

CHAMBERS CO RLD. SK. NO. 33

(FLAT FOLDER)

TITLE TO THE TRINTY RIVER DELTA ISLANDS
IN CHAMBERS CO.

GENERAL HISTORY OF THE TITLE
MAP SHOWING THE MINERAL SUB. DIVISIONS.

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TITLE TO THE TRINITY RIVER DELTA ISLANDS
IN CHAMBERS COUNTY, TEXAS

RECEIVED

APR 4 1950

GENERAL LAND OFFICE

I.

GENERAL HISTORY OF THE TITLE

The land under consideration consists of islands located at the mouth of the Trinity River in Chambers County, Texas, as reflected by the accompanying map which was prepared by W. O. Work, a surveyor, who resides at Anahuac, Texas. These islands are owned in various undivided interests by the following persons: Maxwell Higginbotham, Cockburn Oil Corporation, A. B. Shaver and Joe Neff Basore, Eppie G. Higginbotham, Federal Royalty Company, Katharine S. Evans, Guy C. Jackson, Jr., Charles Troy, Oliver J. Todd, John D. Todd, R. C. Wilcox, the Heirs of Cyrus W. Saladee, Sarah C. Pickrel, a widow, and the Heirs and Assigns of Horace J. Pickrel, possibly including Everett H. Cain, Jack E. Stanley, N. A. Walker, P. H. Scherer and Mark Pickrel. These people claim the entire land in undivided interests under regular chains of title under the widow and heirs of Thomas Jefferson Chambers. The records of Chambers County, Texas, reflect no existing title of record adverse to that of the above persons. We submit herewith a complete abstract of title to the above lands reflecting the foregoing facts.

This land is a part of a Two and One-half League Grant which was made by the State of Coahuila and Texas to Thomas Jefferson Chambers on September 23, 1834. (Abstract, page 34). The islands under consideration were included in this grant, as reflected by the surveyor's plat No. 4 attached to the original grant. You will note that there are other grants and patents which conflict with various portions

of the Chambers Two and One-half League Survey, but the islands under consideration are not within any of these conflicts. (Abstract, pages 40 to 68).

Briefly stated, the records reflect good title into the above named persons to the islands under consideration under the original grantee, Thomas Jefferson Chambers, and there are no active adverse claims to or conflicts with their ownership, which dates back to the original grant in 1834.

Going behind the grant to Judge Chambers, we find that on September 22, 1830, letters of citizenship were granted to "Thomas Jefferson Chambers, Counsellor, whom the Tribunal of Justice, after examining his diploma, shall likewise proceed to examine, that he may practice his profession in the state", by Decree No. 151 of the Congress of the State of Coahuila and Texas. (1 Gammel's Laws, page 272).

By a later decree, No. 245, enacted January 8, 1834, the Congress provided that "the examination of Thomas Jefferson Chambers, as provided by decree of the 22nd of September, 1830, is hereby dispensed with; in pursuance thereof he is authorized to practice as counsellor in the state by sole virtue of the diploma and credentials he has presented." (1 Gammel's Laws, page 336).

Thus did Thomas Jefferson Chambers become a citizen of the Republic of Mexico and was licensed by the State of Coahuila and Texas to practice law in the state.

II.

THE JURY LAW OF 1834 AND THE GRANT TO THOMAS JEFFERSON CHAMBERS THEREUNDER

By Decree No. 277 enacted on April 17, 1834, known as the Jury Law, the Congress of Coahuila and Texas

provided for the establishment of the Superior Judicial Court of Texas composed of one Superior Judge, one Secretary and one Sheriff for the Judicial Circuit of Texas. Article 17 of this enactment required that "to be a Superior Judge it is required that he be a citizen in the full exercise of his rights, over twenty-five years of age and a lawyer by profession and a man of probity and science. He shall be appointed by the Congress on the nomination of the Governor, en terna, and he cannot be removed from office except for some cause legally manifested and proved. His salary shall be \$3,000.00 per annum." (1 Gammel's Laws, pages 364 and 366).

Article 139 of this Decree provides:

"The salaries established by this law shall be paid, for the first year, with vacant lands situated within the judicial circuit at the rate of \$100.00 for each sitio." (1 Gammel's Laws, page 379).

By Decree No. 286 passed by the Congress of the State of Coahuila and Texas on May 5, 1834, it was provided that "during the approaching recess of Congress the executive may appoint provisionally the Superior Circuit Judge of Texas mentioned in the law relative to jurors, without adhering to the provision of Article 17 of said law in respect to making that appointment." (1 Gammel's Laws, page 386).

From the decision by the Supreme Court of Texas in the case of Chambers vs. Fisk, 22 Texas at page 515, it appears that on June 16, 1834, the Governor, Villa Senor, issued a commission to Thomas Jefferson Chambers as Superior Judge of Texas, reciting "I have thought proper to appoint him Provisional Superior Judge of the Circuit of Texas for the administration in all its extent according to the Jury Law of the 17th of April past."

It therefore affirmatively appears that Thomas Jefferson Chambers was appointed as the first Superior Judge of the Judicial Circuit of Texas and as such, on July 29, 1834, made application for a grant of 30 leagues of land in order that he might enter upon the discharge of the duties of his office and "to arrange the manner of receiving my salary to enable me to subsist and which I am to receive in lands, according to the law on the matter." (Abstract, page 34). The State of Coahuila and Texas thereupon granted to Judge Chambers the lands as requested "as salary as Supreme (Superior) Judge of Texas according to Articles 17 and 139 of the Law of April 17, 1834." (Abstract, page 36). Thus, the State of Coahuila and Texas compensated Judge Chambers for his first year's salary of \$3,000.00 in land within the Judicial Circuit of Texas at the rate of \$100.00 per league under the Jury Law.

The land under consideration is a portion of Fourth Tract, containing approximately two and one-half leagues, described in the grant to Judge Chambers. We have been advised by the General Land Office of Texas that the islands located at the mouth of the Trinity River as shown on Plat No. 4 attached to the grant are a part of the Chambers Grant. (See letter from the General Land Office dated November 23, 1949).

This two and a one-half league grant was occupied by William Chambers, for Judge Chambers, "as far back as 1846, and thus continued in possession for a much longer time than was necessary to prescribe under the ten years statute. He was in possession when the statute was suspended during the period of our Civil War... William Chambers during that period being in actual possession of a part of the grant,

holding the same for T. J. Chambers, the latter under the ten years statute then in force could claim possession to the extent of the boundaries of the grant." We cite this statement from the opinion in the case of Harris vs. Iglehart (Abstract, page 227) to evidence the activity of the Chambers title. At the present time we are advised that there is a tenant in possession of the islands under a tenancy contract with Guy C. Jackson, Jr., who with his co-tenants deraign title in an unbroken chain back to Judge Chambers. (Abstract, page 393).

As reflected by such possession and by numerous conveyances in the abstracts, the Chambers title has been active at all times since the date of the grant in 1834 and the title to the islands in the Chambers heirs and their assigns is well recognized and unquestioned other than with respect to the question of validity of the original grant as hereafter mentioned.

III.

THE COLONIZATION LAWS

Attacks have been made on the validity of the grant to Thomas Jefferson Chambers in the cases of Harris vs. Iglehart (Abstract, page 227) and Thomas Jefferson Chambers Development Company vs. Stanolind Oil and Gas Company (Abstract, page 440). These attacks were apparently based on the littoral league prohibitions contained in the various Mexican Colonization Acts.

In the case of Harris vs. Iglehart which was decided by the District Court of Chambers County, Texas, in 1906 the title to a portion of the Chambers Two and One-half League Grant was involved. Such portion of the land was in conflict with an early grant to Moses A. Carroll and

the tract in controversy included no part of the delta and islands under consideration herein. In that case the plaintiffs, claiming under the Carroll Grant, asserted that the Chambers Two and One-half League Grant was void in that it was located within the ten littoral leagues without the consent of the executive of the Mexican Government being shown as required by the colonization acts hereafter quoted. Upon appeal of this case to the Austin Court of Civil Appeals, it was held that the claimant under the Chambers title held title to the land by limitation and, since either the Chambers or the Carroll Grant was a valid grant, "we need not pass upon and determine whether the Chambers grant was void as insisted upon by the appellant on the ground that it was located within the ten littoral leagues". (Abstract, page 227). The contention raised with reference to the validity of the Chambers Grant was therefore immaterial to the decision in the Iglehart case and the court refused to disaffirm the Chambers Grant.

A similar case wherein the question of validity of the Chambers Grant was raised is the case of Thomas Jefferson Chambers Development Company vs. Stanolind Oil and Gas Company which was decided by the District Court of the United States at Galveston, Texas. (Abstract, page 440). As in the Iglehart case, the land involved included no part of the delta and islands under consideration, the tract in controversy being located in the Carroll Survey conflict and the case was decided on the basis of limitation title, it being immaterial whether such limitation title was matured under the Carroll or under the Chambers Grant, there being title out of the sovereignty under one or the other of the grants. Defendants raised the question of validity of the Chambers Grant under the littoral league provisions of the

colonization acts and the District Judge attempted to declare the entire two and one-half league Chambers Grant to be void. This case ended in the District Court and we find no decision therein by the Appellate Courts.

The decision in the Stanolind case above noted is not binding on the owners of the islands first, because such persons or their predecessors in title were not parties to the suit; secondly, because the tract of land in controversy in such case included no part of the delta and islands which they claim and own. Since the Stanolind case involves neither the land under consideration nor the owners thereof, it has no direct bearing on title to the land under consideration either under the rule of res judicata or under the doctrine of stare decisis. Particularly, under the doctrine of stare decisis, the matter must be decided by the appellate courts before it becomes a rule of decision. As pointed out, no appeal was had in the Stanolind case. (See 11 Tex. Jur., page 838, Sec. 96). Under the rule of res judicata it is well established that a party must have his day in court; it is a well established and defined rule that a right or question of fact determined by a court of competent jurisdiction is not binding in a subsequent suit between different parties, regardless of whether the subject matter of the two suits is the same. (See 26 Tex. Jur., pages 11 and 12, Sec. 353).

It is further apparent that the question of validity of the Chambers Grant was immaterial to the decision in the Stanolind case, and it appears to us that the District Judge attempted to infringe upon the legal rights of persons who were not then before the court and such declaration by the court should be regarded as mere dictum.

We have reviewed the briefs filed in the trial court in the Stanolind case by both parties and we conclude that if the matter had been properly presented to the court by all interested parties, the Chambers Grant would have been upheld. It appears from the contentions raised in the Stanolind case that the attack on the Chambers Grant is based entirely upon the provisions of the Mexican Colonization Acts. It is our firm conclusion that the Chambers Grant was issued under and by virtue of the provisions of the Jury Law hereinabove mentioned which was a special law of the Congress of the State of Coahuila and Texas which provided for grants of land to the Superior Judge for the purpose of paying his first year's salary and had nothing to do with colonization grants. On the other hand, the colonization acts related only to grants to colonists and settlers and had no relation to the Jury Law and the grants to the Superior Judge thereunder.

The General Colonization Law of August 18, 1824, passed by the Mexican General Congress related to colonization and settlement. In Article 1 the Government offered to foreigners desirous of settling in Texas the right to settle, and in Article 2 it is specifically provided that this law relates to those lands "which may be occupied by settlers". Article 3 provides that the State Congress shall frame laws or regulations for the colonization of lands in conformity with the Federal Law and Constitution. Article 7 provides that until the year 1840 the General Congress shall not prohibit the admission of foreigners to colonize. Article 12 specifically prohibits grants of land exceeding eleven leagues. The littoral league prohibition of this Act is contained in Article 4 thereof, which provides as follows:

"No lands lying within twenty leagues of the boundaries with any foreign nation nor within ten leagues of the coast can be occupied by settlers without the previous approbation of the Supreme Executive Power."

The entire tenor and subject of the Act is colonization and settlement of colonial grants, except one special provision thereof relating to grants to military men and another relating to grants made by the Supreme Executive. The Federal Act further authorizes the various states of the Mexican Republic to enact regulations for the colonization of those lands which appertain to them in conformity with the Federal Colonization Act. (1 Gammel's Laws, page 97).

Pursuant to the above Federal Colonization Act, on March 24, 1825, the Congress of the State of Coahuila and Texas enacted Decree No. 16 inviting foreigners to enter and settle within the state. (1 Gammel's Laws, page 125). The act also contains various provisions for colonization of lands by contractors or empresarios and provides for the amount of land to be granted to each settler, the amount to be paid therefor and prohibits ownership of more than eleven leagues by any individual. In Article 7 the provision of the Federal Colonization Law prohibiting settlements within the twenty frontier leagues and the ten littoral leagues is set forth. This Act is in its entirety a colonization law relating only to grants of land to colonists and settlement of such lands by them. There is no provision therein relative to grants of land to the judges under the Jury Law or under any other special law enacted by the Congress of Coahuila and Texas, and no such provisions will be found in any of the other colonization acts herein referred to.

Under the above state law, on September 4, 1827, the Executive Department of the State of Coahuila and Texas issued "instructions to which the Commissioner for the dis-

tribution of lands to the new colonists who present themselves to settle in the state, according to the colonization law of March 24, 1825," wherein it was provided that examination be made of the certificates of foreign colonists, that oaths be administered to them, and providing for issuing titles and granting possession to the new settlers, surveying their tracts, laying out townsites and related matters. We specially quote Article 5 of these instructions:

"He shall not give possession to any colonist, settled or intending to settle within twenty frontier or border leagues of the United States of the north and ten of the Gulf of Mexico unless the person interested shall present him a special order from the government wherein the approbation thereof of the national government shall be manifested." (1 Gammel's Laws, page 180).

The above rules are directed only to settlement by colonists under the colonization acts. We find no such directions under the Jury Act.

By Decree No. 190 enacted by the Congress of the State of Coahuila and Texas on April 28, 1832, provisions were made for settlement of lands by Mexicans under the empresario contracts. (1 Gammel's Laws, page 299). The Act contains various provisions with reference to entering into possession by the settlers and prohibition against alienation of the land within a certain period of time after taking possession. In Article 13 of the Act it is provided that no more than eleven leagues shall be united in the same hands. In Article 25 it is provided that "the executive shall take care that within the twenty border leagues and the ten littoral leagues no settlement be made that is not composed of two-thirds Mexicans, to whom he shall forward all petitions made on the subject accompanied by his report whether the empresarios are Mexicans or foreigners." This quoted provision indicates that such

prohibition was intended to apply to the empresarios. This entire act pertains to regulation of colonization by the contractors or empresarios.

On March 26, 1834, the State of Coahuila and Texas decided to abolish the system of colonizing land under the empresario contracts and enacted Decree No. 272 (1 Gammel's Laws, page 357) which provides that the vacant lands of the state shall be sold at public auction. Under this Act the state assumed to colonize her vacant territory by direct sale of lands to both foreigners and Mexicans who might emigrate to the state. We find no prohibition in this Act regarding settlement of the border and littoral leagues. In fact, Article 32 of this Act provides for issuance of titles to the inhabitants of the frontier of Nacogdoches and those residing East of Austin's colonies.

The foregoing represent all of the pertinent statutes and decrees which were enacted prior to the date of the grant to Thomas Jefferson Chambers.

A number of cases have been decided in Texas involving the littoral league and border league prohibitions set out in the various colonization acts. In all of the decided cases, we find that the courts were called upon to construe location of lands granted to colonists or to empresarios under the colonization acts themselves. In none of these cases do we find a decision by the court holding a grant to be invalid where such grant was issued under a special decree of the Congress of Coahuila and Texas, such as the Jury Act.

IV.

PERTINENT CONSTITUTIONAL PROVISIONS

Under the system of government established at the time of passage of the Jury Law and the grant to Judge

Chambers thereunder, the Federal Government held only those powers delegated to it by the federated states and the states retained absolute sovereignty in all matters except those delegated.

The constitutive acts of the Mexican Federation, established January 21, 1824, define the powers of the Federal and State Governments. (1 Gammel's Laws, pages 61 to 93). Articles 49 and 50 thereof state the general powers of the Federal Congress, it being specifically provided in Section 31 of Article 50 that the Congress shall dictate all laws and decrees which may conduce to accomplish the objects spoken of in Article 49, "without intermeddling with the interior administration of the states."

The State Constitution of Coahuila and Texas (1 Gammel's Laws, pages 423 to 453) provides in Article 2 that "in all rights relating to the Mexican Confederacy, the state delegates its powers and rights to the general congress of the same, but in all that belongs to the internal government and administration of said state, it retains its liberty, independence and sovereignty." In Article 15 it provides further that "all kinds of vacant property within its limits shall belong to the state." Article 97 provides that the State Congress has the prerogative to create, suspend or abolish the public offices of the state, assign, diminish or augment them, their salaries, recesses or labours, to enact what is proper for the administration, preservation and alienation of the property of the state." Article 192 of the State Constitution added that "one of the main objects of the attention of Congress shall be to establish the trial by jury in criminal cases, to extend the same gradually and even to adopt it in civil cases, in proportion to the advantages of this valuable institution become practically known."

It, therefore, appears that the sovereignty of the soil, at the time of the Jury Law and grants thereunder, was in the State Government with full power of disposition. The state clearly had the power to enact the Jury Law and to award its vacant lands within the state in payment of salaries thereunder.

V.

GRANTS ISSUED UNDER SPECIFIC DECREES OF STATE CONGRESS
DID NOT VIOLATE LITTORAL LEAGUE PROHIBITIONS

We concede that empresario and colonization grants located within the littoral leagues were invalid, absent the consent of the Federal Supreme Executive. There is, however, no legal or logical basis for extending such prohibition to grants which emanated under the Jury Law or under any other specific decrees of the State Congress awarding lands. The State Government had the constitutional power to enact such specific acts.

This distinction between such specific acts and the colonization laws with their littoral league prohibition is concisely stated by the Supreme Court of Texas in the case of Smith vs. Power, 14 Tex. 146, page 147, in discussing the littoral league prohibition:

"The only recognized exception to this rule is where the title has been issued under the specific authority of a decree of the Congress of the State of Coahuila and Texas. Such law, having been acquiesced in by the Congress of Mexico, no act of that body having declared it null and void, titles emanating under it must be respected by subsequent governments and authorities and cannot be held null and void for want of assent by the Federal Executive."

In the matter at hand we find that the Jury Law under which the Chambers title emanates was never questioned by the Congress of Mexico or any federal authority; at least, we are unable to find any evidence of federal dissatisfaction.

Neither has the grant been questioned by the Republic of Texas or its successor, the State of Texas, since its issuance in 1834.

The foregoing is more fully stated by Judge Lipscomb in the case of Goode vs. McQueen's Heirs, 3 Tex. 241, in discussing the littoral and border league restrictions. We quote from this opinion at page 258:

"If, then, there had been an act of the State Legislature that gave a right of property to the grantee, without reference to the approbation of the Federal Executive, it forming a rule of property, I would not feel myself authorized to say that it was void because repugnant to the general colonization law of the republic. It not being repugnant to our Constitution of the Republic of Texas, or inconsistent with our present institutions, I would not feel myself authorized to withhold the benefit of the act of the Legislature of Coahuila and Texas from plaintiffs below, if it would sustain the grant under which they claim title and the same has not been forfeited by abandonment, if the plaintiffs below showed that there was no impediment to their holding their title so devised. There can be no doubt that the acts of the Congress of the State of Coahuila and Texas so far as they are applicable to contracts executed and completed and to rights consummated, derived from the former government by those who were citizens of Texas at the date of the declaration of independence must, in general, be regarded as the law of property; and that any supposed repugnancy of the acts of Congress, to the State Constitution or to the Constitution of the Republic of Mexico, cannot be considered; that they are still in force, unless they have been abrogated and annulled by the Constitution of the Republic of Texas, or are otherwise repugnant to and incompatible with the laws and institutions of the new government."

Applying Judge Lipscomb's statement to the facts at hand, we find, first, that the State Congress, under the Jury Law, awarded a right of property to Judge Chambers, without reference to federal approval. Such grant and location thereunder are not repugnant to our present Constitution or that of the Republic of Texas and certainly not inconsistent with our present institutions. The Chambers grant has been active and has never been abandoned or forfeited

and we see no impediment to the claimants thereunder holding their title so derived insofar as the islands under consideration are concerned, there being no adverse claimants thereto. The Jury Law created a contract and a property right by providing for the grant of lands to the judges as salary; Judge Chambers rendered his services, the land was awarded to him and located under the Jury Law and the contract created by the law was therefore consummated. Judge Chambers apparently renounced his Mexican citizenship at a later date, as did many other notable Texans, when this state declared its independence from the Mexican Republic. We know that he assisted as interpreter for the general counsel prior to the Declaration of Independence (1 Gammel's Laws, page 575) and was apparently a general in the revolutionary forces, as on June 12, 1837, the Senate and House of Representatives of the Republic of Texas issued a joint resolution "that the thanks of Congress be tendered to General Chambers for the zeal and ability with which he has defended and sustained the cause of Texas and the efficient manner in which he has discharged the duties imposed upon him by his commission in sending to her aid men, arms and supplies by a sacrifice of his private fortune. Resolved, that the auditorial department be authorized and required to settle with Major General Thomas Jefferson Chambers, and that the President be authorized to render justice in the fullest manner and in all matters and things touching the commission conferred upon him by the provisional government of Texas and his operations under that commission." Thus, we are inclined to believe that Thomas Jefferson Chambers could qualify as a citizen of Texas under the requirement laid down in the decision by Judge Lipscomb above set forth.

We further call attention to the fact that even under the colonization acts themselves the littoral and border league restrictions were relaxed by the colonization act of March 26, 1834, above cited which authorized issuance of grants to settlers located east of Austin's colony and in the Nacogdoches Area, despite the previous littoral and border league restrictions. (1 Gammel's Laws, page 361). In the case of Blount vs. Webster, 16 Tex. 616, it was held that grants issued under this colonization law to lands located within the border and littoral leagues were valid, although it does not appear that such grants were approved by the Federal Executive of the Mexican Government. This Act of 1834 was a specific state law and was enacted for the relief of settlers who had located within the prohibited areas and who had no land grants under the colonization laws and colonization contracts. It would be most irrational to say that, if colonists could settle within the border and littoral leagues under this colonization act, that a Supreme Court Judge, who at the time was a citizen of the country, could not locate his lands under the specific law of the Jury Act in similar areas, particularly in view of the fact that the judges were not even required to settle their land. Attention is particularly called to the fact that the Chambers grant was issued in September, 1834, months after the act relaxing the settlement provisions of the colonization laws.

If the State Government had power to enact a law in 1834 relaxing the littoral and border league restrictions, which apparently it had under the above noted case, then by that same power the state, under the Jury Act, could pay its judges, as the act states, "with vacant lands situated within the Judicial Circuit". Since the Judicial Circuit

extended to the United States boundaries and to the waters of the Gulf of Mexico, the judges were free to locate lands awarded to them anywhere within such boundaries, so long as such lands were vacant. This specific law, placing no restrictions on location of his lands, left the judge full discretion with reference to such location. It should be borne in mind that Judge Chambers was recognized and qualified not only as an attorney at law by the Mexican authorities but was elevated to the Supreme or Superior Court of this state by those authorities. No doubt he, as well as the Federal and State Executives, were cognizant at the time of the prohibitions contained in the colonization acts affecting Texas land. Had either he or the executives deemed his location of lands in the coastal leagues violative of the existing laws, it is most logical to assume that Judge Chambers would have located the coastal grant elsewhere, as there were large areas of vacant lands within his judicial circuit in this same locality which he could have appropriated outside of the alleged prohibited area.

Even if the grants under the Jury Law can be placed in the same category with the colonization laws, it must be noted that under the colonization laws it was the settlement of vacant lands, not the grant or sale thereof, which was prohibited within the littoral leagues. Under the colonization acts, such prohibition, in absence of a special act granting the land, would prohibit the granting as well as settlement and cultivation of land, since settlement and cultivation of the land by the colonists were both required under the acts. However, the Jury Law does not require settlement of the land granted as salary. Cultivation was not required. The grant to Chambers was a mere passing of title to land without obligation of settlement in payment of a debt due him by the state. Since Settlement of the land

and cultivation thereof were not required of him, he did not violate Article 4 of the Federal Colonization Law of 1824 hereinabove quoted which states that "no lands lying within ten leagues of the coast can be occupied by settlers without the previous approbation of the supreme executive power." (1 Gammel's Laws, page 97).

The words "occupied by settlers" as used in the Federal Act of 1824 pertaining to colonization refers only to colonists and not to grantees under some other act, such as under the Jury Law. In the case of Arguello vs. the United States, 59 U.S. 539, 15 Law Ed. 478, the United States Supreme Court construed this very act of 1824 in which the federal littoral league prohibition was promulgated. In that case the court held, at page 482, referring to this federal colonization act:

"The title to the decree shows its subject to be 'colonization'. The term 'colonization' implies immigration in numbers. The first section speaks of the subjects of such colonization as 'foreigners'. It guarantees to them security of person and property. The second and third describe the lands open to such colonists and require the state to make rules and regulations for colonization within their limits. The fourth, whose construction is now under consideration, forbids the colonization of the territory comprehended within twenty leagues of the boundaries of any foreign state and within ten leagues of the seacoast, without the consent of the supreme executive power. The sixth section provides that no duties shall be imposed on the entrance of 'foreigners'. The seventh forbids the immigration of 'foreigners' to be prohibited prior to 1840, except of some particular nation and under peculiar circumstances. The seventh indicates the possibility that the government may find it necessary to take measures of precaution for the security of the federation with respect to foreigners who come to colonize. These are all of the sections of the act which refer directly to colonization. The subjects of it are called 'foreigners' throughout. They are the only persons to whom the fourth section has any reference or application. ... Thus, we have seen that the first eight sections apply wholly to colonists and foreigners."

Although the later state colonization acts extended the prohibitions to the Mexican empresarios, the fact nevertheless

remains that, as stated by the United States Supreme Court in the Arguello case, the first eight sections of the Federal Colonization Law, including the littoral league restrictions set out in Section 4 thereof apply wholly to colonists. Although subsequent colonization acts by the state extended various provisions thereof to Mexicans as well as foreigners, all of the various colonization acts dealt with empresarios and colonists. Thomas Jefferson Chambers was neither an empresario nor a colonist; he was judge of the Supreme Court of the Judicial District of Texas and was no more a colonist or an empresario than was the governor of the State of Coahuila and Texas. The terms "settlers" and "colonists" as used in the various acts referred to persons who, for the purpose of obtaining homes and lands, were to be granted lands in the manner described by the acts for the purpose of settling and cultivating same. The empresarios were the contractors who, from 1824, to the abolishment of the empresario system in 1834, were awarded lands for the purpose of inducing colonists to come into the state and settle the sparsely populated areas of Texas.

If Judge Chambers was subject to the colonization laws, why, then, was it permissible for the state to grant him more than eleven leagues of land, since the federal colonization act of 1824, as well as subsequent state acts, contained restrictions against grants to one individual of more than eleven leagues? The grants to Judge Chambers certainly violated such restrictions if his grants were subject to the colonization laws. The cities of Austin, Corsicana and Marlin have been located in part on lands granted to Judge Chambers and such grants have been long established and recognized although Judge Chambers acquired under his grants more than eleven leagues of land. If the Chambers titles are, at this late date, to be declared

invalid because issued in violation of the settlement provisions, the quantity restrictions or the littoral or border league restrictions of these ancient colonization acts, many active and long recognized titles will fail and the results will be disastrous, as these titles cannot be cured by limitations since adverse possession does not mature title against the sovereignty of the soil. The grant to Thomas Jefferson Chambers under consideration has been sustained by the Supreme Court of Texas in the case of Chambers vs. Fisk, 22 Tex. page 504, in which case the issue was raised that the Chambers grant was invalid because it contained more than eleven leagues of land. As above noted, the Federal Colonization Act of 1824 and the subsequent state colonization acts specifically prohibit grants of land exceeding eleven leagues, as first noted in Article 12 of the Federal Act of 1824. The opinion by Justice Roberts in the Fisk case contains a lengthy discussion of the various constitutional provisions of Coahuila and Texas, the enactment of the Jury Law thereunder, the grant to Judge Chambers under the Jury Law, and this prohibition of the colonization acts. In discussing the jury law, the court said, at page 534:

"Texas, at the time these laws (Jury Laws) were passed for her benefit, was peculiarly an object of attention, both to the state and federal government. A convention was held, her grievances and wants had been made known; one of her wisest and best citizens had gone on a mission to the Mexican capital to seek there relief, by giving her an independent position as a state in the federal union and was then suffering a protracted incarceration for her sake. If, under these circumstances, the watchful supervisors and correctors of the infractions of the constitution should have failed to detect any defect, if any there be, in the validity of these laws, in establishing the office, appointing the officer and paying him lands and he accepted and assumed the office and performed its duties under a regular commission from the governor, and received his compensation without his right to exercise the office ever having been contested by any legal authority, during the term of his service, it might be difficult to discover upon what principal

he could collaterally be deprived of it.

"The next question presented under the exceptions to the evidence is, that both the law and the commission under which appellant claims, are too general and indefinite to authorize this grant of 29½ leagues of land. The law fixes the annual salary at \$3,000.00 and stipulates for its payment in land at \$100.00 a league, out of the vacant lands in the District of Texas. It did not in detail prescribe the steps to be taken by which the title was to be obtained. In this respect, the law under consideration was not peculiar; for an examination of the legislation of that period will show that measures of much more importance than the granting of thirty leagues of land were adopted in a few short general sentences, leaving the particular details of the object of the law to be determined and carried out by the executive under the provision of the Constitution which requires that the governor shall see the constitutive act, the Federal and State Constitutions and orders of the Federal Government and of Congress of said state be fulfilled, issuing the proper orders and decrees for their execution."

The court thereupon concluded that the grant to Judge Chambers was valid although it included more than eleven leagues, stating in the concluding paragraph of the opinion as follows:

"We have arrived at these conclusions upon the main questions at issue because we have not been able or willing to repudiate the right of what was then our own state, Coahuila and Texas, to the ownership of her vacant domain and her right to dispose of it as attempted by her in this case in accordance with the rights assumed by her in her constitution and laws, virtually and plainly recognized by the federal authorities in 1830, and never sought to be controlled or prevented, except on reasons of federal policy, in reference to the introduction of colonists from the United States of the North; and then only in 1835, when the overgrown usurped power of the general government was on its march to the annihilation of the states; and because we are not prepared to deny the right of the state to establish a system of judicature, adapted to the wants, principles and intelligence of her Texan citizens."

In discussing the colonization laws, Justice Roberts states at page 531 that there were portions of the general colonization law which did relate to matters pertaining particularly to the federation, as the "colonization of the littoral leagues";

we do not construe this reference to mean that he would have held the Chambers grant invalid in view of the littoral league restrictions for, on page 532, he states that "the act under which appellant claims (the Jury Act) was not a part of the colonial system, but an appropriation of the means of the state, to pay one of its officers for services to be rendered by him." This case cannot be cited either pro or con with reference to the littoral league restrictions of the colonization laws but is distinct authority for the proposition that the Jury Law was a specific act in itself under which land could be granted by the State of Coahuila and Texas without reference to the colonization laws and that the state was not bound by the federal colonization act with reference to the amount of land granted. The appellee in the case stated the issue to be whether or not the Jury Law imported such specific authority for this grant as would bring it within the recognized exception in Smith vs. Power above cited, the rule in the Smith case being that grants within the littoral or border leagues could be made under a specific act of the State Congress; appellee contended that the Jury Law was no authority at all for issuing a grant which violated any provision of the colonization acts. (Page 514). It is significant that in view of this contention, Justice Roberts upheld the Jury Law.

VI.

CONCLUSION

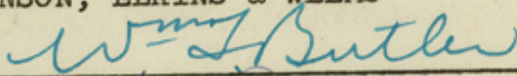
Under the authorities hereinabove cited, it is apparent that if a grant under the Jury Law was in the same category as a grant under the colonization acts, the rule is established that the littoral and border league restrictions of the colonization acts are not applicable to a grant which

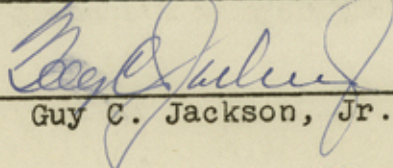
is issued under a specific act of Congress other than the colonization acts. On the other hand, if a grant under the Jury Law is not in the category of a colonial grant, then the colonization acts have no application and, therefore, the littoral league restrictions thereof do not apply. This is particularly true where, as under the Jury Law, no conditions of settlement and cultivation are required. Thomas Jefferson Chambers was neither a colonist nor a settler as contemplated in the littoral league restrictions. The title under the grant made to him in 1834 has remained undisturbed as to the islands under discussion and has been actively asserted by his heirs and their assigns who are now the undisputed owners of this land. The dictum by the Federal District Court in the Stanolind case casts a cloud on their title. These people did not have their day in court nor any opportunity to express to the court in that case the views hereinabove outlined sustaining their title out of the sovereignty of the soil. The grant to Thomas Jefferson Chambers covering the islands at the mouth of the Trinity River in Chambers County, Texas, was a valid grant when issued and we respectfully submit that by reason of the authorities above cited the cloud cast thereon by the federal court in the Stanolind case be removed and the long established and recognized title under the Chambers heirs be given affirmative recognition at this time by the proper officials of the State of Texas. For that purpose we respectfully submit this outline of title and authorities.

Respectfully submitted,

VINSON, ELKINS & WEEMS

By

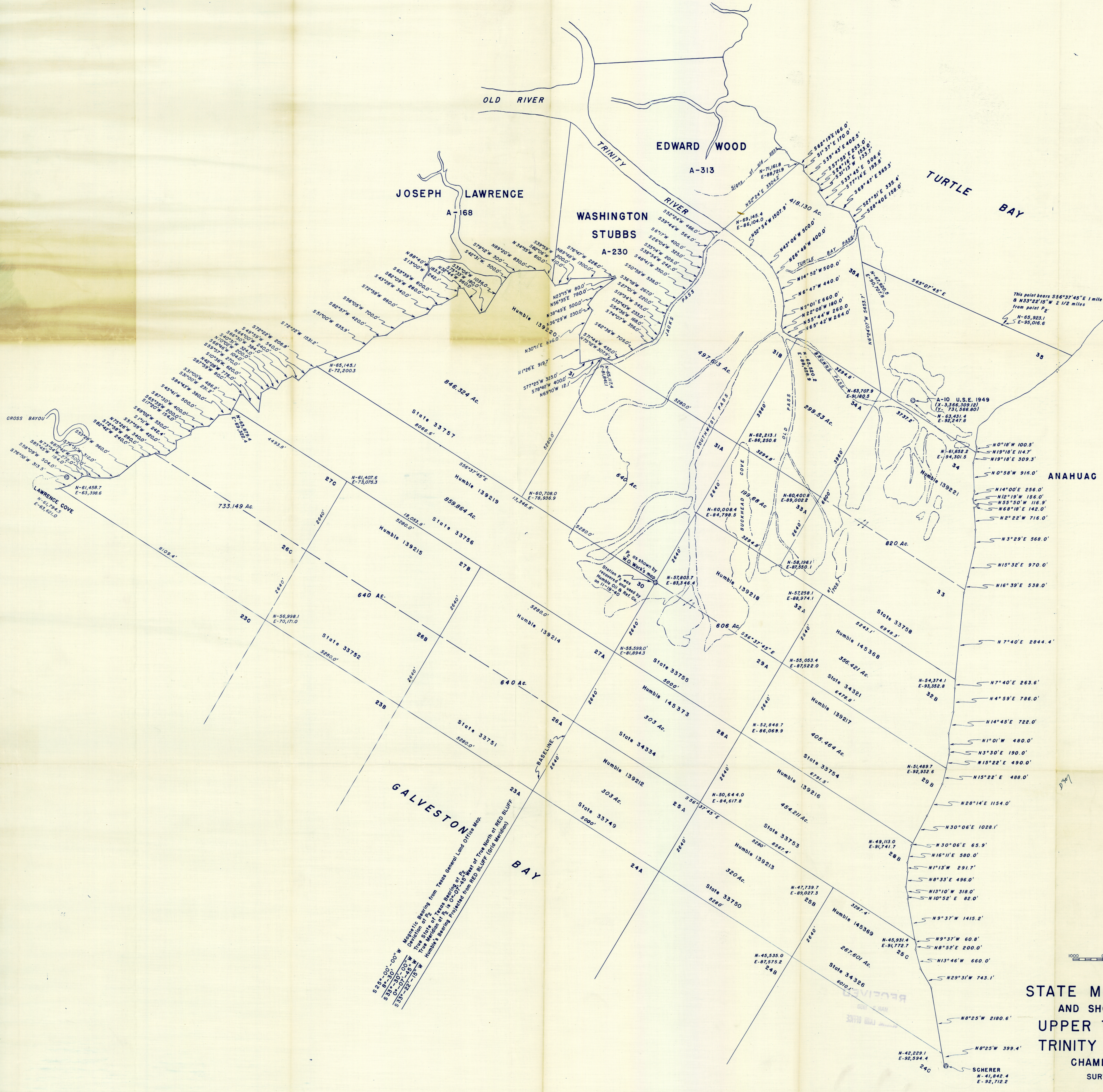



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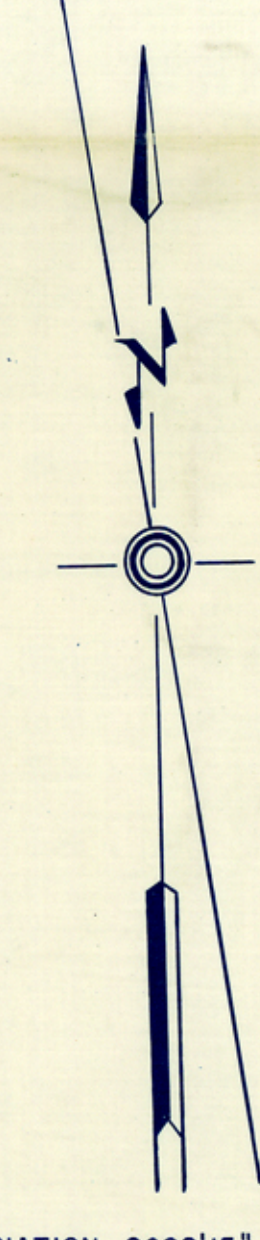
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NOTE:
Positions shown on this map are based on plane rectangular coordinates referred to U.S. Engineers Triangulation Station, RED BLUFF, as the origin.

TRINITY BAY AREA OF GALVESTON BAY
1. Coordinate position of all U.S.C. & G.S. Triangulation Stations around the periphery of Galveston Bay which Humble has used for control have been determined by the method as outlined in U.S. Department of Commerce, Coast & Geodetic Survey, Special Publication No. 71 (Humble's file No. 412) titled "Relation Between Plane Rectangular Coordinates and Geographic Position" by Walter F. Reynolds.
2. All calculations for all rectangular sections No. 1 through No. 35 in Galveston Bay (Trinity Bay) have been made with Station P-2 as the beginning point. This station P-2 as set by W. O. Work, County Surveyor of Chambers County, Texas and shown on map dated 3-28-1935, filed with General Land Office on 4-3-1935 and further described in W. O. Work's field notes dated May 7, 1935 has been given Humble's coordinate positions based upon RED BLUFF as origin. Through this station, P-2, a line has been projected down the approximate center line of Trinity Bay on a magnetic course of S 25° 15' W, true course of S 33° 30' 00" W. (Meridian at Red Bluff) for a distance of 39,600' to an intersection point with the northeast line of section 45. From this base line northward at 1/2 mile intervals, (with the exception of No. 34 being 3/4 mile wide) the sections are projected at 90° to the base line as shown on General Land Office Map dated 11-12-1934.



VARIATION 8° 22' 15" EAST
SCALE 1" = 1000'

**MAP SHOWING
STATE MINERAL SUBDIVISIONS
AND SHORELINE MEANDERS OF
UPPER TRINITY BAY AND
TRINITY RIVER DELTA AREA
CHAMBERS COUNTY, TEXAS**
SURVEYED FEBRUARY 1950
SCALE: 1" = 1000'

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