Galveston COUNTY ROLLED SKETCH NO. 21

Protest to state's selling privately owned Land

~~SURVEYED~~ State of Texas Vs. The Galveston City Co.

FILED Sept. 27, 1899.

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Exhibit "C"

STATE HAS NO TITLE

"News" — May 2/99

TO THE FLATS ALONG GALVESTON BAY WITHIN THE GRANT TO M. B. MENARD.

ATTORNEY GENERAL'S OPINION

THE QUESTION WAS ONCE DECIDED BY JUDGE ROBERTS IN AN ABLE OPINION.

HUNTINGTON BILL CONSTITUTIONAL

Its Wharfage Provisions Are in Compliance With Constitution and Laws of the State.

Austin, Tex., May 1.—The following is the opinion of the attorney general on the Galveston-Huntington bill:

Austin, Tex., April 29.—Governor Joseph D. Sayers, Austin, Tex.—Dear Sir: Your favor received inclosing an exact copy of senate bill No. 228. You ask my opinion as to the constitutionality of said bill, and what interest the state relinquishes, if any, in the flats granted therein for wharf purposes.

1. The constitution, in article 12, section 3, provides that "The right to authorize and regulate freight, tolls, wharfage or fares levied and collected or proposed to be levied and collected by individuals, companies or corporations for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and never shall be relinquished or abandoned by the state, but shall always be under legislative control and depend upon legislative authority."

Section 2 of the bill provides "that if said C. P. Huntington, his heirs or assigns, charge wharfage for the use of such piers or other facilities upon said property, except in so far as wharf service may be covered by the freight rate, all such wharfage shall be subject to the regulations of the railroad commission of Texas; but this shall not be so construed as to permit or allow any other person or corporation to use said property or any portion thereof without the consent of said C. P. Huntington, his heirs or assigns owning the same at the time." This provision of the bill, while contemplating that there will be no wharf charges, yet it reserves and maintains the state's right to regulate and control the charges, tolls and wharfage. While the legislature could not, by reason of the above constitutional provision, waive or relinquish the power of the state to regulate the tolls or wharf charges, yet this bill clearly places the property mentioned therein under the supervision and control of the railroad commission as to wharf charges, should any ever be made. This bill presents very clearly the proposition that the wharves, the construction of which is authorized by the bill, can not be used by any other person or corporation without the consent of Collis P. Huntington, his heirs or assigns owning the same at the time. This presents, in my opinion, the only serious constitutional question in the bill. The effect of this particular feature is to exclude the general public from the use of this property, except by the consent of Huntington, his heirs or assigns. The particular property herein discussed is what is known as a part of the flats and shore fronting the league of land granted by the republic of Texas to M. B. Menard, the same being a part of Galveston bay, and being situated south of the channel, and between it and the shore. It therefore becomes necessary to determine the nature and character of the title of the state to such property, and the power of the legislature to grant such property to an individual for his exclusive use, and as to whether or not the exercise of such power is prohibited by subdivision 3 of section 8 of the constitution of the United States, which reads as follows:

"3. The congress (of the United States) shall have power to regulate commerce with foreign countries, and among the several states, and with the Indian tribes." It has frequently been held by the supreme court of the United States that the ownership of a state in the lands underlying its navigable waters is as complete, and the power to make them the subject of conveyance and grant is as full as such ownership and power to grant in the case of other public lands of the state. In the case of Weber vs. Harbor commissioners, 18 Wall., 57, 65, that court said: "Upon the admission of California into the union upon equal footing with the original states, absolute property in, and dominion and sovereignty over, all soils under the tide waters within her limits passed to the state, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several states, the regulation of which was vested in the general government." That court also held, in the case of Hobokin vs. Pennsylvania railroad, 124 U. S., 656-7, that "Lands below high water mark and navigable waters are the absolute property of the state, subject only to the power conferred upon congress to regulate foreign commerce and commerce between states, and they may be granted by the state, either to the riparian proprietors or to a stranger, as the state may see fit," and it was further held "that the grant by the state of New Jersey to the united companies was intended to secure, and does secure, to the respective grantees the whole beneficial interest in their respective properties, for their exclusive use for the purposes expressed in the grants." In Stevens vs. Paterson and Newark railroad, 6 Vroom (34 N. J. law), 532, the court of errors and appeals of New Jersey declared that it was competent for the state to grant to a stranger lands constituting the shore of a navigable river under tide water below the tide-water mark, to be occupied and used with structures and improvements." In Langden vs. New York city, 93 N. Y., 129-153, the court of appeals of New York said: "From the earliest times in England the law has vested the title to, and the control over, the navigable waters therein, in the crown and in parliament." A distinction was taken between the mere ownership of the soil under water and the control over it for public purposes. The ownership of the soil analogous to the ownership of dry land, was regarded as jus privatum and was vested in the crown. But the right to use and control both the land and the water was deemed a jus publicum, and was vested in parliament. The crown could convey the soil under water so as to give private rights therein, but the dominion and control over the water, in the interest of commerce and navigation, for the benefit of all the subjects of the kingdom, could be exercised only by parliament. In this country, the state has succeeded to all the rights of both crown and parliament in the navigable waters and the soil under them, and here the jus privatum and the jus publicum are both vested in the state." This doctrine is also clearly recognized in the case of Illinois Central railroad company vs. Illinois, 146 U. S., 387. The legislature of Louisiana, by law, authorized and empowered the New Orleans, Mobile and Texas railroad to construct, own and operate certain wharves in the city of New Orleans upon the Mississippi river, a navigable stream, to be used by said railroad company for the purpose of receiving the freight hauled by it, with a proviso in the law "that no steamship or other vessel shall occupy or lie at said wharf or receive or discharge cargo thereat, except by and with the consent of said railroad company." The powers thus granted by the legislature of Louisiana to and exercised by said railroad company came in review before the supreme court of the United States in the case of railroad company vs. Elerman, 105 U. S., 171, the court upholding the laws and resolution above cited. The court cited, with approval, the case of Lutten vs. Strong, 1 Black, U. S., page 1. The same doctrine is also announced in McCready vs. Virginia, 94 U. S., 391. The supreme court of this state, in the case of the city of Galveston vs. Menard, 23d Texas, 350, announces the same doctrine as the federal decision above. In the last case cited the court says: "By the common law (the court was discussing the identical property, the subject matter of the bill under consideration) the right to such property is vested in the king as trustee for the public, and since the time of Magna Charter, he can not grant it, though parliament may. The legislatures of the several states may grant it, if not appropriated by prescription or otherwise; provided it does not infringe upon the power of the United States "to regulate commerce with foreign nations and among the several states."

"In view of either the civil or the common law, the republic of Texas, as a result of its absolute sovereignty over the territory included in its limits, had the power, through its legislative department, in 1836, to grant that part of Galveston bay south of the channel, called the flats, usually covered with salt water, so as to vest an exclusive right to the soil in the grantee."

These authorities, in my opinion, completely establish that the title to the soil under tide water or in navigable waters, which are in the jurisdiction of the respective states, are absolutely vested in the state and that the states have the absolute right to grant the same to individuals for their exclusive rights and uses, subject to the rights of congress to control the waters for the purpose of navigation and subject to the qualification that the state can not grant all the land or frontage upon navigable waters so as to materially and substantiany interfere with the rights of the public in regard to navigation. There is a frontage on Galveston bay suitable for piers and wharves, extending about from seven to nine miles; the property relinquished by this bill to Huntington has an extension of only five-sevenths of a mile. Consequently the relinquishment of the title of the state (if she has any, which will be discussed later on,) to the property set forth in this bill, and conferring exclusive use of the same upon Huntington, can not be seriously contended as operating to substantially and materially impair or impede the public in their right of navigation. I feel well satisfied that this bill violates neither the constitution of the United States nor of this state. The case of the Illinois Central railroad company vs. Illinois, 146 U. S., 387, is supposed by some to be in conflict with this opinion, but to my mind the conclusion arrived at by me is in absolute harmony with that opinion. In that case it appears that all of the lake front in the city of Chicago was granted to the railroad company, and that fact was the prevailing factor that moved a majority of the court to reach the conclusion that the grant was void. Justices Shiras, Gray and Brown dissented from the opinion of the court on the broad ground that the legislature had absolute control of the property and could grant it to individuals or corporations without any limitation or qualification. The three dissenting judges in thier opinion in 146 U. S., page 467, use this language: "The opinion of the majority, if I rightly apprehend it, likewise concedes that a state does possess the power to grant the rights of property and possession in such lands to private parties, but the power is stated to be in some way restricted to small parcels; or where such parcels can be disposed of without detriment to the public interest in the lands and waters remaining." The minority then further say: "But it is difficult to see how the exercise of the power, if the power exists, can depend upon the size of the parcel granted, etc." This case is in perfect harmony with the conclusions heretofore reached by me, and is in no way in conflict with it.

2. The second question presented is, The republic or state of Texas having been vested with the absolute title to the property described in this bill, and having the unlimited power to grant or convey it away, has she exercised that power previously in a valid and effective manner by the grant of the league of land made to M. B. Menard, situated on Galveston island, and hereafter discussed, so that no title now remains in the state, or has she title still, and does that title pass by this bill to Collis P. Huntington and his heirs and assigns? To properly understand this question, a reference to the act under and by authority of which the republic of Texas granted to M. B. Menard a league and labor of land on Galveston island becomes necessary, the land described in this bill being between the channel in Galveston bay and the said Menard league and labor.

On December 9, 1836, the congress of the republic of Texas passed an act entitled "An act relinquishing one league and labor of land to Michael B. Menard and others on the east end of Galveston island." See acts of 1836, pages 70, 71, 72.

The first section of that act reads as follows:

"Section 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled: That all the right, title and claim which the government of Texas has to one league and one labor of land, lying and situated on and including the east end of Galveston island, be and the same is hereby relinquished in favor of Michael B. Menard, and such associates as he may hereafter include, and all the right, title and interest which the government of Texas now has in and to said land is hereby vested in the said Michael B. Menard and such associates as he may hereafter include; provided, that nothing herein contained shall affect the vested rights of third persons.

"Sec. 2. Be it further enacted, that the president shall issue to the said Michael B. Menard, and such associates as he may include, a quit claim title to said land in the name of the republic of Texas.

"Sec 3. * * * That no quit claim title shall be issued by the president until the receipt of some authorized agent of Texas shall be deposited in the office of the secretary of the treasury acknowledging the receipt from the said Michael B. Menard of $50,000 in cash, or approved acceptance in New Orleans."

By section 5 of this act the government reserved to itself fifteen acres of land on the east end of the island, and also a block of lots in a suitable part of the town for a custom house and other public uses, to be selected by an agent to be appointed by the president for that purpose; to be selected on or before the first day of public sale of lots at that place.

Section 6 of the act reads as follows: "Sec. 6. * * * That if the said M. B. Menard and his associates should fail to comply with the requisitions of this act, they shall forfeit and pay to the government of Texas $10,000, recoverable in any court having cognizance over the same." Menard paid the republic of Texas the $50,000 mentioned in this act as the consideration for this grant and received a title from the president of the republic in conformity therewith.

After the issuance of this title a controversy arose in Galveston as to whether or not the Menard grant included the flats between the shore fronting on the north line of the Menard league and extending out to the channel, or as to whether or not the Menard grant stopped at the shore line. To determine this controversy, suits were instituted, and appealed to the supreme court of Texas, where the cases were decided, Judge Oran M. Roberts rendering the opinion. The case is entitled the City of Galveston vs. Menard, and reported in 23 Texas, 350. On page 36 Judge Roberts says: "The main question in this case is, Does this act (the act set out above) confer the right to the shore and flats lying south of the channel of the bay?" He then goes on to say that if viewed as an ordinary grant it would not include the shore and flats lying south of the channel of the bay, but in view of the object of said legislative grant, its locality, and the acts of the contracting parties, it was clearly intended to include the flats therein, so as to build a city upon it, and that Menard and his vendees, being the owners of the soil in the flats in front of the lots out of the channel, may devote it to wharves and the like without being subject to the control of the public, etc. This masterly opinion of this great jurist, Judge Roberts, is too lengthy to be quoted in full here, but the opinion, like all emanating from that distinguished lawyer, shows great research, learning and care, and in plain and express terms announces the legal conclusion that the Menard grant extended out to the channel in the bay, and included the flats between the channel and the shore. The property described in this bill is a part of the Menard grant, the title of which was divested out of the republic by a grant to Menard and vested in Menard, his heirs and assigns. I am therefore of the opinion that as this state has no title to the land or property described in the bill, by the passage of this bill she relinquishes no interest or title, but that in this respect the only effect that this bill can have is to remove a supposed cloud upon the title to the property. It may be that on both the east and west sides of the Menard grant, by reason of the calls in the grant, the state may still have some title to some portion of the flats at these particular points, a question, however, upon which I am not called upon to express, and I do not express an opinion, but as said before, I have no doubt that the particular property in this bill was divested out of the republic of Texas by her grant to Menard. I am, very respectfully,

T. S. SMITH,
Attorney General.

Counter 45062

"Exhibit D"

STATE OF TEXAS, } S. S. District Court within and for
COUNTY OF GALVESTON. } said County. To June Term A. D. 1871.

To the Honorable C. B. Sabin Judge of the Eighteenth Judicial District.

The State of Texas complaining of The Galveston City Company, a corporation duly incorporated by the Republic of Texas on the 5th day of February 1841 by An Act, entitled, "An Act to Incorporate the Galveston City Company," and whose office and place of business is in the said County of Galveston. That J. L. Darrah is president of said Company and J. P. Cole is the secretary of said Company.

That in the year 1836 M. B. Menard, and nine others whose names are not now known to Petitioner, were Partners, that said Menard was the active managin partner and that the business was carried on for the firm under his name. That the business of said firm was speculation in a League and Labor of Land on, and including, the East End of Galveston Island which the claimed under a grant to one Juan W. Seguin and which they had layed of in town lots, as the site of a city. That on 10th of November 1836, said, Menard, as actin managin Partner, as aforesaid, petitioned the Congress of the Republic of Texas for a quit claim title to said oneLeague and on Labor of land on and including the East End of Galveston Island. That on the ninth day of December 1836 the said Congress authorized the President of the Republic of Texas, to grant the quit claim deed to said Menard and his associates, for one League and One Labor of land on an including the East End of Galveston Island, on the payment of Fifty Thousand Dollars. That on 25th Jany 1838 Sam Houston as the President of said Republic executed to said Menard, as agent of defefendant, an instrument purporting to be the quit claim deed or patent authorized by the said act of 9th Decr. 1836. That on the 15th June 1837 said firm of Menard, and his Co-partners changed the form of the firm to that of a Joint Stock Company called the Galveston City Company and said Menard transferred the said land the capital stock of the firm, standing in his name, to Levi Jones, Wm. R. Johnson and Thos. Green as the Directors or Trustees of said Company. That on the 5th Feby. 1841 the stockholders of said Joint Stock

"Exhibit D"

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stock Company were incorporated as aforesaid and is the Defendant in this suit.

Your Petitioner would further allege that by the said act of Congress of the 9th December 1836, a copy of which is annexed as exhibit "A" and prayed to be taken as part of this Petition, the Republic authorized the issuance of one League and Labor of Land on and including the East End of Galveston Island. That the Defendant, through its agent, Levi Jones, on the 25th of January 1838 fraudulently obtained the Patent or quit-claim deed, under which it holds against Petitioner, a copy of said Patent or quit claim Deed is hereby annexed as Exhibit B and made a part of this Petition, from Sam Houstonthe President of the Republic in the name of M. B. Menard as the grant had been made when defendants name and style was M. B. Menard, reciting to be for the land granted under the said Act of 9th of Decr. 1836, without specifying the amount of land so granted. That said Patent included in the meets and bounds given in it, seventeen Hundred Acres more than a League and Labor, said excess beeing on the West End of the League and Labor granted as aforesaid. That said meets & bounds for said excess were obtained by fraud. That there was no survey made to ascertain the field notes on which to make the meets and bounds of the land granted as aforesaid. That the said Jones with knowledge and consent of John P. Borden, Commissioner of the General Land Office of the Republic of Texas, and fraudulently combining and confederating with him the said Borden contrary to the law and the statutes in such cases made and provided did make up and embrace in said deed or Patent the meets and bounds, therein designated, without any date whatsoever from actual survey of the East End of Galveston Island, to ascertain the land granted as aforesaid. That the whole work and the metes and bounds pretended to have been made by survey, as required by law, was done and performed by the said agent Jones and the Commissioner John P. Borden in the City of Houston, County of Harris, state of Texas, at a great distance from said land. That said defendant through its agent Jones and said Borden fraudulently presented to the said Sam Houston, President as aforesaid, the said Patent as beeing correct as to the meets and bounds for the land granted by said act of 9th Decr. 1836, and obtained his signature thereto. That at the time

they obtained said signature and at the time said Borden as commissioner as aforesaid signed said Patent he the said Borden and the said Jones agent of defendant well knew and intended that said meets and bounds thus fraudulently obtained embraced and contained very many more acres than the League and labor to which the President was authorized to make the quit claim deed or Patent.

That said quitclaim deed or Patent under which Defendant claims has for one of its meets and bounds, fraudulently obtainedas aforesaid, the channel of Galveston Bay, that owsing to the meanderings of said Channel the truth or falsity, correctness or incorrectness of said meets and bounds and the amount of such gross excess fraudulently obtained, as aforesaid, cannot be ascertained by calculation without a survey. That said Defendant, although only claiming to have purchased from the said Republic of Texas one League and one Labor of land, & knowing that said meets and bounds embrace a large excess have fraudulently claimed all such excess and still claims the same except such portions as the Defendant has sold. That said Defendant at the time of its incorporation and ever since knowing that the meets and bounds contained in said Patent embrace and include a large excess over one League and one Labor of Land have fraudulently represented and asserted that said meets and bounds embrace and contain only one League and and Labor of land. That the the time of its incorporation the Defendant had sold no part or portion of said land embraced in the excess, over one League and one Labor of land, contained in said meets and bounds and lying and beeing in the extreme western portion of the land called for by said meets and bounds; that since its incorporation defendant has sold a large amount of the lands, included in said excess, amounting in value to Three Hundred Thousand Dollars. That there remains unsold, of said excess, Fifteen Hundred acres the value of which is One Million of Dollars.

That said Defendant, though often requested by Petitioner to surrender or quit claim to Petitioner the said excess of land now held by defendant and to make payment for the parts or portions sold has hitherto wholly refused and still doth refuse so to do to the great damage of Petitioner, to wit, in the sum of Thirteen

Hundred Thousand Dollars.

Wherefore Petitioner prays Process of Citation be issued to pefendant and that an order of survey be made directed to the Surveyor of said County of Galveston, commanding to survey one League and one Labor of Land on and including the East End of Galveston Island following as near as can be done the meets and bounds called for in the said Patent or quit-claim deed of the 25th January 1838 and following whatwas the meets and bounds of said Island on said 25 January. 1838 without regard to subsequent accretions and that said Surveyor further survey the full meets and bounds called for in said Patent, or quit claim deed and ascertain the number of acres included therein. That said Surveyor further survey the excess, on the West end of said survey, over one League and one Labor, included in the meets and bounds of said Patent, and that said Surveyor make return of said surveys with the field notes & maps of the same and also of the number of acres contained therein.

That it be decreed and ordered that the excess of land, over one League and one Labor, embraced in the meets and bounds of the said Patent and unsold by Defendant revert and vest in in Petitioner. That judgment be given for the value of such parts or portions of said excess as may have been sold by Defendant to other parties. That said Patent be so reformed as to make the meets and bounds called for in it to embrace and contain only the One League and one Labor of land on and including the East End of Galveston Island following the meets and bounds of said Patent as they existed on the 25th Jany. 1838, except as to the excess of land on the West end of the said League & Labor.

Petitioner further pray all costs of suit in this behalf expended and as in duty bound Petition ever prays other, further and general relief.

C. Olfson,

District Attorney 18th Jud.
Dist. Texas.

counter 45066

and

Sherwood & Flourney

&

Mann & Baker

Attorneys for Plaintiff.

No. _____

The State of Texas

vs.

Petition.

The Carlyeastern Gaty Company

Dist. Ct of Gaylyeastern County Gourty.

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counter 45067

No._____

The State of Texas

vs. } Petition.

The Galveston City Company

Dist. C't Galveston County.

S. &. F.

& M. &. M.

p. q.

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Exhibit "A".

AN ACT.

Relinquishing one league and labor of Land to Michael B. Menard and others, on the east end of Galveston Island.

Sec. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That all the right, title, and claim which the goverment of Texas has to one league and one labor of land, lying and situate on, and including the east end of Galveston Island, be, and the same is hereby relinquished, in favor of Michael B. Menard, and such associates as he may hereafter include; Provided that nothing herein contained shall affect the vested rights of third persons.

Sec. 2. Be it further enacted, That the president shall issue to the said Michael B. Menard, and such associates as he may include, a quit claim title to said land, in the name of the republic of Texas.

Sec. 3. Be it further enacted, That no quit claim shall be issued by the president, until the receipt of some authorized agent of Texas shall be deposited in the office of the secretary of the treasury, acknowledging the receipt, from the said Michael B. Menard, of fifty thousand dollars in cash, or approved acceptances in New Orleans.

Sec. 4. Be it further enacted, That should the said Menard not pay, or cause to be paid, to some authorized agent of Texas in New Orleans or Mobile, the sum of thirty thousand dollars in cash, or apporved acceptances, by the first day of February next, in the City of New Orleans, then and in that case, this act shall be considered a dead letter, and no such right or title shall vest in the said Menard or his associates, except at the option of the goverment which shall be manifested by the acceptance or rejection of said thirty thousand dollars, as aforesaid, after that time; and a special pledge is retained on the property for the faithful payment of the further sum of twenty thousand dollars, and which if not paid within two moths after the first payment of thrity thousand dollars, the goverment shall have the right to pay back the

Counter 45069

the thirty thousand dollars, and declare this act a dead letter.

Sec. 5. Be it further enacted, That the goverment of Texas reserves to itself, all that tract of land from the extreme east end of the Island of Galveston running west on the north side of the island until it strikes a Bayou a short distance above the present fort, thence up said Bayou to its source, thence in a straight line across the Island to the Gulf, containing fifteen acres more or less; also one block of lots in a suitable part of the town for a Custom House and other public uses, to be selected by an agent to be appointed by the president for that purpose; to be selected on or before the first day of public sale of lots at that place.

Sec. 6. Be it further enacted, That if the said M. B. Menard and his associates should fail to comply with the requisitions of this act, they shall forfeit and pay to the goverment of Texas ten thousand dollars, recoverable in any court having cognizance over the same.

Sec. 7. And be it further enacted, That David White of the city of Mobile be, and is hereby appointed a special agent to carry into effect the provisions contained in the fourth section of this act.

Ira Ingram,
Speaker of the house of representatives.

Richard Ellis,
President pro tem of the senate.

Approved, Dec. 9, 1836.

Sam Houston.

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AN ACT,

Adopting a National Seal and standard for the Republic of Texas,

Sec. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That for the future the national seal of this republic shall consist of a single star, with the letters "Republic of Texas," circular on said seal, which said seal shall also be circular.

Sec. 2. Be it further enacted, That for the future there shall be a national flag, to be nominated the "National Standard of Texas," the conformation of which shall be an azure ground, with a large golden star central.

Sec. 5. Be it further enacted, That the national flag for the naval service for the Republic of Texas as adopted by the president at Harrisburg on the ninth day of April, eighteen hundred and thirty-six, the conformation of which is a union blue, star central, thirteen stripes prolomged, alternate red and white, be, and the same is hereby ratified and confirmed, and adopted as the future national flag for the naval service for the Republic of Texas.

Ira Ingram,
Speaker of the house of representatives

Richard Ellis,
President pro. tem. of the Senate.

Approved, Dec. 10, 1836.

Sam Houston.

counter 45071

To have and to hold the with tract of land with all the appurtenances thereunto belonging to the said Michael B. Menard his heirs and assigns for his or their own proper use and behoof, forever. In testimony whereof I have caused this patent to be issued under the seal of the Republic and the Commissioner of the General Land Office to countersign the same and affix his private seal (there being yet no public seal provided) hereunto.

counter 45072

No. 1. Vol. 1.

In the name of the Republic of Texas.

To all whom these presents shall come: Know Ye, That I, Sam Houston, President of the Republic of Texas, by the authority in me vested in consideration of the sum of Fifty thousand Dollars in pursuance of an Act of Congress passed on the 9th day of December, A. D., 1836 and by virtue of the authority thereby in me reposed, have granted and confirmed, and by these presents do grant and confirm unto Michael B. Menard his heirs and assigns by deed of quit claim, all that tract of land lying, being and situate, on the East end of Galveston Island and bounded as follows;

Viz: ----------Beginning at the North East corner of Lot No. ten (10) in section No. One (1) as represented in the plat of survey of the Island of Galveston made by R. S. Trimble and William Lindsey under direction of The Secretary of the Treasury and running thence due North one hundred and fifty Varas, to a stake; thence Eastwardly with the channel of the harbour in the bay of Galveston and with the General Course of said Island at the distance of at least one hundred and fifty varras from the Shore to a stake, One hundred and fifty varras from extreme Eastern point of said Island, thence South to the Gulf of Mexico, thence with the meanders of the Gulf to the South East corner of Lot No. One (1) in said plat of survey; thence Northwardly across the Island with the Eastern bounday of Lots Nos. one, two, three, four, five, six, seven, eight, nine and ten, to the beginning, except the reservation expressed in the fifth section of the Act of Congress aforesaid. ----------To have and to hold the said tract of land with all the appurtenances thereunto belonging to the said Michael B. Menard his heirs and assigns for his or their own proper use and behoof, forever.----------In testimony whereof I have caused this patent to be issued under the sea, of the Republic; and the Commissioner of the General Land Office to countersign the same and affix his private seal (there being yet no public seal provided) hereunto.

counter 45072

----------Given under my hand in the City of Houston, on the twenty fifth day of january in the Year of our Lord one thousand and eight hundred and thirty eight and of the indipendence of Texas the Second----- ----------

{ Commissioner
Gen'l Land Office
private seal. }

John P. Borden,
Commissioner
Gen'l Land Office.

{ Seal of the
Republic of
-----Texas---- }

Sam Houston.

General Land Office, Austin
Texas, May 6th, 1871.

I, L. E. E. Kellner, Chief Clerk and Acting Commissioner of the Gen'l Land Office of the State of Texas, hereby certify that the foregoing is a true and correct copy from the Record kept in this Office.

In testimony Whereof I hereunto set my hand and affix the impress of the seal of said Office the date last above written.

(Seal)

L. E. E. Kellner Chf. Clk.
and Actg. Commissioner.

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Copy of Patent for
Judge Mann-fee
fee $1.00/100
L.E.E.Kellner Chf. Clk.

counter 45074

Indorsed.

No. 4918.

The state of Texas
Vs. } Petition.
The Galveston City Company.

Filed June 8" 1871
J. Reed Clk. D.C.G. C.
By J. M. Harrison.
Dep. Clk

C. Olfson, District Attorney
18th Judicial District , Texas.
and Sherwood & Flourney.
and
Copies & Citation June 14"
1871.

Mann & Baker,
for Pltf.

counter 450 75

"Exhibit D"

A true copy of
Petition in case of
State of Texas
v.
Galveston City Co.

Carnett, copied as
to spelling, etc.

counter 15076

The State of Texas.
#4918. vs.
The Galveston City Co.

June 24th, 1872.

This day came the parties by their attorneys and both parties ask and are granted leave to amend their pleadings and thereupon came on to be heard the plaintiffs exceptions to defendants plea of want of authority in the District Attorney to represent the Goverment, and the argument of counsel thereon being heard it is the opinion of the Court that the exceptions should be sustained and then came on to be heard the demurrer to the petition and the argument of counsel thereon being fully heard and understood it is the opinion of the Court that the law is for the defendant; it is therefore considered by the Court that the defendant go hence without day and that he recover of the Plaintiff all costs in and about this cause incurred for which execution shall issue. To which ruling of the Court Plaintiff's except and give notice of appeal in open Court.

Exhibit 3.

counter #5077

"Exhibit E"

#4918

District Court of
Galveston County.

The State of Texas
v.
The Galveston City Co.

Copy of Final Judgment

Corenter 45078

Galveston Co
Sketch Files
No 31a

Filed in Genl Land
Office Septr 27th/99
L. C. Wise
Chf. Draftsman

Protest to state's selling pri-
vately owned lands.

$12.50

counter 45079

Galveston COUNTY ROLLED SKETCH 21
Formerly Sketch File 31A
SURVEYED ..... BY .....
FILED Sept. 27, 1899

counter 15080.