating the same and raising his live stock thereon, with his stock pens, houses and other improvements, and with his servants, until his death about the year 1860, except that from the year 1836 until about 1852 the incursions of the hostile Indians occasionally drove him and his servants off the land; that he was a Mexican citizen; that since his death his heirs and their assigns, including the defendant Leonard Haynes, have continuously held actual and open and peaceable possession of said land by virtue of said title and proceedings, cultivating the same and raising live stock thereon, with their houses, stock pens and other improvements, and their servants, down to the present time; that said land has been assessed for taxes, and taxes have been paid thereon, as land originally granted to Ignacio Gutierrez, ever since it was first put upon the assessment rolls, about the year 1874; and that all taxes thereon have been paid by the defendant and his grantors, the heirs of said Ignacio Gutierrez. It was also proved that the south half of the tract of land described in plaintiff's petition as survey No. 431, and the east

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half of the tract described in said petition as 300 acres of unsurveyed public domain, are upon said Los Mogotes tract of land. (Tr. 35-36.)

It was proven on behalf of defendant that the said Manuel Ramirez, who was a Mexican citizen and to whom the tract called Laguna de los Venados was finally granted by the Governor of Tamaulipas on January 2, 1848, remained on said land from the time he settled on it in 1829 until the same was surveyed for him in 1835, and thereafter under claim of right and ownership he continued in the actual, open and peaceable possession of said land, cultivating the same and raising his live stock thereon, with his stock pens, houses and other improvements, until his death, about the year 1880, except that from the year 1836 until about 1852, the incursions of the hostile Indians occasionally drove him and his servants off the land; and that since his death his heirs and their assigns, including the defendant Leonard Haynes, have continuously held actual and open possession thereof by virtue of said title and proceedings, cultivating the same and raising live stock thereon, with their houses, stock pens and other improvements, and their servants, down to the present time; that said land has been assessed for taxes, and taxes have been paid thereon, as land originally granted to Manuel Ramirez, ever since it was first put upon the assessment rolls about the year 1874; and that all taxes thereon have been paid by the defendant and his grantors, the heirs of said Ramirez. It was proved that the tract of 1280 acres sued for and described in plaintiff's petition as survey No. 427 is located wholly upon the said Ramirez tract, and that the land sued for and described in plaintiff's petition as survey No. 428 is located partially upon said Ramirez tract or grant, the conflict being about 240 acres in the southeast corner of said survey No. 428. (Tr. 36-37.)

It was proven that the records of the ayuntamiento or city council of Guerrero as existing in the archives and all other archives of said city, are incomplete and imperfect, and many parts thereof missing, and that the archives and records of Victoria, Tamaulipas, were destroyed by French troops in the year 1864. (Tr. 35, 36.) Also that the land in controversy is in that part of Texas which was formerly a part of Tamaulipas, and was within the jurisdiction of Guerrero; and that said two tracts, Los Mogotes and Laguna de los Venados, had been delineated on the official county map in the General Land Office of Texas since about the year 1870. (Tr. 38.)

It was also proved that the defendant Leonard Haynes is the present owner of all the title and interest had or acquired by Ignacio Gutierrez and Manuel Ramirez, the original grantees, and their heirs, in said respective tracts of land called Los Mogotes and Laguna de los Venados, by purchase from their heirs; that after so acquiring such interests other parties located certificates upon all of said two tracts except such parts thereof as are here in controversy, and he purchased the interests of the locators; that he has had said two grants, including the lands in

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controversy, under fence for about twelve years; that the lands in controversy in this suit are worth about $1.25 per acre; that they are dry grazing lands and not well adapted to stock raising except during seasons when there is sufficient rainfall to supply the natural water holes. (Tr. 37.)

Defendant introduced in evidence a copy of a map of the four internal provinces of the east and accompanying documents, fixing the boundaries of said provinces as shown thereon, taken from the archives at Saltillo, Mexico. This map was approved by the Viceroy of Mexico on October 15, 1815, and shows the boundary line between the provinces of Texas and Coahuila as beginning at the source of the Medina river, thence down the Medina to a point in the same directly south of Bexar (San Antonio), and thence southwesterly to the Nueces River. From this latter point the Nueces River to its mouth formed the boundary line between the provinces of Texas and Nuevo Santander. The latter province afterwards became the State of Tamaulipas, with the same boundaries. (Tr., 37-38.)

Defendant read in evidence the said Decree No. 24, of October 19, 1833, of the Congress of Tamaulipas. (Tr. 39-40.) This decree is set out in full in The State v. Cardinas, 47 Texas, 254-255.

Plaintiff, in rebuttal, introduced the testimony of Leonard Haynes, as follows: "The lands sued for were located by me as county surveyor of Zapata County; they are inclosed in one pasture and have been for more than three years; the rental value of the land is as much as three cents per acre per annum when they can be rented, but it frequently happens, as it has of late years, that it is so dry in that country that they can not be rented at any price. The piece of vacant land is as shown on the map; that is, it is vacant unless it be a part of the Gutierrez grant. The grant does not extend as far as my pasture fence to the east; that is, if the Gutierrez grant was a valid grant. A part of the land inclosed by my fence is not on the grant. Perhaps as much as eighty acres of the vacant land shown on the map is off of what I claim to be the Gutierrez grant anyhow, and no part of section 428 is on the Gutierrez grant. I have only one-half of that tract inclosed." (Tr. 41.)

Plaintiff next introduced in evidence the record of a suit brought in the District Court of Travis County in 1872 by Manuel Ramirez, for himself as original grantee, against the State of Texas, for confirmation of the title to said Laguna de los Venados tract. Also the record of a suit brought in the same court by Pedro Gutierrez, an heir of Ignacio Gutierrez, for confirmation of said Los Mogotes tract, against the State of Texas. Both suits were brought under the Act of August 15, 1870. In both suits the State filed answer of general denial. Judgment for plaintiffs was rendered in the district court in both cases, which judgments, on appeal by the State, were reversed and the cases remanded

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by the Supreme Court, and on March 7, 1884, both causes were dismissed by plaintiffs in the district court. (Tr. 41, 42.)

AUTHORITIES.

Clark v. Hills, 67 Texas, 141.
Byers Bros. v. Wallace, 87 Texas, 503.
Scott v. Pettigrew, 72 Texas, 329.
Treaty of Guadalupe Hidalgo, arts. 8 and 9.
Strother v. Lucas, 12 Peters, 410, 436-438.
Sulard v. United States, 4 Peters, 511-513; 10 Peters, 104-106.
Mitchel v. United States, 9 Peters, 734.
Leitendorfer v. Webb, 20 Howard, 176.
United States v. Perchman, 7 Peters, 86-88.
The People v. The Rector of Trinity Church, 30 Barb., 537.
Hornsby v. United States, 10 Wallace, 242.
Carpenter v. Runnells, 19 Wallace, 141.
Bryan v. Kennett, 113 U. S., 179.

SECOND PROPOSITION UNDER SECOND ASSIGNMENT.

The equitable title to the land having passed out of Tamaulipas while that State held the undisputed sovereignty and possession of the territory where it is situated, the succeeding sovereignty acquired nothing but the naked legal title charged in conscience "with a trust," and the equitable is the superior title.

STATEMENT.

Same as under first proposition.

AUTHORITIES.

Thompson v. Langdon, 87 Texas, 259.
Hume v. Ware, 87 Texas, 383.
Latimer v. Logwood (Texas Civ. App.), 27 S. W. Rep., 961.
Strother v. Lucas, 12 Peters, 436, and authorities there cited.
Mitchel v. United States, 9 Peters, 734.

THIRD PROPOSITION UNDER SECOND ASSIGNMENT.

The introduction in evidence, by defendant, of the final grants by Tamaulipas, dated January 2, 1848, based, as they were, upon prior proceedings, made a prima facie case for defendant, and cast upon the

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State of Texas the burden of proving that the State of Tamaulipas had then lost the power to issue such final grants.

Statement and authorities same as under first proposition.

FOURTH PROPOSITION UNDER SECOND ASSIGNMENT.

To protect Mexicans in their property rights within the territory in question, claimed and asserted under the treaty of Guadalupe Hidalgo, the court will not be bound by the declaration of the Congress of the Republic of Texas on December 19, 1836, that the Rio Grande was the boundary line, and presume the invalidity of final grants made subsequently by the State of Tamaulipas, but before the treaty.

STATEMENT.

Same as under first proposition.

AUTHORITIES.

Act of Congress of Texas approved Dec. 19, 1836, defining the boundaries of the Republic.

Arts. 8 and 9 of the treaty of Guadalupe Hidalgo.

Mitchel v. United States, 9 Peters, 738-739.

FIFTH PROPOSITION UNDER SECOND ASSIGNMENT.

Whether or not the boundary declaration of Texas on December 19, 1836, was ever binding on the courts, it ceased to be so under the articles of annexation in 1845, which referred questions of boundary to the United States for settlement; the only subsequent legislation on the subject binding on the courts was (1) the treaty of Guadalupe Hidalgo by which the United States acquired the territory between the Nueces and the Rio Grande rivers, and (2) the compromise act of 1850, giving it to Texas, this latter being the first and only acquisition of the territory by Texas either de jure or de facto.

STATEMENT.

Same as under first proposition.

AUTHORITIES.

Articles of Annexation of Texas, sec. 2 (Paschal's Dig., vol. 1, p. 144).

Joint resolution of Texas Congress of June 23, 1845 (Paschal's Digest, p. 46).

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Joint resolution of United States Congress of Dec. 29, 1845 (Paschal's Digest, p. 46).

Act of Congress approved Sept. 9, 1850, fixing the boundaries of Texas.

Act of the Legislature of Texas approved Nov. 25, 1850, accepting the boundaries as fixed by the act of Congress.

Legislative Journals of Texas, 1858. (Journal of the House, p. 702. Senate Journal, pp. 328, 329).

The Quarterly of the Texas State Historical Association, vol 7, pp. 176-195.

SIXTH PROPOSITION UNDER SECOND ASSIGNMENT.

Under the treaty of Guadalupe Hidalgo it is not only the right but the duty of the courts of Texas, regardless of political declarations, to examine into the origin of property rights set up in defense and claimed to be protected by such treaty, and to inviolably respect the same if duly emanating from the legitimate sovereign at the time claimed; and the judgment for plaintiff violated the rights of defendant as proved by the evidence.

STATEMENT.

Same as under first proposition.

AUTHORITIES.

Mitchel v. United States, 9 Peters, 734-735, 736-739.
Treaty of Guadalupe Hidalgo, arts. 5, 8 and 12.
Howell v. Fountain (Ga.), 46 Am. Dec., 415, 417.
United States v. Martin, 14 Fed. Rep., 817, 821-822.

THIRD ASSIGNMENT OF ERROR.

The court erred in rendering judgment for plaintiff for the lands claimed by this defendant in the third paragraph of his answer, because the facts proved by this defendant under said paragraph of his answer showed that valid inchoate grants of such lands had been made by a former government to those under whom he claims, and rights of property in said lands accrued at the time of the treaty of Guadalupe Hidalgo between the United States and Mexico which were and are protected by the terms of such treaty, and which grants were confirmed thereby. (Tr. 56.)

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FOURTH ASSIGNMENT OF ERROR.

The court erred in rendering judgment for plaintiff for the lands claimed by defendant in the third paragraph of his answer, because the evidence showed that this defendant held legitimate title to said lands under a former government and possessed rights of property thereto protected by the terms of the treaty of Guadalupe Hidalgo and the law of nations; and such judgment violated the terms of said treaty as well as the law of nations. (Tr. 57.)

FIRST PROPOSITION UNDER THESE TWO ASSIGNMENTS.

Where a right amounting to "property" became attached to land under the Mexican government, the treaty of Guadalupe Hidalgo protected and confirmed it, and the title to the land was not conveyed thereby, but remained to the grantee or his assigns.

STATEMENT.

The adjudication of the right of the original grantees by the ayuntamiento of Guerrero to the benefits of Decree No. 24 of October 19, 1833, the denouncement of the lands and survey thereof by the Surveyor General of Tamaulipas, and expedientes thereon, were all made prior to the year 1836. Final titles were issued by the Governor of Tamaulipas one month before date of treaty. See statement under first proposition under second assignment in this brief.

AUTHORITIES.

Sulard v. United States, 4 Peters, 511; 10 Peters, 100-106.
Strother v. Lucas, 12 Peters, 476, and authorities there cited.
Mitchel v. United States, 9 Peters, 734-735.

SECOND PROPOSITION UNDER THIRD AND FOURTH ASSIGNMENTS.

Defendant's rights of property in the lands being protected by the terms of the treaty of Guadalupe Hidalgo and the law of nations, it was a violation of both, as well as a disregard of the law of Texas of September 3, 1901, to render the judgment for plaintiff.

STATEMENT.

Same as under foregoing first proposition.

AUTHORITIES.

Same as last above; also

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Bryan v. Kennett, 113 U. S., 179.
Hornsby v. United States, 10 Wallace, 242.
Carpenter v. Runnels, 19 Wallace, 141.

THIRD PROPOSITION UNDER THIRD AND FOURTH ASSIGNMENTS.

The act of the Legislature of Texas approved September 3, 1901, authorized the District Court of Travis County to take cognizance of and adjudicate upon inchoate as well as perfect titles emanating from a former government, and under such law the judgment should have been for the defendant.

STATEMENT.

Same as under first proposition under these assignments.

AUTHORITIES.

Act of Sept. 3, 1901 (acts of the first called session of the 27th Leg., pp. 4 to 7), sec. 1 of which authorizes the court to adjudicate in favor of all kinds of claims established in accordance with the "laws of nations, the laws, usages and customs of the government from which such ownership, right, interest or claim emanates or is derived, and the Constitution, laws and treaties of the United States of America and of this, the State of Texas, and the principles of equity."

FIFTH ASSIGNMENT OF ERROR.

The court erred in not rendering judgment for this defendant on the facts proved under the third paragraph of his answer for the land therein claimed, because possession under claim of title to such land was shown, unquestioned by the former Mexican government or by the governments succeeding, since the year 1834; a time sufficient to confer a title by prescription or presumption of a grant. (Tr. 57.)

FIRST PROPOSITION UNDER FIFTH ASSIGNMENT.

A grant is presumed against the State by long and uninterrupted possession under a claim of ownership; the presumption is that the possession began in right, and that all that might lawfully have been done to perfect the legal title was in fact done, and in the form prescribed by law.

STATEMENT.

See statement under first proposition under second assignment.

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AUTHORITIES.

Jones v. Borden, 5 Texas, 410.
Herndon v. Casiano, 7 Texas, 322.
Paul v. Perez, 7 Texas, 338.
State v. Cardinas, 47 Texas, 293-294.
Daingerfield v. Paschal, 11 Texas, 579.
Sheppard v. Harrison, 54 Texas, 96.
Barclay v. Howell's Lessee, 6 Peters, 498, 512.
United States v. Chavez, 175 U. S., 509, 523-524.

SECOND PROPOSITION UNDER FIFTH ASSIGNMENT.

The rule that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for twenty years, is applicable wherever, by possibility, a right may be acquired in any manner known to the law. Where, as in this case, the possession continued for seventy-three years before suit, the presumption ought to be conclusive.

STATEMENT.

One original grant involved in this case was first possessed by the original grantee in 1829 and the other in 1830; the lands were surveyed for them prior to December 19, 1836, under Decree No. 24, of October 19, 1833. after their right to the benefits of said decree had been adjudicated by the ayuntamiento of Guerrero in accordance with said decree, and up to the day of trial the lands were still in possession under such original rights. (Tr. 23-28, 33-37.)

AUTHORITIES.

United States v. Chavez, 175 U. S., 509, and authorities cited on page 522.
Sheppard v. Harrison, 54 Texas, 96.

SIXTH ASSIGNMENT OF ERROR.

The court erred in not rendering judgment for this defendant for the lands claimed in the third paragraph of his answer, because he proved a good and valid title thereto in himself by a preponderance of the evidence. (Tr. 57.)

Propositions, statements and authorities same as under second, third, fourth, fifth and seventh assignments.

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SEVENTH ASSIGNMENT OF ERROR.

The court erred in not holding that the final title to the lands embracing those claimed by this defendant in the third paragraph of his answer, issued by the Governor of Tamaulipas on the 2d day of January, 1848, were good and valid titles, because the Governor had the power at that time to issue final titles to lands where the rights of the grantees originated prior to the 19th day of December, 1836. (Tr. 57.)

FIRST PROPOSITION UNDER SEVENTH ASSIGNMENT.

The issuance of the final titles by the Governor of Tamaulipas was but a ministerial act, to vest the legal title in the party who had the equitable title to the land prior to any claim of Texas to the territory, and did not impair the value of the ceded territory to the new sovereign; and being done by the proper officer, before either the date or the exchange of ratifications of the treaty of cession, such title is legitimate and valid.

SECOND PROPOSITION UNDER SEVENTH ASSIGNMENT.

The general rule is that a sovereign can not, by granting lands in a conquered territory, impair the value of the conquest after it is apparent that the territory is lost. But where, as in this case, the final grants only conveyed the legal title, the equity having long prior thereto existed in the grantees, and were made before either the date of the treaty of cession or exchange of ratifications and while the former government was the only one exercising the functions of government in the territory, such grant was valid and effectual to convey the legal title.

For statement under these two propositions, see statement under second proposition under fifth assignment. The final grants were made January 2, 1848; the treaty was dated February 2, 1848, and ratifications were exchanged July 4, 1848.

AUTHORITIES.

State v. De Leon, 64 Texas, 556.

Art. 1 of Decree No. 24, of October 19, 1833, of Tamaulipas.

Haver v. Yaker, 9 Wallace, 32.

EIGHTH ASSIGNMENT OF ERROR.

The court erred in not rendering judgment for this defendant for the lands claimed by him in the third paragraph of his answer, on his tender of the original price or value of such lands as fixed by Decree No. 24,

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of October 19, 1833, under which he holds, no time limit having been fixed by law within which such payment should be made. (Tr. 57.)

This assignment is submitted as a proposition.

STATEMENT.

A tender of the original price was pleaded. (Tr. 13.) The price was $10 per league. (Tr. 39.)

AUTHORITIES.

Decree No. 24, of Oct. 19, 1833, art. 1.
State v. Sais, 47 Texas, 307, 316.

J. F. MULLALLY,
Attorney of Record for Leonard Haynes, Appellant.

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No 3455

Leonard Haynes
Appellant
vs
The State of Texas
Appellee

Argument for
Appellant

FILED IN COURT OF CIVIL APPEALS
3rd Supreme Judicial District
AUSTIN, TEXAS.
NOV 1 1904
E. H. Connelly, Clerk.

FILED IN
SUPREME COURT
APR 27 1906
F. L. Connelly
CLERK

REPRODUCED FROM THE
HOLDINGS OF THE
TEXAS STATE ARCHIVES

Group 5 of 10

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No.) 3455.

In the Court of Civil Appeals of Texas

Third Supreme Judicial District

Leonard Haynes, Appellants,

vs

The State of Texas, Appellee.

Appeal from the District Court of Travis County.

Argument for Appellants.

This is one among eight suits brought by the State to recover lands situated between the Nueces and Rio Grande rivers in territory which was formerly a part of the State of Tamaulipas, the defendants holding under titles and rights acquired by virtue of Decree No.24 of October 19th 1833 of Tamaulipas, having their inception prior to the 19th day of December 1836. At the May term 1904 of the district court of Travis County judgment for plaintiff was rendered in all of said causes, and they are all now before this court on appeal.

The issues raised by the pleadings in this case are given in the statement of the nature and result of the suit in our brief, and the main facts proved are set out in the statement under 1st proposition under 2nd assignment, (brief, 2 to 9), to which the court is respectfully referred. There was no conflict in the testimony.

On the conclusion of the testimony it was contended on behalf of the State, (1), that final grants to lands between the Nueces and Rio Grande rivers issued by Governor Fernandez of Tamaulipas on January 2nd 1848 were void because that territory was not then a part of Tamaulipas; (2), that in the absence of valid final grants, the titles of defendants are inchoate or imperfect and "have no standing in court" if there be no statute expressly conferring authority to adjudicate upon them; and (3), that such inchoate titles are neither within the protection of the treaty of Guadalupe Hidalgo nor within the scope of the act of Sept.3rd 1901. These contentions prevailed in the trial court and resulted in the judgment for the State.

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The first contention was based on the case of the State vs Bustamante, 47 Texas 322, in which the court expressed the opinion that such grants were without authority, because "Texas claimed the territory, in defining its boundaries, on the 19th of December 1836. In 1846 the claim was perfected by possession and the actual exercise of exclusive jurisdiction, and from that time it was lost by the State of Tamaulipas, in Mexico, for all purposes whatever, whether of judicial action or the exercise of power relating to eminent domain. And it never afterwards recovered such lost powers. The action of the Governor, in making concession, was without authority, and neither advanced nor prejudiced the imperfect title to the land, which may have been acquired previous to the 19th day of December 1836."

While we do not regard the validity of the final title as of vital importance in this case, yet we are confident that the contention ~~against~~ against its validity is not sound, and is not supported by the history of the region. The mere naked claim of Texas to the territory in defining its boundaries on December 19th 1836 did not make it a part of Texas in any sense, any more than did the same declaration of boundaries give Texas all of New Mexico east of the Rio Grande or the stretch of territory extending up into what is now the State of Wyoming. Texas then had well defined and known boundaries, coincident with those existing when it was one of the Four Internal Provinces of the East under the Spanish government (Tr.) extending no further south than the Nueces river; it had never exercised any act of sovereignty beyond those limits, and the most that can be said of the boundary declaration is that it amounted to a notice that Texas would proceed to take in that outside territory if she ever became able to do so. The people of Tamaulipas continued to inhabit the territory between the two rivers as a part of their own State, and were molested only by incursions of hostile Indians against whom they defended as best they could and without any aid from Texas. This region is from 100 to 150 miles in width from north to south, and extends inland from the gulf coast about 200 miles. Within it, near its western border, was the town of Laredo, with a municipal government and jurisdiction, and the village of Dolores about 25 miles further down the river, and many tracts of land distributed ~~thxxx~~ throughout its entire extent granted and held under titles emanating

fromt the governments of Spain and Mexico, held and possessed by Mexican citizens of Tamaulipas. Many of these landowners, perhaps most of them kept their families in the towns of Guerrero, Mier, Camargo, ~~X~~ Reynosa and Matamoros, on the west margin of the Rio Grande, for protection from the Indians. An invasion through the western part of this territory and further into Mexico, just beyond the Rio Grande, was undertaken on behalf of Texas in the latter part of 1842, known as the Somervell Expedition, which resulted in nothing but disaster. (Brown's Histo of Texas, Vol.2,pp 233-253.) This was attempted by way of punishment for Gen.Woll's capture of San Antonio in September of that year. No other attempt to even invade this territory, to say nothing of reducing it to possession or establishing a government over it, was ever undertaken by the Republic of Texas, so far as known to the writer, except the one at Lipantitlan on the west bank of the Nueces river in June 1842, which was defeated at its very birth by Mexican forces. (Brown's Hist.,Vol.2 pp 217-218.)

In March 1845 the joint resolution of Congress for the annexation of Texas, subject to the adjustment by the Government of the United ~~X~~ States of all questions of boundary, was signed by the President; in October 1845 the constitution of the new State was ratified, and in the following December a bill extending the laws of the United States over Texas was approved by President Polk, and Texas as an independent republic then ceased to exist, without having performed one act of sovereignty over the territory between the Nueces and Rio Grande rivers.

In August 1845, General Taylor, under the orders of President Polk, occupied Corpus Christi with about 3000 troops, Mexico protesting; in March 1846 Gen.Taylor with his forces marched down the coast, reached the Rio Grande opposite Matamoros, and established Fort Brown; early in May the Mexican forces sent against him were overcome; he then marched up the Rio Grande to Camargo and left the river there on his march to Monterey. The march down the coast and up the Rio Grande to Camargo can hardly be called a taking possession of or conquering the entire territory between the two rivers, and the land here in question lay far to the northwest of Camargo. So far as history records, it does not appear that the Mexican civil authorities were displaced or a military government established anywhere in Tamaulipas either north or south of the Rio

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Grande during the war between the United States and Mexico, and thus matters stood until the treaty of Guadalupe Hidalgo dated one month after issuance of final titles in this case, and effective by exchange of ratifications five months later.

The State of Texas afterwards acquired this territory between the two rivers from the United States, by the compromise acts of 1850, as well as large areas to the west and north of her original boundaries, and ten million dollars in money, in compromise of her boundary-declaration claim to still more territory further west and further north; all the boundary claims of Texas beyond her original lines rested on the naked declaration of December 19 1836, never enforced in any way by Texas, a fact well known in the Congress of the United States and there fully discussed in 1850 pending the passage of the joint resolution defining the boundaries of Texas, - not what such boundaries then were, but what they should thereafter be. (Quarterly of the Texas State Historical Assn.,Vol.7 pp 177-195.) It thus appears that although a paper claim amounts to nothing at the time made, it may form a basis for great benefits long afterwards.

When Texas acquired the territory between the two rivers from the United States in 1850, she acquired what the United States acquired under the treaty with Mexico: the sovereignty of the territory, and the ownership of so much of the land in it as had not been titled or equitably held by individuals prior to the treaty. It may properly be said that upon the annexation of Texas, the invasion of the troops of the United States south of the Nueces river first put this territory in dispute with Mexico; it remained disputed territory belonging to Mexico until ceded by the treaty and then the title and sovereignty changed, but not before.

In the case of Coffee vs Groover, 123 U.S.1, the rule is clearly established that the power to grant lands belongs to the government to which the territory <u>rightfully</u> belongs, and not to the government that claims it, even though the latter exercises political jurisdiction <u>de facto</u> over it. In that case Georgia claimed a certain line as its boundary with Florida, and Florida claimed a line further north as the true boundary; Georgia exercised political jurisdiction over the territory thus in dispute and made grants of land therein; the true boundary line

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was afterwards proved to be even further north than that contended for by Florida; and the Georgia grants were held invalid as against the government of Florida to which the territory rightfully belonged, and it was also held that the possession of Georgia did not give a superior right.

In the case at bar Texas had neither sovereignty nor possession at the time of the grant by the Governor of Tamaulipas, and, be it said to her credit, she never undertook to grant any lands between the Nueces and Rio Grande until after the boundary settlement of 1850. Her first act was to confirm certain Spanish and Mexican titles by the law of Sept. 4th 1850.

It is also well established "as a principle of international law, that, as respects the rights of either government under it, a treaty is considered as concluded and binding from the date of its signature. In this regard the exchange of ratifications has a retroactive effect, confirming a treaty from its date." Haver vs Yaker,9 Wallace 32. In the present case the final titles were issued by the Governor of Tamaulipas one month before the date of the treaty. If it be urged that as it was then apparent that the territory was lost, that the issuance of the ~~xiii~~ titles was an attempt to impair the value of the conquest to the new sovereign and therefore void or voidable, we answer that such might and probably would have been the effect, had any titles been then issued to parties having no previous interest or right in the lands; it certainly would have been an act of bad faith on the part of the governor, and voidable on that ground; but where, as in this case, the rights of the parties had attached to the lands more than thirteen years prior thereto, the lands having been "given,at once" to them under Decree No.24 of October 1833 for meritorious services in defending ~~the frontier with~~ ~~elements of the State from the hostile Indians~~ against the Indians, the issuance of final titles on January 2nd 1848 can in no proper sense be regarded as an attempt to impair the value of the territory to the new sovereign; the value of the particular land so titled or so held, under the rules of international law which protect all property rights both perfect and imperfect, could not have formed any part of the value of the territorial acquisition to the succeeding sovereign, for nothing passes by treaty or by conquest except what belonged to the former sov-

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sreign.

The issuance of the final titles was but a ministerial act, done by the Governor to give the grantee the formal, final and customary evidence of property rights shown by the testimony in this case to have attached to the land as early as the year 1835. It was simply the performance of an act which the succeeding sovereign would have been bound in conscience to perform if not already done, an act done by the proper executive officer of the outgoing government in closing its affairs pending or unfinished with respect to the territory apparently to be surrendered; and we submit that no sufficient reason can be suggested to declare it unauthorized, or wanting in intrinsic merit, fairness and honesty. It will avail nothing to declare it void, for such a declaration would but make it necessary for Texas in conscience to make the same title. The rule is concisely stated in Les Bois vs Bramell, 4 Howard 460: "That this government had imposed on it the same duty to perfect the title that rested on Spain before the country was ceded is not open to question."

The second of the State's three contentions in the trial court assumes that the final grants were invalid, and hence the titles or rights of defendants in the land are imperfect or inchoate and "have no standing in court" without a statute expressly conferring authority to adjudicate upon them. This contention was based upon the cases of Jones vs Borden, 5 Texas 410; McMullen vs Hodge, 5 Texas 77; Trimble vs Smithers, 1 Texas 790, and Paschal vs Perez, 7 Texas, 348, 366. None of these cases in fact supports the State's contention, to the extent of authorizing the court to enter judgment against a defendant in possession under an inchoate title held under a former government; they go no further than to hold that a plaintiff cannot under ordinary laws maintain a suit upon such a title for the recovery of land held adversely by another, and do not intimate that such a title would afford a defendant no protection, or that the court could brush it away as a thing having no standing in court when offered by the party sued. In all those cases the plaintiffs were the parties holding the inchoate titles, and in one of them (Jones vs Borden) it appears by the beginning sentence of the opinion that there then existed a constitutional inhibition against further action upon such titles until removed by the legislature. These cases are in

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entire harmony with the long established doctrine recognized by the Supreme Court of the United States, that perfect titles emanating from a former government are enforceable in the courts without further legislation by the existing government; but that imperfect or inchoate titles, which required something further to be done by the former government to perfect them, retain that character, and until action is taken by the political authority they cannot form the basis of an action at law. (Les Bois vs Bramell, 4 Howard 449, 461.) But as there is also a rule that private rights of property remain unchanged either in the case of a ceded or a conquered territory (Strother vs Lucas, 12 Peters 410, 436-438), and the treaty of Guadalupe Hidalgo expressly declares that such rights shall be "inviolably respected," it is manifest that if jurisdiction has not been conferred upon the court to try the merits of inchoate titles it cannot lawfully render judgment against a defendant in possession holding under an inchoate title and presenting it as a defense of his possession. The court, having no power to try and determine the merits of the inchoate right of the defendant, would in effect destroy the right by such judgment unless its action would be void. It is not believed that any case can be found that will sustain a judgment so rendered. We submit that if our title is inchoate, and if the court had no jurisdiction or power to try its merits, then the case should have been dismissed for want of jurisdiction of the issue raised by the answer.

There was, however, a law that clearly gave the court jurisdiction to try the merits of the answer. The law of Sept.3rd 1901 empowered the court to "investigate the same, and try said cause in accordance with the laws of nations, the laws, usages and customs of the government from which such ownership, right, interest or claim is derived, and the Constitution, laws and treaties of the United States and of this, the State of Texas, and the principles of equity, so far as the same may be applicable," and to give judgment in accordance with the preponderance of the testimony. This law, however, is limited to titles and claims to lands in the territory in question "having their origin at such time as to be, and being within the protection of the treaty of Guadalupe Hidalgo," and this brings us to the consideration of the last of the State's three contentions, which was, that inchoate titles are neither within the protection of the treaty of Guadalupe Hidalgo nor within the scopo

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of the law of Sept.3rd 1901. It is apparent that only titles and claims to land within the treaty are within said law, and it is equally clear that the law embraces all titles and claims within the treaty.

The striking-out of X Article X of the treaty was the sole ground upon which counsel for the State relied in support of the contention that none but perfect titles were within the treaty; the argument being that Art.X was the only part of the treaty that sought to protect inchoate titles, and, being stricken out, such titles were intentionally excluded. But it is not the fact thar Art.X dealt only with inchoate titles, nor that such titles were not otherwise protected by the treaty. its purpose was to extend the time within which grantees could comply with conditions-subsequent attached to their titles to lands of which they had been "put in possession," so as to make the time limit run from the date of exchange of ratifications, and not from the date specified in their titles; and no distinction was made in said article between perfect and imperfect titles. The article so stricken out is as follows:-

"Art.X. All grants of land made by the Mexican government, or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid if the territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country, since the beginning of the troubles between Texas and the Mexican government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited in the same, respectively; such periods to be now counted from the date of the exchange of ratifications of this treaty; in default of which, the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this article.

"The foregoing stipulation in regard to grantees of land in Texas is extended to all grantees of land in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and, in default of the fulfillment of the conditions of any such grant, within the new period, which, as is above stipulated, begins with the day of

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the exchange of ratifications of this treaty, the same shall be null and void.

"The Mexican government declares that no grant whatever of lands in Texas has been made since the second day of March 1836; and that no grant whatsoever of lands, in any of the territories aforesaid, has been made since the 13th day of May 1846."

In transmitting the treaty to the senate on February 22nd 1848, the following is the only reference to Article X made by President Polk:"To the tenth article of the treaty there are serious objections, and no instructions given to Mr.Trist contemplated or authorized its insertion. The public lands within the limits of Texas belong to that State, and this government has no power to dispose of them, or to change the conditions of grants already made. All valid titles to land within the other territories ceded to the United States will remain unaffected by the change of sovereignty; and I therefore submit that this article should not be ratified as a part of the treaty."

From the text of Art.X, and the President's message relating thereto, it is plain that the controlling objection was the benefit of an extension of time to comply with conditions in titles, sought to be given to parties who had been put in possession of their lands subject to the fulfillment of conditions-subsequent within a specified time, regardless of any question as to whether final titles had issued or not. And to make it clear and conclusive that the class of titles here in issue could not possibly have been embraced within the intendment of Art.X, it is only necessary to refer to the fact that no conditions of any kind requiring fulfillment by the grantees were attached to titles acquired under Decree No.24 of Oct.19 1833; there was only the negative or passive condition that the lands should not be alienated within 20 years after the concession;- a condition that manifestly could be in nowise affected by the "troubles between Texas and the Mexican government," the cause assigned in Art.X for the desired extension of time. If further proof were needed, that inchoate titles or claims under said Decree No.24 of 1833 were not within the intendment of Art.X of the ~~xxxx~~ treaty, it is found in the fact that the act of putting in possession formally, of lands acquired under said decree, was only performed <u>after</u> the issuance of final titles. (State vs Sais,47 Texas 307, 314.) The

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striking out of Art.X left all titles within its intendment in the situation in which they then existed, with their conditions unchanged, and the rights of their owners unaffected by the change of government.

Before leaving Art.X it may be well to observe that the declaration therein, that no grants of land in Texas had been made since March 2nd 1836, undoubtedly referred to Texas within the boundaries existing on that date, extending no further south than the Nueces river. The further declaration therein, that no grants in any of the ceded territory had been made since May 13th 1846, is probably due to the fact that the city of Victoria, where the Governor of Tamaulipas issued final titles one month before the date of the treaty, is several hundreds of miles distant from the city of Mexico; and with a mountainous country intervening and no railroads or telegraphs at that time, and no law requiring any report of such titles to be made to Mexico, the fact of such issuance was unknown in Mexico when such declaration was made.

Property rights of every kind in the ceded territory were fully protected by the treaty as ratified, and no distinction whatever is made between perfect and inchoate titles to land. Article VIII of the treaty provides that "Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said tesritories, or disposing thereof, and removing the proceeds wherever they please, without being subjected, on this account, to any contribution, tax, or charge whatever;" and also that "In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States."

In Strother vs Lucas, 12 Peters 410, 436, the Supreme Court of the United States applied the rule that upon a cession of territory the rights and obligations of the former sovereign and the inhabitants remain unchanged, the new government putting itself in the place of the former sovereign. "Both were regulated by the law of nations, according

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to which the rights of property are protected, even in the case of a conquered country, and held sacred and inviolable when it is ceded by treaty, with or without any stipulation to such effect; and the laws, whether in writing, or evidenced by the usage and customs of the conquered or ceded country, continue in force till altered by the new sovereign. (8 Wheat.,589; 12 Wheat.528,535; 6 Peters 712; 7 Peters 86,87; 8 Peters 444,465; 9 Peters 133, 734, 748, 749; Cowp.,205; 2 Ves.Jun.,349; 10 Peters 305, 330, 721, 723.)" Continuing, the court in Strother vs Lucas say: "This court has defined property to be any right, legal or equitable, inceptive, inchoate, or perfect, which before the treaty with France in 1803, or with Spain in 1819, had so attached to any piece or tract of land, great or small, as to affect the conscience of the former sovereign 'with a trust' and make him a trustee for an individual, according to the law of nations, of the sovereign himself, the local usage or custom of the colony or district, according to the principles of justice, and rules of equity. (6 Peters 709, 714; 8 Peters 450; 9 Peters 133, 144, 737; 10 Peters 105, 324, 331, 335, 336;)" and again: "This court has also uniformly held that the term 'grant,' in a treaty, comprehends not only those which are made in form, but also any concession, warrant, order or permission to survey, possess or settle, whether evidenced by writing or parol, or presumed from possession (vide the cases last cited; 8 Peters 466, 467; 9 Peters 152, 170; 10 Peters 331-340; S.P.,10 Peters 718 etc.), and that in the term 'laws' is included custom and usage, when once settled; though it may be 'comparatively of recent date, and is not one of those to the contrary of of which the memory of man runneth not, which contributed so much to make up the common law code, which is so justly venerated.'(9 Wh.,585.) Its evidence consists in the sense and understanding of parties in their contracts, which are made with reference to such usage or custom; for the custom then becomes a part of the contract, and may not improperly be considered the law of the contract, and it rests on the same principle as the lex Loci.'"

Applying these principles to the case now at bar, is it not clear that the rights of the original grantees had so attached to the lands in controversy "as to affect the conscience of the former sovereign with a trust, and make him a trustee for an individual, according to the law of nations, of the sovereign himself, the local usage or custom of the col-

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ony or district, according to the principles of justice, and rules of equity?" Does not this language particularly include inchoate or imperfect titles, since there is nothing in the nature of a"trust" in perfect titles, which need no further act of the granting power to complete them?

If it be conceded that the final titles issued in January 1848 were void for want of power in the Governor of Tamaulipas to issue them at that time, it is nevertheless true that the lands had been held since 1835 under circumstances charging the government of Tamaulipas with a trust. In State vs Sais, 47 Texas 307, 315-316, which involved a title or right to three leagues of land under Decree No.24 of Oct.19th 1833, Chief Justice Roberts in delivering the opinion of the court said: "The act of putting the party in possession, and the final concession of the Governor, which he had ordered should be made, are not found in the title presented for adjudication and ~~xxxxxxxx~~ filed with the petition, and it is to that extent an imperfect title to the land claimed. It shows, however, the adjudicated right of the applicant, and the setting apart and survey of the land, with defined boundaries, and its locality and extent, and that the money at which it was valued under the ~~xxx~~ law ($30) was paid into the treasury of the State, with the regularity and legality of the proceedings, and direction for their completion, by the attorney of the treasury, sanctioned by the order of the Governor. Under these circumstances, although the title is imperfect, 'the principles of equity,' contemplated by the Statute of 1870, authorizing this suit, may properly be invoked to relieve the applicant from again paying the price of the land, it having been paid into the treasury of the State of Tamaulipas at the proper time. (Paschal's Digest, Art.7068.) ~~xx~~ This would seem to be proper, also, in consideration of the fact that this grant of land was made, partly at least, on the ground that the inhabitants of Camargo, and of the other towns on the Rio Grande, named in the decree No.24 of 1833, which constituted the frontier Mexican settlements of that region, had valiantly held their position against the hostile savages, which, as to those who needed lands there, caused the Government of the State to reduce the price from the ordinary minimum valuation of thirty to ten dollars per league. Such reduction was doubtless intended as a partial remuneration for the losses sustained by the frequent and long-continued depredations of the Indians, that had kept

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them poor." The circumstances there referred to by the supreme court were certainly such as to charge the conscience of any government with a trust, and make it a trustee of the legal title for the benefit of the settler. In that case (page 315) it was said by the court that the most important parts of the proceedings to acquire land under said decree No. 24 were "1st, the action of the ayuntamiento in establishing the right or qualification of the party under the law to get a grant of land; 2nd, the survey of the land by the surveyor, under the directions of the alcalde; and 3rd, the concession made by the Governor of the State, corresponding in the main to, 1st, the issuing of a headright certificate; 2nd, the survey of the land, approved and recorded by the county surveyor; and 3rd, the patent, issued from the General Land Office, under the Texas system of granting lands. The Texas system, though more simple and less ceremonious, was evidently founded on the Mexican, in its principal features." In the case at bar it was proved that the qualifications of the party under the law to get a grant of land had been established by the action of the ayuntamiento of Guerrero, and the land had been surveyed by the Surveyor General of the State in 1835, and it had long prior thereto been held in possession or occupied by the grantee for stockraising purposes; these facts clearly bring the property- right within the treaty as well as the law of nations, facts recognized in State vs Sais (page 317) as amply sufficient, where it was said: "So far as it appears from the record in this case, the right of the grantee, as a party entitled to land, had been properly established, and the land had been selected and surveyed, with defined boundaries, previous to the 19th day of December 1836, and it was, therefore, such a right as could, and reasonably would, have been protected, had there not been a change of government."

Could the government of Tamaulipas have disregarded its obligation under Decree No.24 to the original grantee in this present case, and its obligation under the action of the ayuntamiento of Guerrero, and under the survey made thereafter by the Surveyor General of the State on January 5th 1835, taking the land back and keeping it or granting it to another, in good conscience and without violating the principles of equity? We respectfully submit that it could not, and that the present sovereignty of Texas over the territory is charged with the identical

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obligation as to this land that then rested upon the State of Tamaulipas; and that this obligation is binding both by the terms of the treaty and by the law of nations, and that under the law of Sept. 3rd 1901 the court was expressly given jurisdiction to protect and enforce such obligation.

In discussing the aforesaid three contentions of the Attorney General, which prevailed in the trial court, and which we believe we have here successfully met, we have also presented what we desire to say in support of our assignments of error Nos. 3, 4 and 7 and the propositions in our brief thereunder.

Our 2nd assignment charges that plaintiff failed to establish its case by a preponderance of the evidence; and in the 6th assignment and propositions thereunder we contend that defendants proved a good and valid title in themselves by a preponderance of the evidence. Without here repeating in detail the facts contained in our brief under these assignments and the propositions under them, we may say that they show that the lands in controversy were settled upon by the original grantees, who were Mexicans, some years prior to 1834; that the grantees were duly adjudged entitled to lands under Decree No.24 of October 1833 by the ayuntamiento of Guerrero, in which jurisdiction they were situated; that afterwards, on Jan. 5th 1835 one tract of said lands were surveyed for them by the Surveyor General of Tamaulipas and date of the other survey is not definitely known; that the expedientes of their titles existed in the archives of Guerrero in 1835; that on January 2, 1848 the Governor of Tamaulipas issued final titles to said grantees for said lands, based on said expedientes, the price of $10 per leagua having been paid into the treasury of the State; that said lands had been continuously in the actual possession and use of the original grantees, their heirs and assigns, ever since they were first taken into possession as aforesaid, except when incursions of hostile Indians rendered them unsafe, and then they were only temporarily unoccupied; that they had been resurveyed by the proper county surveyor in the years 1870 to 1879 and had been delineated on the official county map in the general land office since the year 1870 ;that State and county taxes have been assessed and collected on said lands as titled lands ever since the same were first put upon the assessment rolls about the year 1874; that defendants are the present owners of all the right,title and interest acquired

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by the original grantees in the parts of the grants here in controversy; that said lands are entirely enclosed by substantial barb wire fences, and there are some cultivated fields, and houses, tanks, and other improvements upon them. The evidence for plaintiff consisted of the field notes of certain surveys of land as described in the petition, which surveys lie upon said granted lands; also the testimony of Leonard Haynes that he as county surveyor of Zapata County located and surveyed the certificates, and the alternate sections now in question, in the year 1884; that he located the certificates for his brother J.J.Haynes; that the rental value of the lands is as much as three cents per acre per annum when they can be rented,"but it frequently happens, as it has of late years, that it is so dry in that country that they cannot be rented at any price." Plaintiff also introduced the record of two suits brought in the district court of Travis County in 1871 for confirmation of said grants under the act of August 15th 1870; in each of said suits the State filed answer of general denial, judgment for plaintiffs was rendered in the trial court in both cases, and on appeal were reversed, and afterwards both suits were dismissed by plaintiffs on March 7th 1884. These records were introduced to show that the State had disputed the grants claimed; but the attorney general at that time in filing plea of general denial merely performed his duty to put the claimants upon proof, and as they were then apparently unable to produce record evidence of their right adjudicated by the ayuntamiento of Guerrero, and as the view taken of the law of Aug.15,1870,by the Supreme Court was that it required parties to attach to their petitions the written evidence of such adjudications, those suits resulted in nothing, and neither advanced nor prejudiced their rights in the land, and conferred no right upon the State that it did not have before, and settled nothing as between the State and the claimants.

Now, as to the State's right under the alternate locations sued upon, we think there can be no doubt that such locations were void. Sec.2 of Art.(14) XIV of the constitution of the State provides that land certificates "shall be located, surveyed or patented, only upon vacant and unappropriated public domain, and not upon land titled or equitably owned under color of title from the sovereignty of the State, evidence of the appropriation of which is on the county records or in the General Land Office; or when the appropriation is evidenced by the occupation

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of the owner, or of some person holding for him." In this case the lands were titled if the final grants were valid, and were equitably owned under color of title from the sovereignty of the State (which includes former sovereignties as well as that now existing) if such final titles were not valid; and the evidence of the appropriation was on the county records and also in the General Land Office, and was further shown by the occupation of the owner. The locations being therefore void, the State alternates were likewise void; so that there was no evidence of title or ownership in the State to the lands sued for, and its case could only rest on the presumption of title by reason of its sovereignty had there been no evidence of adverse claims. We therefore submit that such presumption was overwhelmingly defeated by the undisputed evidence showing the accrual of private rights in the land long before Texas made any claim to the territory, - rights that have ever since remained in full force and effect and are now held by the defendants; and that our assignments Nos.2 and 6 are well taken.

In addition to what we have already said on the subject of the treaty protection of inchoate equally with perfect titles, we desire also to cite the case of Soulard vs United States, 4 Peters 511-513. The Court there said:

"The term 'property' as applied to lands, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract - those which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away." The state of case on which this ruling was made was oral proof that the lieutenant governer made a cession of the amount of land to be surveyed out of the public lands, and that a survey was made before the change of government. The cause was then held under advisement, and finally determined at a later term,when on such state of case the court said, (10 Peters 104-106): "We are therefore of the opinion that the claim of the petitioners to the land described in their petition is a good and valid title thereto, by the law of nations, the laws, usages and customs of Spain (under whose government the title originated), the treaty between France and the United States for the cession of Louisiana, and stipulations thereof."

The evidence in the case now before the court showing defendants

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to be well within the term "property" as thus defined, was conclusive; there is no escape from this result, if the decisions of the Supreme Court of the United States defining the term property are to be accepted; the treaty of Guadalupe Hidalgo provided that the property of Mexicans of every kind should be "inviolably respected," and Sec.2 of Art.VII of the constitution of the United States declares that "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." More direct or emphatic language than this could hardly be found.

In our 5th assignment we contend that our possession under claim of title since the year 1834 authorized the presumption of a ~~grant~~ grant, and that we should have been given judgment on that ground. It is no answer to say that the issuance of the final grants in January 1848 is inconsistent with such presumption, for the rule is well settled that where a right to a grant is coupled with long possession all necessary presumptions will be indulged. In Sheppard vs Harrison, 54 Texas 96, it was said: "But if it should be held that the final title was imperfect and never fully completed for want of the insertion of the name of the grantee, we are of the opinion that the facts exhibited in the record are abundantly sufficient in warranting the presumption of a grant to Travis as curator ~~for~~ of Martinez. It will be noted that the presumption of a grant in this case does not rest alone on the bare fact of the long continued possession by the appellee and his vendees. It is ~~indisputably~~ indisputably shown that the party in whose favor the presumption is asked to be indulged, was justly entitled to a grant; that nothing remained for its legal consummation but the bare fact of the drawing up and executing a proper instrument to evidence a final title; no legal impediment was or could be interposed. That contemporaneous with the supposed grant, it was, as we have said, recognized as such by the tribunals of the country and the parties in interest as having been consummated. From that day to the date of appellant's file upon the land, it continued to be so recognized by all the officials of the government in any way connected with the administration of the laws relating to or

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affecting the public domain, and its disposal. These facts, connected with the long possession and payment of taxes, are amply sufficient to justify the presumption of a grant, even if it is admitted that supposed final title under which it had been held for so long a time was incomplete by reason of the omission of the name of the grantee, to whom it should have been issued. Grimes vs Bastrop,26 Texas 314."

And in U.S.vs Chaves, 175 U.S.,509, 523, the court said: "It is contended by the government that no juridical possession is shown under the grant to the southern portion of the tract; that there is no grant shown to Sedille of the northern portion of the tract; that admitting both are shown there is no evidence that the title which Don Diego Borrego received in 1734 was conveyed to Clemente Gutierrez, who was shown to have had the possession claiming title in 1785. To infer all these ~~thiege~~ things, it is argued, is to build presumption on presumption, and carry constructive proof too far. The argument is not formidable. The instances mentioned are of the same kind as those in the cited cases, and the principle of the cases is not limited or satisfied by the presumption of only one step in the title. It requires the presumption of all that may be necessary to the repose of the title - to the absolute assurance and quietude of the possession. Quoting the language of the supreme court of Tennessee, approved by this court, it assumes that all 'that might lawfully have been done to perfect the legal title was in fact done and in the form prescribed by law.' And 'There is hardly a species of act or document, public or private, that will not be presumed in support of possession. Even acts of Parliament may thus be presumed, as also will grants from the Crown.' Best,Presumptions,Sec.109."

Under such doctrine there seems to be no difficulty in presuming valid final grants in this case. The established right of the parties to final grants was proved, and no legal impediments could have been interposed, since the grants were in recognition of meritorious conduct. These and the other facts proved, and the long possession and payment of ~~X~~ taxes are amply sufficient to justify the presumption of grants, according to the conclusion of the court in Sheppard vs Harrison. In that case there was an incomplete final grant before the court, which was not allowed to destroy the presumption. In the case at bar there were complete final grants, which may possibly be regarded as issued too late, but no reason can be suggested why they should be allowed to

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destroy the presumption.

The proof in this case does not show how long before the 2nd day of January 1848 the ten dollars per league had been paid into the treasury of the State of Tamaulipas, but tends to show that such payment was made in November 1847. If it should be determined that such payment was not made at a time when that State had the right to receive it, then the principles of equity may require us to pay it now; we therefore pleaded a tender into court of said amount, and submit that under such tender we were entitled to judgment, as contended for under our 8th assignment. The ten dollars per league cannot be regarded as the substantial and real consideration for the land, for it was only one-third of the ordinary minimum price, and only persons with certain established qualifications as already shown were allowed to acquire lands under the law fixing that price; it is much less than the fee charged by the State of Texas for issuing a patent to a like quantity of land, and was evidently intended as a fee to cover office costs, the real consideration being the merit of the grantee as a settler who had defended against the depredations of the Indians and suffered losses therefrom.

There appears to have been no time limit within which the money had to be paid and final title issued; and as the party had long been in possession the final act of putting into possession would have been a useless ceremony; it has not been regarded as an essential step in the acquirement of such titles. State vs Sais,47 Texas 315, 316.

For the reasons indicated we respectfully submit that the judgment of the district court should be reversed, and judgment here rendered for appellants.

J. P. McCall

Attorney of record for appellants.

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No 1562

APPLICATION

No. 4628 Third District

Leonard Haynes
Appellant.

vs.

State of Texas
Appellee.

From Travis County

CERTIFIED COPY OF ORDERS

FROM THE

Court of Civil Appeals

AT AUSTIN.

Granted Apl. 5, 1906.

Filed in Supreme Court at Austin, th

10th day of April A. D. 190

F. J. Connerly Clerk.

By Holbrick Deputy.

BEN C. JONES & CO., PRINTERS, AUSTIN.

REPRODUCED FROM THE
HOLDINGS OF THE
TEXAS STATE ARCHIVES

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Judgment, rendered January 25th 1905

Leonard Haynes

vs. { No. 3455

The State of Texas appeal

from District Court of Travis County.

Opinion by Chief Justice Fisher

"This cause came on to be heard on the transcript of the record and, the same being inspected, because it is the opinion of the Court that there was no error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed; that the appellant Leonard Haynes, Principal and his sureties, S.U. Edwards and M.T. Cogley, pay all costs in this behalf expended."

and this decision be certified below for observance."

Order, made March 8th 1905,

overruling motion for a rehearing,

Motion 2129.; Cause No. 3455; Leonard Haynes -vs- State of Texas, appeal from Travis County; motion for a rehearing, the motion is overruled.

I, R. H. Connerly, Clerk of the Court of Civil Appeals, Third Supreme Judicial District of Texas, hereby certify that the foregoing page contains true and correct copies of the judgment of said Court and its order overruling the motion for a rehearing and the respective dates thereof in the above numbered and styled cause.

Witness my hand and the seal of said Court, this the 19th day of April 1905

R. H. Connerly.
Clerk.

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HEIDELBERG et al. v. BEHRENS.

(Court of Civil Appeals of Texas. March 10, 1905.)

HUSBAND AND WIFE — OWNERSHIP OF PROPERTY—ADVERSE POSSESSION—LIFE ESTATES—IMPROVEMENTS — LIABILITY OF REMAINDERMEN.

1. Where a wife claimed and occupied certain lots as her separate property for the period of limitations, and denied the community interest of her husband therein, and the rights of plaintiff and defendant as his heirs, they were not entitled to recover any part thereof after her death.

2. Improvements made by a life tenant cannot be charged against the remainderman.

Appeal from District Court, Harris County; Chas. E. Ashe, Judge.

Action by Lena Heidelberg and others against F. M. Behrens. From a judgment in favor of defendant, plaintiffs appeal. Reformed and affirmed.

Coleman & Abbott, for appellants. Brashear & Dannenbaum, for appellee.

GARRETT, C. J. This action was brought in the district court of Harris county for the Eleventh Judicial District by Lena Heidelberg, joined by her husband, against F. M. Behrens, for the recovery of an undivided one-half interest in lots 3, 4, and 5 of block 12 of Seneschal's Addition to the city of Houston, and for the adjustment of equities therein, and for partition. The plaintiff and the defendant were children of Fred and Minna Behrens, who acquired the property during their coverture. The husband died in 1879, and the surviving wife, Minna, died in 1903, after having conveyed to the defendant the three lots above mentioned, which she claimed in her own right. The defendant also made claim for improvements put on the property by his mother with money advanced by himself. Lots 4 and 5 had been conveyed to the wife, Minna Behrens, and lot 3 had been conveyed to the husband, Fred Behrens, but all were so acquired and conveyed as to make them community property; but Minna Behrens, after the death of her husband, claimed lots 4 and 5 as her separate property, and improved them, and let them to tenants. The plaintiff married in 1884, and moved off the premises. The cause was tried by the court without a jury, and resulted in a judgment in favor of the plaintiff for one-fourth of lot 3 charged with one-fourth of $250, the value of the improvements made by the mother, less $20 found to be due by the defendant for one-fourth of the rental value during his occupancy of the land since the death of his mother. The other two lots, 4 and 5, were adjudged to the defendant on the title acquired by Minna Behrens by limitation. The findings of fact made by the trial court are adopted by this court.

The evidence fully supports the finding of the court that Minna Behrens claimed the lots 4 and 5 as her separate property, and denied the community interest of her husband therein and of the plaintiff and the defendant as his heirs, and that she occupied and used them in such manner as to acquire the interest of the plaintiff by limitation. Lot 5 was not a part of the homestead at the date of the death of Fred Behrens, and the court did not err in not so finding. It was not inclosed, as were lots 3 and 4, and not used in any manner in connection with the home; but that is immaterial, as Minna Behrens claimed, improved, and occupied lots 4 and 5 in such manner as to acquire them by limitation. As to lot 3 she was a life tenant, and improvements made by her on it should not be charged to the plaintiff as remainderman. Clift v. Clift, 72 Tex. 144, 10 S. W. 338; Elam v. Parkhill, 60 Tex. 581.

There are no other questions that require decision. The judgment of the court below will be reformed so as to deny any claim for improvements against the plaintiff, and, as reformed, will be affirmed.

Reformed and affirmed.

HAYNES et al. v. STATE. GUELLAR et al. v. SAME. HAYNES v. SAME. FLORES et al. v. SAME (two cases). GARZA et al. v. SAME. BENAVIDES v. SAME. PENA v. SAME.*

(Court of Civil Appeals of Texas. Jan. 25, 1905.)

LANDS — MEXICAN GRANTS — CONFIRMATION—TREATIES—CONSTRUCTION—EVIDENCE—ADMISSIBILITY.

1. Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, is not limited in its application to perfect legal titles, but authorizes the adjudication of imperfect or equitable titles having their origin in a grant of the Mexican government.

2. Equitable rights claimed by virtue of a treaty in the ceded territory cannot be adjudicated and established by the courts until the political department provides the remedy.

3. The provision of the protocol of the treaty of Guadalupe Hidalgo that Mexican grants in ceded territory shall preserve their legal value, and that the grantees may cause their "legitimate titles" to be acknowledged before the American tribunals, is not restricted to titles that had prior to the treaty become absolute and legal, but includes also equitable titles, which, if there had been no change of sovereignty, would have become perfect, or could have been made perfect if the proper steps had been taken.

4. The protocol of the treaty of Guadalupe Hidalgo, stating that the suppression of the tenth article of the treaty was not intended to annul the Mexican grants in ceded territories, but that these should preserve the legal value which they possess, etc., refers solely to titles existing in Texas at the time of the treaty, and not to titles to lands embraced in the treaty, and hence does not affect the provision of article 8 of the

*Rehearing denied March 8, 1905.

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treaty that property of every kind belonging to Mexicans in the territory ceded shall be inviolably respected.

5. In an action by the state, in trespass to try title, brought under Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, the lands in question having been surveyed by the state for the common school fund, the state was entitled to recover as against defendants having at the time of the location neither a valid legal title nor equitable title, within the protection of the treaty of Guadalupe Hidalgo, or the laws of Texas existing at the time, or within the protection of the act of 1901.

6. In an action by the state, under Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, evidence considered, and *held* sufficient to show that the grantee in the Mexican grant under which defendants claimed denounced the land before the ayuntamiento of Guerrero; that that body passed favorably on the application; that a survey was made by the Surveyor General of the state of Tamaulipas; that expediente was formed, and became an archive of the public records at Guerrero; and that the alleged grantee was in possession of the land prior to the denouncement.

7. The fact that an applicant for a Mexican grant was in possession when the lands were denounced was sufficient to dispense with juridical possession.

8. Where, in trespass to try title by the state under Sess. Laws 1901, p. 4, c. 4, providing a method for confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, defendants claimed under a Mexican grant of lands denounced before the ayuntamiento of Guerrero in 1835, it appearing that the archives of the city of Victoria, the capital of Tamaulipas, was destroyed by the French troops in 1864, and that the records were incomplete, it would be assumed that record evidence of the steps necessary to acquire title which was not produced, was destroyed.

9. In determining whether steps had been taken to acquire title in accordance with the laws of Tamaulipas then existing, it was proper to introduce parol evidence as to what was done, when the record evidence, by loss or destruction, could not be produced.

10. The Governor of Tamaulipas had no authority to make a grant to land east of the Rio Grande, January 2, 1848, under the treaty of Guadalupe Hidalgo.

11. Recitals in a grant by the Governor of Tamaulipas to land east of the Rio Grande, January 2, 1848, were not evidence of the facts recited in behalf of those claiming under such grant.

12. Decree No. 24 of the state of Tamaulipas decreed that the inhabitants of Guerrero might have five leagues of land each in recompense for which they were to pay the state $10 per league. Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, did not contain any provision for payment by a claimant of such sum as the claimant would have had to pay, had not the sovereignty of the soil changed. *Held* that, where one who had denounced land before the ayuntamiento of Guerrero did not pay the amount required by the decree, those claiming under him had no title protected by the treaty of Guadalupe Hidalgo or by the act of 1901, even though the amount demanded by the decree was tendered.

13. A presumption of grant cannot be indulged in, in order to authorize a confirmation under the act of 1901.

14. In trespass to try title by the state, under Sess. Laws 1901, p. 4, c. 4, against defendants claiming under a Mexican grant, a presumption of grant might be considered under defendant's plea of not guilty.

15. Sess. Laws 1901, p. 4, c. 4, providing a method for the confirmation and for testing the validity of titles to lands embraced in grants emanating from the Spanish or Mexican governments, and having their origin at such time as to be within the treaty of Guadalupe Hidalgo, provides for a consideration of the usages and customs prevailing in Mexico at the time the right was attempted to be acquired. *Held*, that the right must be adjudicated according to the laws then in existence, of which the courts of Texas take judicial notice, and that evidence of witnesses claiming to have knowledge of such laws and customs could not be considered as establishing the fact that some of the essential requirements of the laws were dispensed with, and could not afford a basis for an opinion as to the validity of the title in question.

16. Sess. Laws 1901, p. 4, c. 4, provides that any person who may be the original grantee, heir, or claimant of any grant within certain territory emanating from the Mexican government, and having its origin at such time as to be within the protection of the treaty of Guadalupe Hidalgo, may file a petition for confirmation of the title, and that the district court shall investigate and try the cause, and, if plaintiff shows his title by a preponderance of the evidence, judgment shall be given in his favor. *Held*, that the statute does not in itself confirm any grant.

Appeal from District Court, Travis County; V. L. Brooks, Judge.

Two cases to try title by the state against Leonard Haynes and others, against Juan Vela Cuellar and others, against Leonard Haynes, against Juan Manuel Flores and others, against Espiridion Flores and others, against Porfiria Garza and others, against Servando Benavides and others, and against Filiberto Pena and others. From judgments in favor of plaintiff, defendants appeal. Affirmed.

J. F. Mullally, B. Coopwood, F. W. Seabury, and James B. Wells, for appellants. C. K. Bell, Atty. Gen., for the State.

FISHER, C. J. The first-named is an action, in the form of trespass to try title, brought by the state, under the act of the Legislature of Texas approved September 3, 1901, on pages 4 and 5, c. 4, of the Session Laws, in which judgment was rendered by the court in favor of the plaintiff. The state sued for 17 surveys, aggregating 12,825 acres of land, as alternate sections located and surveyed for the common school fund of the state of Texas. These locations were made upon surveys that were claimed to have been granted to Antonio Zapata and Pedro Bustamente by the state of Tamaulipas under decree No. 24, of date October 19, 18[illegible]. Appellants in this case (de-

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fendants below) pleaded a general denial and not guilty, and also alleged that the lands sued for are part of the two Mexican grants above stated, both having their origins prior to the 25th day of April, 1835, by adjudication of the ayuntamiento of the city of Guerrero, by virtue of decree 24; that a proper denouncement was made, and favorably passed upon by the ayuntamiento, followed by a survey made about April 25, 1835, by the Surveyor General of Tamaulipas, upon which final title to the grants was issued by the Governor of Tamaulipas on the 2d day of January, 1848; continuous possession long prior to 1835, up to the date of the institution of this suit; and the resurvey of these grants by the county surveyor of Zapata county in 1871 and 1876. And they also pleaded the protection afforded by the treaty of Guadalupe Hidalgo. They also tendered in their pleading the original price of these grants as fixed by decree No. 24, and pleaded presumption of grants based on more than 70 years' possession. Plaintiff, by supplemental petition, and for the purpose of showing that the state of Texas never recognized the grants, pleaded the record of two suits brought against the state for the confirmation of these grants under the law of 1870, in which suits the claimants recovered judgment in the district court of Travis county, which was reversed by the Supreme Court, and the cases finally dismissed by the plaintiffs. The case was tried before the court without a jury, and judgment, as before stated, rendered in favor of the state, and denying appellants confirmation as prayed for.

We find the following facts:

Subsequent to the date upon which the Supreme Court reversed the judgment for the claimants for confirmation of titles to these lands under the act of 1870, the surveys sued for by the state were surveyed and located, in 1884, embracing the land in controversy, the field notes of which were introduced in evidence, as stated in the plaintiff's petition, and these locations were made upon the grants as set out and described and claimed by appellants in their answer. We find that this evidence upon the part of the state is sufficient to entitle it to recover, unless defeated by the testimony coming from the defendants, as hereinafter set out. There is no controversy about the facts, but the principal question to be considered is the sufficiency of the evidence offered by the appellants to show that they are entitled to recover.

Defendants read in evidence a final grant made by the Governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Antonio Zapata, as follows (translation):

"[Third Seal.] Years of eighteen hundred and forty eight and eighteen hundred and forty nine. 1848 & 1849. Fifty cents.

"Francisco Vital Fernandez, Brigadier General of the Army of the Mexican Republic and Governor of the State of Tamaulipas. Whereas, the citizen Antonio Zapata has paid into the Treasury of the State the fifty dollars at which were valued the five sitios of pasture land for large stock denounced by him at the point de Villa, as appears by the expediente made for the purpose, using the power that the law gives me upon this particular, I have thought proper to adjudicate to the citizen Antonio Zapata for himself, his heirs and successors the said five sitios for large stock, within the limits and boundaries made on the attached map.

"Therefore, I order the authorities and inhabitants of the State to recognize the said citizen Antonio Zapata as the legitimate owner of the said five sitios of pasture land for large stock which are thus granted. Given at the city of Victoria on the second day of the Month of January, Eighteen Hundred and Forty eight.

"Franco. V. Fernandez

"[Seal.] Andres Guerrero, 2nd official.

"Pasture land of De Villa, surveyed for the citizen Antonio Zapata:

SW.
SE. NW.
NE.

"[Place of the seal of the State of Tamaulipas.]

Explanation of the demarcations:

a. Corner of La Lobera.
b. Corner of the Loma de Macho Vallo.
c. Corner of Los Huesos.
d. Corner of the Seja del Gruyo.
f. Branch called
g. Branch called Calavasas.
h. Branch called Villa.

"Explanation of the Survey.

"The area comprehended in the rectangle above drawn is five sitios of pasture land for large stock surveyed in the courses indicated in the plan, after correcting the variation of ten degrees that the needle has in this land, this tract of land is bounded on the northwest by the land of Mas Comitas, on the S. W. by that of Los Chapparros Prietos, on the S. E. by that of El Grullo and on the N. E. by vacant lands.

"City of Guerrero, April 25th, 1835. Lic. Antonio Canales."

Defendants introduced in evidence a certified copy of the survey and plat of said land made by the special deputy surveyor of Zapata county, as follows:

"The State of Texas, County of Zapata. Field notes of a survey of five leagues of land originally granted by the government of the state of Tamaulipas to Antonio Zapata on the 5th day of January, A. D. 1835. Said survey is situated in the county of Zapata 15 miles northeast of the town of Carrizo and on the waters of Veleno Creek, and is called Villa. Beginning at the south corner of a survey in the name of Pedro Bustamente and called Las Comitas, this corner being in

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the original title Lindero de la Lobera; thence N. 55 E. with the east line of said survey at 287 varas crossed derremadero de Villa, at 4230 varas an old line tree, at 4275 varas passed the eastern extremity of Laguna Quemada, at 7275 varas crossed road from Laredo to Rio Grande City bearing N. E., at 10300 varas the road from Teposan to the Escobas, at 10375 varas the derramadero de la Pita, at 14021 varas the east corner of said survey in the name of Bustamante, at 15000 varas set post for the north corner called Lindero del Macho Bayo, from which a mesquite marked X bears S. 55 E. 5 varas; also a mesquite marked ⅄ bears S. 30 W. 5 varas; thence S. 35 E. at 2084 varas a post for line mark, at 4168 varas the road from the Tanque, at 8333⅓ varas set post for east corner from which a mesquite marked V bears S. 25 W. 3 varas, also a mesquite marked V bears N. 37 W. 29½ varas; thence S. 55 W. at 7000 varas entered the Nopalera de las Calabasas, at 10000 varas post for line mark I L at the Puesto de San Juan, at 10280 varas crossed road from Rio Grande City to Laredo, at 14000 varas crossed road to the Grullo, at 15000 varas set post for the south corner called Lindero del Macho from which a mesquite marked X bears S. 82 W., 25 varas, and a mesquite marked X bears S. 15 E. 20 varas; thence N. 35 W., at 3128 varas the arroyo de Simon, at 4903 varas the road to Teposan, at 8333⅓ varas to the place of beginning. Surveyed August 22nd to Sept. 2nd, 1874. James McLain, Santiago Cantu, chain carriers. Resurveyed April 20th, 1876.

"I, Felix A. Blucher, special deputy surveyor for Zapata County, do hereby certify that the foregoing survey was made according to law, and that the lines, boundaries and courses of the same are truly described in the foregoing plat and field notes. Felix A. Blucher, Special Deputy Surveyor for Zapata County.

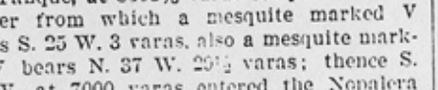
"Examined and recorded Nov. 28th, 1874."

Defendants read in evidence a final grant made by the governor of Tamaulipas, together with a plat and field notes of a survey made by Antonio Canales, Surveyor General of Tamaulipas, for Pedro Bustamente, as follows (translation):

"[Third Seal.] National Coat of arms for the years. Fifty Cents.

"Francisco Vital Fernandez, Brigadier General in the Army of the Mexican Republic, and Governor of the State of Tamaulipas; whereas the citizen Pedro Bustamente has paid into the treasury of the State the fifty dollars, at which were valued the five leagues of pasture land that he had denounced in the place called Las Comitas as appears from the expediente made to that effect, using the powers conferred upon me by the law upon the subject, I have resolved to grant to the citizen Pedro Bustamente, for himself, his heirs and successors, the indicated five leagues of pasture land according to the limits and demarcations appearing in the annexed map. Wherefore, I command the authorities and inhabitants of the state to hold and recognize the said citizen Pedro Bustamente as the legitimate master and owner of the said five leagues of pasture land that have been granted to him. Given at the city of Victoria on the 2nd day of January, Eighteen Hundred and Forty eight. Franco. V. Fernandez. [Rubric.] Andreas Guerrero. [Rubric.] 2nd official. [State seal of Tamaulipas.]

"Pasture land of Las Comitas, surveyed for the citizen Pedro Bustamente.



"Explanation of the demarcations: a, corner of La India. b, corner of La Lobera. c, corner of Mocho Valo. d, corner of Las Escobas. f, Waterhole called Rotamitas. g, ranch of Comitas. h, branch called Comitas. i, branch called Lobetas. j, branch called Villa. m, branch called Socoro.

"[Seal of the State of Tamaulipas.]

"Explanation of the Survey.

"The area comprehended in the rectangle above drawn contains five leagues of pasture land, surveyed to the courses indicated in the plan after correcting the variation of ten degrees that the needle has in this land to the northeast. This tract of land is bounded on the N. W. by the tract of Charco Largo, on the S. W. by those called Humaran and La Huerta, on the S. E. by the tract of Villa, and on the N. E. by vacant land. City of Guerrero, April 25th, 1835. Lic. Anto. Canales. [Rubric.]"

Defendants introduced in evidence a certified copy of a survey and plat of said land in the name of Pedro Bustamente, made by the district surveyor of Zapata county, as follows:

"The State of Texas, County of Zapata. Resurvey of five leagues of pasture land made for the heirs of Pedro Bustamente by virtue of a grant made by the state of Tamaulipas, Mexico, it being confirmation No. ——— in Zapata County and is situated about 24 miles N. 65 E. from the town of Carrizo. Beginning at the N. W. corner of a survey in the name of Jose Canales, called La Huerta, a post on eastern boundary of a survey in the name of Andreas Bautista Pareda, 4646 varas from the S. E. corner of said survey a mesquite post from which a mesquite tree marked X bears N. 67½ E., 8½ varas; thence S. 55¾ E. with the north boundary line of the J. Cuellar survey 2560 varas to the N. E. corner; thence S. 34¼ W. with the E. boundary of said survey 931 varas to a mesquite post in thicket for the

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extreme S. W. corner of this survey; thence S. 35¾ E. 6570 varas to the old original southeast corner designated in the original map as Lindero de la Cabra, a large sink; thence N. 54¼ E. with the east line of this survey and west line of a survey in the name of Antonio Zapata called Villa at 287 varas crossed the redemadera de Villa, at 4230 varas an old elm tree marked A at 4275 varas passed the eastern extremity of the laguna Quemada, at 5000 varas set post in line, at 7275 varas road from Rio Grande City, bearing N. E. at 10300 varas road to Las Escobas from Teposan, at 10375 varas redamadero de la Pita, at 13462 varas a tree marked ▬ on left of line, at 14021 varas the northeast corner a mesquite post designated in the original as Lindero del Macho Bayo, from which a mesquite tree bears S. 19 W. 40 varas, marked X, also another mesquite bears S. 83 W. 22 varas, another bears S. 61½ E. 15½ varas; thence N. 35¾ with the north boundary of this survey at 600 varas road to Las Escobas bearing N. N. E. at 1979 varas an old mesquite stump on line hewed square, at 9063½ varas the extreme boundary of a survey in the name of Manuel Pareda, a post set for the northwest corner of this survey, from which a mesquite bears S. 2 W. 20¼ varas; thence S. 54¼ with the east boundary of said Manuel Pareda survey at 3118 varas passed S. E. corner of said survey and N. E. corner of a survey in the name of Andreas Bautista Pareda, thence same course with eastern boundary of said survey at 13087 varas the place of beginning.

"Surveyed July 6th to 18th, 1874.

"Bearings marked X

"Cesareo de las Santos, Martin Van Merick, Chain Carriers.

"I, Martin Van Merick, special deputy surveyor of Zapata county, do hereby certify that the foregoing survey was made according to the law and that the limits, boundaries and corners, with marks natural and artifial, are truly described in the foregoing plat and field notes. Martin Van Merick, Special Deputy Surveyor of Zapata County.

"I, Fernando Uribe, district surveyor of Zapata county, do hereby certify that I have examined the foregoing plat and field notes and find them correct, and they are recorded in my office in Book A. No. 1, pages 26, 27th, and 28. Given under my hand at Carrizo this 21st day of July, A. D. 1874. Fernando Uribe, District Surveyor of Zapata County."

Defendants introduced in evidence a translated extract from an inventory of the office of the ayuntamiento of Guerrero made in 1835, as follows:

"[L. S. A revenue stamp canceled.] City of Guerrero, February 20th, 1904. Number 6. Antonio G. Martinez, Municipal President of the city of Guerrero, Tamaulipas. Certified: That in the archives of this Presidency there is a parcel of inventories attached together, which is endorsed: 'Common book containing the inventories of the Ayuntamientos and Alcaldes, and delivery and receipt of their archives, which date from the year 1823.' There being on folios 23 reverse and front of 24 an inventory subscribed in the year 1835 by the 1st Alcalde citizen Rafael Uribe, in the folios of which appear an entry of the following tenor:

"Affairs pending:

1 expediente upon the measurement of pasture land for large stock denounced by the citizen Antonio Martinez Guiterrez.

Delivered to him — 1 idem of the citizen Eduardo Davila.

1 id. of the citizen Ygnacio Gutierrez.

1 id. of the citizen Yaidro Gutierrez.

1 id. of the citizen Simon de Ynojosa.

1 id. of Dona Tomasa de la Pena.

1 id. of the citizen Mariano Arispo.

Delivered to him — 1 id. of the citizen Luis Vola.

1 id. of the citizen Trinidad Vola.

Delivered to him — 1 id. of Dona Josefa Cuellar.

That of Don Felipe Pena was delivered to him and he sent it to Victoria.

Delivered to him on Nov. 7, 1836. — 1 expediente of Don Antonio Zapata.

1 id. of Don Jose Ma Canales.

1 id. of Don Anastacio Garcia.

1 id. of Don Pedro Bustamente.

1 id. of Don Jesus Cuellar.

1 id. of Don Onefre Garcia.

1 expediente upon the measurements of pasture lands for large stock denounced by Jesus Benavides.

1 id. of Don Hariano Garcia.

1 id. of Don Jesus Mesa."

"And at request of an interested party and for such use as he may rightfully make of it,

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this copy is issued to him on the twentieth day of February Nineteen Hundred and Four.

"E. R. Jiminez, Secretary.

"Antonio G. Martinez."

Defendants read in evidence the following certified copy of a letter:

"Fabian Zapata, First Supplemental Alcalde of this Municipality, acting with the witnesses of his assistance. He testified: That in the archives of this first court, which at this time is in his charge, there is a package with the following: 'City of Guerrero in the year 1846 and 1847. Folio of papers pertaining to the second constitutional court with various authorities.' And in said folio on its 26th leaf and reverse there is seen an official letter, which literally copied is as follows:

"'I remit to you seventeen titles, which contain the vacant lands denounced and surveyed from the year 1831, until that of 1835, in order that your honor may please present them to the Honorable Governor of the State, to the effect that they may have the necessary validation. The amount of the dues I do not send attached to said documents so as not to expose the same, and your Honor will deign also to direct in the most certain manner, the mode in which they may be paid, and draw against this receiver's office. God and Liberty.

"'City of Guerrero, November 28th, 1847.

"'To his Honor General Don Antonio Canales, City of Victoria.'

"'And at the request of an interested party and for the uses which may suit his rights, the present copy is issued, which I certify in the city of Guerrero, Tamaulipas, on the 8th day of month of August, one thousand nine hundred and two. All before me the authorizing alcalde and those of my assistance: we give faith.

"'The First Supplemental Alcalde.

"'Fabian Zapata.

"'Assisting, Guadalupe Rodiquez. Assisting, Eduardo Senz.'"

Andres Garcia testified by deposition in the year 1878 in the case of Eulalio Gonzales v. The State of Texas, then pending in the district court of Travis county for confirmation of the title to said Villa tract of land, which deposition was introduced in evidence by the defendants in this case. Said witness testified in substance as follows:

"I was municipal commissioner of Guerrero, Mexico, in 1835, alderman in 1857 and 1859, and second alcalde in 1861. I have known the Villa tract of land described in the title issued to Antonio Zapata since 1829, and I know he was then in possession of said land as a raiser of small stock. I am familiar with the law known as decree No. 24, of October 19, 1833, for denouncing lands. When said decree was published, all parties denouncing modified their denouncements to take advantage of the privileges granted by said decree No. 24, without destroying the ones they had already made; and, to have that right with more force by the antiquity of their ownership, the title of Antonio Zapata was issued under said decree No. 24. I have seen Antonio Zapata's denouncement of said land with the approval of the ayuntamiento of Guerrero, and the plat and field notes of the survey made by Lic. Antonio Canales, and the expediente formed thereon, all in accordance with said decree No. 24. That expediente was destroyed by the French troops in Victoria about 1865."

Defendants, by consent, read in evidence certain answers of the following witnesses to the interrogatories propounded to them in cause No. 3,189 district court of Travis county, entitled Manuel Bustamente et al. v. The State of Texas, 47 Tex. 321 (said answers having been taken in the year 1872), as follows:

Jose Maria Canales: That he was then 72 years old. Had been regidor in 1830 and 1831, and first alcalde in 1846. That he knew the Comitas tract of land, hereinbefore mentioned, in 1828, and that it was then occupied by said Pedro Bustamente, with horses and cattle. That said Bustamente petitioned for a grant of said land through the alcalde of Guerrero, and that witness was one of the witnesses to the act of the alcalde approving said petition, and that said land was denounced by and surveyed for said Pedro Bustamente previous to the year 1836, in accordance with decree No. 24, of October 19, 1833, passed by the Congress of Tamaulipas.

Jose Maria Martinez: That he was then 54 years of age, and had always lived in the jurisdiction of Guerrero, Mexico, and had been regidor in 1860, constitutional second alcalde in 1861, and constitutional first alcalde and president of the Ayuntamiento in 1863 and 1864. That the title extended to Pedro Bustamente for the Comitas tract of land, as hereinbefore described, was, to his knowledge, issued on an original denuncio made previous to December 19, 1836, and on the decree of the ayuntamiento of Guerrero. That said Bustamente was entitled to the benefits of decree No. 24.

Jose Maria Benavidas: That he was then 62 years old, and had always lived in Guerrero, where he was regidor several times, and first alcalde in 1868; that the right of said Pedro Bustamente to said Comias tract was based upon a denuncio or seleccion of said land by said Bustamente previous to December 19, 1836; and that Bustamente had improvements and stock on said land long prior to that date, and was entitled to the benefits of said decree No. 24 by services against Indians, etc.

Andreas Garcia: That he was then 56 years old, and had lived most of his life in the jurisdiction of Guerrero, where he was commissario, or justice of the peace, in 55,

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regidor in 1837 and 1839, and second alcalde in 1861; that in November, 1847, witness and two others left Guerrero for Victoria, the capital of Tamaulipas, carrying with them many expedientes of surveys belonging to different persons, each expediente containing the denuncio of the land, the certificate by the ayuntamiento of Guerrero that the applicant was entitled to the land under said decree No. 24, and all other proceedings had before the ayuntamiento in relation thereto; that these expedientes were by them deposited in the state department; that witness was present on January 2, 1848, and saw the Governor and Secretary of State of Tamaulipas sign all the titles or grants issued on that date, and that this Comitas tract was one of those whose expedientes were so filed and title issued thereon in his presence; that the said denuncio was made by said Bustamente prior to the year 1836.

It was proven on behalf of the defendants that Antonio Zapata, to whom the tract of five leagues called "Villa" was finally granted by the Governor of Tamaulipas on January 2, 1848, first settled on said land about the year 1822; that the records of the ayuntamiento or city council of Guerrero, as existing in the archives of said city, are incomplete and imperfect, and many parts thereof missing; that the archives of Victoria, Tamaulipas, were destroyed by French troops under Col. Dupin in the year 1864; that said Zapata, from the time he first settled on said land in 1822, continued in possession thereof until the same was surveyed for him in the year 1835, and thereafter under claim of right and ownership by virtue of said proceedings he remained in the actual, open, and peaceable possession of said land, cultivating the same, and raising his live stock thereon, with his servants, houses, stock pens, cultivated fields, and other improvements, until he died, about the year 1840, and thereafter his children and heirs continued in said possession and use of said land, and they and their assigns, including defendants, have so held the actual, open, and uninterrupted possession of said land, claiming to be the owners thereof, down to the present time; that no other persons have ever held possession of any part of said land adversely to said title; that during the years from 1836 until about 1852, the incursions of hostile Indians occasionally drove said Zapata and his heirs and their servants off said land, but they always returned to it as soon as it was safe to do so; that said Zapata and his children and heirs were Mexican citizens, and said heirs were the owners of his right and title to said land by inheritance from him during the year 1848, and for some years before and after that time, until they sold their interests, and defendants now hold and own and claim the same by mesne conveyances from said heirs; that said land has been assessed for taxes, and taxes have been paid thereon as land originally granted to Antonio Zapata ever since it was first put upon the assignment rolls, about the year 1874, and that all taxes thereon have been paid by the defendants and their grantors under the said title of Antonio Zapata; that the said land is dry grazing land, and not well adapted to stock raising, except during seasons when there is sufficient rainfall to supply the natural water holes; that a few small fields have always existed on the land, which have been cultivated by the owners during favorable seasons; that there are various ranches on the land, most of them very old, placed there by the heirs of Zapata at different times, besides the improvements made by said Antonio Zapata, and all have been inhabited by said heirs and their assigns since the death of the original grantee, with their servants and employés; that the defendants are the owners, through mesne conveyances from the heirs of Antonio Zapata, of all the right and title had or acquired by him or them in the western half or more of said Villa grant, and have had the same inclosed by a barb-wire fence about six years; that the whole of said Villa tract is covered by railroad certificates and their alternates, and that, after purchasing from and under the heirs of Zapata, defendants acquired the individual certificate locations; that there are ranch houses, pens, tanks, and wells on defendants' part of said land so inclosed, and that the tracts of said land described in plaintiff's petition as surveys No. 522, No. 524, No. 526, No. 528, No. 530, No. 532, No. 534, No. 536, No. 604, and No. 550, and the strip of 20 acres of public domain, are all from the land so held and possessed by defendants in the Villa tract or grant; and that the lands in controversy are reasonably worth $1.25 per acre.

It was proven that said Villa tract of land in the name of Antonio Zapata had been delineated on the official maps in the General Land Office of Texas since about the year 1870.

It was proven on behalf of defendants that Pedro Bustamente, to whom the tract of five leagues called "Comitas" was finally granted by the Governor of Tamaulipas on January 2, 1848, first settled on said land about the year 1822; that the records of the ayuntamiento of the city council of Guerrero are existing in the archives, and all other archives of said city are incomplete and imperfect, and many parts thereof missing; that the archives of Victoria, Tamaulipas, were destroyed by French troops under Col. Dupin in the year 1864; that said Bustamente was a Mexican citizen, and that from the time he first settled on said land, about the year 1822, he continued in possession thereof until his denouncement and the survey thereof for him in the year 1835, and thereafter, under claim of right and ownership by virtue of the proceedings had thereon, he remained in the actual, open, and peaceable possession of said land, cultivating

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the same, and raising his live stock thereon, with his servants and his houses, stock pens, and other improvements, until he died, about the year 1835; that although there were many incursions of hostile Indians during the time from the year 1836 until about 1874 into the territory where said land is situated, which caused the other settlers to temporarily leave their lands from time to time, yet the said Bustamente, who had built himself a blockhouse or fort upon said land, was never driven off by the Indians, and valiantly held his ground against them; that from his death, about the year 1855, his children and heirs, of whom there were many, continued in the open, peaceable, and uninterrupted possession and enjoyment of said land, cultivating small fields thereon during favorable seasons, and using the said land for general stock-raising purposes, it being dry grazing land, claiming the said land as their property, and holding the same; that while so holding and possessing the said land some of said heirs sold and conveyed their interest therein to other persons, who thereupon went into possession of the part so purchased by them, and such purchasers and their assigns, including the defendants in this suit, have continuously and uninterruptedly held, occupied, and possessed the parts of said Comitas tract so purchased by them up to the present time; that some of the heirs of said Bustamente, his children and grandchildren, have never sold their interest in said Comitas tract, and have always lived and still live upon it, holding and claiming by virtue of said title, with their servants and their houses, stock pens, and general ranch improvements; that the said land is reasonably worth the sum of $1.25 per acre; that since the time Pedro Bustamente acquired his right and title thereto no person has ever lived upon or possessed any part of the said Comitas tract or grant without the consent of said Bustamente, or those holding under him; that the improvements upon said Comitas tract consist of substantial rock dwelling houses, stock pens, wells, tanks, cleared and inclosed fields, and so forth, placed there at different times by said owners during the period of their said occupancy, and that during all of said time there have been about 40 or 50 persons constantly living upon said land, they being the said owners and their servants, and that the greater part of said land has been inclosed with substantial barb-wire fences for the past six or seven years.

That the said Comitas tract or grant has always been assessed for taxation, and taxes have always been paid thereon by said owners, as land originally granted to Pedro Bustamente ever since about the year 1874, when the same was first put upon the tax rolls; that defendants Leonard Haynes and H. M. Haynes are the owners, by purchase through mesne conveyances from and under certain of the heirs of said Pedro Bustamente, of a part of the western portion of said Comitas tract or grant which is inclosed by a barb-wire fence, with other lands belonging to them; and that the land sued for in this cause, and described in plaintiff's petition as surveys Nos. 563, 564, 590, 585, 586, and 587, are located upon said part of said land claimed by defendants to be the Comitas grant.

Defendants introduced in evidence a copy of a map of the four internal provinces of the east, and accompanying documents, fixing the boundaries of said provinces as shown thereon, taken from the archives at Saltillo, Mexico. This map was approved by the Viceroy of Mexico on October 15, 1815, and shows the boundary line between the provinces of Texas and Coahuila as being at the source of the Medina river, thence down the Medina to a point on the same directly south of Bejar (San Antonio), and thence southwesterly to the Nueces river. From this latter point the Nueces river to its mouth formed the boundary line between the provinces of Texas and Nuevo Santander. The latter province afterwards became the state of Tamaulipas, with the same boundaries.

It was agreed that the land in controversy is in that part of Texas which was formerly a part of Tamaulipas, and was within the jurisdiction of Guerrero. It was proven that said Comitas tract was first delineated on the official map in the General Land Office of Texas about the year 1870.

Defendants read in evidence article 6 of the Constitution of Coahuila and Texas, as follows: "Article 6. The territory of the state is the same as that embraced in the provinces formerly known by the names Coahuila and Texas. A constitutional law shall mark out its limits in respect to the adjoining states of the Mexican Confederacy." (Dated March 11, 1827.)

Defendants also read in evidence articles 7 and 8 of the colonization law of the state of Tamaulipas, of December 15, 1825, as follows:

"Article 7. From the very date wherein a foreigner is thus registered, he acquires domiciliation, and may as such an inhabitant denounce the vacant land he thinks best, presenting himself to that effect by writing to the respective alcalde, who shall decree what is proper for examining, measuring, and marking out the land designated after citing the adjoining proprietors, should there be any.

"Article 8. The instructive despatch being terminated and no opponent right resulting, the alcalde shall pass it to the executive of the state, by whom the title of adjudication and ownership shall be issued to the person interested, ordering that the alcalde of the town of his residence put him immediately in possession of the land granted. All of these proceedings shall be conducted officially, and the executive shall proceed with the audience of the fiscal of the Supreme Court of Justice of the state."

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Defendants also read in evidence decree No. 24 of October 19, 1833, of the state of Tamaulipas, as follows:

"No. 24. The Constitutional Congress of the free state of Tamaulipas, has decreed the following:

"Article 1. To the inhabitants of Carmago, Mier, Guerrero and Laredo, who may have no lands of their own, and who may possess stock to occupy them, there shall be given at once, not exceeding five leagues each, and in compensation they shall pay the state ten dollars for each league.

"Art. 2. Those only are comprehended in the foregoing article who lived in said villages during the last Indian war now passed, and who did not emigrate previous to the year 1821.

"Art. 3. The respective ayuntamiento shall inform itself by previous justification, whether the interested party, who may possess himself has lands of his own and stock with which to occupy them.

"Art 4. These lands shall not be alienated until twenty years have passed after the concession; and if so alienated the state recovers its right to them, and he who may have been the owner loses whatever advances and useful and necessary improvements that he may have made; it being sufficient for a judgment of condemnation that the alienation shall be made to appear. Upon this point the respective administering judge shall decide summarily, without prejudice to the legal remedies of the interested party.

"Art. 5. The benefits of article 1 shall continue for three years from the day of the approval of this decree, after the expiration of which term no one shall obtain lands, except according to the ordinary laws.

"Art. 6. The ayuntamientos and their individual members collectively and each one for himself are responsible personally and pecuniarily, if they are wanting in the truth of the inquiry exacted by article 3, and the government having heard their defense shall make their responsibility effective.

"The Governor of the state shall take care that this decree be understood, and shall order its execution, having it printed, published and circulated. Wherefore, I command that it be printed, published and circulated, and that it be duly executed.

"City of Victoria, October 19th, 1833, 10th of the installation of the Congress of the State.

"Francisco Vital Fernandez.
"Gabriel Arcos, Secretary of State."

Leonard Haynes testified as follows: "I am familiar with the land in controversy in this case. I have had the lands which are shown on the map exhibited to me inclosed for as much anyhow as three years. I as county surveyor of Zapata county located the certificates and alternate sections, copies of which have been read in evidence by the state. They were located for my brother, J. J. Haynes. There is a small strip of vacant land on the eastern edge of my pasture, as shown by the map; that is, the land is vacant, unless it has been appropriated by the Zapata grant. The rental value of the land is as much as three cents per acre per annum when they can be rented, but it frequently happens, as it has of late years, that it is so dry in that country that they cannot be rented at any price."

Plaintiff next introduced in evidence a certified copy of a petition filed in the district court of Travis county on the 26th day of September, 1871, by Eulalio Gonzales and his wife, Petra Zapata, Bartolo Moralos and his wife, Rafaela Zapata, Jose Ma. Coronado and his wife, Maria Anna Zapata, and Dolores Zapata, the only heirs of Antonio Zapata, to which the state of Texas was defendant. The plaintiffs in that suit claimed that part of the land in controversy which was then and is now claimed to have been granted to Antonio Zapata, and sought to have the title confirmed. Plaintiff also introduced in evidence the answer of the defendant, the state of Texas, in said case, which consisted of a general denial. Plaintiff then introduced the judgment of the district court of Travis county in favor of the plaintiffs, and notice of appeal therefrom to the Supreme Court, and the judgment of the Supreme Court of the state of Texas reversing and remanding said case, and a copy of the judgment of the district court of Travis county dismissing said cause from the docket on March 7, 1884. Plaintiff next introduced in evidence a certified copy of a petition filed in the district court of Travis county on the 9th day of January, 1872, by Manuel Bustamente and Felix Rodriguez, as the heirs of Pedro Bustamente, to which the state of Texas was defendant. The plaintiffs in that suit claimed that part of the land in controversy which was then and is now claimed to have been granted to Pedro Bustamente, and sought to have the title confirmed. The plaintiff also introduced in evidence the answer of the defendant, the state of Texas, in said cause, which consisted of a general denial. Plaintiff then introduced the judgment of the district court of Travis county in favor of the plaintiffs, and notice of appeal therefrom to the Supreme Court, and the judgment of the Supreme Court of the state of Texas reversing and remanding said case, and a copy of the judgment of the district court of Travis county dismissing said case from the docket on March 7, 1884.

Before considering the merits of the appellants' claim, it is necessary to pass upon certain questions raised by the state. It is contended by the state that the act of 1901, under which this suit is brought and the appellants assert their right to confirmation, does not provide for the adjudication of imperfect or equitable titles; that the purpose and intention of the act was to only apply

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to legal titles emanating from the government of Mexico prior to the 2d day of March, 1836; that the protocol of the treaty of Guadalupe Hidalgo restricts and limits the general scope of the eighth article of that treaty, and affords protection only to complete legal titles existing on the 2d day of March, 1836; that the courts have no power to adjudicate equitable titles emanating from the government of Mexico, unless the law that provides for confirmation of titles expressly authorizes such titles to be adjudicated by the courts; that, if the treaty does afford protection to imperfect titles, such protection can only be accorded where the political department of the government provides the remedy. In the recent case of the State of Texas v. Russell (decided by this court, and which is not yet officially reported) 83 S. W. 288, we had occasion to pass upon these questions adversely to the contention of the state. The territory where the land embraced in that suit is situated was a part of the state of Tamaulipas on the 2d day of March, 1836, and the lands embraced in this suit and the companion cases that go with it, which are disposed of by this case, are located in the same territory, which was a part of Tamaulipas on the date named. In view of the fact that the case cited is not yet reported, and of the importance of the questions involved as applying to the case before us, and in order to make the opinion in this and the companion cases complete, we deem it necessary not to be content with a bare reference to the unreported case, but to copy so much from the opinion of the court as is there relevant to these questions, in order that this opinion may be complete on all the questions of law raised in the case:

"It is provided in the first section of the act of the Special Session of 1901, p. 5, c. 4, providing for the confirmation and for testing the validity of titles within the boundaries of Texas, where the tracts in controversy are located: 'That any person or persons who may be the original grantee, heir, legal assign or in any manner the owner or claimant of any grant, tract or survey of land or part, situated between the Nueces and Rio Grande rivers, and below a line drawn from the northern boundary of Webb county to the mouth of Moros creek, where the same empties into the Nueces river, and emanating or claimed to have emanated from the Spanish or Mexican governments, and having its origin at such time as to be and being within the protection guarantied by the treaty of Guadalupe Hidalgo, entered into between the United States and Mexico and proclaimed on the 4th day of July, 1848, may file a petition in the district court of Travis county, Texas, against the state of Texas as defendant, for the confirmation of the title thereto, and also for the adjudication of his, her or their title, right, interest or claim therein and thereto, as against the state; which petition shall be filed with the district clerk of the county in which suit is brought, at least twenty days before the time of holding the next succeeding term of the district court in and for such county, and shall contain a full description of the grant, tract or survey of land claimed, setting forth particularly its situation, boundaries and extent, and the ownership, right, interest or claim of the plaintiff or plaintiffs and each of them in and to said land, and the source from which such ownership, right, interest or claim emanates, and shall accompany and file with such petition the titles or evidences of titles or right, or true copies thereof, and if in a foreign language, in addition, true translations thereof, under which the same is held or claimed, or if such ownership, right, interest or claim of plaintiff does not have its origin in or is not based upon such written evidences of title, right, interest or claim, then a statement in writing, setting forth substantially the facts upon which said ownership, right, interest or claim is based and of which it consists; and the district court shall thereafter, at a regular term thereof investigate the right and try said cause in accordance with the laws of nations, the laws, usages and customs of the government from which said ownership, right, interest or claim emanates or is derived, and the Constitution, laws, and treaties of the United States of America, and of this the state of Texas, and the principles of equity, so far as the same are applicable and if in accordance therewith, the plaintiff or plaintiffs as the case may be, shall by a preponderance of the testimony show that he is entitled thereto, shall give judgment in favor of such plaintiff or plaintiffs against the state in favor of and for the confirmation of the title to said land, describing the same by metes and bounds, or in favor of the state against such claimant or claimants, as the facts may warrant.'

"There are other provisions of the act, one of which authorizes the state to bring suit. It is insisted that this act does not permit the adjudication of imperfect or equitable titles asserted by the claimant, which had its origin under the Mexican government. It is true that this statute in question, as was the case in the acts of 1860 and 1870, does not in express terms authorize the adjudication and confirmation of imperfect titles. But the language of the act in effect declares that the court may determine and adjudicate the right or title of a claimant relying upon a title purporting to emanate from the Mexican government. The language here is about the same as that contained in the act of Congress of March 3, 1851 [9 Stat. 631, c. 41], passed for the purpose of ascertaining and settling claims to lands, existing in California, derived from the Mexican government. Chief Justice Taney, in the case of Fremont v. The United States, 17 How. 542, 15 L. Ed. 241, in construing this act, uses

this language: 'It will be seen from the quotation we have made that the eighth section embraces not only the inchoate or equitable titles, but legal titles also, and requires them all to undergo examination and be passed upon by the court.' As said before, the language used in the act of 1901, in its terms, substantially employs, so far as designating the character of title that might be adjudicated, similar language to that used in the eighth section of the act of Congress of 1851 [9 Stat. 632], and the construction placed upon that act by the Supreme Court of the United States in the Fremont Case is applicable to the act of the Legislature under which this present claim was adjudicated. As bearing out this construction, it is not reasonable to suppose that the Legislature would limit the jurisdiction of the court to passing upon merely legal titles which became perfect and absolute prior to the time that Texas declared her independence, for it is well settled that titles that had reached the point that they could be considered as final and legal needed no protection at the time of change of government from the treaty. Fremont Case, 17 How. 542, 15 L. Ed. 241; Dent v. Emmeger, 14 Wall. 308, 20 L. Ed. 838; Ainsa v. M. M. Railway, 175 U. S. 76, 20 Sup. Ct. 28, 44 L. Ed. 78.

"If, as contended by the state, the title was merely equitable, and was not embraced in the act of 1901, the courts would have no power to adjudicate and establish that title, for it is too well settled now to admit of contradiction that equitable rights claimed by virtue of a treaty in the territory ceded cannot be adjudicated and established by the courts until the political department provides the remedy. Trimble v. Smithers, 1 Tex. 790; League v. De Young, 2 Tex. 500; Jones v. Borden, 5 Tex. 412; McMullen v. Hodge, 5 Tex. 77; Paschal v. Perez, 7 Tex. 366.

"In Astiazaran v. Santa Rita Land & Mining Company, 148 U. S. 81, 13 Sup. Ct. 457, 37 L. Ed. 376, the court says: 'Undoubtedly, private rights of property within the ceded territory were not affected by the change of sovereignty and jurisdiction, and were entitled to protection, whether the party had full and absolute ownership of the land, or merely an equitable interest therein which required some further act of the government to vest in him a perfect title. But the duty of providing the mode of securing these rights and of fulfilling the obligations imposed upon the United States by the treaties belong to the political department of the government, and Congress might either itself discharge that duty, or delegate it to the judicial department'—citing many cases.

"The Supreme Court of the United States, also, in the case of United States v. Santa Fé, 165 U. S. 675, 17 Sup. Ct. 472, 41 L. Ed. 874, states that the duty of protecting imperfect rights of property under treaties, such as those by which the territory was ceded by Mexico to the United States, in existence at the time of the cession, rests upon the political, and not the judicial, department of the government; and to the extent only that Congress had vested them with authority to determine and protect such rights can courts exercise jurisdiction. Where, therefore, a tribunal of limited jurisdiction is created by Congress to determine such rights of property, a party seeking relief must present for adjudication a case clearly within the act, or relief cannot be given; citing authorities. This doctrine is maintained in many recent decisions of that court, among which is United States v. Sandoval, 167 U. S. 292, 17 Sup. Ct. 868, 42 L. Ed. 168, and Ainsa v. The United States, 161 U. S. 218, 16 Sup. Ct. 544, 40 L. Ed. 673.

"In the construction of those provisions of a treaty that provide for the protection of property of owners within the ceded territory, it has been uniformly held that the term 'property' embraces all rights, whether legal, equitable, or imperfect. Strother v. Lucas, 12 Pet. 435, 9 L. Ed. 1137; Hornsby v. United States, 10 Wall. 224, 19 L. Ed. 900. It could not seriously be contended that on the 24 day of March, 1836, the date of the declaration, that the territory where the property is situated was within the limits of Texas, or that the mere declaration announced upon that date could affect the territory where these lands were situated, because at that time that portion of the state which is now embraced within its boundaries was a part of the state of Tamaulipas. Texas up to that time had not, and did not prior to the 19th day of December, 1836, ever seriously assert any claim or right that her boundaries included the territory where is situated the land in controversy. Then, if this be true, we must ascertain and determine what effect the protocol of the treaty of Guadalupe Hidalgo had upon the territory where the lands in question are situated; for, if it should be determined that it was not the intention of the protocol to control the eighth article of the treaty, or to affect titles to lands emanating from the state of Tamaulipas prior to the time that Texas had ever asserted any right to any part of the territory of the state of Tamaulipas, or if we should determine that the expression 'legitimate titles,' mentioned in subdivision 2 of the protocol, was not intended solely to apply to legal titles existing prior to the 2d day of March, 1836, then, under the principles of law as stated, that should apply to equitable titles, the title in controversy should be protected, whether the grant was complete or imperfect on the 2d day of March, 1836.

"The facts detailed in the record with reference to the steps taken to acquire the grants from the government of Mexico clearly show that everything necessary to be done was done at a time when the state of Tamaulipas had sole and exclusive jurisdic-

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tion of the territory where the lands are located, and the title became perfect at a time when such jurisdiction existed. Under the view expressed, and heretofore stated, and hereafter to be stated, whether we regard the title as legal or equitable, it is entitled to protection under the facts as found by this court.

"By the eighth article of the treaty of Guadalupe Hidalgo, it is provided that property of every kind belonging to Mexicans in the ceded territory shall be inviolably respected. In the protocol agreed to between the two governments upon the suppression of the tenth article of the treaty as originally submitted, and which protocol was an agreement reached by the government upon the suppression of that article, it is provided that: 'The American government, by suppressing the 10th article of the treaty of Guadalupe Hidalgo, did not in any way intend to annul the grants of land made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the treaty preserve the legal value which they may possess and the grantees may cause their legitimate titles to be acknowledged before the American tribunals. Conformably to the law of the United States legitimate titles to every description of property, personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th day of May, 1846, and in Texas up to the second day of March, 1836.'

"It is contended that this provision of the protocol is a limitation upon the general terms of the eighth article of the treaty; that, so far as Texas is concerned, it was the intention, by the use of the expression 'legitimate titles,' to only protect perfect legal titles that existed in Texas on the 2d day of March, 1836. We have not been able to find any case in which such a construction has ever been placed upon the treaty; but, to the contrary, it has been inferentially held in State v. Bustamente, 47 Tex. 321, State v. Sais, 47 Tex. 309, and other Texas cases on the same lines that might be mentioned, that steps taken to acquire title subsequent to the 2d day of March, 1836, could be considered in determining whether such equities were shown as would authorize the court to decree confirmation in favor of the claimant. The court evidently in those cases had before them the treaty between this government and Mexico, and the protocol which is a part of the treaty. And in the Bustamente Case it is stated that the title offered by the claimant in that case was excluded upon the ground that it was executed at a time at which Mexico had lost her jurisdiction over the territory where the lands were situated, and the location of the lands considered in those cases and other similar cases was within the state of Tamaulipas; and in that case the intimation is clear that if the equitable steps had been complete, or the title had been finally issued prior to the 19th day of December, 1836, or possibly prior to 1846, when the American government by its armed occupation assumed jurisdiction over that portion of the country where the land is situated, such title would have been confirmed.

"In cases brought before the Supreme Court of the United States, in passing upon titles emanating from the Mexican government to lands situated in California, we have found no instance in which the expression 'legitimate titles,' used in the protocol, was held to mean a perfect grant existing on the 13th day of May, 1846; but, upon the contrary, that court has held that protection would be afforded to titles emanating subsequent to that date up to the 7th day of July, 1846, the time when the American troops captured Monterey, the then capital of California, and by virtue of such occupancy became the masters of that territory and assumed jurisdiction over it. Stearns v. United States, 73 U. S. 594, 18 L. Ed. 843; Hornsby v. United States, 10 Wall. 224, 19 L. Ed. 900; More v. Steinbach, 127 U. S. 70, 8 Sup. Ct. 1067, 32 L. Ed. 51; United States v. Pena, 175 U. S. 509, 20 Sup. Ct. 165, 44 L. Ed. 251.

"The terms 'grants' and 'legitimate titles,' employed in the protocol, we do not think mean an absolute perfect grant existing on the 2d day of March, 1836, in Texas, and on the 13th day of May, 1846, in California. The meaning conveyed by the expression 'legitimate titles' could not be held to mean that it related to a stronger title than would be implied from the use of the word 'grants.' Now, the expression 'grants' that is employed in treaties comprehends, says the Supreme Court of the United States in Strother v. Lucas, 12 Pet. 435, 9 L. Ed. 1137, 'not only those which are made in form, but also any concession, warrant, order, or permission to survey, possess, or settle, whether evidenced by writing or parol, or presumed from possession.' Citing authorities.

"The article quoted in the protocol expressly states that it is not the purpose, by the suppression of the tenth article, to annul grants, and that those grants, notwithstanding the suppression of the article of the treaty, preserve the legal value which they may possess, and the grantees may cause their legitimate titles to be acknowledged in the American tribunals. The words 'legitimate titles,' as here used in the subsequent portion of the protocol quoted, mean titles that are comprehended in the term 'grant'; and when we have ascertained that the construction of the term 'grant,' as employed in treaties, embraces all character of titles, legal or equitable, it reflects the sense and meaning in which the term 'legitimate titles' was intended to be employed. The case cited was decided by the Supreme Court of the United States in 1838, about

ten years prior to the execution of the treaty of Guadalupe Hidalgo; and it is reasonable to assume that the term 'grant,' employed in the treaty, would be and should be given a construction and application that had been previously determined by the Supreme Court. Therefore we reach the conclusion that the expression 'legitimate titles' does not mean merely to embrace titles that had become absolute and legal, but also was intended to apply to equitable titles existing at that date, which, if there had been no change of sovereignty, would thereafter have become perfect, if the steps had been taken to acquire the legal title, and the equities had become so perfect that the claimant could have demanded the legal title prior to the time that Texas or the United States government assumed jurisdiction over the territory where the lands may be situated. The fact is too well settled now to admit of dispute but that the eastern boundary of Tamaulipas extended to the Nueces river, including the land in controversy, at least up to the 19th day of December, 1836, when Texas by an act undertook to extend her boundaries to the Rio Grande river. It is not necessary for us to determine whether her mere paper title to such extension was valid, and whether Tamaulipas did not, prior to the occupation by the American troops in 1846, lose her jurisdiction over the territory lying between the Rio Grande and the Nueces, for all of the proceedings in this case, the equitable steps taken to acquire title, as well as the issuance of the legal title, occurred prior to the 19th of December, 1836."

In appellants' second assignment of error it is contended that the state failed to prove its title to the land in controversy by a preponderance of the evidence, and that, as the defendants were in possession under a title emanating from the state of Tamaulipas, the mere proof of the location of surveys by the state for the common school fund was not sufficient evidence of title to overcome the right asserted by the appellants. The solution of this question depends upon the fact whether the appellants had, at the time that the locations were made, either a valid legal or equitable title that was within the protection of the treaty of Guadalupe Hidalgo, or the laws of this state existing at that time, or within the protection afforded by the act of 1901. If no such title then existed in the appellants or those under whom they claim, then the land could be regarded as public domain, and was subject to location; and the state, by reason of its sovereign ownership of all untitled lands, could recover from any one in possession, independent of the fact whether it had made surveys for the common school fund or not. If, as a fact, such locations were so made, it would also vest title in the state upon which it could base an action of trespass to try title. If, in disposing of this case for the reasons hereinafter stated, the conclusion should be reached that the appellants did not have a title to the land, then it is clear that the state would be entitled to recover.

We have examined the evidence in the record in the Bustamente Case that was decided by the Supreme Court in 47 Tex. 321, which involved part of the land in controversy in this case, and wherein similar facts and similar ruling was made as to the Zapata grant. The opinion in that case does not set out the facts, but, as said before, we have examined the record, and find the facts in the case before us a little stronger than was originally urged in the case referred to; and we conclude that the evidence in the record justifies the assumption that Zapata and Bustamente denounced the lands in controversy before the ayuntamiento of Guerrero in 1835, and that that body passed favorably upon the application; that a survey was made by Canales, the surveyor general of Tamaulipas, in 1835, of these two purported grants, and the expediente was formed and became an archive of the public records at Guerrero; and that the claimants were in possession of the land prior to the denouncement. The evidence does not show any juridical possession, but the fact that they were in possession when the lands were denounced, and continued in possession thereafter, was sufficient to dispense with juridical possession, as is decided in the case of State v. Sais, 60 Tex. 88; and they continued in possession for such length of time as would justify a presumption of grant, provided the evidence in the record did not repel such presumption.

The evidence also warrants the assumption that, while a copy of the expediente was not introduced in evidence, the copy of the index, as stated by the facts, indicates that an expediente was formed, and such fact is also established by the parol evidence in the record. Copies of the record of the denouncement to the ayuntamiento, and the favorable action of that body upon the application, was not introduced in evidence; but the evidence in the record which is not objected to tends to show that such denouncement was made to the ayuntamiento, and they acted favorably upon it. The evidence in the record also shows that the public archives in the city of Victoria were destroyed by the French troops in 1864, and that the records of Guerrero were imperfect and mutilated, and many missing, which fact would justify us in assuming that the record evidence of steps taken to acquire title which was not produced was lost or destroyed.

The only evidence showing that the purchase price of the land was paid is the statement contained in a letter to Canales of date November 28, 1847, found upon page 41 of the record. That is merely a statement to the effect that the amount of dues were received, but were not remitted for fear that it would expose the same, which

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was doubtless intended to mean that the dues would become lost in transmission. Thereafter, on the 2d day of January, 1848, the Governor of Tamaulipas issued what purported to be the final grant. In determining whether steps had been taken to acquire title in accordance with the law of Tamaulipas then existing, it was proper to introduce parol evidence as to what was done when the record evidence, by loss or destruction, could not be produced. State v. Cuellar, 47 Tex. 296; State v. Sais, 47 Tex. 315; and Castro's Case, 24 How. 349, 16 L. Ed. 659.

In the Bustamente Case, in 47 Tex. 321, it seems, and some of the other cases that were decided at that time involving some of the grants now before the court, evidence was not introduced showing the loss or destruction of, or the inability to produce, the record evidence of title, but the omission in that respect is supplied by the evidence in the cases now before us.

In the case of State v. Bustamente, 47 Tex. 321, the same final grant that we are now considering, which was undertaken to be issued by the Governor of Tamaulipas on the 2d day of January, 1848, was passed upon by the Supreme Court, and it was there held that: "The proof was therefore not sufficient, unless the Governor of Tamaulipas had on the 2d day of January, 1848, the right to grant this land east of the Rio Grande under the treaty of Guadalupe Hidalgo, concluded one month thereafter, to wit, on the 2d day of February, 1848. We are of opinion that he had no such right. Texas claimed the territory in defining its boundaries on the 19th of December, 1836. In 1846 the claim was perfected by possession and the actual exercise of exclusive jurisdiction, and from that time it was lost by the state of Tamaulipas in Mexico, for all purposes whatever, whether of judicial action or the exercise of powers relating to eminent domain. And it never afterwards recovered such lost powers. The action of the Governor in making concession was without authority, and neither advanced nor prejudiced the imperfect title to the land, which may have been acquired previous to the 19th day of December, 1836."

In the case of Stearns v. The United States, 73 U. S. 594, 18 L. Ed. 843, it is held that the Mexican authorities in the state of California undertaking to exercise authority subsequent to the 7th day of July, 1846, were without jurisdiction, for at that time the American troops had acquired possession of that territory. The same doctrine is announced in United States v. Pena, 175 U. S. 509, 20 Sup. Ct. 165, 44 L. Ed. 251. These decisions are conclusive upon the point that in November, 1847—the time that it appears the purchase price of the land was paid to the government of Tamaulipas—and at the time that the Governor, on January 2, 1848, issued the grant, that the government of Mexico had lost jurisdiction over the territory where these lands are situated, and that such payment and grant could not be considered as evidence of any right acquired against the government of Texas. It is true that the document evidencing the payment of the purchase price of the land and the grant issued by the Governor of Tamaulipas were not objected to when introduced in evidence; but the court, in passing upon the validity and the extent of the facts recited, could only give them such weight as evidence as they would be legally entitled to. These documents, under the decisions quoted, were not serviceable as evidence of title upon the ground stated, because the officers that issued them were lacking in authority. And if this is true they could not, by recital of facts contained in these documents, make evidence serviceable for the claimants, when the power to make such recitals was lacking. In other words, if these papers were invalid as evidence of title, they do not become legal evidence of any fact recited in them. Consequently the conclusion must be reached that we cannot judicially consider, in passing upon the merits of this case, any facts recited or undertaken to be established by the contents of these instruments.

Now, this leads us to the question as to what effect should be given to the failure of the evidence to establish the fact that the purchase price of these lands was paid by the claimants prior to the time that Mexico lost her jurisdiction over the territory where the lands are situated. The first section of decree 24, under which these lands were attempted to be acquired, is as follows: "$10 for each league. To the inhabitants of Carmago, Mier, Guerrero and Laredo, who may have no lands of their own, and who may possess stock to occupy them, there shall be given at once as much as five leagues each, and in recompense they shall pay to the state ten dollars for each league." 1 Sayles' Early Laws, art. 90. Under other colonization laws of the state of Tamaulipas the minimum price for a league of land of the character of these in controversy was $30 per league. Decree 24 reduced the price to $10 per league, to some extent, it seems, on account of services rendered by the inhabitants of these towns in repelling Indian invasions. But it is apparent from a reading of the section in question that it was intended that the parties taking the benefit of this statute should pay a compensation for the land, which was fixed at $10 per league, and that this payment evidently should be made before he could demand or would be entitled to a final grant or title issued by the Governor of the state. And in investigating this question we have found no case where a price was fixed on land by the law under which it should be granted, where such payment has been dispensed with. The Supreme Court, in the case of State v. Sais, 47 Tex. 315, in passing upon a grant that was then confirmed, says: "The act of putting the

party in possession and the final concession of the Governor, which he had ordered should be made, are not found in the title presented for adjudication and filed with the petition, and it is to that extent an imperfect title to the land claimed. It shows, however, the adjudicated right of the applicant, and the setting apart and survey of the land with defined boundaries, and its locality and extent, and that the money at which it was valued under the law, $30, was paid into the treasury of the state, with the regularity and legality of the proceedings, and direction for their completion by the attorney of the treasury, sanctioned by order of the Governor. Under these circumstances, although the title is imperfect, 'the principles of equity contemplated by the act of 1870, authorizing this suit, may properly be invoked to relieve the applicant from again paying the price of the land, it having been paid into the treasury of the state of Tamaulipas at the proper time. This would seem to be proper, also, in consideration of the fact that this grant of land was made, partly at least, on the ground that the inhabitants of Camargo and of the other towns on the Rio Grande named in the decree No. 24 of 1833, which constituted the frontier Mexican settlements of that region, had valiantly held their position against the hostile savages, which, as to those who needed lands there, caused the government of the state to reduce the price from the ordinary minimum valuation of thirty to ten dollars per league. Such reduction was doubtless intended as a partial remuneration for the losses sustained by the frequent and long-continued depredations of the Indians that had kept them poor. This branch of the subject, however, under the terms of the law, may address itself for determination more appropriately to other departments of the government than to this court." In State v. Sais, 60 Tex. 88, payment of the purchase price was regarded as essential; but, in order to maintain the title there presented for adjudication, the court presumed from the long lapse of time that the payment was made at the proper time to the proper parties. In the case of State v. De Leon, 64 Tex. 556, all of the sum required by the law was not paid at the time that the claimants undertook to acquire their title from the state of Tamaulipas. Payment was held essential in that case, for as a condition to the confirmation of title the Supreme Court required the claimants to pay into court within 12 months from the date of its judgment the sum that the laws of Tamaulipas required to be paid per league for the land in controversy. All of these cases were adjudicated under the act of August 15, 1870, which provided for the confirmation of titles to land located within the territory where the lands in controversy in this case are situated. In the Sais Case in 47 Tex. 315, the evidence shows that payment was made while the government of Tamaulipas had jurisdiction over the lands; but the intimation is clear that payment was essential in order to complete the equity, and that it could not be dispensed with by the courts, but that such power, if it existed, could only be exercised by the legislative branch of the government. Payment, as stated in the Sais Case in 60 Tex. 87, is only supported by the presumption. The power exercised in the De Leon Case, in 64 Tex., was provided for by section 7 of the act of 1870, which is as follows: "When the judgment of a court shall be given in favor of claimants of any public grant, no other fee or costs shall be taxed, except such as provided for in the 5th section of this act. But in any case in which judgment shall be given in favor of the claimant under an imperfect grant, the court shall condemn the claimant to the payment of such amount as the claimant would have had to pay had not the sovereignty of the soil changed, in addition to the costs taxed by section 5 of this act; and it shall be the duty of the clerk of the district court to enter the judgment in full on the docket, which shall show the amount to be paid by each claimant." The act authorizing the confirmation of titles, passed in 1869, contained a similar provision. The present law —that is, the statute of 1901, under which this suit and the defense thereto is predicated—contains no such provision of law. In Ely v. United States, 171 U. S. 220, 18 Sup. Ct. 840, 43 L. Ed. 142, and Cannon v. United States, 171 U. S. 282, 18 Sup. Ct. 855, 43 L. Ed. 163, the court, in passing upon the validity of Mexican grants, says that they will be confirmed only to the extent paid for.

Now, when it was shown that no legal grant was issued at a time at which Mexico had jurisdiction over this territory, was it contemplated by the act of 1901, or by the protection afforded by the treaty of Guadalupe Hidalgo, that a mere fragment of title should be protected, or an imperfect grant confirmed, when it is apparent that one of the essential elements of the law in order to acquire title was not complied with at a time when that government had jurisdiction of the territory where the lands are situated, and no obstacle or impediment existed that could be equitably considered that prevented the claimant from doing the thing required. There is nothing in the act of 1901 that justifies the assumption that the Legislature intended to donate the lands to the claimant, or that it was intended that any and every character of imperfect title should be protected, but only such titles should be confirmed that were within the protection of the treaty of Guadalupe Hidalgo, or were valid under the laws of Mexico or of this state at the time that Mexico lost her jurisdiction. State v. Cuellar, 47 Tex. 296; State v. Cardinas, 47 Tex. 250. The treaty, in effect, only protected such interests as the claim-

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ant had when the territory changed hands; and if, under the conditions then existing, the steps taken as required by law did not create an equity that was perfect, or if some essential feature of the law, as a condition of the title, was not observed, when there existed no impediment to the performance by the claimant before the Mexican government lost jurisdiction of the territory, then no duty is imposed upon this government to recognize such imperfect equity. Menard v. Massey, 8 How. 293, 12 L. Ed. 1085; United States v. Castro, 24 How. 346, 16 L. Ed. 659; McMicken v. United States, 97 U. S. 204, 24 L. Ed. 947. The laws, usages, and customs of Mexico provided for in the statute, and the principles of equity there mentioned, may be considered in determining a right, but a title must be shown. Peralta v. United States, 70 U. S. 440, 18 L. Ed. 221. This does not necessarily mean a legal title, but that at the time when the territory changed hands the customs and usages prevailing in Mexico and the principles of equity might be considered in determining whether a party has acquired a right; or some equitable ground might be considered in excusing the claimant of complete performance. But under the guise of applying the principles of equity it was never intended that one of the essential requirements of the law with reference to the acquisition of title should be dispensed with when no good reason is shown why its requirements were not observed. An imperfect title, when urged, only affects the conscience of the new government. Dent v. Emmeger, 14 Wall. 308, 20 L. Ed. 838. And it is not supposed that this government, in providing a remedy looking to the protection of such class of titles, would do more in that direction than could and should be expected of the former government, under which it is claimed the title originated.

Now, if we have correctly construed decree No. 24, that payment of the purchase price was essential as one of the equities that must be established in order to demand a grant from the Mexican government, it must be assumed that the government of Tamaulipas would never have issued the final title, or recognized it as of any validity, until the purchase price was paid. Without some good excuse being shown why this was not done before that government lost its jurisdiction, it would practically be asking a denotation by this government that it should confirm a grant which the claimant was not entitled to under the laws of the government that formerly owned the ceded territory. In this case no evidence is offered such as would address itself to the exercise of the equitable jurisdiction of this court, tending to excuse or give any good reason why the purchase price was not paid at a time when decree No. 24 was in effect, or at a time when the government of Mexico had jurisdiction over the territory where these lands are situated. It might be said that there is no express limitation in decree No. 24 that prescribed a time in which such payment should be made; but it is clearly contemplated by the decree that payment was essential, and was absolutely required, before the government of Tamaulipas could be called upon or required to issue the grant. If it should be determined—which we are inclined to think is the proper rule—that Tamaulipas exercised jurisdiction over this territory to 1846, over 10 years elapsed from the time of the attempted acquisition of title to the loss of this territory by Mexico in which the claimants could pay the purchase price. While time may be considered in creating a presumption of payment, as was determined in State v. Sais, 60 Tex. 87, and as the general principle is announced in Mills v. Alexander, 21 Tex. 154, and Weems v. Masterson, 80 Tex. 56, 15 S. W. 590, such presumption ought not to be indulged in in this case, because it is disproved and negatived by the facts in the record. Baldwin v. Goldfrank, 88 Tex. 249, 31 S. W. 1064; Hays v. United States, 175 U. S. 262, 20 Sup. Ct. 80, 44 L. Ed. 159. The excluded evidence of witnesses, as shown in the record as stated in the bill of exceptions, shows that payment was regarded as essential; and the evidence shows that in November, 1847, the expediente was carried to the Governor at Victoria, and all the evidence of payment that is shown is stated in the letter of date November, 1847, at a time in which the officer, so far as this government is concerned, was not authorized to receive payment, for the reason that Mexico had lost her jurisdiction over the territory. There is no pretense that payment was made at any other time. This is sufficient to show that whatever payment was made was not made to the government that was entitled to receive it. The state, as shown by the record in this case, has contested this title; and it has never been urged, as we have been able to discover, that the state has recognized this title, or that any other payment was ever made than that above stated. Consequently we are of the opinion that presumption of payment cannot arise.

The appellants have tendered the payment of the original purchase price demanded by decree No. 24, and insist that, if payment is regarded as essential, this court may render judgment for the purchase price fixed by the law. This jurisdiction was exercised in the De Leon Case in 64 Tex. 553, but that was, as before said, by virtue of an express provision of the act of 1870. There is no such provision in the present law, and we are of the opinion that this court, in view of the construction which usually applies to this character of statute, is lacking in jurisdiction to enter a decree in equity requiring payment of the purchase price. Statutes of this character, where the jurisdiction of the court is limited, will not be extended by construction, but will be confined to the terms stated. Texas Mexican Ry. Co. v. Jarvis, 80

Tex. 463, 15 S. W. 1089. In Astiazaran v. Santa Rita, 148 U. S. 81, 13 Sup. Ct. 457, 37 L. Ed. 376, it is said that when the title is imperfect it can only be enforced in the manner provided by the act which authorizes the confirmation. And, as said in United States v. Sandoval, 167 U. S. 292, 17 Sup. Ct. 868, 42 L. Ed. 168, when a tribunal of limited jurisdiction is authorized to act, the claim must come clearly within the terms of the law. These decisions were under act of Congress authorizing the confirmation of titles emanating from the Mexican government. It is true they were based upon the court of claims act, which was not as liberal in favor of the claimant as the act of 1851, passed by Congress authorizing the confirmation of titles emanating from the Mexican government to lands located in California; but the principle involved in the cases is applicable to the construction of the statute under which these suits were brought, and to the exercise of jurisdiction under the statute. The acts of 1870 and 1860 passed by the Legislature of this state authorize the court to consider the principles of equity in decreeing confirmation; but the Legislature evidently, in passing those statutes, did not mean that that provision conferred general equitable powers upon district courts as courts of general jurisdiction, for they expressly provided for just such a contingency as arises in this case; that is, that those courts, when payment had not been made to the government of Mexico, could, as a condition to confirmation, require the claimants to pay the price of the land. The present law does not contain such provision, and the previous legislation upon this subject is persuasive of the idea that it was not intended by the Legislature, in using the expression "according to principles of equity," as contained in the present statute, to confer general equitable jurisdiction upon district courts in passing upon the question whether titles emanating from Mexico should be confirmed according to general principles of equity. Furthermore, if we could concede that the expression used in the statute, "principles of equity," confers jurisdiction upon this court to apply the general principles of equity in determining whether the title should be confirmed, the offer of the appellants to do equity is not sufficient. They have merely offered to pay the original purchase price. If we are to exercise the jurisdiction of a court of equity, and determine the rights of the appellants and the state according to the principles of equity, it would be just and proper, in order to accomplish that purpose, that, as the appellants have been in continual use and occupation of the land, reaping its revenues, fruits, and benefits, they should at least, in addition to the original purchase price as fixed by decree No. 24, pay interest upon that sum from the time that it was due up to the present time. There is no offer of this kind made. But, however, we are firm in the conviction that the expression "equitable principles" does not mean that we can go outside of the provisions of the statute, and apply a principle of equity which is not provided for in the terms of the law. The meaning of the expression "equitable principles," as used in the statute, has been adverted to in another part of this opinion, and we do not think it should be given such an application as to create an additional jurisdiction in the court under this special statute that creates and limits its powers.

It is also contended that we should indulge, from the lapse of time, in a presumption of grant from the Mexican government. This cannot be done in this case. The presumption is disproved by the facts. The evidence affirmatively shows that the only grant that was ever issued was by the Governor in 1848, after Mexico ceased to exercise jurisdiction over this territory. Baldwin v. Goldfrank, 88 Tex. 249, 31 S. W. 1064; Hays v. United States, 175 U. S. 262, 20 Sup. Ct. 80, 44 L. Ed. 120; Chavez v. United States, 175 U. S. 555, 20 Sup. Ct. 201, 44 L. Ed. 969—the same cases cited in discussing the question as to presumption of payment. It is not pretended that this presumption should be indulged in as applied to any grant issued by the state of Texas, and it is apparent that the state has always disputed the title of these parties to the land in controversy. Furthermore, it is held in State v. Cardenas, 47 Tex. 294, and Railway v. Jarvis, 69 Tex. 542, 7 S. W. 210, that a presumption of grant cannot be indulged in in order to authorize a decree of confirmation under the act of 1870. And we think that in this respect there is no difference between that act and the one that was passed in 1901. But, while this is true—that is, that the statute would not authorize a confirmation to be based upon a presumption of grant—such a presumption might be considered under the defendants' plea of not guilty. The state brought the suit, and any legal title that the defendants could urge that would defeat the action of the state could be presented under a plea of not guilty, independent of any reliance upon that branch of the statute that authorizes a decree of confirmation in favor of the claimant. In State v. Sais, 47 Tex. 313, 314, it is held that the act permitting suits to be brought did not defeat a title which could be maintained under the general law. In United States v. Pillerin, 13 How. 10, 14 L. Ed. 28, it is held that possession that would lay the foundation for a presumption of grant would be a legal title. If the defendants had a legal title of any character, they could urge it under their plea of not guilty, not as a basis for confirmation, but as defeating a recovery by the state. But, however, this view of the law does not help their

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cause, because, as said before, the facts in the record clearly negative and disprove the existence of a grant.

There is also in the record a bill of exceptions, which complains of the action of the court in refusing to admit the testimony of certain witnesses by whom the appellants had expected to prove the construction that the Mexican authorities had placed upon the law, as stated in decree No. 24; and that they regarded that the steps taken by the claimants, as shown in this case, amounted to a perfect or legal title, concerning which the witnesses purported to express their opinion as to the validity of the title asserted by the appellants. The purported evidence, as stated in the bill of exceptions, in some respects was admitted and was testified to, and the court has appended to the bill an explanation stating why it was the evidence was not admitted. We are of the opinion that no error was committed in excluding this evidence. Notwithstanding the provision of the law of 1870, which is similar to the act of 1901 in this respect, which provides for considering usages and customs that prevailed in Mexico at the time the right was attempted to be acquired, it is held that the right must be adjudicated according to the laws then in existence, and which laws the courts of this state must take judicial notice of; and that evidence of witnesses to the effect who claimed to have knowledge of these laws and customs there prevailing could not be considered as establishing the fact that some of the essential requirements of the law were dispensed with, and from this state the opinion or conclusion that the titles claimed to exist were regarded as legal or perfect titles. This principle is decided in State v. Cuellar, 47 Tex. 296.

The views expressed dispose of the important questions in the case, and, finding no error in the record, the judgment will be affirmed.

In connection with this case, and as companion cases with it, and which were so submitted, are No. 3,450, Juan Vella Cuellar et al. v. The State of Texas; No. 3,455, Leonard Haynes v. The State of Texas; No. 3,452, Juan Manuel Flores et al. v. The State of Texas; No. 3,453, Porfiria Garza et al. v. The State of Texas; No. 3,457, Espiridion Flores et al. v. The State of Texas; No. 3,454, Servando Benavides v. The State of Texas; and No. 3,458, Filiberto Pena et al. v. The State of Texas. The decision of this case, so far as the rules of law announced, apply to the above cases, and the facts, so far as the evidence of title is concerned, are substantially the same in each case. Of course, in each case different lands are sued for, and different parties assert title; but all the titles emanate under decree No. 24 of Tamaulipas, and in none of the cases is the evidence of title stronger than that considered in the case in which the opinion is written.

Except in the cases No. 3,450, Juan Vella Cuellar v. The State of Texas, and No. 3,452, Juan Manuel Flores v. The State of Texas, patents were issued in favor of the appellants in 1891. Those patents recite that they are based upon a grant issued in 1835, and by virtue of a judgment of the district court of Webb county of July 16, 1880. The proof establishes the fact that no such grant was issued in 1835, and that the judgment of the district court of Webb county referred to in the patents was not binding upon the state, because the state was not a party to it; and that that court had no authority to adjudicate the facts that the appellants were entitled to patents, or to conclude the right of the state. The trial court properly, under the facts, treated the patents as void, as the officers who issued it had no authority, because the facts did not exist upon which it could be based.

In all of the cases possession of the land was shown for a number of years; in some from the time that the land was denounced, and in some before then. It is contended in these cases where the patents are urged that the suit of the state is barred by the statute of four-years limitation. We do not think this is a case in which limitation would run against the state, but anyhow the patents can be treated as void, and would not affect the remedy of the state to recover the land in an action of trespass to try title.

In these cases it is also contended that the district court of Travis county had no jurisdiction. This question was practically passed upon by this court in the case of the State v. O'Connor, 71 S. W. 960. It is also contended that the act of 1901 confirmed the grants. There is nothing in the act that authorizes this construction.

In some of the cases there are intimations in the briefs that the state is estopped by virtue of the facts shown in favor of the appellants, and further intimation that in some of the cases the appellants are innocent purchasers, and also that they are entitled to judgment for the value of the improvements shown to exist on the land. Without particularly discussing these questions, we overrule the assignments of error in which they are raised. No power is given the court to render a judgment against the state for the value of the improvements.

For the reasons stated, the judgment rendered in the main case, as well as the companion cases, as above stated, is affirmed.

Affirmed.

MISSOURI, K. & T. RY. CO. OF TEXAS et al. v. BUMPAS et al.

(Court of Civil Appeals of Texas. March 4, 1905.)

CONNECTING CARRIERS — CATTLE SHIPMENT — DAMAGES—ACTIONS—VENUE—STATUTES.

Where cattle were shipped over the roads of three connecting carriers, and the initial carrier was not sued for damages thereto, and was

Filed in Supreme Court
April 10. 1905
F. T. Connerly Clerk
By Pellyrick Deputy

No. app 4628-

Leonard Haynes.

vs.

The State of Texas

In the Supreme Court
of the State of Texas

The petition of Leonard Haynes for Writ of Error to the Court of Civil Appeals Third Supreme Judicial District

Filed in Court of Civil Appeals
3rd Supreme Judicial District,
AUSTIN, TEXAS.
APR 7. 1905
R. F. Connerly, Clerk.

No 3-v-v.

REPRODUCED FROM THE
HOLDINGS OF THE
TEXAS STATE ARCHIVES

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THE STATE OF TEXAS, } In the Supreme Court of the State of Texas.
In County of Webb }

To the Honorable, The Judges of the Supreme Court:

The petition of Leonard Haynes, [redacted], aid H.M.Haynes, [redacted], respectfully represent:

That, petitioners were appellants in certain causes pending in the Court of Civil Appeals of the Third Supreme Judicial District, and The State of Texas, appellee,
numbered on the docket of said Court [redacted], 3455 ;

That said causes were determined in the said Court by an opinion rendered in the said cause No. 3451, in which Leonard Haynes and H.M.Haynes were appellants, and The State of Texas appellee, on the 25th day of January 1905, affirming the judgment of the trial Court as to the said causes ;

That a motion for rehearing was presented in said Court, which was overruled on the 8th day of March 1905 ;

Petitioners would show that the said Court of Civil Appeals in affirming the judgment of the trial Court, committed error in the disposition of said causes, and they now come to this Honorable Court asking for a writ of error.

It is respectfully submitted that the Court of Civil Appeals erred as follows:

First - In holding that the act of payment of the $10.00 per league required under the Decree No.24 of October 1833, occurred on November 24, 1847, there being no evidence that the grantee had not paid such money at some time long prior to that date.

Second - In not indulging the presumption that the dues required by Decree No.24, were paid at the proper time, and that all

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things necessary had been done and performed by the original claimant, in the manner required by the said Decree and at a time when the former government had jurisdiction over the territory in which the land in controversy is situated.

Remarks - The letter which was read in evidence, in which mention is made of the dues which were not sent for a reason therein given, should not be held as proof that such dues had only recently been paid - If it is evidence, however, for any purpose, it should not be held to show more than that the dues required under the law were at that time in the hands of the proper government officer ; how long he had been in possession thereof is not shown in said letter and the Court may reasonably presume, under all the facts and circumstances, that such dues must have been paid within the time required by law and at a time when the former government had jurisdiction over the territory in which the land in controversy is situated. In this connection attention is called to Article 5 of Decree No.24, which is to the effect that the benefits of Art. 1 are made available only for three years from the day of the approval of this Decree ; and to the fact that Art.1 provided that there should be given at once to certain individuals a certain quantity of land, each on payment of $10.00 for each league ; and that by Arts. 3 and 6, the authorities were required to satisfy themselves that the parties to whom such lands were given were entitled thereto.

The facts and circumstances of long possession prior to the passage of the Decree No.24 ; and the occupancy and claim of title, subsequently, and even down to the present time, together with the fact that the legal dues had at some time been paid, and the absence of proof that the act of payment of such dues did not occur after the former government had lost its jurisdiction, furnish sufficient ground for the presumption that all things necessary in the premises, including the payment of the dues, had been done and performed according to law and at a time when the former government had jurisdiction.

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Attention is also called to that part of the evidence showing that the Expediente of Don Antonio Zapata was delivered to him on the 7th day of November 1836shortly after expiration of three years period mentioned in Art. 5 of Decree No.24, and it is a reasonable presumption that all acts necessary to be done by Don Antonio Zapata had at that time been done and performed in order to entitle himto the Expediente as evidence of the right which he acquired, and subsequently enjoyed .

The Honorable Court of Appeals considered that it would be proper to presume payment of the legal dues,under the authority of The State vs Sais, 60 Texas, 88, but held that the letter of November 28,1847, repels such presumption. If Don Antonio Zapata had been writing the letter atthat time, and, in order to avoid the risk of the dues, had been holding the money for instructions as to how it should be sent, the fact would be perhaps sufficiently established that the dues were not paid at the proper time, and the delay in payment would have to be explained - on the contrary, the letter is an official document, making mention of no particular lands or grantee, and refers, not to the act of payment of dues, but is merely the remittance of seventeen titles and gives the reason for not sendingthe dues - what dues - paid by whom - when paid, no where appears.

It is therefore respectfully submitted that the letter is not proof that the dues were not legally paid .

Third - Because the record contains abundant proof that the true and real consideration for the grants in question was meritorious service, rendered the government in protecting the frontier against hostile Indians ; and the State should not be held justified in taking from the grantees that which they have claimed,and for generations have enjoyed, as compensation, when there is no evidence that the further money consideration had not been paid by the grantee at the proper time , and when, under all the circumstances and by reason

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of the great lapse of time, presumption may be indulged that payment was made at the proper time.

Fourth - Becuase the Hon. Court of Civil Appeals correctly conclude that "the evidence in the record justified the assumption that Zapata and Bustamente denounced the lands in controversy ,before the ayuntamiento of Cuerrero in 1836, and that that body passed favorably upon the application ; that a survey was made by Canales, the Surveyor General of Tamaulipas, in 1835, of these two purported grants and the expediente was formed and became an archive of the public records of Guerrero, and that the claimants were in possession of the land prior to the denouncement." But,contrary to the holding og of the Hon. Court of Civil Appeals, there is nothing in the record to repel the presumption of title ,and the title should therefore be confirmed.

Remarks - In the State vs Sais, 60 Texas, 90,the Court found from the evidence that the money consideration had been paid ; and the evidence upon which such finding was based is a statement in the expediente, "tending to show that fact" ; and the Court say: "Considering the fact that more than forty years have elapsed ,this recital by a public officer,made in the discharge of his official duty, should be considered as sufficient to sustain the finding of the Court in that particular."

The holding in that case that the expediente contained all the requisites of the law and showed also the payment of the purchase money ; and that such showing,in connection with parol evidence of possession,established "a perfect equitable title", applies to the present case and calls for the same finding .

The expediente in this case was delivered. If any action was taken upon it by the executive, it was beyond the power of the claimants to show what that action was, after the destruction of the records of the State of Tamaulipas in 1865. The Court should presume,if necessary, that the expediente mentioned in this case showed facts and contained recitals such as the expediente contained

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which is mentioned & in the case of Sais (60 Tex.,90). Wherefore it is respectively submitted that the Hon. Court of Civil Appeals committed error in holding that there is evidence in the record which repels the assumption of title .

Fifth - Because, contrary to the holding of the Hon.Court of Civil Appeals, the general principles of equity may be applied to the facts and circumstances shown by the record - especially so, since,under the Act of 1901, the question at issue must be investigated and tried in accordance therewith .

Sixth - Because, contrary to the holding of the Hon.Court of Civil Appeals, the appellants, "by a preponderance of the testimony" have shown themselves entitled to the lands in controversy, and their title for that reason should be confirmed.

Seventh - Because, contrary to the holding of the Hon.Court of Civil Appeals, the State, on whom the burden rested, failed to show itself entitled "by the preponderance of the testimony" ; and the State having brought the action, in view of the plea of not guilty, the judgment should be that the State take nothing by its suit.

Eighth - Because the Statute of Limitations of four years bars the action of the State to cancel a patent - the same being a personal action.

Ninth - As further ground of error,petitioners say : That they and those under whom they claim, have and hold rights of property which were acquired and vested in citizens of the former government, who were in possession of the lands in controversy,claiming title thereto, at the time of, and for a long time immediately prior to the making of the Treaty of Guadalupe-Hidalgo ; such rights and occupancy and claim of title are within the protection of the express provisions of said Treaty ; and under a proper construction and ap-

plication of the terms of said Treaty the said rights, occupancy and claim of title should not be disturbed ;

WHEREFORE, the Hon. Court of Civil Appeals committed error in affirming the judgment of the trial Court thereby failing to properly construe and apply the provisions of the Treaty of Guadalupe-Hidalgo to the facts and circumstances shown in the record - such error being in violation of the terms of said Treaty.

Remarks - Under Decree No. 24, of October 1833, the lands were to be "given,at once," to such as were entitled thereto ; the rights of the parties, so entitled, must have attached within three years after that Decree became operative , and certainly before the delivery of the Expediente to the interested party. Now, if the expediente was delivered to the grantor at a time when the former government had jurisdiction, will the Courts put aside the Treaty on the ground that there is no actual proof that all the money consideration required by law had been received by the government ? When the true and real consideration - doubtless the moving consideration - services rendered , is unchallenged, may not the Court indulge a presumption of payment rather than that by exacting strict proof of payment, the Treaty should be held not to apply ?

WHEREFORE, it is respectfully submitted, that such presumption as may reasonably arise should be indulged and that under all the facts and circumstances the grants in question should be held within the protection of the Treaty of Guadalupe-Hidalgo.

And now petitions pray for a Writ of Error, based on the foregoing Assignments of Error, all of which were called to the attention of the Honorable Court of Civil Appeals in their mo-

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tion for a re-hearing.

The defendant herein is represented by the Honorable Attorney General.

Respectfully submitted,

Leonard Haynes & H. M. Haynes,
Petitioners by,
J. E. Mudally & E. A. Allen,
their attorneys.

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EME COURT
AUSTIN

THE STATE OF TEXAS.

To the District Court of Travis County, GREETING:

Before our Supreme Court on the 27th. day of March, A. D. 1907, the cause, upon writ of error, to revise or reverse your judgment between

Leonard Haynes,
Plaintiff in Error,

No. 1561 vs.

The State of Texas,
Defendant in Error,

was determined; and therein our Supreme Court made its order in these words:

This cause came on to be heard on writ of error to the Court of Civil Appeals for the Third Supreme Judicial District and the original transcript in said cause being before the Court as well as the transcript showing the proceedings had in said Court of Civil Appeals and these having been duly considered because it is the opinion of this Court that there was error in the judgment of the Court of Civil Appeals and District Court, it is therefore considered, adjudged and ordered that said judgments be reversed; And this Court proceeding to render such judgment as should have been rendered, it is therefore ordered, adjudged and decreed that the Defendant in error, The State of Texas take nothing by its suit and that the plaintiff in error, Leonard Haynes go hence without day and do have and recover of and from the State of Texas, certain tracts of land situated in the County of Zapata, in the State of Texas and particularly described in plaintiffs petition as follows, to-wit: First tract, Being survey No. 427 made for the State of Texas, by virtue of scrip No. 142, issued to B. J. Baldwin, situated in Zapata County, about 15 miles N. 30° E. from Carrizo and bounded as follows; Beginning at a large mesquite post the S. corner of a so-called grant in the name of Ignacio Guttierrez, from which a mesquite marked X bears S. 28 varas and another bears S. 13° W. 14 varas; Thence S. 45° E. 1320 varas, post in line of Charco de la India for E. corner; Thence S. 55° W. with said India tract at 1872 varas large stone S.W. or W. corner of same at 2089 a post on N.E. line of survey No. 313; Thence N. 35° W. with 313 and 429 at 4205 varas, post in prairie for W. corner of this survey; Thence N. 55° E. at 1348 varas a post in the S. W. line of "Mogotes"; Thence S. 45° E. 2950 varas to the beginning, containing 1380 acres. Second tract, Being survey No. 428, made for the State of Texas, by virtue of scrip No. 410 to J. O. Thomas, situated in Zapata County about 16 miles N. 20 E. from Carrizo and bounded as follows; Beginning at a post on the S. W. line of a so-called grant of "Los Mogotes" to Ignacio Guttorrez, 2950 varas N. 45° W. from its S. corner, said post being the N. corner of No. 427 and E. corner of this. Thence N. 45° W. with said Mogotes at 4303 varas, post for N. corner of this survey: Thence S. 55° W. at 923 varas a post on N.E. line of porcion No. 5; Thence S. 35° E. with porcion No. 5, 744 varas to its E. corner; Thence S. 55° W. with porcion No. 5, 479 varas to the N. corner of porcion No. 4; Thence S. 35° E. with porcion No. 4,

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Copy of Mandate of Supreme Court concerning files. San Pat [illegible]. 3491-3494-3544 and school file 150238. Also two Mexican grants San Pat 1st class 657-806. Covers surveys 427-428-431 and file 150238.
Filed 8/15/41 Bascom Giles Comm.

BY L. B.

No. 2054

No. 1501

MANDATE.

SUPREME COURT

AUSTIN.

vs.

Filed October 4th 1907

Clerk.

By Deputy.

To Travis County.

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HAYNES
v.
STATE.

Supreme Court of Texas.
March 27, 1907.

Error from Court of Civil Appeals of Third Supreme Judicial District.

Action by the state against Leonard Haynes. Judgment for plaintiff was affirmed by the Court of Civil Appeals (85 S. W. 1029), and defendant brings error. Reversed and rendered.

1. PUBLIC LANDS--MEXICAN TITLE--UNAUTHORIZED ISSUING OF FINAL TITLE.
The issuing, by the governor of Tamaulipas, after his power to do so had ceased, of a final title to lands, formerly within the state of Tamaulipas, but by Act Dec. 19, 1836, declared part of the territory of Texas, took away no existing right of the grantee to the land, on which such unauthorized act was based.

2. PUBLIC LANDS--EVIDENCE OF RIGHT--PRESUMPTION.
The presumption from the fact that, prior to December 19, 1836, the ayuntamiento of the village of Guerrero, in the state of Tamaulipas, made up an instructive despatch, embracing all papers required by law to show the right of Z. to land, situate in such state before it became part of Texas, and a compliance by him with the requirement of the law on which the governor of Tamaulipas was authorized to issue final title--that everything required by the law as a basis for the action of the ayuntamiento, including the collection from Z. of the purchase money, and the depositing of it with the treasurer of Guerrero, so as to give Z. a right to the land, protected by the Treaty of Guadalupe Hidalgo, is not overcome by the letter of the supplemental alcalde of Guerrero to the governor of Tamaulipas, in 1847, stating that, while he sends the papers constituting the evidence of right in Z. to the land, he does not send with them the dues, because not desiring to expose the same, and directing that the same be drawn against; this not showing that the money was not collected by the ayuntamiento in 1847.

3. APPEAL--REVERSING AND RENDERING JUDGMENT.
Where, on reversal of a judgment, the facts furnish no ground for a difference of opinion as to the rights of the parties, the case will not be remanded, but judgment will be rendered.
[Ed. Note.--For cases in point, see Cent. Dig. vol. 3, Appeal and Error, s 4580.]

[100 Tex. 427] James B. Wells, for plaintiff in error.

R. V. Davidson, Atty. Gen., and Wm. E. Hawkins, Asst. Atty. Gen., for the State.

[100 Tex. 428] BROWN, J.

The state of Texas sued Leonard Haynes to recover five leagues of land situated between the Nueces river and the lower Rio Grande, which is within the limits of the territory of the state of Tamaulipas as it existed prior to the Texas Revolution. The land was surveyed for the state in 1884, and there is, of course, no question of the state's right to it, unless the plaintiff in error has shown a right to the land which originated at a date prior to the 19th day of December, 1836, and which right is protected by the treaty of Guadalupe Hidalgo between the United States and Mexico. Haynes claims by mesne conveyances under Antonio Zapata, who claimed to have acquired a right to the land by a grant made by the governor of Tamaulipas, under decree No. 24 of the Congress of that state. We copy the decree as follows:

[100 Tex. 429] 'No. 24. The Constitutional Congress of the Free State of Tamaulipas has decreed the following:

'Article 1. To the inhabitants of Camargo, Mier, Guerrero and Laredo, who may have no lands of their own, and who may possess stock to occupy them, there shall be given at once not exceeding five leagues each. and in compensation they shall pay the state $10 for each league.

'Art. 2. Those only are comprehended in the foregoing article who lived in said villages during the last Indian war now passed, and who did not emigrate previous to the year 1821.

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'Art. 3. The respective ayuntamiento shall inform itself by previous justification whether the interested party, who may present himself, has lands of his own and stock with which to occupy them.

'Art. 4. These lands shall not be alienated until twenty years have passed after the concession; and, if so alienated, the state recovers its right to them, and he who may have been the owner loses whatever advances and useful and necessary improvements that he may have made; it being sufficient for a judgment of condemnation that the alienation shall be made to appear. Upon this point the respective administering judge shall decide summarily, without prejudice to the legal remedies of the interested party.

'Art. 5. The benefits of article 1 shall continue for three years from the day of the approval of this decree, after the expiration of which term no one shall obtain lands except according to the ordinary laws.

'Art. 6. The ayuntamientos and their individual members collectively and each one for himself are responsible personally and pecuniarily of they are wanting in the truth of the inquiry exacted by article 3, and the government having heard their defense shall make their responsibility effective.

'The governor of the state shall take care that this decree be understood, and shall order its execution, having it printed, published and circulated. Wherefore, I command that it be printed, published, and circulated, and that it be duly executed.'

There is no question made of Zapata's qualification to acquire the land; that is, that he was one of those who had settled in that section of the country and remained there according to the terms of the decree. ***913** The Court of Civil Appeals (85 S. W. 1029) found the following facts which constitute the right of Zapata to the land in question: 'We conclude that the evidence in the record justifies the assumption that Zapata and Bustamente denounced the lands in controversy before the ayuntamiento of Guerrero in 1835, and that that body passed favorably upon the application; that a survey was made by Canales, the surveyor general of Tamaulipas, in 1835, of these two purported grants, and the expediente was formed and became an archive of the public records at Guerrero; and that the claimants were in possession of the land prior to the denouncement. The evidence does not show any juridical possession, but the fact that they were in possession when the lands were denounced, and continued in possession thereafter, was sufficient to dispense with juridical possession, as is decided in the case of State v. Sais, 60 Tex. 88; and they continued in possession for such length of time as would justify a presumption of grant, provided the evidence in the record did not repel such presumption. The evidence also warrants the assumption that, [100 Tex. 430] while a copy of the expediente was not introduced in evidence, the copy of the index, as stated by the facts, indicates that an expediente was formed, and such fact is also established by the parol evidence in the record. Copies of the record of the denouncement to the ayuntamiento, and the favorable action of that body upon the application, was not introduced in evidence; but the evidence in the record, which is not objected to, tends to show that such denouncement was made to the ayuntamiento, and they acted favorably upon it. The evidence in the record also shows that the public archives in the city of Victoria were destroyed by the French troops in 1864, and that the records of Guerrero were imperfect and mutilated, and many missing, which fact would justify us in assuming that the record evidence of steps taken to acquire title which was not produced was lost or destroyed. The only evidence showing that the purchase price of the land was paid is the statement contained in a letter to Canales of date November 28, 1847, found upon page 141 of the record.'

On the 28th day of November, 1847, Fabian Zapata, first supplemental alcalde of the municipality of the city of Guerrero, wrote to his honor, Gen. Don Antonio Canales, at the city of Victoria, Tamaulipas, as follows: 'I remit to you seventeen titles, which contain the vacant lands denounced and surveyed from the year 1831 until that of 1835, in order that your honor may please present them to the honorable governor of the state, to the effect that they may have the necessary validation. The amount of the dues I do not send attached to said documents so as not to expose the same, and your honor will deign also to direct in the most certain manner the mode in which they may be paid, and draw against this receiver's office. God and Liberty.'

The governor of Tamaulipas issued to Antonio Zapata the following final grant: 'Francisco Vital Fernandez, Brigadier General of the Army of the

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Mexican Republic and Governor of the State of Tamaulipas: Whereas, the citizen Antonio Zapata has paid into the treasury of the state the $50 at which were valued the five sitios of pasture land for large stock denounced by him at the point de Villa, as appears by the expediente made for the purpose, using the power that the law gives me upon this particular, I have thought proper to adjudicate to the citizen Antonio Zapata for himself, his heirs and successors the said five sitios for large stock, within the limits and boundaries made on the attached map. Therefore, I order the authorities and inhabitants of the state to recognize the said citizen Antonio Zapata as the legitimate owner of the said five sitios of pasture land for large stock which are thus granted. Given at the city of Victoria on the 2d day of the month of January, eighteen hundred and forty-eight.'

The following articles of the colonization law of 1826 of the state of Tamaulipas are pertinent to the issue involved in this case:

'Art. 7. From the very date whereon a foreigner is thus registered he acquires domiciliation, and may as such an inhabitant (denunciar) the vacant land he thinks best, presenting himself to that effect by writing to the respective alcalde, who shall decree what is proper for examining, measuring and marking out the land designated, after citing the adjoining proprietors should there be any.

[100 Tex. 431] 'Art. 8. The instructive despatch being terminated, and no opponent of right resulting, the alcalde shall pass it to the executive of the state, by whom the title of adjudication and ownership shall be issued to the person interested, ordering that the alcalde of the town of his residence put him immediately in possession of the land granted. All these proceedings shall be conducted officially, and the executive shall proceed with the audience of the fiscal of the Supreme Court of justice of the state.'

'Art. 24. The ayuntamientos, each in its limits, shall collect said funds gratis by means of a commission from within or without their own body, and shall pass them according as they are collected to the depositary or treasurer that they may be of their funds or means, who shall give the corresponding receipt; and without further interest than two and a half per cent., that shall be paid him, he shall place them at the disposal of the executive, giving him notice every month of the receipts and remittances thereof, and of any negligence of deceit he may notice in their collection. Of the management of the treasurer and that of the commission, the officers themselves and commissioners ***914** shall be responsible with their property; and moreover, the members of the ayuntamiento who choose them, and that this responsibility may at all times be effectual, the said appointments shall be made viva voce, and notice thereof shall be immediately given to the executive.'

The learned judge, who wrote the exhaustive opinion of the Court of Civil Appeals, said; in substance, that the facts found by that court would justify the presumption that a grant had been made by the governor of Tamaulipas, if it were not shown by the testimony that the governor of Tamaulipas had issued a final title to Zapata, which was void because he had not the power to do so at the time that it was granted. The issuing of the final title without authority could not affect the right which existed and upon which the unauthorized act was based. State v. Bustamente, 47 Tex. 320. Therefore, discarding the title issued by Canales, governor of Tamaulipas in the year 1848, we have the facts still existing which, if sufficient to justify a presumption of a grant, must be sufficient to establish a right to the grant. If, therefore, the evidence introduced upon the trial shows that Antonio Zapata was on the 19th day of December, 1836, entitled to have a grant issued, the state ought not to recover the land in controversy, because such a title would be protected by the Treaty of Guadalupe Hidalgo. It is true that the Attorney General insists that the facts do not establish such a title as would be embraced in the terms and protection of that treaty, but we are of opinion that the position is not well taken. State v. Sais, 47 Tex. 307.

If it be conceded that the $10 per league was the purchase price for the land, which must be paid before a right to the land accrued to Zapata, then, under the law as it then existed, it was the duty of the ayuntamiento of the village of Guerrero to collect from Antonio Zapata the $10 for each league before making up the expediente or instructive despatch, and to deposit the money in the treasury of that village subject to the order of the governor. The undisputed evidence in the case and the finding of the Court of Civil Appeals establishes the [100 Tex. 432] fact that, before the 19th day of December, 1836, the ayuntamiento of Guerrero did

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make up the instructive despatch, embracing all papers required by law to show the right of Antonio Zapata and a compliance by him with the requirement of the law upon which the governor of Tamaulipas was authorized to issue the final title. It was shown that the records of the ayuntamiento of Guerrero were multilated, and many of them destroyed or lost, and that the expediente of Zapata had at one time been in the archives of Victoria, the capital of Tamaulipas, which were destroyed in 1864 by the French soldiers. In this state of the facts, there would arise the presumption that, before the ayuntamiento made up the instructive despatch or expediente, everything was done that the law required to be done as a basis of their action, and that the $10 per league had been collected from Zapata and deposited with the treasurer in accordance with law. Olcott v. Gabert, 86 Tex. 126, 23 S. W. 985; State v. Sais, 60 Tex. 90. This presumption might have been disproved, but it is undisputed, and the concurrent facts support it, so that the presumption is entitled to the same weight as the undisputed testimony of a credible witness. It is, however, suggested in the opinion of the Court of Civil Appeals, that the letter, which was written in 1847 by the supplemental alcalde of Guerrero to the governor of Tamaulipas, shows that the money was paid in 1847. The letter does not state that the money was paid at that time, but that it was not forwarded with the expedientes which were sent in 17 cases, for the reason that it was unsafe to do so. These 17 packages of paper which constituted the evidence of right in Zapata and others to the lands granted, had remained in the archives of Guerrero from 1835 to 1847, and it is entirely consistent with the terms of the letter, and with the facts established in connection with it, that the money collected by the ayuntamiento from Zapata was still in the treasury of Guerrero, although it was collected in 1835. There is not a fact or circumstance to which we have been pointed by the counsel for the state which would in the least impair the force of the presumption of law that the money was collected at the time the land was surveyed and the title papers made up by the municipal officials. The facts of this case establish that Zapata, under whom the plaintiff in error claims, had, on the 19th day of December, 1836, done all that the law required of him, and was entitled under the laws of Tamaulipas to receive from the governor of that state a grant for the five leagues of land. It follows from this conclusion that we must reverse the judgments of the district court and of the Court of Civil Appeals.

The question arises: Shall we remand the case to the district court for another trial, or shall we render judgment for the plaintiff in error? If the facts of this case furnished any ground for a difference of opinion as to the rights of Antonio Zapata under the laws of Tamaulipas to receive a grant of the land in question, it would be our duty to remand the case for another trial. It is evident, from the opinion of the Court of Civil Appeals, that they would have reversed the judgment of the district court, but for the fact that they construed the letter from Fabian Zapata to the governor to mean that the ***914** money, $10 per league, was paid at the time that the papers were forwarded to the governor; but we are of opinion that that construction of the letter was incorrect, and [100 Tex. 433] was unsupported by the attending circumstances. Assuming that the $50 for the five leagues was collected from Zapata at the ***915.** time the surveys were made and the instructive despatch formulated, we are not able to see how there could be a difference of opinion as to the right of the plaintiff in error to the land in controversy.

It is therefore ordered that the judgment of the district court and that of the Court of Civil Appeals be reversed, and that judgment be here rendered for the plaintiff in error.

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Group 10 of 10 March 27 " 1907.

No 1661 R. J. Brown
vs
J. S. Wallis
Certified Questions from 2nd District = Wichita Co
It is ordered that this Cause be set for hearing on Wednesday April 24" 1907. The Clerk will notify Counsel for both parties of this order.

Mo No 1645 Georgiana F. Webster vs Mary J. Clark = From Cherokee Co = 4th " District =
For rehearing =
Submitted =

Mo No 1650 W. L. Moody & Co vs B. W. Rowland = Certified Questions from 1st District
For rehearing =
Submitted =

Mo No 1651 M. K & T. Ry Co of Texas vs O. K. Shannon et al = From Travis Co = 3rd Dist =
For rehedring =
Submitted =

Mo No 1654 A. Murphy vs. J. J. Terrell Comm'r et al = Petition for Mandamus.
For rehearing =
Submitted.

No 1634 E. W. Punchard et al vs Branch T. Masterson et al = Certified Questns from 1st Dist.
Submitted on briefs for both parties and orally for appellees =

No 1655 Womack & Sturgis et al vs S. F. & G. N. R. R. Co = Cert'd Questions from 3rd District =
Submitted on briefs for both parties =

No 1681 T. S. Cavin et al vs W. P. Coleman = From Harrison Co = 5th " District
Submitted on briefs for both parties =

No 1561 Leonard Haynes =
vs
The State of Texas.
From Travis Co = 3rd District

Opinion delivered by Associate Justice Brown =

This cause came on to be heard on writ of error to the Court of Civil Appeals for the Third Supreme Judicial District and the original transcript in said Cause being before the Court as well as the transcript showing the proceedings had in said Court of Civil Appeals and these having been duly Considered because it is the Opinion of this Court that there was error in the judgments of the Court of Civil Appeals and District Court, it is therefore Considered, adjudged and ordered that said judgments be reversed; And this Court proceeding to render such judgment as should have been rendered. it is therefore ordered, adjudged and decreed that the Defendant in error The State of Texas take nothing by its suit and that the plaintiff in error Leonard Haynes go hence without day. and do have and recover of and from the State of Texas, Certain tracts of land situated in the County of Zapata, in the State of Texas and particularly described in plaintiff's petition as follows, to wit; First tract. Being Survey No 427 made for the State of Texas, by Virtue of Scrip No 142, issued to B. J. Baldwin situated in Zapata County, about 15 miles N. 30° E. from Carrizo and bounded as follows; Beginning at a large Mesquite post the S. Corner

et al. 1907. Mandate issued. Writ to Dist. Court Travis Co. Sam Lackey

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March 21st 1907.

No 1561. of a so called grant in the name of Ignacio Gutierrez, from which a Mesquite Marked X bears S. 28 Varas and another bears S. 13° W. 14 Varas; Thence S. 45° E. 1320 varas, post in line of Charca de le India for E. Corner; Thence S. 55° W. with said India tract at 1872 Varas, large Stone S.W or W. Corner of same, at 2089 a post on N.E. line of Survey No 313; Thence N. 35° W with 313 and 429 at 4205 Varas, post in prairie for W. Corner of this survey; Thence N. 55° E. at 1348 Varas a post in the S.W. line of "Mogotes"; Thence S. 45° E. 2950 Varas to the beginning, Containing 1280 Acres. Second tract. Being Survey No 428, Made for the State of Texas, by virtue of Scrip No 410 to J. O. Thomas, situated in Zapata County about 16 miles N 20 E from Carrizo and bounded as follows; Beginning at a post on the S.W. line of a so called grant of "Los Mogotes" to Ignacio Gutierrez 2950 Varas N. 45° W. from its S. Corner, said post being the N. Corner of No 427 and E. Corner of this. Thence N. 45° W. with said Mogotes at 4303 Varas, post for N. Corner of this survey; Thence S. 55° W at 923 Varas a post on N.E. line of porcion No 5. Thence S. 35° E. with porcion No 5, 744 Varas to its E. Corner; Thence S. 55° W. With porcion No 5. 479 Varas to the N. Corner of porcion No 4. Thence S. 35° E. with porcion No 4, 1960 Varas to its N. E. Corner; Thence N 55° E. 68 Varas to a post for Corner. Thence S. 35° E. 1750 Varas to a post for Corner; Thence N 55° E. 733 Varas to post on line of No 427; Thence N. 35° W 216 Varas to a post, W Corner of 427; Thence N. 55° E. 1348 Varas to the beginning, Containing 1280 acres. Third tract. Being Survey No 431, made for the State of Texas, by virtue of Scrip 1190 issued to James M. Lummus, situated in Zapata County, about 14 Miles N. 14° E. from Carrizo and bounded as follows: Beginning at a post the N Corner of porcion No 6. in the name of Miguel Alegna de Lascaño, from which a Mesquite Marked X bears S. 36° 15' W. 86 Varas. Thence S. 35° E. With said porcion at 1245 Varas to Large post Supposed to be the W. Corner of the Mogotes tract at 2665 Varas a post for S. Corner of this Survey. Thence N. 45° E. 1696 Varas to a post on the S.W. boundary of Survey No 430 for the E. Corner of this Survey; Thence N 45° W. 1399 Varas to a post, W. Corner of 430; Thence S. 45° W. 190 Varas to a post; Thence N. 35 W. 1032 Varas to a post on the S.E. boundary of Borrego grant for the N. Corner of this Survey; Thence S. 55° W. With said Borrego grant 1233 Varas to the beginning, Containing 640 acres. Fourth tract. Being 300 acres of unsurveyed public domain in Zapata County about 13 Miles N. 14½° E. from Carrizo and bounded and described as follows; Beginning at the S. Corner of Survey No 431; Thence N 45° E. 1696 Varas with said No 431, J. M. Lummus State section; Thence S. 45° E. 500 Varas to the S. Corner of No 430, J. M. Lummus individual Section; Thence N. 45° E. 850 Varas to the W. Corner of 607. M. M. Hall individual Section; Thence S. 45° E. 100 Varas to the N. Corner of 610, J. R. Christian individual Section; Thence S. 45° W. 2250 Varas to W. Corner of 610, J. R. Christian individual Section; Thence S. 45° E. 800 Varas to N. Corner of No 428. J. O. Thomas. State Section; Thence S 55° W. 952 Varas to N. W. Corner of 428. J. O. Thomas State Section; Thence N. 35° W. 1200 Varas to N. Corner of porcion No 5; Thence N. 55° E. 400 Varas to E. Corner of porcion No 6. Thence N. 35° W. 170 Varas to the beginning, Containing 300 acres. It is further ordered that the plaintiff in error Leonard Haynes do have and recover of and from the Defendant in error The State of Texas all Costs in this behalf expended in this Court

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March 27th 1907.

o 1561 in the Court of Civil Appeals and in the District Court and this decisi
be certified to the District Court for observance.

lo 1562. Leonard Haynes et al.

1s. From Travis Co = 3rd District =

The State of Texas.

Opinion delivered by Associate Justice Brown=

This cause came on to be heard on writ of error to the Court of Civil appeals for the Third Supreme Judicial District and the original transcript in said cause being before the Court as well as the transcript showing the proceedings had in said Court of Civil Appeals and these having been duly Considered because it is the Opinion of this Court that there was error in the Judgment of the Court of Civil Appeals and District Court, it is therefore Considered, adjud. and ordered that said Judgments be reversed; And this Court proceeding to render such Judgment as should have been rendered, it is therefore ordered adjudged and decreed that the Defendant in error, The State of Texas, tak. nothing by its suit and that the plaintiffs in error Leonard Haynes and N. M. Haynes go hence without day and do have and recover of and from The State of Texas Certain tracts of land situated in the County of Zapata, in the State of Texas, and particularly described in plaintiff's petition as follows to wit; First tract. Being Survey No 522 made for the State of Texas, by Virtue of Certifi. No 425, issued to the T. C. Ry Co situated in Zapata County Texas and bounded as follows; Beginning at a post the N. Corner of survey No 521. Thence S. 55° W. with same 1900 Varas to post for its W. Corner and S. Corner of this. Thence N. 35° W. 1900 varas to post for W. Corner; Thence N. 55° E 1900 Varas to post for. N. Corner; Thence S. 35° E. 1900 varas to the place of beginning, Containing 640. acres. Second tract. Being Survey No 524 made for the State of Texas, by Virtue of Certificate No 426, issued to the T. C. Ry Co, Situated in Zapata County, about 16 miles N 70° E. from Carrizo and bounded as follows; Beginning at a post the N. Corner of No 523. Thence S. 55° W. 1900 varas to post for S. Corner; Thence N. 35° W. 1900 varas to post for W. Corner; Thence N. 55° E. 1900 varas to post for N. Corner; Thence S. 35° E. 1900 varas to the place of beginning Containing 640 acres. Third tract. Being Survey No 526. made for the State of Texas, by Virtue of Certificate No 427. issued to the Texas Central Ry Co, Situated in Zapata County about 17 miles N. 70° E. from Carrizo and bounded as follows; Beginning at a post for the N. Corner of No 523 and S. Corner of ... 525. for the W. Corner of this Survey. Thence N 55° E. 1900 Varas to post for N. Corner; Thence S. 35° E. 1900 Varas to post for E. Corner; Thence S. 55° W 1900 Varas to post for S. Corner; Thence N 35° W. 1900 Varas to the place of beginning, Containing 640 acres. Fourth tract. Being Survey No 528 made for the State of Texas by Virtue of Certificate No 1162 issued to the S. E. & W. T. Ry Co, Situated in Zapata County about 18 miles N. 75° East from Carrizo and bounded as follows; Beginning at post S. Corner of No 527 for the West Corner of this Survey: Thence N. 55° E. 1900 Varas to post for N. Corner; Thence S. 35° E. 1900 Varas to post for E. Corner; Thence S. 55° W. 1900 Varas to post for S. Corner; Thence N. 35° W. 1900 Varas to the place of beginning, Containing 640 acres. Fifth tract. Being Survey No 530 made for the State of Texas by Virtue of Certificate No 1163. issued to the S. E. & W. T. Ry Co, Situated;

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62 in Zapata County about 19 miles N. 71° E. from Carrizo and bounded as follows; Beginning at a post, the West Corner of No 529, for the S. Corner hereof: Thence N. 55° E. 1900 varas to post for E. Corner; Thence N. 35° W. 1900 varas to post for N. Corner; Thence S. 55° W. 1900 varas to post for W. Corner; Thence S. 35° E. 1900 varas to the place of beginning; Containing 640. acres: Sixth tract. Being Survey No 532, made for the State of Texas by Virtue of Certificate No 1164, issued for the N. E. & W. T. Ry Co, situated in Zapata County about 19 miles N 65° E from Carrizo and bounded as follows; Beginning at a post, the W. Corner of No 531, for the S. Corner hereof; Thence N. 55° E. 1900 varas to a post for E. Corner; Thence N 35° W. 1900. Varas to a post for N. Corner; Thence S. 55° W. 1900 varas to a post for W. Corner; Thence S. 35° E. 1900 varas to the place of beginning Containing 640 acres: Seventh tract. Being Survey No 534 made for the State of Texas by virtue of certificate No 485, issued to the M. K. & T. Ry Co, situated in Zapata County about 20 Miles N. 67° E. from Carrizo and bounded as follows; Beginning at a post the S. Corner of No 533, for the W Corner hereof; Thence N. 55° E. 1900 varas to a post for N. Corner; Thence S. 35° E. 1900 varas to a post for E. Corner; Thence S. 55° W. 1900 Varas to a post for S. Corner; Thence N. 35° W. 1900 varas to the place of beginning Containing 640 acres: Eighth tract. Being Survey No 536. for the State of Texas by Virtue of Certificate No 486. issued to the M. K. & T. Ry Co, situated in Zapata County, about 21 Miles N. 72° E. from Carrizo and bounded as follows; Beginning at a post, the S. Corner of No 535, and N. Corner of 529, and the W. Corner hereof; Thence N. 55° E. 1900 varas to a post for N. Corner; Thence S. 35° E. 1900 varas to a post for E. Corner; Thence S. 55° W. 1900 Varas to a post for S. Corner; Thence N. 35° W. 1900. Varas to the place of beginning, Containing 640 acres. Ninth tract. Being Survey No 604 made for the State of Texas by virtue of Certificate No 4894 issued to the G. C. & S. F. Ry Co, situated in Zapata County about 16 Miles N 65° E. from Carrizo and bounded as follows; Beginning at a post, the W. Corner of 524, for the S. Corner hereof Thence N 55° E. with Surveys 525, 524, and 532 at 4173 varas a post for E. Corner; Thence N. 35° W. 733. Varas to a post for N. Corner; Thence S. 55° W. at 2600 varas. S. Corner of 586. at 3062 varas; post for a Corner; Thence N. 35° W. with No 587 at 497 varas post for N. W. Corner of this survey; Thence S. 55° W. 1111 Varas to a post for W. Corner; Thence S. 35° E. 1236 varas to the place of beginning Containing 640 acres. Tenth tract. Being Survey No 563 made for the State of Texas by Virtue of Certificate No 524. issued to Samuel L. Cooke situated in Zapata County, about 16½ Miles N 56° E. from Carrizo and bounded as follows; Beginning at a post, the E. Corner of 555 and the W. Corner of 559. in the name of J. M. Jackson for the N. Corner of this tract; Thence S. 55° W. 1900 varas to a post for W. Corner; Thence S. 35° E. 1900 Varas to a post for S. Corner; Thence N. 55° E. 1900 Varas to a post for E. Corner; Thence N. 35° W. 1900 Varas to the place of beginning, Containing 640 acres. Eleventh tract. Being Survey No 564 made for the State of Texas, by Virtue of Certificate No 524 issued to Samuel L. Cooke, situated in Zapata County, about 16 miles N. 55° E from Carrizo and bounded as follows; Beginning at a post the S. Corner of No 563 for the E. Corner of this survey; Thence N 35° W. 3800 varas post for N. Corner and W. Corner of No 555; Thence S. 55° W. 950 Varas to a

2 post for W Corner; Thence S. 35° E. 3800 Varas to a post for S. Corner; Thence N. 55° E. 950 Varas to the place of beginning, Containing 640 acres. Twelfth tract. Being Survey No 590 made for the State of Texas by Virtue of Certificate No 1017 issued to Mrs Martha Vogles, situated in Zapata County and bounded as follows; Beginning at a large post in edge of arroyo, being the North Corner of two leagues of the J. M. Conales; Thence S. 35° E with same 4250 Varas, to post the W Corner of No 603 and S. W. Corner hereof; Thence N. 55° E. 620 Varas to a post for Corner and for N. Corner of No 603; Thence S 35° E. 1328 Varas to a post for S. Corner; Thence N. 55° E. 1111 Varas to a post for E. Corner; Thence N 35° W. 2893 Varas to a post for N. E. Corner and West Corner of 584; Thence S. 55° W. 975 Varas to a Corner, the S. Corner of No 564; Thence N 35° W 3800 Varas to a post for N. Corner and W Corner of 564; Thence S. 55° W. 450 Varas to a post for Corner and S. Corner of 565; Thence N 35° W. 545 Varas to a post for a Corner; Thence S. 55° W. 306 Varas to a post for W Corner; Thence S. 35° E. 1660 Varas to the place of beginning, Containing 1280 acres. Thirteenth tract, Being Survey No 585, made for the State of Texas, by Virtue of Certificate No 1586, issued to S. P. Peebles, situated in Zapata County, about 18 miles N. 62 E from Carrizo and bounded as follows; Beginning at a post, the S. Corner of 584 and S. 55° W. 6352 Varas from the N. Corner of Viela tract. Thence S 55° W. 2688 Varas to a post for S. Corner; Thence N. 35° W. 2688 Varas to a post for W. Corner: Thence N 55° E. 2688 Varas to a post for N. Corner; Thence S. 35° E. 2688 Varas to the place of beginning, Containing 1280 acres. Fourteenth tract. Being Survey No 586, made for the State of Texas by Virtue of Certificate No 1710. issued to E. P. Ashley, Situated in Zapata County about 16 miles N. 63° E. from Carrizo and bounded as follows; Beginning at a post in N. W. line of "La Viela" tract, S. 55° W. 9040 Varas from its N. Corner, for the E Corner of this Survey, being the S. Corner of 585, S. P. Peebles. Thence S. 55° W. 2688 Varas to a post for S. Corner; Thence N 35° W. 2688 Varas to a post for W. Corner; Thence N. 55° E. 2688 Varas to a post for N. Corner: Thence S. 35° E. 2688 Varas to the place of beginning, Containing 1280 acres. Fifteenth tract. Being Survey No 587, made for the State of Texas by Virtue of Certificate No 1788, issued to J. T. Sedgeley, Situated in Zapata County about 15½ Miles N. 60 E. from Carrizo and bounded as follows; Beginning at a post in the N. W. line of Viela tract, S. 55° W. 11728 Varas from its N Corner, being also the S Corner of 586. E. P. Ashley. Thence N. 35° W. 2688 Varas to a post for W. Corner of 586; Thence N 55° E. 8064 Varas to a post for E. Corner of this and S. Corner of 552, R. L. Robinson; Thence N 35° W. 702 Varas to a post for N. Corner and E. Corner of 562, Jas Campbell; Thence S. 55° W. 8525 Varas With line of surveys Nos 562, 561, 559, and 563 to a post for W. Corner of this survey; Thence S. 35° E. 3390 Varas to a post for S. Corner; Thence N. 55° E. 461 Varas to the place of beginning, Containing 1280 acres. Sixteenth tract. Being Survey No 550 made for the State of Texas by Virtue of Certificate 493 issued to the M. K. & T. Ry Co. Situated in Zapata County about 17 miles N. 75° E. from Carrizo and bounded as follows; Beginning at a post, the S. Corner of 549 for the W. Corner hereof; Thence N. 55° E. at 1636 Varas, E Corner of 549, at 1700 Varas post for N. Corner hereof; Thence S. 35° E. With surveys 522 and 521 at 2125 Varas post for E. Corner of 521: Thence S. 55° W. at 1700 Varas post Marked X for S. Corner; Thence N 35° W. 2125 Varas to the place of beginning, Containing 640 acres. Seventeenth tract. Being a Small Strip of public domain Situated in Zapata County bounded as follows; Beginning at the N. Corner of 549,

counter #1259

1562 Thence S. 35° E. 2208 varas to E. Corner of 549; Thence N. 55° E. 64 varas to N. Corner of 550; Thence N. 35° W. 2208 varas to E. Corner of 603; Thence S. 55° W. 64 varas to the place of beginning, Containing 25 acres of land more or less. It is further ordered that the plaintiffs in error Leonard Haynes and A. M. Haynes do have and recover of and from the Defendant in error, The State of Texas all costs in this behalf expended in this Court, in the Court of Civil Appeals and in the District Court and this decision be certified to the District Court for observance.

1563. Juan Manuel Flores etal
vs. From Travis Co = 3rd District.
The State of Texas.

1907: Writ issued Sept 6th to Travis Co

Opinion delivered by Associate Justice Brown.

This cause came on to be heard on writ of error to the Court of Civil Appeals for the Third Supreme Judicial District and the original transcript in said cause being before the Court as well as the transcript showing the proceedings had in said Court of Civil Appeals and these having been duly Considered, because it is the Opinion of this Court that there was error in the Judgment of the Court of Civil Appeals and District Court, it is therefore Considered adjudged and ordered that said Judgments be reversed; And this Court proceeding to render such Judgment as should have been rendered, it is therefore ordered, adjudged and decreed that the Defendant in error The State of Texas take nothing by its suit and that the plaintiffs in error Juan Manuel Flores, Regulo Flores, Eusebio Garcia, Jose Maria Garcia, Jose Dionisio Uribe, Emeterio Flores and Aurelio Flores go hence without day and do have and recover of and from The State of Texas a certain tract of land in Webb County Texas, described in plaintiffs petition and bounded as follows: Beginning at the N. W. Corner of a Survey in the name of Felipe de le Pena and Called Los Animas, a Stone Slab and post whence a Coma marked III in a Mott bears S. 88½° West 142 Varas: Thence west at 2100 varas Cross the road from Los Animas at 3504 varas entered Canon at 3992 varas, placed Stone Mound on the point of Junction of the Canon de Mirardo and the Canon de la Alberca, at 4040 varas Cross said Canon Marked Guisache, North of line of 6400 varas, a Stone Slab and post for the S. W Corner Called Lindero de Cristanto from whence a Mesquite Marked X bears S. 2½° West 100 Varas. Thence North at 4010 varas Cross old road from Laredo to the Salt Lake at 5640 Varas. Cross new road from Laredo to Salt Lake, at 8860 varas, a Stone pillar Marked X on its South face for the N. W. Corner, designated as the Lindero de la Leon, from whence a Mesquite Marked X bears S. 2° West 25. Varas and the Center of a limestone quarry bears N. 25° East 185. Varas; Thence East ascend border of Table Land, placed three large Stones for line Marked at 2060 Varas, Cross road from the Alberca to the Ojuelos and Laredo at 7050 varas, post and Stone Slab Marked X for line marked at 1060 varas Cross road from the Alberca to the Angelos; at 1400 Varas set post and Stone Slab in prairie, Marked on its South face VI the N. E. Corner Called Lindero de las 3 Aristones; Thence 1500 Varas pass Laguna del Javali, 150 Varas +

No 165

counter 1260

MEMORANDUM

Texas General Land Office • David Dewhurst • Commissioner

DATE: April 4, 2001

TO: GLO Files: San Patricio 1st Class 657, San Patricio 1st Class 806, San Patricio Scrip 3491, San Patricio Scrip 3494, San Patricio Scrip 3544, and School File 150238, describing property located in Zapata County, Texas

FROM: LaNell Aston, Office of Chief Clerk

SUBJECT: Agreed Final Judgement being, *William Herbert Hunt Trust Estate, J.W. Beavers, Jr., Trustee v. Garry Mauro, Commissioner of the General Land Office of the State of Texas*; Cause No. 97-12885, 261st District, Travis County, Texas.

Persons researching property and mineral ownership in the records of Zapata County, Texas have recently brought to the attention of this office that some of the abstract numbers recited in the subject Judgement are inconsistent with the county and other state records, therefore, causing confusion when identifying the appropriate property and mineral owners.

After a careful examination of the records of the General Land Office (GLO) and in an effort to clarify the records of this office, the following is the correct listing of the abstract numbers and survey information in relation to the above listed GLO records which are included in the subject Judgement, as well as other related surveys.

GLO file San Patricio 1st Class 657, contains the records of a two-league grant in the name of Ignacio Gutierrez, aka "Los Mogotes". The abstract number recited in the subject Judgement pertaining to this survey, being Abst. 566, is recited correctly.

GLO file San Patricio 1st Class 806, contains the records of a 2 + league grant in the name of Manuel Ramirez, aka "La Laguna de los Venados". The abstract number recited in the subject Judgement pertaining to this survey, being Abst. 401, is incorrect. The correct Abstract No. is 141.

GLO file San Patricio Scrip 3491, contains the records of Survey 423 and 427. Survey 423 was located for B. J. Baldwin by virtue of Confederate Scrip Certificate No. 142, patented for 1280 acres and assigned Abstract No. 212. Confederate Scrip Certificates authorized the grantee to have surveyed 1280 acres of unappropriated public domain of the State of Texas. In accordance with the Act granting Confederate Scrip grants, a companion survey of 1280 acres was to be surveyed for the benefit of the Permanent School Fund (PSF) by virtue of the same certificate. The companion PSF survey was typically sold by the State and the revenue was deposited into the PSF. The companion PSF Survey No. 427, located by virtue this Certificate was found to be in conflict with a senior survey in the name of Manuel Ramirez mentioned above. Survey 427 was never sold by the State and therefore was not assigned an abstract number by the GLO. The abstract number recited in the subject Judgement pertaining to Survey 427, being Abstract 212, is incorrect. Survey 427, included in the Judgement, should be recited as having no abstract number.

SKETCH FILE No. 20
COUNTY Zapata

counter 78612

15. A justiciable controversy exists between Plaintiff and Defendant concerning the rights and status of the Plaintiff and Defendant because records with respect to the Lands maintained by the Defendant reveal that Defendant purports to claim title as to some or all of the Lands notwithstanding the referenced judgment and mandate of the Texas Supreme Court.

16. The records of Defendant cast a cloud on the title of the Plaintiff and have impaired and threaten to continue to impair the rights of Plaintiff with respect to the Lands.

17. The erroneous records of Defendant pose a continuing harm to Plaintiff's quiet enjoyment of the Lands in accordance with the ruling and mandate of the Supreme Court.

RELIEF REQUESTED

18. Plaintiff requests the following declaration: As a result of the judgment rendered by the Texas Supreme Court on March 27, 1907, in No. 1561, *Leonard Haynes v. State of Texas*, and the mandate to the District Court of Travis County, Texas, issued October 4, 1907, pursuant to said judgment, the State of Texas has no claim to title to the Lands; and a declaration and order that all endorsements, memos, or other records of Defendant General Land Office stating, suggesting, or otherwise indicating to the contrary are void and of no effect.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant be cited to appear and answer, and that judgment be entered in favor of Plaintiff and against Defendant as described above.

SKETCH FILE No. 20
COUNTY Zapata

counter 78627

8. The opinion of the Texas Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, rendered March 27, 1907, and the mandate issued to the Travis County District Court on October 4, 1907, rendered judgment in favor of Haynes and awarded title to the Lands to Haynes.

9. Notations in Defendant's San Patricio Scrip Files 3491, 3494, 3544, and School Land File 150238 claim that portions of Surveys 427, 428, 431, and the tract described in paragraph 5.f. above awarded to Haynes by the Supreme Court are "free of conflict" with the Supreme Court judgment.

10. On June 16, 1954, the Defendant issued a Certificate of Facts asserting that portions of Surveys 427, 428, 431, and the tract described in paragraph 6.f. above are "unsold school land."

11. In June 1997, Plaintiff filed applications with the Railroad Commission of Texas for drilling permits for wells to be located on the Lands.

12. The Railroad Commission staff refused to process the permit applications because records of the Defendant show that the State of Texas claims title to the Lands, notwithstanding the ruling and mandate of the Texas Supreme Court referred to in paragraphs 7 and 8.

V.

REQUEST FOR DECLARATORY JUDGMENT

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. As a result of the judgment and mandate of the Texas Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, Haynes and his successor, Plaintiff and its assigns, have title to the Lands free and clear of all claims to title by the State of Texas.

SKETCH FILE No. 20
COUNTY Zapata

counter 78626

6. Plaintiff and its assigns have been the lessee and operator of oil and gas leasehold acreage covering 17,835.83 acres in Zapata County, Texas, more fully described below:

a. File No. 657, San Patricio First Class Abstract 566, Ignacio Gutierrez, Two Leagues "Los Mogotes".

b. File 806, San Patricio First Class Abstract 141, Manuel Ramirez, Two Plus Leagues, Mexican Grant.

c. File 3491, San Patricio Scrip, Survey 427, no Abstract Number assigned.[1]

d. File 3494, San Patricio Scrip, Survey 428, no Abstract Number assigned.

e. File 3544, San Patricio Scrip, Survey 431, no Abstract Number assigned.

f. Approximately 300 acres described by metes and bounds in the mandate of the Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, issued to the District Court of Travis County, Texas, in No. 1561, *Leonard Haynes v. State of Texas*, on October 4, 1907.

(Said properties are hereinafter referred to as "the Lands.")

7. On March 27, 1907, the Texas Supreme Court rendered judgment in No. 1561, *Leonard Haynes v. The State of Texas* (reported 100 S.W. 915), rendering judgment against the State of Texas and in favor of Leonard Haynes, pursuant to which a mandate was issued to the District Court of Travis County, Texas, on October 4, 1907.

---

[1] No Abstract Numbers were assigned to Surveys 427, 428, 431, described in subsections c, d, and e, because they were never sold by the State.

SKETCH FILE No. 20
COUNTY Zapata

counter 78625

Permanent School Fund. The General Land Office may be served with process by service on Jerry Patterson, Commissioner of the General Land Office, Stephen F. Austin Building, 1700 North Congress, Austin, Texas 78701.

II.

VENUE

3. This is a suit to remove a cloud on title caused by records maintained in the offices of the Defendant in Travis County, Texas, and therefore venue is appropriate in Travis County.

III.

DECLARATORY JUDGMENT REQUESTED

4. The Plaintiff requests a declaratory judgment pursuant to §§ 37.003 and 37.004 of the Texas Civil Practice and Remedies Code.

IV.

FACTS

5. Plaintiff previously filed suit against Defendant, in Cause No. 97-12885, 261st Judicial District Court, Travis County, Texas, seeking a Declaratory Judgment. An Agreed Final Judgment was entered on March 24, 1998 in that cause. This Petition is filed in order to correct errors made in the description of the property at issue in Cause No.97-12885 and for the final judgment in this cause to supersede the Agreed Final Judgment in Cause No.97-12885.

SKETCH FILE No. 20
COUNTY Zapata

counter 78624

No. GN300158

WILLIAM HERBERT HUNT TRUST ESTATE, J. W. BEAVERS, JR., TRUSTEE,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	TRAVIS COUNTY, TEXAS
JERRY PATTERSON, COMMISSIONER, THE GENERAL LAND OFFICE OF THE STATE OF TEXAS,	§	
Defendant.	§	200 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, The William Herbert Hunt Trust Estate, J.W. Beavers, Jr., Trustee ("Plaintiff" or "Hunt") complaining of the General Land Office of the State of Texas, and for cause of action would respectfully show the Court as follows:

I.

PARTIES

1. Plaintiff is an owner and operator of oil and gas properties in the State of Texas with its principal place of business at 3900 Thanksgiving Tower, Dallas, Dallas County, Texas 75201.

2. Defendant, the General Land Office of the State of Texas, is the agency of the State of Texas charged with administration and management of lands claimed by or owned by the Texas

SKETCH FILE No. 20
COUNTY Zapata

counter 78623

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of January 2003, a true and correct copy of the foregoing Original Answer of Defendant Jerry Patterson, Commissioner of the General Land Office of the State of Texas, was sent by courier to the following:

Michael E. McElroy
Kathryn J. Howard
McELROY, SULLIVAN, RYAN & MILLER, L.L.P.
P. O. Box 12127
Austin, Texas 78711
(512) 327-8111
(512) 327-6566 FAX

Attorneys for Plaintiff, William Herbert Hunt Trust Estate

JEFFEE MARTINEZ-VARGAS

SKETCH FILE No. 20
COUNTY Zapata

counter 78622

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that Plaintiff takes nothing by its suit. Defendant further prays for such other and further relief, both at law and in equity, to which Defendant may show itself to be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

JEFFREY S. BOYD
Deputy Attorney General for Litigation

KAREN W. KORNELL
Assistant Attorney General
Chief, Natural Resources Division

JEFFEE MARTINEZ-VARGAS
State Bar No. 13144665
Assistant Attorney General
Natural Resources Division
P. O. Box 12548
Austin, Texas
(512) 475-4138
(512) 320-0911 FAX

Attorneys for Defendant, Jerry Patterson,
Commissioner of the General Land Office

counter 7862/

No. GN300158

WILLIAM HERBERT HUNT TRUST ESTATE, J. W. BEAVERS, JR., TRUSTEE,	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
v.	§	
JERRY PATTERSON, COMMISSIONER, THE GENERAL LAND OFFICE OF THE STATE OF TEXAS,	§	**TRAVIS COUNTY, TEXAS**
Defendant.	§	200 **JUDICIAL DISTRICT**

ORIGINAL ANSWER OF DEFENDANT
JERRY PATTERSON, COMMISSIONER

TO THE HONORABLE COURT:

NOW COMES Jerry Patterson, Commissioner of the General Land Office of the State of Texas, Defendant, appearing by and through the Office of the Attorney General of Texas, and files this answer to Plaintiff's Original Petition filed by the William Herbert Hunt Trust Estate, J.W. Beavers, Jr., Trustee. Defendant would respectfully show the Court as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation contained in Plaintiff's Original Petition, and demands strict proof thereof.

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SKETCH FILE No. 20
COUNTY Zapata

counter 78620

APPROVED AS TO FORM AND SUBSTANCE:

Michael E. McElroy
State Bar No. 13584200
Kathryn J. Howard
State Bar No. 24027238
McELROY, SULLIVAN, RYAN & MILLER, L.L.P.
P. O. Box 12127
Austin, Texas 78711
(512) 327-8111
(512) 327-6566 FAX

Attorneys for Plaintiff, William Herbert Hunt Trust Estate

By: _____
Kathryn J. Howard

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

JEFFREY S. BOYD
Deputy Attorney General for Litigation

KAREN W. KORNELL
Assistant Attorney General
Chief, Natural Resources Division

JEFFEE MARTINEZ-VARGAS
State Bar No. 13144665
Assistant Attorney General
Natural Resources Division
P. O. Box 12548
Austin, Texas
(512) 475-4138
(512) 320-0911 FAX

Attorneys for Defendant, Jerry Patterson,
Commissioner of the General Land Office

By: _____
Jeffee Martinez-Vargas

SKETCH FILE No. 20
COUNTY Zapata

counter 78619

5. The records of Defendant, which are inconsistent with the ruling and mandate of the Supreme Court referenced above, cast a cloud on title of Plaintiff and have impaired and threaten to continue to impair the rights of Plaintiff with respect to the Lands.

The Court is of the opinion that Plaintiff is entitled to a declaratory judgment as requested. It is therefore **ORDERED, ADJUDGED, and DECREED** that the State of Texas has no claim to title to the Lands.

It is further **ORDERED, ADJUDGED, and DECREED** that all endorsements, memos, or other records of the Defendant General Land Office stating, suggesting, or otherwise indicating to the contrary are void and of no effect.

It is further **ORDERED, ADJUDGED, and DECREED** that Defendant shall maintain a copy of this judgment in the Defendant's records concerning the Lands.

All costs of Court expended or incurred in this cause are adjudged against the party incurring same. All other relief not expressly granted is denied.

Signed this 16 day of January, 2003.

JUDGE PRESIDING

SKETCH FILE No. 20
COUNTY Zapata

counter 78618

2. The opinion of the Texas Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, rendered March 27, 1907, and the mandate issued to the Travis County District Court on October 4, 1907, rendered judgment in favor of Haynes and awarded Haynes title to the lands described in the following instruments:

a. File No. 657, San Patricio First Class Abstract 566, Ignacio Gutierrez, Two Leagues "Los Mogotes".

b. File 806, San Patricio First Class Abstract 141, Manuel Ramirez, Two Plus Leagues, Mexican Grant.

c. File 3491, San Patricio Scrip, Survey 427.

d. File 3494, San Patricio Scrip, Survey 428.

e. File 3544, San Patricio Scrip, Survey 431.

f. Approximately 300 acres described by metes and bounds in the mandate of the Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, issued to the District Court of Travis County, Texas, in No. 1561, *Leonard Haynes v. State of Texas*, on October 4, 1907.

Said properties are hereinafter referred to as "the Lands."

3. Notwithstanding the ruling and mandate of the Texas Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, portions of Surveys 427, 428, 431, and the approximately 300-acre tract described in paragraph f. above, are listed on Defendant's records as surveyed unsold School Land.

4. Plaintiff and its assigns, as successor in title to Leonard Haynes, are the owners and operators of oil and gas wells located on the Lands.

SKETCH FILE No. 20
COUNTY Zapata

counter 78617

No. GN300158

WILLIAM HERBERT HUNT TRUST ESTATE, J. W. BEAVERS, JR., TRUSTEE,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	TRAVIS COUNTY, TEXAS
JERRY PATTERSON, COMMISSIONER, THE GENERAL LAND OFFICE OF THE STATE OF TEXAS,	§	
Defendant.	§	200 JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this day came on to be heard the above-entitled and numbered cause, and William Herbert Hunt Trust Estate, Plaintiff, appeared by attorney of record and announced ready for trial, and Jerry Patterson, Commissioner of the General Land Office of the State of Texas, appeared by attorney of record and announced ready for trial, and all questions of fact were submitted to the Court.

The Court, after having first determined that it has jurisdiction of the parties hereto and the subject matter hereof, and hearing the evidence and arguments of counsel, has determined that the following facts are undisputed.

1. On March 27, 1907, the Texas Supreme Court rendered judgment in No. 1561, *Leonard Haynes v. State of Texas* (reported 100 S.W. 915), rendering judgment against the State of Texas and in favor of Leonard Haynes pursuant to which a mandate was issued to the District Court of Travis County, Texas, on October 4, 1907.

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2003 JAN 16 PM 1:49

SKETCH FILE No. 20
COUNTY Zapata

counter 78614

TEXAS GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

January 22, 2003

McElroy, Sullivan, Ryan & Miller, L.L.P.
1201 Spyglass Drive, Suite 200
Austin, Texas 78746
Attn: Katie Howard

RE: William Herbert Hunt Trust Estate, J. W. Beavers, Jr., Trustee vs. Jerry Patterson, Commissioner, General Land Office, State of Texas General Land Office, Agreed Final Judgement, Cause No. 6N300158

Dear Ms. Howard:

This letter is to acknowledge receipt of the fully executed referenced judgement dated January 16, 2003. I will have the completed documents filed in the appropriate General Land Office archive files as permanent records of this office. For future reference, those files are as follows:

San Patricio-1st Class-657;
San Patricio-1st Class-806;
San Patricio-Scrip-3491;
San Patricio-Scrip-3494;
San Patricio-Scrip-3544; and
School File 150238

Thank you for you assistance with this project.

Sincerely,

LaNell H. Aston
Executive Assistant
Office of Chief Clerk

cc: Kay Molina, GLO Legal Services
Jeffee Martinez-Vargas, Asst. Attorney General, State of Texas

Stephen F. Austin Building • 1700 North Congress Avenue • Austin, Texas 78701-1495
Post Office Box 12873 • Austin, Texas 78711-2873
512-463-5001 • 800-998-4GLO
www.glo.state.tx.us

SKETCH FILE No. 20
COUNTY Zapata

counter 78615

Identified in 1998 Agreed Judgement
SKETCH FILE No. 20
COUNTY Zapata
F.M.Makeig S.2776
Eliza Rozell S.2778
Thomas Burtrang D.403
J.M.Lummus S.3544 Abst.300
Mrs. Martha Hall Magotes" S.3564
Gutierrez
Los Ignacio S.3567
J.K.Chrisman
Lucy Inglewberry S.3565
J.O.Thomas S.3494 Abst.233
B.J.Baldwin S.3491 Abst.212
E.M.Black "La Laguna de los Venados" S.3566
Manuel Ramirez
J.M.Sutrait S.3492
J.M.Pattillo S.3569
J.C.Thomas (No Abst.#) (S.3494)
Court Decree in 148229 (S.3492)
Court Decree in 150724 (S.2867)
(S.3544 No Abst.#)
(S.3491 No Abst.#)
I-657
I-806
Abst.141
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Geographical cent Zapata
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GLO file San Patricio Scrip 3494, contains the records of Surveys 424 and 428. Survey 424 was located for J. O. Thomas by virtue of Confederate Scrip Certificate No. 410, patented for 1280 acres and assigned Abstract No. 233. The companion PSF Survey No. 428, located by virtue of the same Certificate, was found to be in conflict with a senior survey in the name of Manuel Ramirez mentioned above. Survey 428 was never sold by the State and therefore was not assigned an abstract number by the GLO. The abstract number recited in the subject Judgement pertaining to Survey 428, being Abstract 233, is incorrect. Survey 428, included in the Judgement, should be recited as having no abstract number.

GLO file San Patricio Scrip 3544, contains the records of Surveys 430, 431, 432, and 433. Surveys 430 and 432 were located for James M. Lummus by virtue of Confederate Scrip Certificate No. 1190, patented for 640 acres each and assigned Abstract Nos. 300 and 301, respectively. The companion PSF Surveys No. 431 and 433 were located by virtue of the same Certificate. Survey 431 was never sold by the State and therefore was not assigned an abstract number by the GLO. Survey 433 was sold to Hilario Martinez by virtue of his application to purchase said survey dated December 26, 1906, filed in GLO School File 93805. The file jacket of File 93805 is endorsed, "Canceled account of illegal sale. This land recovered from state in suit of L. Haynes et al v. state. See San Pat. S. 3491. John J. Terrell Comr. 4/27/7". File also endorsed, "Canceled in error, see letter within 9-17-1930." Additional endorsement, "minerals in this land recovered under judgement - see file 148229, LCH 1-15-35". "Subject to Relinquishment Act." Survey 433 has not been patented and no evidence is found that an abstract number has been assigned to Survey 433. The abstract numbers recited in the subject Judgement as pertaining to Survey 431 are incorrect. Survey 431, included in the Judgement, should be recited as having no abstract number.

GLO School File Number 150238 contains the records of a tract of land surveyed for the PSF and described in the subject Judgement at Section IV (5) (f) as approximately 300 acres described by metes and bounds in the mandate of the Supreme Court in No. 1561, *Leonard Haynes v. State of Texas*, issued to the District Count of Travis County, Texas, in No. 1561, *Leonard Haynes v. State of Texas*, on October 4, 1907. This 300-acre tract was never assigned an abstract number by the GLO and is recited in the subject judgement correctly.

File No. Sketch File 20

Zapata County

Clarification of Survey Nos & Abstract Nos.

Date Filed: ~~Feb~~. July 9, 2003

Jerry Patterson, Commissioner

By Douglas Howard

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Respectfully submitted,

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Kathryn J. Howard
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The William Herbert Hunt Trust Estate

By: _____
Kathryn J. Howard

SKETCH FILE No. 20
COUNTY Zapata

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