Flat Folder

NEWTON CO. ROLL SK. #26
(S. F. 16039 - 40.)

VACANCY APPLICATIONS, S.F.-16039-40.

JOE W. STEGALL

Surveyors Report and Sketch by
E. C. DOMINY
Aug. 29, 1960.

Filed Sept. 26, 1960.

counter 47265

REPORT OF SURVEY OF ALLEGED VACANCIES OUT
OF JESSE TERRY SURVEY, ABSTRACT NO. 423,
NEWTON COUNTY, TEXAS

THE HONORABLE BILL ALCORN, COMMISSIONER
GENERAL LAND OFFICE
AUSTIN, TEXAS

Dear Sir:

Pursuant to authority from you contained in your letter to me dated the 28th day of July, 1960, I proceeded to make an actual survey on the ground of two alleged vacancies in Newton County, Texas, doing my field work on August 9, 10, 11, 22, 23 and 29, and September 13, 1960. In addition to work done on the ground, I consulted with persons who had been familiar with this area or had lived in the area for forty or fifty years, consulted and studied field notes of adjoining surveys and such other surveys as I thought might be helpful, and consulted with Registered Surveyors who have done extensive surveying in the area.

My investigation concerned two tracts of land alleged to be vacancies in Newton County, Texas, about 17 miles Northeast of the Town of Newton, the County Seat, bounded as follows:

> Tract No. 1. General Land Office SF 16039: 70 acres of land, more or less, bounded on the North by the John Droddy Survey, Abstract No. 89, on the East by the G. W. Smyth Survey, Abstract No. 366, on the South by the Jesse Terry Survey, Abstract No. 423, and on the West by the Mary Davlin Survey, Abstract No. 93.
>
> Tract No. 2. General Land Office SF 16040: Bounded on the North by the G. W. Smyth Survey, Abstract No. 366, on the East by the Sabine River, on the South and on the West by the Jesse Terry Survey, Abstract No. 423.

Reference in this report will be made to plat attached hereto as Exhibit "A". On this plat, squares represent points I consider to be established corners at or about the location made by the original surveyor, upon whose field notes the appropriate survey was patented. Circles represent corners I could not prove. Patent calls for distances are enclosed in parentheses and distances I chained on the ground are not enclosed in parentheses. I have numbered the

A

counter 17266

corners for easy reference in making this report. Some of the lines and corners are well established and have been long recognized by people familiar with the area as the correct lines and corners. As to other lines and corners, there was little or no evidence to be found. Practically all of this area represents cut over lands from which all of the original timber has been removed that was merchantable, and since the cutting of the timber, operations have been conducted by turpentine companies to remove the pine stumps. Also for convenience, I am numbering the paragraphs of this report.

1. The main question in issue is a determination of the correct location on the ground of the upper and lower North Boundary Lines of the Jesse Terry Survey.

2. I made a careful survey of lines between the following corners, and made careful search for all corners either on these lines or at the termination of these lines as follows:

From corner No. 1 through No. 2, No. 3 and up to No. 19; North Boundary Line of Mary Davlin Survey; (Not on plat)

From corner No. 1 through No. 4 to No. 5, then up through corner No. 6 to No. 7 to No. 8;

From Corner No. 6 to Corner No. 9 to Corner No. 10 to Corner No. 5;

From Corner No. 9 through No. 10 to No. 11 to No. 14 down the Sabine River to No. 13, West to Corner No. 12, back to Corner No. 11;

Did not meander the Sabine River from Corner No. 13 to Corner No. 15, but went to Corner No. 15;

Did not run the South Boundary Line of the Terry Survey, being the North Boundary Line of the A. S. Droddy Survey, Abstract No. 86, being the line from Corner No. 15 to No. 16, as this was a well established line;

Ran the line from Corner No. 16 through No. 17 and No. 18 to Corner No. 1.

3. Pertinent surveys were laid out as follows:

(a) Richard Williams, Abstract No. 19, patented on field notes of Wm. Ewing, dated September 17, 1835;

counter #7267

(b) Isaac McMahon Labor, Abstract No. 297, patented on corrected field notes; (originally called the Theopolis Hickman Labor and was called for in the Davlin field notes as such and the Davlin field notes called for same bearing trees at common corners as the corrected field notes on which the Isaac McMahon was patented.)

(c) A. S. Droddy, Abstract No. 86, patented on the field notes of William Prissick dated May 1, 1838;

(d) John Droddy Labor, Abstract No. 89, patented on the field notes of William Prissick dated May 16, 1838;

(e) G. W. Smyth Survey, assignee of Mitchell Martin, Abstract No. 366, patented on the field notes of William Prissick dated June 10, 1838;

(f) Theopholis Hickman Survey, Abstract No. 143, patented on the field notes of A. J. Shelby, dated October 27, 1838;

(g) Mary Davlin Survey, Abstract No. 93, patented on the field notes of A. J. Shelby dated October 26, 1838;

(h) Jesse Terry Survey, Abstract No. 423, patented on the field notes of A. J. Shelby dated October 26, 1838;

(i) S. H. Smyth Survey, assignee of A. F. Albright, Abstract No. 28, patented on the field notes of S. H. Smyth dated July 20, 1848;

(j) J. F. Brack Survey, Abstract No. 728, patented on the field notes of G. W. Gray dated December 14, 1880;

(k) J. N. Smyth Survey, Abstract No. 594, patented on the field notes of J. A. Dubose dated December 17, 1880;

(l) J. M. Cloud Survey, Abstract No. 678, patented on the field notes of G. W. Gray dated February 5, 1890.

4. When Shelby endeavored to lay out the Theopholis Hickman, the Mary Davlin and the Jesse Terry Surveys on October 26 and 27, 1838, the A. S. Droddy, the G. W. Smyth and the John Droddy Surveys had already been surveyed and patented. Since all of these surveys are well located on the ground today, as shown by this report, I believe that Prissick actually laid off these surveys on the ground and that the lines and corners would have been easily identifiable by Shelby in October of 1838. Although the F. Albright was patented on field notes dated July 20, 1848, Shelby called for its lines and corners in his field notes of the Mary Davlin Survey and therefore the Albright Survey must have been actually laid out on the ground prior to the time Shelby made his surveys in October, 1838.

counter 47268

(a) Although I did not believe it necessary to survey the lines and corners of the Richard Williams Survey and the Isaac McMahon Labor, first called the T. Hickman Labor, these had been surveyed, according to the field notes, before Shelby attempted to lay out the Theopholis Hickman, Mary Davlin and Jesse Terry Surveys. Therefore, it is evident that Shelby was planning to take up the vacant land lying South of the R. Williams and I. McMahon Surveys, lying West of the Sabine River, the F. Albright, the J. Droddy and the G. W. Smyth Surveys; and lying North of the A. S. Droddy Survey.

(b) He would have found it almost essential to survey the Theopholis Hickman, but he could easily have only surveyed the West Boundary Line of the Davlin, calculated his Sabine River calls and the lines and corners of the surrounding surveys above mentioned from maps and field notes, and made the field notes for the Davlin and Terry Surveys from this information. Since, as herein shown, it is impossible to make Shelby's field notes fit on the ground, some such hypothesis is necessary in order to try to reconstruct these surveys.

5. Although the J. F. Brack, the J. M. Cloud and the J. N. Smyth Surveys were junior surveys and laid down from forty-two to fifty-two years after the Terry and Davlin Surveys, their calls for the West Boundary Line of the Terry, the North Boundary Line of the Adam S. Droddy and part of the West Boundary Line of the Mary Davlin Survey are entitled to some weight, and indicate that G. W. Gray in 1880 and 1890, and J. A. Dubose in 1880 thought that the line from No. 16 North through Corners No. 17, 18, 1, 2 and 3, to No. 19 was the West Boundary Line of the Jesse Terry and the Mary Davlin Surveys. They must have found some evidence to support their opinions.

6. At corner No. 16, Shelby called for the following as the Southwest corner of the Terry Survey:

> Hickman's East Boundary, a stake from which a
> Black Gum marked "TH" North 29 deg. West 7.7 varas, and a
> Black Oak marked "TH" South 45 East 6 varas.

7. This corner is now in the edge of the right-of-way for State Highway No. 63 or 45 and no evidence of these original bearing trees could be found.

counter 47269

However, this is a well marked corner, showing that it has been recognized as the Southwest corner of the Jesse Terry Survey since at least December 14, 1888, when G. W. Gray laid down the J. F. Brack Survey.

8. Although Shelby did not call for the Terry Survey in the Davlin field notes and did not call for the Davlin Survey in the Terry field notes, he called for the same bearing trees at the N. W. corner of the Terry and the S. W. corner of the Davlin, as follows:

> A post from which a P.O. marked "JR", bears South 86 deg. West 7 varas, and a
> Black Jack marked "JR" bears South 65 deg. East 4.5 varas.

9. I did not find any evidence of the Black Jack, but I found a corner marked up at this point on the line between Corners No. 16 - 3, from which corner the stump of a Post Oak bears S. 86 West 7 varas. This stump indicates that the Post Oak tree was cut down some two or three years prior to the time I was on the ground, but I scraped the stump carefully and used a magnifying glass in an effort to count the rings. Although I could not count all the rings, I am satisfied that this Post Oak tree was 200 years or more old when it was cut, and I believe it was the Post Oak tree marked by Shelby.

10. At corner No. 2, Shelby called for the following bearing trees for the Southeast corner of the Theopholis Hickman Survey:

> A Pine S. 19 E. 12.4 vrs., marked X;
> A Pine N. 50 E. 12 vrs., marked X.

11. At this same corner, J. A. Dubose, in surveying the J. N. Smyth Survey in December, 1880, called for the following bearing trees:

> Pine South 17 East 12 varas;
> Pine North 37 West 6.5 varas.

12. At this point, I found the following:

> Pine 14" N. 70 W. 7.6 varas, marked X;
> Red Oak 5" S. 85 W. 3.4 vrs., alligator;

13. This is a well marked corner and I am satisfied it is the Southeast corner of the Theopholis Hickman and the Northeast corner of the J. N. Smyth Survey on the East Boundary Line of the Mary Davlin Survey.

counter 17270

14. Shelby called the West Boundary Line of the Terry Survey from Corner No. 16 to Corner No. 1 to be 2,525 varas, but at 2,525 varas North from Corner No. 16 I did not find any evidence of a corner, and did not find any evidence of a corner from that point northward until I reached Corner No. 1. The line from Corner No. 16 to Corner No. 1 is 2,733 varas, being 208 varas longer than Shelby called it to be.

15. I ran North on the recognized West Boundary Line of the Mary Davlin Survey from No. 1, following an old well marked line to No. 19, a well marked corner on the South Boundary Line of the Richard Williams Survey. At this No. 19 I found the following:

Black Jack 9" N. 31 W. 9.4 varas;
Post Oak 10" N. 56 E. 7.9 varas;
Sand Jack 6" N. 67 E. 3.2 varas;
Sand Jack 6" S. 68 E. 6.5 varas;

At the Northwest corner of the Mary Davlin, Shelby had called for the South Boundary Line of the Richard Williams, and the following:

Pine marked "TH" brs. S. 33 deg. 30' E. 3-7/10 varas;
Pine marked "TH" brs. N. 45 deg. W. 5-3/10 varas;

I found the distance from No. 1 to No. 19 to be 3,227 varas, and Shelby called this to be 3,150 varas. Since this is not a great discrepancy, and since Line No. 16 - 19 is the recognized West Boundary Line of the Terry and Davlin Surveys and since I believe the Post Oak stump at No. 1 is the stump of the original bearing tree called for at this point by Shelby, I believe No. 1 is the Northwest corner of the Terry Survey and the Southwest corner of the Davlin Survey.

(a) I ran East on the North Boundary Line of the Davlin and the South Boundary Line of the R. Williams, and at 1,264 varas reached the upper N.E. corner of the Davlin. Shelby called this distance to be 6,168 varas and at this corner called for the following:

Beech marked "TH" brs. S. 38 deg. 15' E. 5-6/10 varas;
White Oak marked "TH" brs. W. 7-1/10 varas;

counter 47271

At this corner I found the following:

Pine 15" S. 4.7 varas;
Sweet Gum 5" S. 28 W. 7 varas;
White Oak 26" W. 5.6 varas. (I believe this is the original witness tree)

16. Finally, the judgment in the case of R. C. Shindler vs. Lutcher & Moore, et al, rendered in the District Court of Newton County, Texas, on October 9, 1906, affirmed an appeal, a copy attached hereto as Exhibit "B", found that Corner No. 1 was the Southwest corner of the Mary Davlin Survey and the Northwest corner of the Jesse Terry Survey, that Corner No. 19 was the Northwest corner of the Mary Davlin Survey and that Corner No. 2 was the Southeast corner of the T. Hickman Survey, Abstract No. 143.

17. I made a search for a corner at No. 3, but did not find any evidence of a corner or any evidence of a line going East from this point. A line running due East from No. 3 would go to No. 6, the Southwest corner of the John Droddy Survey, but I did not find any facts to support establishing a corner at No. 3.

18. From corner No. 1 to corner No. 5, which corner is directly South of corner No. 6, the Southwest corner of the Droddy Survey, is a distance of 4,082 varas, instead of 6,200 varas as called in Shelby's field notes. It is incredible that Shelby made such an error in his chaining, and it is my opinion that he did not run this line at all on the ground and attempted to calculate this distance. As a result, he did not realize that a line running due East from corner No. 1 would not strike the Northwest corner of the G. W. Smyth Survey, my corner No. 9. I did not find evidence of any old line from corner No. 1 to corner No. 4, but did find some marks of a line probably sixty or seventy years old from corner No. 4 to corner No. 5.

19. At corner 5, I found the following marked trees, although these trees were not called for in any of the field notes or patents of either the Terry, the Davlin, the Droddy or the Smyth Surveys, to-wit:

Pin Oak 24" N. 37 W. 3 varas, xxx;
Pin Oak 12" N. 83 E. 5.2 varas;
Maple 6" N. 37 E. 3.6 varas.

counter 17272

20. At corner No. 6, Prissick called for the following at the S. W. corner of the John Droddy Survey;

A Post from which a Pine marked "JD bears N. 8 deg. W. 5.5 varas;
Pine marked "JD" bears South 16 deg. West 9 varas;

The field notes of Shelby of the Davlin Survey called for these same bearing trees and for this Southwest corner of the J. Droddy Survey. I found the following at this corner:

Maple 8" N. 19 E. 6.4 varas;
B.G. 14" N. 55 E. 8 varas;
B.G. 20" N. 67 E. 3.5 varas;
Hickory 5" S. 85 E. 2.2 varas;
R.O. stp. S. 9 E. 15.4 varas.

21. At Corner No. 7, the field notes of the Albright and Droddy Surveys called for the following:

Post from which a Pine marked "JD" bears S. 85 E. 5.3 varas;
Pine marked "JD" bears South 1 deg. East 12.6 varas.

At this corner I found the following:

Pine 20" N. 30 E. 4.1 varas, xx;
Pine 20" S. 62 W. 8 varas, xxx;
Pine stp. S. 33 E. 5.7 varas.

22. At corner No. 8, being the Northwest corner of the Albright Survey, its field notes called for the following:

Post from which an Ash marked "WH" bears S. 33 W. 8 varas;
Pine marked "WH" bears N. 20 E. 5 varas;

I believe the field notes of the Davlin call for this same corner, because the Davlin field notes called to begin on the West bank of the Sabine River at the Southeast corner of the Theopholis Hickman Labor, then to go down said River to the Northeast corner of the Fleming Albright Labor, then to go,

"with the North line of said Labor S. 89 deg. 30' W. at 1650 vrs.,
a stake from which an
Ash marked "WH" bears S. 35 W. 8 varas;
Pine marked "WH" bears N. 20 E. 3 varas.

Thus the Davlin notes call for the same distance from the Northeast corner of the Albright to its Northwest corner (my No. 8) as do the Albright field notes, and call for the same trees, except the Pine is called to be a distance of "3 varas" instead of "5 varas".

counter 47373

At this corner, I found the following:

Ash 8" N. 33-1/3 W. 3.8 varas;
Pin Oak 18" S. 31-3/4 W. 6.8 varas;
Pin Oak 18" N. 58 E. 2.8 varas;
Pine stp. hole N. 20 E. 5 varas;
Ash stp. hole S. 33 W. 8 varas;

The stump holes are correct for the original bearing trees, and I am convinced this is the original Northwest corner of the F. Albright Labor, and an interior corner of the Davlin.

23. The field notes of the Albright called for its West Boundary to be 500 varas in length, the field notes of the John Droddy called for its West Boundary Line to be 500 varas, and the Davlin field notes called for this total distance, being from Corner No. 8 to Corner No. 6, to be 1,000 varas.

24. I found this distance to be 1,023 varas, and 700 varas South from Corner No. 8, I found the evidence of the old road called for in the field notes of the Davlin Survey by Shelby.

25. The line from Corner No. 6 to Corner No. 8 is an old, well established line, with old hacks and marks and corners No. 6, No. 7 and No. 8 are old, well established and recognized corners.

26. At Corner No. 9, the field notes of the J. W. Smyth called for a stake from which:

White Oak marked "S" brs. S. 31 E. 10.5 varas;
White Oak marked "S" brs. S. 89 E. 5.2 varas.

Shelby's field notes of the Terry call for the following at this corner:

"Martins N.W. corner, from which a White Oak brs. S. 31 deg. E. 10-5/10 vrs;
Water Oak brs. S. 87 deg. E. 5-4/10 vrs;

At this corner No. 9, I found the following:

A Hub, from which:
White Oak 24" S. 38 E. 2.8 varas;
White Oak 14" N. 84 E. 5 varas; and marked with an alligator.

There was an old, well marked line going East from Corner No. 9 toward the Sabine River, but I did not run this line to the river.

counter 47274

The field notes of the Smyth, made by Prissick called for the line from Corner 9 to Corner 11, the West Boundary Line of the Smyth, to be 500 varas, and I found this distance to be 494 varas.

27. At Corner No. 10, not a patent corner, I found the following:

S.G. 15" S. 87 W. 10.4 varas; and I marked a
P.O. 6" S. 17 E. 6.9 varas.

I did not find anything at this point that would indicate it was a corner of either the Smyth, the Terry or the Droddy Surveys.

28. At Corner No. 11, the field notes of Prissick called for the following at the Southwest corner of the G. W. Smyth:

A stake from which a White Oak marked "S" bears S. 24 E. 5 varas;
Sweet Gum marked "S" bears N. 45 E. 9.9 varas.

Shelby's field notes of the Terry called for this to be an interior corner of the Terry Survey and called for the following:

A stake, S. W. corner of said Survey, from which a
Water Oak brs. S. 24 deg. East 5 varas;
Sweet Gum brs. N. 45 deg. E. 9-9/10 vrs; each marked "S".

At this corner, my No. 11, I found the following:

Water Oak 9" N. 88 W. 2.1 varas;
Pine 20" S. 28 E. 4.6 varas;
Pine 12" S. 82 W. 8.8 varas;
S.G. 8" E. 9.4 varas;
Pin Oak 9" N. 68 E. 12.6 varas;
S.G. stp. N. 45 E. 9-9/10 varas.

29. In running the line between Corner No. 11 and Corner No. 14, being the South Boundary Line of the Smyth Survey, I found the distance to be 2,386 varas, whereas Prissick called this distance to be 2,306 varas. Corner No. 14 is under the State Highway Bridge across the Sabine River and there was no evidence of any corner. However, I talked to Joe Harralson, an old settler in this area, who was employed by the State Highway Department in helping to clear right-of-way when this highway was first built and the bridge constructed. He remembers seeing the old Maple at this corner with the old marks upon it, but does not remember the Sycamore.

A

counter 47275

30. At this corner, my No. 14, Prissick called for the following witness trees:

Maple marked "S" South 33 deg. East 5.9 varas;
Sycamore marked "S" South 15 deg. 30 min. West 15.3 varas.

These are the same witness trees called by Shelby in his field notes of the Terry, and as already mentioned, he calls for these witness trees and the Southwest corner of the Smyth Survey to be the beginning point of the Terry Survey. I surveyed down the river from Corner No. 14 to Corner No. 13 and started running on South from No. 13, but it was obvious that the field note calls of the Terry Survey as given in Shelby's field notes were radically different from the present course of the River, and I did not find any evidence that the River had made such radical changes as would be indicated by the difference between Shelby's calls and the present course of the River.

At Corner No. 13, I found the following:

Elm 24" S. 64 W. 2 varas; and gator
Gum stp. S. 1.2 varas;

I found no evidence that this was a corner of the G. W. Smyth Survey or the beginning corner of the Terry Survey.

31. On the line from Corners No. 13 to 12 and from 12 to 11, I found some old marks and hacks that indicated this line was probably sixty to seventy years old, indicating that it was probably surveyed about 1890 to 1900. I did not find any evidence of a corner at my No. 12, and I marked the following:

S.G. 5" S. 62 E. 4.6 varas;
Hickory 4" N. 82 E. 7/10 varas.

I did not find any evidence or any bearing trees at this Corner No. 12 that would indicate that this was the original Southwest corner of the G. W. Smyth Survey, or that it was the original interior corner of the Terry Survey.

32. I did not meander the Sabine River from Corner No. 13 to No. 15, but went to Corner No. 15. At Corner No. 15, Prissick in surveying the Adam S. Droddy Survey, called for the following:

Post on West bank Sabine River from which a
Sycamore marked "AD" bears N. 87 deg. 30 min. 4.6 varas;
Sycamore marked "AD" bears S. 48 E. 7.4 varas;

counter 47276

I found the following at this corner:

Willow 14" N. 40 W. 7/10 varas;
Willow 12" S. 28 W. 11.2 varas;

This is the corner called for by Shelby in surveying the Terry, and the evidence on the ground indicates that this is a well established corner and the line going West from this corner is an old, well marked line and recognized in the community as the North Boundary Line of the A. S. Droddy Survey and the South Boundary Line of the Jesse Terry Survey.

33. In summary, the evidence indicates unmistakably that the Fleming Albright, and John Droddy and the G. W. Smyth Surveys are correctly located on the ground today according to the field notes made by the surveyors upon which patents were issued, and that the same is true of the North Boundary Line of the A. S. Droddy Survey, Abstract No. 86. A. J. Shelby, in writing the field notes of the Mary Davlin, Abstract No. 93, dated October 26, 1838, and the field notes of the Jesse Terry, Abstract No. 423, dated October 27, 1838, called for the lines and corners of the Albright, Droddy and Smyth Surveys. In addition, at common corners, he called for the same bearing trees called for by William Prissick in his field notes of the John Droddy on May 16, 1838, and in his field notes of the G. W. Smyth on June 10, 1838. If Shelby was actually on the ground, the conclusion is inescapable that he was actually on the lines and corners of the Albright, Droddy and G. W. Smyth Surveys as the lines and corners established by Prissick would have been plainly visible and evident.

34. If Prissick was not on the ground, then his calls for the lines, corners and bearing trees of these surveys must be honored.

35. For the same reasons, Shelby's calls for the North Boundary Line of the A. S. Droddy, Abstract No. 86, must be honored.

36. It is evident from the work I have done, and from the facts to be found on the ground, that A. J. Shelby did not run all the lines on the ground of the Mary Davlin and the Jesse Terry Surveys. It is possible, but doubtful, that Shelby began his surveying on the ground as he stated at the lower corner

A

counter 17277

of the T. Hickman Labor on the West Bank of the Sabine River (not shown on my plat) thence went down the Sabine River, around the Albright, Droddy and Smyth Surveys, down the River to the A. S. Droddy Survey, West on its North Boundary Line to Corner No. 16, thence North through Corner No. 17, 18, 1 and 3 and on up to the Northwest corner of the Davlin and back to his place of beginning. However, it is my opinion that Shelby actually only established Corner No. 1 on the ground, and probably surveyed the Theopholis Hickman and the West Boundary Line of the Mary Davlin Survey. This is the finding of the District Court of Newton County in the Judgment in the Schindler case, copy attached as Exhibit "B". By reason of the fact that the North Boundary Line of the Davlin Survey is only 1,264 varas in length, when Shelby called it to be 6,168 varas, and, from a study of the field notes of surveys named in this report, and from a study of the working sketch of this area prepared by the General Land Office, it is difficult to believe that Shelby actually surveyed the North Boundary Line of the Davlin Survey.

37. If Shelby actually did as much surveying on the ground as above stated, it is my firm opinion that he did not survey on the ground any line going East from No. 1 or No. 3, or from any point on the line between Corners No. 16 to No. 3, and that he did not run any lines West from either Corner No. 6 or Corner No. 5. It is my opinion that he endeavored to calculate the division line between the Mary Davlin and the Jesse Terry Surveys without running the line on the ground. This is the only way to account for the discrepancies in the actual location of various points on the ground.

38. SUMMARY OF ESSENTIAL FACTS:

In my opinion, the following facts are established by evidence found on the ground, by the original field notes of the surveys mentioned, by general acceptance of land owners as evidenced by established lines and corners, and, by the judgment mentioned, copy attached as Exhibit "B":

(a) That No. 1 is the corner established on the ground by A. J. Shelby

counter 47378

in October, 1838, as the Northwest corner of the Jesse Terry Survey and the Southwest corner of the Mary Davlin Survey;

(b) That Corner No. 6 is the original Southwest corner of the John Droddy Survey established by William Prissick in May, 1838;

(c) That Corner No. 9 is the original Northwest corner of the G. W. Smyth Survey on the South Boundary Line of the John Droddy Survey, established by William Prissick in June of 1838;

(d) That Corner No. 11 is the original Southwest corner of the G. W. Smyth Survey as established on the ground by William Prissick in June, 1838, and that regardless of whether or not A. J. Shelby made this portion of his survey on the ground, this is the corner he intended to, and did establish as the interior Northeast corner of the Jesse Terry Survey;

(e) That the line between Corner No. 11 and Corner No. 14 is the original South Boundary Line of the G. W. Smyth Survey established by William Prissick on the ground in June, 1838, and that regardless of whether or not A. J. Shelby made this part of his survey on the ground, this is the line he intended to, and did establish, as the lower North Boundary Line of the Jesse Terry Survey;

(f) That Corner No. 14 is the original Southeast corner of the G. W. Smyth Survey as established on the ground by William Prissick in June, 1838, and that regardless of whether or not A. J. Shelby was on the ground on this portion of his surveys, he intended to and did establish this corner as the lower Northeast corner, and the beginning corner, of the Jesse Terry Survey;

39. QUESTION OF EXISTENCE OF ALLEGED VACANCIES:

(a) I do not believe that Tract No. 2, SF 16040, hereinabove described and shown on Exhibit "A", is a vacancy, being the land enclosed between the lines connecting my Corners Nos. 11, 14, 13, 12 and back to 11.

(b) There is no way to reconcile on the ground all of the calls in the field notes of the Mary Davlin Survey and those of the Jesse Terry Survey. In

counter 47279

order to complete these surveys, it is necessary to reject one or more of the calls for course, distance and corners in the field notes of both, and it may be solely a legal question from the facts I have found in this report.

(c) The only way to reconstruct the South Boundary Line of the Mary Davlin Survey and the North Boundary Line of the Jesse Terry Survey to avoid any vacancy is to find that the line connecting Corner No. 3 and Corner No. 6 is the common boundary line of these two surveys. As already pointed out, there is no evidence of any corner at No. 3 and no evidence on the ground that a line between Corner No. 3 and Corner No. 6 was ever run on the ground as the common boundary line of these two surveys. Therefore, I do not believe the line from No. 3 to No. 6 is the common boundary line between the Davlin and Terry Surveys.

(d) If, as Shelby stated, the lower South Boundary Line of the Mary Davlin Survey goes from the Southwest corner of the John Droddy Survey (corner No. 6) to the Post Oak corner (corner No. 1), and if, the upper North Boundary Line of the Jesse Terry is run as Shelby stated from the Post Oak corner (corner No. 1) to the Northwest corner of the G. W. Smyth Survey (corner No. 9), there is still a vacancy between these lines. Therefore, I do not believe this method would be a correct reconstruction of the original boundaries between the Davlin and Terry Surveys.

(e) I believe the original and correct location of the boundary line between the Mary Davlin Survey and the Jesse Terry Survey is as follows, and for the reasons stated:

From Corner No. 8, the East Boundary Line of the Mary Davlin Survey should run due South through Corners No. 7 and 6 to Corner No. 5;

From Corner No. 5 a line should be run due West to Corner No. 1, as the South Boundary Line of the Davlin Survey and the North Boundary Line of the Terry Survey;

The North Boundary Line of the Jesse Terry Survey should run from

counter 47280

A

Corner No. 1 due East through Corner No. 5 to Corner No. 10, thence South to Corner No. 11 and thence East to Corner No. 14. I found old maps that showed this construction of the two surveys and found some old deeds calling for the Mary Davlin Survey to Corner No. 5. This solution is supported by the judgment, Exhibit "B", and the actual lines on the ground indicate this has been the accepted lines and corners of these portions of the Mary Davlin and Jesse Terry Surveys. I realize this would be extending the distance of the Mary Davlin East Boundary Line 386 varas further than Shelby called it to be, and it would also indicate that Shelby was mistaken as to the location of the Southwest corner of the John Droddy Survey. However, in view of the numerous and obvious errors in Shelby's field notes, this would not be a major change, would most nearly harmonize the calls of his field notes with the least amount of change, and would still honor Shelby's intent to have a common Boundary Line between the Terry and Davlin Surveys.

40. I therefore conclude that Tract No. I, S.F. 16039, bounded by the lines connecting my Corners No. 6 to No. 9 to No. 10 to No. 5 and back to No. 6, is a vacancy, the field notes thereof being as follows:

> BEGINNING at Corner No. 9, the Northwest corner of the G. W. Smyth Survey, Abstract No. 366, on the South Boundary Line of the John Droddy Survey, Abstract No. 89, a 24" W.O. is S. 38 E. 2-8/10 varas, and a 14" W.O. is N. 84 E. 5 varas;
>
> THENCE West with the South Boundary Line of said Droddy Survey 1,023 varas to the Southwest corner of said Droddy Survey, which is Corner No. 6, an 8" Maple is N. 19 E. 6-4/10 varas, a 14" B.G. is N. 55 E. 8 varas, a 20" B.G. is N. 67 E. 3-5/10 varas, a 5" Hickory is S. 85 E. 2-2/10 varas, and a R.O. stump is S. 9 E. 15-4/10 varas;
>
> THENCE South at 386 varas to a stake for corner No 5, a 24" Pin Oak is N. 37 W. 3 varas, a 12" Pin Oak is N. 83 E. 5-2/10 varas and a 6" Maple is N. 37 E. 3-6/10 varas;
>
> THENCE East at 1,023 varas to a stake in the West Boundary Line of the G. W. Smyth Survey which is Corner No. 10, from which a 15" S.G. is S. 87 W. 10-4/10 varas, and a 6" P.O. is S. 17 E. 6-9/10 varas;
>
> THENCE North with the West Boundary Line of said Smyth Survey to the beginning, containing 69.89 acres of land by actual survey.

counter 47281

41. I further conclude that Tract No. 1, SF 16040, bounded by the lines connecting my corners No. 11 to No. 12 to No. 13 to No. 14 and back to No. 11, is not a vacancy, but is a part of the Jesse Terry Survey according to the field notes of A. J. Shelby, the original surveyor, the field notes thereof being as follows:

> BEGINNING at Corner No. 11, the Southwest corner of the G. W. Smyth Survey, Abstract No. 366, a stake for corner from which a Water Oak 9" bears N. 88 W. 2.1 varas; a Pine 20" bears S. 28 E. 4.6 varas; a Pine 12" bears S. 82 W. 8.8 varas;
>
> THENCE East with the South Boundary Line of said G. W. Smyth Survey, 2,386 varas to corner No. 14, the Southeast corner of said G. W. Smyth Survey, a stake for corner on the West bank of the Sabine River under the bridge on Texas Highway No. 6., no bearing trees available;
>
> THENCE down the said River with its meanders as follows: S. 6 E. 310 varas, and S. 19 W. 240 varas to a stake for corner at Corner No. 13, from which an Elm 24" bears S. 64 W. 2 varas, a Gum Stump bears S. 1.2 varas;
>
> THENCE West 2,352 varas to Corner No. 12, a stake from which a Sweet Gum 5" bears S. 62 E. 4.6 varas; a Hickory 4" bears N. 82 E. 7/10 of a vara;
>
> THENCE North 501 varas to Corner No. 11, the place of beginning, the Southwest corner of the G. W. Smyth Survey, andcontaining 212.4 acres of land.

There are no oil wells within five (5) miles of either of the two surveyed tracts of land.

This concludes my report.

Respectfully submitted,

E. C. Dominy

E. C. Dominy, Licensed State Land Surveyor.

A

counter #7282

R. C. SHINDLER | INSTRUMENT: JUDGMENT

DATED : AUGUST 9, 1906

TO FILED : NOV. 22, 1906

RECORDED : DB 2 Pg 131

LUTCHER & MOORE ET AL | DEED RECORDS NEWTON COUNTY

* * * * * * * * * * *

C C C N C

EXHIBIT

NO. 908 | IN THE DISTRICT COURT OF NEWTON

R. C. Shindler | COUNTY

vs. |

Lutcher & Moore et al | October 9, A.D. 1906.

On this day this cause was called for trial, and thereupon the plaintiff R. C. Shindler announced to the court that he desired to dismiss his suit as to the defendants G. Gedell Moore, J. T. Ramsey, George L. Porter and E. J. Barrett;

WHEREFORE it is accordingly ordered that as to said defendants plaintiff's suit be and same is hereby dismissed without prejudice, and it is ordered that plaintiff pay the costs incurred in making them parties. Thereupon Plaintiff R. C. Shindler and the defendants W. H. Strak, Henry J. Lutcher and the Lutcher & Moore Lumber Company; and the executors of M. T. Jones, deceased, to-wit: T. W. House, A. J. Schureman, H. D. Timmons Jesse H. Jones and J. M. Rockwell, and the widow and heirs of M. T. Jones, deceased, to-wit: Mrs. Louisa Jone, W. E. Jones, Janette Jones, Jesse H. Jones, Mrs. Augusta Hunting and husband J. D. Hunting appeared by their respective attorneys and announced ready; - the defendants C. T. Darby, J. W. Darby, John Sterrett assignee of C. T. Darby and John

W. Darby although duly served and although they had formerly answered failed to appear and defend, they having enetered into an agreement with plaintiff for judgment; - and the defendants J. C. Ramsey, Curtis Gunter and Frank Dunn although duly served and cited to trial, failed to appear and answer, but wholly made default. Wherefore it is ordered, adjudged and decreed by the court that the plaintiff R. C. Shindler do have and recover of the said defendants in default, to-wit: J. C. Ramsey, Frank Dunn and Curtis Gunter the premises in controversy and the title to and possess of same, said premises being the Mary Davlin survey situated on Sabine River in Newton County, Texas, for which let plaintiff have his writ of possession as against said defendants.

Whereupon it was announced to the court that the controversy herein between plaintiff R. C. Shindler and the defendants C. T. Darby, J. W. Darby, John Sterrett and John Sterrett as assignee of C. T. Darby and J. W. Darby, had been settled by agreement to the effect that plaintiff R. C. Shindler should take judgment against said defendants for and in consideration of a deed conveying an interest of seventy one (71) acres to one John Wahrenberger, vendee of said defendants. Wherefore it was accordingly ordered, adjudged and decreed by the court that the plaintiff R. C. Shindler do have and recover of the defendatns C. T. Darby, J. W. Darby, John Sterrett and John Sterrett as assignee of C. T. Darby and John W. Darby the said premises in controversy and title to and possession of same, said premises being the Mary Davlin survey situated on the Sabine river in Newton County, Texas, but it is ordered in accordance with said agreement that the

counter 47284

plaintiff R. C. Shindler pay all costs incurred in making said defendants parties to this suit.

And it further appearing to the court that there was an agreement on file settling the controversy herein as between the plaintiff R. C. Shindler and the Executors, widow and heirs of M. T. Jones, deceased, deceased, who defendants herein they being T. W. House, A.J. Schureman, H. D. Timmons Jesse H. Jones and J. M. Rockwell independent executors of the last will and testament & the estate of M. T. Jones deceased, and Mrs. Louise Jones, widow, and Jesse H. Jones, and W. E. Jones, Miss Jennette Jones and Augusta Hunting, heirs of M. T. Jones, deceased, and J. D. Hunting husband of Augusta Hunting; Wherefore in accordance with said agreement, it is ordered, adjudged and decreed by the court that the following portion of the said Mary Davlin survey in controversy between plaintiff and said defendants, executors, widow and heirs of M. T. Jones, deceased, shall be divided between them as set out below said part of said Davlin survey so in controversy being described thus:

BEGINNING at the northwest corner of the Mary Davlin survey as herein fixed

THENCE north 89 deg. 30' E 1250 vrs., to a stake marked J N

THENCE S 1594 vrs to a stake for corner a pine 36 inches diameter brs, S 83 W 5 vrs,

THENCE N 89 deg. 30' E 650 vrs, to cor.

THENCE S 306 vrs. to corner,

THENCE S 89 deg. 30' W 1900 vrs, to corner in the west line of the Mary Davlin survey as fixed and located by this decree.

counter 17285

THENCE N 1900 vrs, to the beginning, containing 456 acres, more or less.

(a) Said executors, widow and heirs of M. T. Jones shall have and take judgment against palintiff R. C. Shindler for the following tract of 100 acres, more or less, part of said 456 acre tract, to-wit:

BEGINNING at the NW corner of the tract, part of said Mary Davlin survey known as the Runyan tract of 400 acres, said corner being on the south line of the Richard Williams league. A pine brs, N 54 deg. W 1 v. another pine brs. S. 44 E 10½ vrs.

THENCE S at 564 5/10 vrs, a post from which a pine brs, S 38 deg. E 6 vrs, and a red oak brs, W 81 E 6-3/10 vrs

THENCE E at 1000 vrs, a post from which a sweet gum brs, N 4½ and a pine brs, E 13 vrs,

THENCE N 564 v the S boundary line of the Richard Williams survey a post from which a white oak brs, S [illegible] E 8 vrs, and a pine brs, S 7 vrs,

THENCE W 1000 vrs, to the beginning, containing 100 acres more or less.

(b) The plaintiff R. C. Shindler shall have and take judgment against the said defendants, to-wit, said executors, widow and heairs of M. T. Jones for that portion remaining after deducting said 100 acre tract described above, of the said tract of 456 acres, more or less, that may be in conflict with said Runyan tract of 400 acres, more or less, (conveyed to W. J. Runyan by C. S. Hunt November 18th, 1849, by deed recorded in book A p 539 deed records of Newton County) and the Runyan tract of 200 acres, more or less, on said

counter 17286

Davlin survey (conveyed to W. J. Runyan by Mastin Brack by deed dated Dec. 8 1857, and recorded in book C p 109 said records) which said portion so in conflict and so to be adjudged in its entirety to plaintiff is described by metes and bounds as follows:

BEGINNING at the S.W. corner of said 100 acres described above,

THENCE south about 1030 vrs more or less, to the S W corner of said Runyan 200 acres refered to above,

THENCE west along the south line of said 200 acre tract 1000 vrs, more or less, to the intersection with the west line of said tract of 456 acres, mor or less in controversy or to a point immediately south of said line (If there is no intersection),

THENCE northward with said west line to the S E corner of said 100 acre tract on the west line of said 456 acre tract, said point being about 564 vrs, south of the S line of the Richard Williams survey,

THENCE west 1000 vrs more or less, to the beginning, containing about 180 acres.

(c) The remainder of said 456 acres in controversy, being about 176 acres shall be divided between plaintiff and said defendants, (the executors, heirs and widow of M. T. Jones, deceased) in the proportion of first, one-third thereof to plaintiff R. C. Shindler & then one fifth of the remainder to Plaintiff R. C. Shindler and four-fifths (4/5) thereof to the said defendants; and each shall have and take judgment for his share against the other.

Wherefore it is ordered, adjudged and decreed by the

counter 47287

court in accordance with said agreement that the plaintiff R. C. Shindler shall have judgment against said defendants, the said executors, as such and individually, and the said widow and heirs of M. T. Jones, deceased, and J. D. Hunting for said portions of said 456 acre tract so allotted to him andfor title to and possession of same, and likewise for all the balance of said Mary Davlin in survey except the parts of said 456 acre tract allotted and adjudged to them.

It is ordered, adjudged and decreed by the Court that the said executors, widow and heirs of M. T. Jones, deceased, and J. D. Hunting do have and recover judgment of the said R. C. Shindler for the said portions of said 456 acres so allotted to them, and for title and possession of same and their costs in this behalf expended for which let them have their execution.

Let each have his writ of Possession for the parts allotted to him or them respectively. It is further ordered that said executors, widow and heirs be released from all claims for damages for former trespasses.

Upon announcment of ready for trial as to issues between plaintiff and the defendants, Henry J. Lutcher, W. H. Stark and the Lutcher and Moore Lumber Company, a corporation, a jury of twelve good and lawful men, composed of F. W. McMahon and eleven others, were duly sworn and impannelled in this cause to try the same as between said parties, and after hearing the pleadings, evidence and argument of counsel and receiving the special issues submitted to them by the court retired to consider of their verdict, and after due deliberation, returned their verdict and answers under oath in open court as follows, to-wit:

counter 17288

1st. Was the Mary Davlin Survey actually made on the ground by A. J. Shelby, deputy surveyor on or before the 26th, day of October 1838?

Answer, No.

2nd. Was the Theophilus Hickman survey actually made on the ground by A. J. Shelby deputy surveyor on or before the 27th, day of October 1838?

Answer, Yes.

3rd. If you answer the last above question in the affirmative then you are asked the further question: Did or not said surveyor locate said Hickman survey to begin as claimed by defendants Lutcher & Moore, at a marked corner about 1265 varas south 89 deg. 30' west of the northwest corner of the I McMahon or T. Hickman Labor?

Answer, Yes.

F. W. McMahon foreman.

Wherefore in accordance with said verdict, it is ordered by the court that the true west line of the said Mary Davlin survey situated in Newton County, Texas being the land in controversy is situated and located and the same is hereby fixed and established thus:

BEGINNING at a point in the south line of the Richard Williams league survey situated in Newton County, Texas, on the Sabine river, which is now marked and designated on the ground as the north east corner of the Theophilus Hickman survey of 12½ labors, same being situated about 1265 vrs, more or less, south 89 deg. 30' west from the northwest corner of the I McMahon labor in said county (formerly called the Theophulus Hickman labor) witness a pine marked X brs S 32 30 E

counter 47289

3.4 vrs, and being the original witness tree called for in the Davlin and Hickman field notes,

THENCE south along on the old marked line now located on the ground, being the the true west line of the said Davlin survey, and the true east line of said Hickman survey, at a distance of about 3030 vrs passing the S E corner of said Hickman survey, as marked on the ground, witness a pine marked X brs, S 19 deg. E 12 4/10 vs another pine mkd, X bears N 50 E 12 vs. being the same witness tree called for in the original field notes continuing on in same course in all 3150 vrs, to corner witness a post oak marked X bears S 85 W 7 vrs, same being the corner now marked on the ground and being the original and true SW corner of the said Mary Davlin survey.

And it is ordered, adjudged and decreed by the court that the plaintiff R. C. Shindler recover of said defendants Henry J. Lutcher, W. H. Strak and Lutcher & Moore Lumber Company, a corporation, in accordance with said verdict, and likewise with their admission and agreement on file in this cause all of the land in controversy lying east of said line, and the title to and possession of same for which let him have his writ of possession. And in accordance with said verdict admission and agreement on file in this cause it is further ordered adjudged and decreed by the court that the said defendants Henry J. Lutcher, W. H. Stark and the Lutcher & Moore Lumber Company recover of the plaintiff R. C. Shindler all of the land in controversy lying west of said line, and the title to and possession of same for which let them have their writ of possession.

The said Mary Davlin survey as defined herein and as recovered by plaintiff of said defendants is more particularly

counter 47290

described as follows:

BEGINNING at the north west corner of the said I. McMahon labor (formerly Theophilus Hickman labor)

THENCE S 89 deg. 30' west along the south line of the Richard Williams league about 1265 vrs, to the north east corner of the Theophilus Hickman survey of 12½ labors as above described,

THENCE along old marked line now marked on the ground as the east line of the said Hickman surveyabout 3030 vrs, passing S E corner of said Hickman survey as above described and continuing on 3150 vrs in all to S W corner of the Mary Davlin survey which is also the N W corner of the Jesse Terry survey witness a post oak marked X bears S 85 W 7 vrs,

THENCE east along the south line of the Mary Davlin survey or the north line of the Jesse Terry survey about 4088 vrs, to corner in N line of Jesse Terry survey immediately south of the S W corner of the John Droddy survey of a labor,

THENCE north passing said S W corner of the John Droddy labor, and continuing on to the N W corner of the F. Albright labor, an old ash now standing marked X bears S 33 W 8 vrs,

THENCE N 89 deg. 30' E about 1000 vrs, (instead of 1650) to the N E corner of said Albright labor, from which formerly a gum marked W H S 85 W 7 vrs, a sassafras marked W H S 40 E 6.4 vrs,

THENCE in a general course more westerly to the S E corner of said I. McMahon (formerly Theophilus Hickman) labor,

THENCE S 89 deg. 30' W with the south line of said McMahon labor 2569 3/10 vrs, to its S.W. corner,

counter 47291

RECEIVED
SEP 26 1960
General Land Office

D-545 2120

THENCE north with the west line of the said McMahon labor 500 vrs, to the beginning.

It is further ordered that plaintiff R. C. Shindler pay all costs incident to prosecuting this suit and herein incurred by or against said defendants and that they have execution for the costs incurred in this behalf.

And it further appearing to the court that the plaintiff has filed a cost bond herein with ____ and ____ as sureties, it is ordered that said defendants recover their costs against plaintiff and said sureties, and that the officers of the court likewise recover of plaintiff and said sureties, the costs in this behalf incurred by plaintiff, for which let them have their execution.

aff'd. in 107 S.W. 941

To which judgment, so far as in favor of the defendants H. J. Lutcher, W. H. Stark and Lutcher & Moore Lumber Company the plaintiff excepts, and also the heirs, executors & widow of M. T. Jones decd.

THE STATE OF TEXAS |
COUNTY OF NEWTON | I, John M. Horger Clerk of the District Court of Newton County, Texas, do hereby certify that the foregoing is a true and correct copy of the original Judgment as the same appears of record in my office in book F page 503.

Given under my hand and seal of said court, at office in Newton this 22nd, day of Novr. 1906.

John M. Horger Clerk.

(SEAL) By J. A. Hancock Deputy.

counter 47292

File No. 26

Newton County

Rolled Sketch

Filed Sept 26 1960

BILL ALLCORN, Com'r

By L. E. Thigpen

counter 47293

RECEIVED
NOV - 1 1960
General Land Office

JESSE TERRY | INSTRUMENT: DEED
DATED : OCT. 27, 1846
TO FILED : DEC. 28, 1853
RECORDED : DB "B" Pg 317
T. S. MCFARLAND | DEED RECORDS NEWTON COUNTY

* * * * * * * * *

THE STATE OF TEXAS |
COUNTY OF NEWTON |

EXHIBIT

THIS INDENTURE made and entered into on this the twenty seventh day of October in the year of our Lord Eighteen hundred and forty six between Jesse Terry of Anderson County, State aforesaid of the first part and Thomas S. McFarland of Newton County and state aforesaid of the second part,

WITNESSETH that the said Terry for and in consideration of the said McFarland having located and paid all expences on said Terry's headright League and Labor and the sum of three hundred dollars in hand paid the receipt whereof is hereby acknowledged and acquitted doth grant bargain, sell, alean, release, and convey unto the said McFarland all his right, title, claim, interest and demand in or to a certain tract or parcel of land situate in the County of Newton being a part of the headright of the said Terry situate on Sabine River opposit_ Burr's Ferry and designated as follows Viz.

BEGINNING at the South West corner of said Terry's Survey, whence a black gum marked T.H. bears S. 45 deg. E 6 varas.

THENCE North with Hickmans East boundary two thousand five hundred and twenty five varas to a post from which a post Oak marked J.R. bears S 86 deg. W. 7 varas and a black

counter 47294

Jack marked J.R. bears S 65 deg. E. 4 5/10 varas.

THENCE East Two thousand one hundred varas to a post on the boundary of M. Davlins Survey

THENCE South (excluding N.W. Carrolls labor) two thousand five hundred an_ thirty varas to a stake on the North boundary of Drowdy's Survey.

THENCE with said line to the beginning, containing Nine hundred and thirty acres more or less, also another tract of land on big cow Creek in said County being also a part of said Terry's Headright, designated and described as follows Viz.

BEGINNING at a post on the East bank of Big Cow Creek on the North boundary of R. Sims League from which a Beech marked J. T. bears N 17 deg. W. 11 8/10 varas, and a beech marked J.T.N 84 deg. E 10 varas.

THENCE North eighty degrees East Eight hundred and forty varas to the Northeast corner of said Survey,

THENCE South ten degrees East with the East boundary of said Sims, Survey one thousand three hundred eighty (eighty interlined in the original) varas to a post from which a pine marked J. T. bears S 89 deg. W. 15 2/10 varas.

THENCE East two thousand three hundred and fifteen varas to a post from which a Sweet Gum marked J.T. bears N 69 deg. W. 2 6/10 varas

THENCE North two thousand seven hundred and seventy varas to a post on the South boundary of B. T. Thompson's Survey from which a pine marked J.T. bears N. 79 deg. E. 7 varas.

THENCE West with said Thompon's South boundary three

thousand four hundred and thirty varas to his South West corner on the East bank of Big Cow Creek a post from which a Magnolia marked B.T.T. bears S. 18 deg. E. 2 5/10 varas.

THENCE down said creek with its east bank to the beginning containing (8,236,000) eight millions two hundred and thirty six thousand sqare varas more or less.

TO HAVE AND TO HOLD the premises aforesaid together with all and singular the rights members privileges and appurtenances to the (*same interlined) same belonging or in anywise appertaing to the only proper use benefit and behoof of the said Thomas S. McFarland and his heirs and assigns forever from the said Jesse Terry and his heirs and assigns forever.

In testimony whereof the said party of the first party hath hereunto placed his signature and Seal (using a Scrawl instead of a Seal) in the County of Newton on the date above written

In the 4th line on this page the word "eighty" interlined and in the 20th the word "same intentured before signing "Houston" erased and "Anderson" intertined before signing_

Jesse Terry (Seal)

Witness present
Saml. P. McFarland.
Isaac Lindsey.

counter 17296

St 16039
St 16040

Transcript of Hearing

counter 17297

HEARING OF THE APPLICATION TO PURCHASE AN ALLEGED VACANT AREA IN NEWTON COUNTY, TEXAS, SCRAP FILES NOS. 16040 AND 16039 FILED BY J. W. STEGALL HELD BEFORE THE HON. JACK GIBERSON, CHIEF CLERK AND ACTING COMMISSIONER OF THE GENERAL LAND OFFICE, IN AUSTIN, TEXAS, OCTOBER 25, 1960.

****

BEFORE

HON. JACK GIBERSON, CHIEF

CLERK AND ACTING COMMISSIONER OF

THE GENERAL LAND OFFICE

****

APPEARANCES

Hon. Bill Allcorn, Commissioner of the General Land Office

Hon. Milton Richardson, Assistant Attorney General

Hon. E. C. Dominy, Licensed State Land Surveyor, Lufkin, Texas

PROPONENTS:

Hon. Wm. Drew Perkins, appearing in behalf of J. W. Stegall

Mr. Arthur Richmond, Burkeville, Texas, representing himself

Mr. H. C. Montgomery, Burkeville, Texas, surveyor representing Mr. Richmond

OPPONENTS:

Hon. B. F. Whitworth: Jasper, Texas, appearing in behalf of Southern Pine Lumber Company

Hon. Ward R. Burke, Diboll, Texas, appearing in behalf of Southern Pine Lumber Company

Mr. Kenneth Nelson, Diboll, Texas, appearing in behalf of Southern Pine Lumber Company

counter #7298

Mr. Roland Goodrich, Lufkin, Texas, appearing in behalf of Southern Pine Lumber Company

OTHER APPEARANCES:

Mr. Bill A. Martin, Newton, Texas, appearing as an observer for Mr. Richmond

Mr. J.G. Harralson, Leesville, Louisiana, appearing as an observer

Mr. Gordon McNutt, Austin, Texas, appearing as an observer for the General Land Office

****

TRANSCRIPT OF PROCEEDINGS

****

PREPARED BY THE GENERAL LAND OFFICE

FROM A RECORDING OF THIS HEARING

****

counter 47299

D

MORNING SESSION

9:30 A. M.

OCTOBER 25, 1960

AUSTIN, TEXAS

MR. GIBERSON: This is a hearing on two applications of Mr. J. W. Stegall of Lufkin, Texas, to purchase an alleged vacant area in Newton County. The applications are numbered S. F. 16039 and S. F. 16040 and cover areas in Newton County about 17 miles from Newton, the county seat, and are bounded as follows, to-wit:

S. F. 16039 - "Situated in Newton County, Texas, about 17 miles Northeast from Newton, the county seat, and is bounded as follows, to-wit:

Bounded on the North by the John Droddy Survey, Abstract No. 89;

Bounded on the West by the Mary Davlin Survey, Abstract No. 93;

Bounded on the South by the Jesse Terry Survey, Abstract No. 423; and

Bounded on the East by the G. W. Smyth or Mitchell Martin Survey, Abstract No. 366, and containing 70 acres, more or less."

S. F. 16040 - "Situated in Newton County, Texas, about 17 miles Northeast from Newton, the county seat, and is bounded as follows, to-wit:

Bounded on the North by the G. W. Smyth or Mitchell Martin Survey, Abstract 366;

Bounded on the West and on the South by the Jesse Terry Survey, Abstract 423; and

Bounded on the East by the Sabine River and containing 200 acres, more or less."

The purpose of this hearing is to afford the applicant and all interested parties the opportunity to present evidence and arguments supporting their contentions as to whether or not the vacancy exists as alleged, and to present

counter 4730

D

information to the Commissioner, which, when reviewed in connection with the information already filed in the Land Office, will provide a sufficient basis for him to determine the vacancy question.

Under the usual procedure, the applicant and other proponents and opponents are all given the opportunity to make an opening statement. Then the surveyor appointed under the law by the Commissioner of the General Land Office will be sworn in and will give a narrative report of his findings. He will then be examined by the proponents and opponents will cross-examine. Ordinary court rules of procedure are not imposed here, but we do ask that you keep the questions and discussion within the bounds of relevancy. Additional witnesses and evidence may be presented by both sides. All interested parties and the applicant are permitted to make a closing statement. Any matter that is of record in the Land Office may be incorporated in the record by reference. It will not be necessary that you introduce any record of the Land Office as an exhibit. I would like to add that when you are speaking to identify yourself, because we are wired for sound and we would like to know for the purpose of the record who is asking the questions and who is doing the talking. I would also like to add that when examining the Surveyor or when you refer to the map, please identify all points or calls that you are talking about, just don't say from here to there.

Now, does the proponent have an opening statement to make?

MR. PERKINS: Let me ask you a question first. Are we going to take each application separately or both together?

MR. GIBERSON: We are going to take them both together. Actually, the procedure that I am interested in following, you can see them outlined on the

D

map up there. The lights seem to be rather bad, but I think you can all see them. We will let the surveyor, when it's time for him to take the stand, for him to tell us in his own words what he did in surveying out these two vacancies, and what his findings are. Then after he has gone through and even during the time he is going through his narrative report or statement, if you feel like it's necessary you can break in and ask a question if it's not clear about the things that he is saying. After he concludes his narrativeof what he has done, why you can ask him questions. Actually we will, as I pointed out here, the proponents will be the first people to ask the questions of the surveyor and then the opponents will cross-examine. We will give everyone here an opportunity to be heard if they want to be heard or they can present any evidence that they want to present. But before they're given an opportunity, our normal procedure is to let the proponents, if they want to, make an opening statement and the opponents then follow with their opening statement if they so desire. If they don't they can waive it, and the next witness would be the surveyor, our surveyor, appointed by the Commissioner of the General Land Office. If any of you other people have any surveyors you would like to put on the stand, we will be glad to give them opportunity to be heard. Does that answer your question, or is there something else?

MR. PERKINS: No, that answers my question. In that case, I'm Bill Perkins. I represent the proponent. We have no statement to make at this time.

MR. GIBERSON: Does the opponent, if there are any opponents here, have any statement to make?

counter 17302

D

MR. WHITWORTH: I am B. F. Whitworth of Jasper, Texas, and along with Mr. Ward Burke, Mr. Kenneth Nelson and Mr. Roland Goodrich, we are appearing here for the Southern Pine Lumber Company in opposition to both of the applications, and inasmuch as the proponents have not made an opening statement we will waive any opening statement that we might have thought we would make.

MR. GIBERSON: Thank you. Does anybody else have any statement that they would like to make before we proceed? Mr. Dominy, would you please stand and be sworn, please. Is that the correct pronunciation of your name?

MR. DOMINY: Yes, sir.

MR. GIBERSON: (DOMINY SWORN IN) Now, we have a little contraption here. I am going to attempt to show you how it works. It goes around your neck so that we can record your testimony. It will be a little simpler for the secretary to take it down, she's trying to get this down verbatim. I'll ask you in your own words to tell us your starting point and in your own words tell us what you did in your survey work.

MR. DOMINY: Well, I have made my report here and it is more or less condensed in the report, but when I started this survey I began at corner number 6 and ran North through number 7 to number 8 and I might say, too, that these square corners are the corners that I recognized as being corners, and corners that I could prove, and the circles are the corners that I could not prove.

MR. GIBERSON: In other words, your square corners are the original corners you found on the ground and the circled corners, what corners

D

are they now?

MR. DOMINY: The corners that I couldn't prove that they were surveyed corners. The circled corners I could not prove. If it's O.K., I'll just read from my report.

MR. GIBERSON: That'll be fine, and while you are reading, if you can, point out on the map so that we can locate where you are.

MR. DOMINY: Patent calls for distances are enclosed in parentheses and distances I chained on the ground are not enclosed in parantheses. I have numbered the corners for easy reference in making this report. Some of the lines and corners are well established and have been long recognized by people familiar with the area as the correct lines and corners. As to other lines and corners, there was little or no evidence to be found. Practically all of this area represents cutover lands from which all of the original timber has been removed that was merchantable, andsince the cutting of the timer, operations have been conducted by turpentine companies to remove the pine stumps. Also for convenience, I am numbering the paragraphs of this report.

(1) The main question in issue is a determination of the correct location on the ground of the upper and lower North Boundary Lines of the Jesse Terry Survey.

(2) I made a careful survey of lines between the following corners, and made careful search for all corners either on these lines or at the termination of these lines as follows:

From corner No. 1 through No. 2, No. 3 and up to No. 19; I'll say here that this line does not represent the distance.....it would run

D

higher up here. This is not a true scale on the map. North Boundary Line of Mary Davlin Survey; (Not on plat).

From corner No. 1 through No. 4 to No. 5, then up through corner No. 6 to No. 7 to No. 8.

Fromcorner No. 6 to corner No. 9 to Corner No. 10 to Corner No. 5;

From corner No. 9 through No. 10 to No. 11 to No. 14 down the Sabine River to No. 13, West to Corner No. 12, back to corner No. 11;

Did not meander the Sabine River from corner No. 13 to Corner No. 15, but went to Corner No. 15;

Did not run the South Boundary Line of the Terry Survey, being the North Boundary Line of the A.S. Droddy Survey, Abstract No. 86, being the line from Corner No. 15 to No. 16, as this was a well established line;

Ran the line from Corner No. 16 through No. 17 and No. 18 to Corner No. 1;

(3) Pertinent surveys were laid out as follows:

(a) Richard Williams, Abstract No. 19, patented on field notes of Wm. Ewing, dated Septmeber 17, 1835;

(b) Isaac McMahon Labor, Abstract No. 297, patented on corrected field notes; (originally called the Theopolis Hickman Labor and was called for in the Davlin field notes as such and the Davlin field notes called for same bearing trees at common corners as the corrected field notes on which the Isaac McMahon was patented.)

counter 17305

D

(c) A. S. Droddy, Abstract No. 86, patented on the field notes of Wm. Prissick dated May 1, 1838;

(d) John Droddy Labor, Abstract No. 89, patented on the field notes of Wm. Prissick dated May 16, 1838;

(e) G. W. Smyth Survey, assignee of Mitchell Martin, Abstract No. 366, patented on the field notes of Wm. Prissick dated June 10, 1838;

(f) Theopholis Hickman Survey, Abstract No. 143, patented on the field notes of A. J. Shelby, dated October 27, 1838;

(g) Mary Davlin Survey, Abstract No. 93, patented on the field notes of A. J. Shelby dated October 26, 1838;

(h) Jesse Terry Survey, Abstract No. 423, patented on the field notes of A. J. Shelby dated October 26, 1838;

(i) S. H. Smyth Survey, assignee of A. F. Allbright, Abstract No. 28, patented on the field notes of S. H. Smyth dated July 20, 1848;

(j) J. F. Brack Survey, Abstract No. 728, patented on the field notes of G. W. Gray dated December 14, 1880;

(k) J. N. Smyth Survey, Abstract No. 594, patented on the field notes of J. A. Dubose dated December 17, 1880;

(l) J. M. Cloud Survey, Abstract No. 678, patented on the field notes of G. W. Gray dated February 5, 1890;

4. When Shelby endeavored to lay out the Theopholis Hickman, the Mary Davlin and the Jesse Terry Surveys on October 26 and 27, 1838, the A. S.

counter 47306

D

Droddy, the G. W. Smyth and the John Droddy Surveys had already been surveyed and patented. Since all of these surveys are well located on the ground today, as shown by this report, I believe that Prissick actually laid off these surveys on the ground and that the lines and corners would have been easily identifiable by Shelby in October of 1838. Although the F. Albright was patented on field notes dated July 20, 1848, Shelby called for its lines and corners in his field notes of the Mary Davlin Survey and therefore the Albright Survey must have been actually laid out on the ground prior to the time Shelby made his surveys in October, 1838.

(a) Although Idid not believe it necessary to survey the lines and corners of the Richard Williams Survey and the Isaac McMahon Labor, first called the T. Hickman Labor, these had been surveyed, according to the field notes, before Shelby attempted to lay out the Theopholis Hickman, Mary Davlin and Jesse Terry Surveys. Therefore, it is evident that Shelby was planning to take up the vacant land lying South of the R. Williams and I. McMahon Surveys, lying West of the Sabine River, the F. Albright, and the J. Droddy and the G. W. Smyth Surveys; and lying North of the A. S. Droddy Survey.

(b) He would have found it almost essential to survey the Theopholis Hickman, but he could easily have only surveyed the West Boundary Line of the Davlin, calculated his Sabine River calls and the lines and corners of the surrounding surveys above mentioned from maps and field notes, and made the field notes for the Davlin and Terry Surveys from this information. Since, as herein shown, it is impossible to make Shelby's field notes fit on the ground, some such hypothesis is necessary in order to try to reconstrutt these surveys.

counter 17307

D

5. Although J. F. Brack, the J. M. Cloud and the J. N. Smyth Surveys were junior surveys and laid down from forty-two to fifty-two years after the Terry and Davlin Surveys, their calls for the West Boundary Line of the Terry, the North Boundary Line of the Adam S. Droddy and part of the West Boundary Line of the Mary Davlin Survey are entitled to some weight, and indicate that G. W. Gray in 1880 and 1890, and J. A. Dubose in 1880 thought that the line from No. 16 North through Corners No. 17, 18, 1, 2 and3, to No. 19 was the West Boundary Line of the Jesse Terry and the Mary Davlin Surveys. They must have found some evidence to support their opinions.

6. At corner No. 16, Shelby called for the following as the Southwest corner of the Terry Survey:

> Hickman's East Boundary, a stake from which a
> Black Gum marked "TH" North 29 deg. West 7.7 varas, and a
> Black Oak marked "TH" South 45 East 6 varas.

7. This corner is now in the edge of the right-of-way for State Highway No. 63 or 45 and no evidence of these original bearing trees could be found. However, this is a well marked corner, showing that is has been recognized as the Southwest corner of the Jesse Terry Survey since at least December 14, 1888, when G. W. Gray laid down the J. F. Brack Survey.

8. Although Shelby did not call for the Terry Survey in the Davlin field notes and did not call for the Davlin Survey in the Terry field notes, he called for the same bearing trees at the N. W. corner of the Terry and the S. w. Corner of the Davlins, as follows:

counter 47308

D

A post from which a P.O. marked "JR" bears South 86 degrees West 7 varas, and a
Black Jack marked "JR" bears South 65 deg. East 4.5 varas.

9. I did not find any evidence of the Black Jack, but I found a corner marked up at this point on the line between Corners No. 16 - 3 from which corner the stump of a Post Oak bears S. 86 West 7 varas. This stump indicates that the Post Oak tree was cut down some two or three years prior to the time I was on the ground, but I scraped the stump carefully and used a magnifying glass in an effort to count the rings. Although I could not count all the rings, I am staisfied that this Post Oak tree was 200 years or more old when it was cut, and I believe it was the Post Oak tree marked by Shelby.

10. At corner No. 2, Shelby called for the following bearing trees for the Southeast corner of the Theopholis Hickman Survey;

A pine S. 19 E. 12.4 vrs., marked X;
A pine N. 50 E. 12 vrs, marked X.

11. At this same corner, J.A. Dubose, in surveying the J. N. Smyth Survey in December, 1880, called for the following bearing trees:

Pine South 17 East 12 varas;
Pine North 37 West 6.5 varas.

12. At this point, I found the following:

Pine 14" N. 70 W. 7.6 varas, marked X;
Red Oak 5" S. 85 W. 3.4 vrs. alligator;

An alligator is a mark used by some surveyors.

13. This is a well marked corner and I am satisfied it is the Southeast corner of the Theopholis Hickman and the Northeast corner of the J. N. Smyth Survey on the West Boundary Line of the Mary Davlin Survey.

14. Shelby called the West Boundary Line of the Terry Survey from

D

Corner No. 16 to Corner No. 1 to be 2,525 varas, but at 2,525 varas North from Corner No. 16, I did not find any evidence of a corner, and did not find any evidence of a corner from that point northward until I reached Corner No. 1. The 2,525 would come in here. The line from Corner No. 16 to Corner No. 1 is 2,733 varas, being 208 varas longer than Shelby called it to be.

15. I ran North on the recognized West Boundary Line of the Mary Davlin Survey from No. 1, following an old well marked line to No. 19, a well marked corner on the South Boundary Line of the Richard Williams Survey. At this No. 19 I found the following:

Black Jack 9" N. 31 W. 9.4 varas;
Post Oak 10" N. 56 E. 7.9 varas;
Sand Jack 6" N. 67 E. 3.2 varas;
Sand Jack 6" S. 68 E. 6.5 varas;

At the Northwest corner of the Mary Davlin, Shelby had called for the South Boundary Line of the Richard Williams, and the following:

Pine marked "TH" brs. S 33 deg. 30' E. 3-7/10 varas;
Pine marked "TH" brs. N. 45 deg. W. 5-3/10 varas;

I found the distance from No. 1 to No. 19 to be 3,227 varas, and Shelby called this to be 3,150 varas. Since this is not a great discrepancy, and since Line No. 16-19 is the recognized West Boundary Line of the Terry and Davlin Surveys and since I believe the Post Oak stump at No. 1 is the stump of the original bearing tree called for at this point by Shelby, I believe No. 1 is the Northwest corner of the Terry Survey and the Southwest corner of the Davlin Survey.

corenter 47310

D

(a) I ran East on the North Boundary Line of the Davlin and the South Boundary Line of the R. Williams, and at 1,264 varas reached the upper N. E. corner of the Davlin. Shelby called this distance to be 6.168 varas and at this corner called for the following;

Beech marked "TH" brs. S. 38 deg. 15' E. 5-6/10 varas;
White Oak marked "TH" brs. W 7-1/10 varas;

At this corner I found the following:

Pine 15" S. 4.7 varas;
Sweet Gum 5" S 28 W 7 varas;
White Oak 26" W. 5.6 varas. (I believe this is the original witness tree.)

16. Finally, the judgment in the case of R. C. Shindler vs. Lutcher & Moore, et al, rendered in the District Court of Newton County, Texas, on October 9, 1906, affirmed an appeal, a copy attached hereto as Exhibit "B", found that Corner No. 1 was the Southwest corner of the Mary Davlin Survey and the Northwest corner of the Jesse Terry Survey, that Corner No. 19 was the Northwest corner of the Mary Davlin Survey and that Corner No. 2 was the Southeat corner of the T. Hickman Survey, Abstract No. 143;

17. I made a search for a corner at No. 3, but did not find any evidence of a corner or any evidence of a line going East from this point. A line running due East from No. 3 would go to Nol 6, the Southwest corner of the John Droddy Survey, but I did not find any facts to support establishing a corner at No. 3.

counter 17311

D

18. From corner No. 1 to corner No. 5, which corner is directly South of corner No. 6, the Southwest corner of the Droddy Survey, is a distance of 4,082 varas, instead of 6,200 varas as called in Shelby's field notes. It is incredible that Shelby made such an error in his chaining, and it is my opinion that he did not run this line at all on the ground and attempted to calculate this distance. As a result, he did not realize that a line running due East from corner No. 1 would not strike the Northwest corner of the G. W. Smyth Survey, my corner No. 9. I did not find evidence of any old line from corner No. 1 to corner No. 4, but did find some marks of a line probably sixty or seventy years old from corner No. 4 to corner No. 5.

19. At corner 5, I found the following marked trees, although these trees were not called for in any of the field notes or patents of either the Terry, the Davlin, the Droddy or the Smyth Surveys, to-wit:

Pin Oak 24" N. 37 W 3 varas, xxx
Pin Oak 12" N. 83 E 5.2 varas;
Maple 6" N. 37 E. 3.6 varas.

20. At corner No. 6, Prissick called for the following at the S. W. corner of the John Droddy Survey:

A Post from which a Pine marked "JD" bears N. 8 dg. W. 5.5 varas;
Pine marked "JD" bears South 16 deg. West 9 varas.

The field notes of the Shelby of the Davlin Survey called for these same bearing trees and for this Southwest corner of the J. Droddy Survey. I found the following at this corner.

Maple 8" N. 19 E 6.4 varas;

counter 47312

D

B. G. 14" N. 55 E. 8 varas;
B. G. 20" N. 67 E. 3.5 varas;
Hickory 5" S. 85 E 2.2 varas;
R. O. stp. S 9 E 15.4 varas.

21. At corner No. 7, the field notes of the Albright and Droddy Surveys called for the following;

Post from which a Pine marked "JD" bears S. 85 E 5.3 varas;
Pine marked "JD" bears South 1 deg. East 12.6 varas;

At this corner I found the following:

Pine 20" N. 30 E 4.1 varas, xx;
Pine 20" S 62 W 8 varas, xxx;
Pine stp. S. 33 E. 5.7 varas;

22. At corner No. 8, being the Northwest corner of the Albright Survey, its field notes called for the following:

Post from which an Ash marked "WH" bears S. 33 W. 8 varas;
Pine marked "WH" bears N. 20 E. 5 varas;

I believe the field notes of the Davlin call for this same corner, because of the Davlin field notes called to begin on the West bank of the Sabine River at the Southeast corner of the Theopholis Hickman Labor, then to go down said River to the Northeast corner of the Fleming Albright Labor, then to go:

"with the North line of said Labor S. 89 deg. 30' W at 16.50 varas a stake from which an
Ash marked "WH" bears S. 35 W 8 varas;
Pine marked "WH" bears N 20 E 3 varas.

Thus the Davlin notes call for the same distance from the Northeast corner of the Albright to its Northwest corner (my No. 8) as do the albright field notes, and call for the same trees, except the Pine is called to be a distance of "3 varas" instead of "5 varas."

counter #7313

D

At this corner, I found the following:

Ash 8" N. 33-1/3 W 3.8 varas;
Pin Oak 18" S 31-3/4 W 6.8 varas;
Pin Oak 18" N 58 E 2.8 varas;
Pine stp. hole N. 20 E. 5 varas;
Ash stp. hole S 33 W 8 varas;

The stump holes are correct for the original bearing trees, and I am convinced this is the original Northwest corner of the F. Albright Labor, and an interior corner of the Davlin.

23. The field notes ofthe Albright called for its West Boundary to be 500 varas in length, the field notes of the John Droddy called for its West Boundary Line to be 500 varas, and the Davlin field notes called for this total distance, being from Corner No. 8 to Corner No. 6, to be 1,000 varas.

24. I found this distance to be 1,023 varas, and 700 varas South from Corner No. 8 I found the evidence of the old road called for in the field notes of the Davlin Survey by Shelby.

25. The line from Corner No. 6 to Corner No. 8 is an old, well established line, with old hacks and marks and corners No. 6, No. 7 and No. 8 are old, well established and recognized corners.

26. At Corner No. 9 the field notes of the J. W. Smyth called for a stake from which:

White Oak marked "S" brs. S 31 E 10.5 varas;
White Oak makred "S" brs. S 89 E 5.2 varas;

counter 1734

D

Shelby's field notes of the Terry call for the following at this corner:

"Martins N. W. corner, from which a White Oak brs. S 31 deg. E 10-5/10 vrs;
Water Oak brs. S 87 deg. E 5-4/10 vrs;

At this corner No. 9, I found the following:

A Hub, from which:
White Oak 24" S 38 E 2.8 varas;
White Oak 14" N 84 E 5 varas, and marked with an alligator.

There was an old, well marked line going East from Corner No. 9 toward the Sabine River, but I did not run this line to the river.

The field notes of the Smyth, made by Prissick called for the line from Corner 9 to Corner 11, the West Boundary Line of the Smyth, to be 500 vara, and I found this distance to be 494 varas.

27. At Corner No. 10, not a patent corner, I found the following:

S. G. 15" S 87 W 10.4 varas, and I marked a
P. O. 6" S 17 E 6.9 varas.

I did not find anything at this point that would indicate it was a corner of either the Smyth, the Terry or the Droddy Surveys.

28. At Corner No. 11, the field notes of Prissick called for the following at the Southwest corner of the G. W. Smyth:

A stake from which a White Oak marked "S" bears S. 24 E 5 varas;
Sweet Gum marked "S" bears N. 45 E 9.9 varas.

Shelby's field notes of the Terry called for this to be an interior corner of the Terry Survey and called for the following:

A stake, S. W. corner of said Survey, from which a
Water Oak brs. S 24 deg. East 5 varas;
Sweet Gum brs. N. 45 deg. E 9-9/10 vrs, each marked "S".

counter 47315

D

At this corner, my No. 11, I found the following:

Water Oak 9" N 88 W 2.1 varas;
Pine 20" S 28 E 4.6 varas;
Pine 12" S 82 W 8.8 varas;
S.G. 8" E 9.4 varas;
Pin Oak 9" N. 68 E 12.6 varas;
S.G. stp. N 45 E 9-9/10 varas.

29. In running the line between Corner No. 11 and Corner No. 14, being the South Boundary Line of the Smyth Survey, I found the distance to be 2,386 varas, whereas Prissick called this distance to be 2,306 varas. Corner No. 14 is under the State Highway Bridge across the Sabine River, and there was no evidence of any corner. However, I talked to Joe Harralson, an old settler in this area, who was employed by the State Highway Department in helping to clear right-of-way when this highway was first built and the bridge c constructed. He remembers seeing the old Maple at this corner with the old makrs upon it, but does not remember the Sycamore.

30. At this corner, My No. 14, Prissick called for the following witness trees:

Maple marked "S" South 33 deg. East 5.9 varas;
Sycamore marked "S: South 15 deg. 30' West 15.3 varas.

There are the same witness trees called by Shelby in his field notes of the Terry, and as already mentioned, he calls for these witness trees and the Southwest corner of the Smyth Survey to be the beginning point of the Terry Survey. I surveyed down the river from Corner No. 14 to Corner No. 13 and started running on South from No. 13, but it was obvious that the field note calls of the Terry Survey as given in Shelby's field notes were radically

counter 47316

different from the present course of the River, and I did not find any evidence that the River had made such radical changes as would be indicated by the difference between Shelby's field note calls and the present course of the River.

At Corner No13, I found the following:

Elm 24" S 64 W 2 varas and gator
Gum stp. S. 1.2 varas.

I found no evidence that this was a corner of the G. W. Smyth Survey or the beginning corner of the Terry Survey.

31. On the line from Corners No. 13 to 12 and from 12 to 11, I found some old marks and hacks that indicated this line was probably sixty to seventy years old, indicating that it was probably surveyed about 1890 to 1900. I did not find any evidence of a corner at my No. 12, and I marked the following:

S. G. 5" S 62 E 4.6 varas;
Hickory 4" N 82 E 7/10 varas.

I did not find any evidence or any bearing trees at this Corner No. 12 that would indicate that this was the original Southwest corner of the G. W. Smyth Survey, or that it was the original interior corner of the Terry Survey.

32. I did not meander the Sabine River from Corner No. 13 to No. 15, but went to Corner No. 15. At Corner No. 15, Prissick in surveying the Adam S. Droddy Survey, called for the following:

Post on West bank Sabine River from which a
Sycamore marked "AD" bears N. 87 deg. 30 Min. 4.6 varas;
Sycamore marked "AD" bears S. 48 E 7.4 varas;

counter 47317

D

I found the following at this corner:

Willow 14" N 40 W 7/10 varas;
Willow 12" S 28 W 11.2 varas.

This is the corner called forby Shelby in surveying the Terry, and the evidence on the ground indicates that this is a well established corner and the line going West from this corner is an old, well marked line and recognized in the community as the North Boundary Line of the A.S. Droddy Survey and the South Boundary Line of the Jesse Terry Survey.

33. In summary, the evidence indicates unmistakably that the Fleming Albright, and John Droddy and the G.W. Smyth Surveys are correctly located on the ground today according to the field notes made by the surveyors upon which patents were issued, and that the same is true of the North Boundary Line of the A.S. Droddy Survey, Abstract No. 86. A. J. Shelby, in writing the field notes of the Mary Davlin, Abstract No. 93, dated October 26, 1838, and the field notes of the Jesse Terry, Abstract No. 423, dated October 27, 1838, called for the lines and corners of the Albright, Droddy and Smyth Surveyr. In addition, at common corners, he called for the same bearing trees called for by William Prissick in his field notes of the John Droddy on May 16, 1838, and in his field notes of the G.W. Smyth on June 10, 1838. K If Shelby was actually on the ground, the conclusion is inescapable that he was actually on the lines and corners of the Albright, Droddy and G.W. Smyth Surveys as the lines and corners established by Prissick would have been plainly visible and evident.

34. If Prissick (Shelby)* was not on the ground, then his calls for the lines, corners and bearing trees of these surveys must be honored.

counter 77318

D

36. It is evident from the work I have done, and from the facts to be found on the ground that A. J. Shelby did not run all thelines on the ground of the Mary Davlin and the Jesse Terry Surveys. It is possible, but doubtful, that Shelby began his surveying on the ground as he stated at the lower corner of the T. Hickman Labor on the West Bank of the Sabine River (not shown on my plat) thence went down the Sabine River, around the Albright, Droddy and Smyth Surveys down the River to the A.S. Droddy Survey, West on its North Boundary Line to Corner No. 16, thence North through Corner No. 17, 18, 1 and 3 and on up to the Northwest corner of the Davlin and back to his place of beginning. However, it is my opinion that Shelby actually only established Corner No. 1 on the ground, and probably surveyed the Theopholis Hickman and the West Boundary Line of the Mary Davlin Survey. This is the finding of the District Court of Newton County in the Judgment in the Schindler case, copy attached as Exhibit "B". By reason of the fact that the North Boundary Line of the Davlin Survey is only 1,264 varas in length, when Shelby called it to be 6,168 varas, and, froma study of the field notes of surveys named in this report, and from a study of the working sketch of this area prepared by the General Land Office, it is difficult to believe that Shelby actually surveyed the North Boundary Line of the Davlin Survey.

37. If Shelby actually did as much surveying on the ground as above stated, it is my firm opinion that he did not survey on the ground any line going East from No. 1 or No. 3 or from any point on the line between Corner No. 6 or Corner No. 5. It 'smy opinion that he endeavored to calculate the division line between the Mary Davlin and the Jesse Terry Surveys without running the line on the ground. This is the only way to account for the discrepancies in

counter 97319

D

the actual location of various points on the ground.

38. SUMMARY OF ESSENTIAL FACTS:

In my opinion, the following facts are established by evidence found on the ground, by the original field notes of the surveys mentioned, by general acceptance of land owners as evidenced by established lines and corners, and, by the judgment mentioned, copy attached as Exhibit "B":

(a) That No. 1 is the corner established on the ground by A. J. Shelby in October, 1838, as the Northwest corner of the Jesse Terry Survey and the Southwest corner of the Mary Davlin Survey;

(b) That Corner No. 6 is the original Southwest corner of the John Droddy Survey established by William Prissick in May, 1838;

(c) That Corner No. 9 is the original Northwest corner of the G. W. Smyth Survey on the South Boundary Line of the John Droddy Survey, established by William Prissick in June of 1838;

(d) That Corner No. 11 is the original Southwest corner of the G. W. Smyth Survey as established on the ground by William Prissick in June, 1838, and that regardless of whether or not A. J. Shelby made this portion of his survey on the ground, this is the corner he intended to and did establish, as the interior Northeast corner of the Jesse Terry Survey;

(e) That the line between Corner No. 11 and Corner No. 14 is the original South Boundary Line of the G. W. Smyth Survey established by William Prissick on the ground in June, 1838, and that regardless of whether or not A. J. Shelby made this part of his survey on the ground, this is the line he intended to, and did establish, as the lower North Boundary Line of the Jesse Terry Survey;

counter 47320

D

(f) That Corner No. 14 is the original Southeast corner of the G. W. Smyth Survey as established on the ground by William Prissick in June, 1838, and that regardless of whether or not A. J. Shelby was on the ground on this portion of his surveys, he intended to and did establish this corner as the lower Northeast corner, and the beginning corner, of the Jesse Terry Survey;

39. QUESTION OF EXISTENCE OF ALLEGED VACANCIES:

(a) I do not believe that Tract No. 2, S. F. 16040, hereinabove described and shown on Exhibit "A", is a vacancy, being the land enclosed between the lines connecting my Corners Nos. 11, 14, 13, 12 and back to 11.

(b) There is no way to reconcile on the ground all of the calls in the field notes of the Mary Davlin Survey and those of the Jesse Terry Survey. In order to complete these surveys, it is necessary to reject one or more of the calls for course, distance and corners in the field notes of both, and it may be solely a legal question from the facts I have found in this report.

(c) The only way to reconstruct the South Boundary Line of the Mary Davlin Survey and the North Boundary Line of the Jesse Terry Survey to avoid any vacancy is to find that the line connecting Corner No. 3 and Corner No. 6 is the common boundary line of these two surveys. As already pointed out, there is no evidence of any corner at No. 3 and no evidence on the ground that a line between Corner No. 3 and Corner No. 6 was ever run on the ground as the common boundary line of these two surveys. Therefore, I do not believe the line from No. 3 to No. 6 is the common boundary line between the Davlin and Terry Surveys.

(d) If, as Shelby stated, the lower South Boundary Line of the Mary Davlin Survey goes from the Southwest corner of the John Droddy Survey

D

(corner No. 6) to the Post Oak corner (corner No. 1), and if, the upper North Boundary Line of the Jesse Terry is run as Shelby stated from the Post Oak corner (corner No. 1) to the Northwest corner of the G. W. Smyth Survey (corner No. 9), there is still a vacancy between these lines. Therefore, I do not believe this method would be a correct reconstruction of the original boundaries between the Davlin and Terry Surveys.

(e) I believe the original and correct location of the boundary line between the Mary Davlin Survey and the Jesse Terry Survey is as follows, and for the reasons stated:

From Corner No. 8, the East Boundary Line of the Mary Davlin Survey should run due South through Corners No. 7 and 6 to Corner No. 5;

From Corner No. 5 a line should be run due West to Corner No. 1, as the South Boundary Line of the Davlin Survey and the North Boundary Line of the Terry Survey;

The North Boundary Line of the Jesse Terry Survey should run from Corner No. 1 due East through Corner No. 5 to Corner No. 10, thence South to Corner No. 11 and thence East to Corner No. 14. I found old maps that showed this construction of the two surveys and found some old deeds calling forthe Mary Davlin Survey to Corner No. 5. This solution is supported by the judgment, Exhibit "B", and the actual lines on the ground indicate this has been the accepted lines and corners of these portions of the Mary Davlin and Jesse Terry Surveys. I realize this would be extending the distance of the

counter 7322

Mary Davlin East Boundary Line 386 varas further than Shelby called it to be, and it would also indicate that Shelby was mistaken as to the location of the Southwest corner of the John Droddy Survey. However, in view of the numerous and obvious errors in Shelby's field notes, this would not be a major change, would most nearly harmonize the calls of his field notes with the least amount of change, and would still honor Shelby's intent to have a common Boundary Line between the Terry and Davlin Surveys.

40. I therefore conclude that Tract No. 1, S. F. 16039, bounded by the lines connecting my Corners No. 6 to No. 9 to No. 10 to No. 5 and back to No. 6, is a vacancy, the field notes thereof being as follows:

"BEGINNING at Corner No. 9, the Northwest corner of the G. W. Smyth Survey, Abstract No. 366, on the South Boundary Line of the John Droddy Survey, Abstract No. 89, a 24" W.O. is S. 38 E. 2-8/10 varas, and a 14" W.O. is N. 84 E. 5 varas;

THENCE West with the South Boundary Line of said Droddy Survey 1,023 varas to the Southwest corner of said Droddy Survey, which is Corner No. 6, an 8" Maple is N. 19 E. 6-4/10 varas, a 14" B.G. is N. 55 E. 8 varas, a 20" B.G. is N. 67 E. 3-5/10 varas, a 5" Hickory is S 85 E. 2-2/10 varas, and a R.O. stump is S. 9 E. 15-4/10 varas;

THENCE South at 386 varas to a stake for corner No. 5, a 24" Pin Oak is N 37 W 3 varas, a 12" Pin Oak is N 83 E 5-2/10 varas and a 6" Maple is N 37 E 3-6/10 varas;

THENCE East at 1,023 varas to a stake in the West Boundary Line of the G. W. Smyth Survey which is Corner No. 10, from which a 15" S.G. is S 87 W 10-4/10 varas, and a 6" P.O. is S 17 E 6-9/10 varas;

THENCE North with the West Boundary Line of said Smyth Survey to the beginning, containing 68.89 acres of land by actual survey.

counter 97323

D

41. I further conclude that Tract No. 2 S. F. 16040, bounded by the lines connecting my corners No. 11 to No. 12 to No. 13 to No. 14 and back to No. 11, is not a vacancy, but is a part of the Jesse Terry Survey according to the field notes of A. J. Shelby, the original surveyor, the field notes thereof being as follows:

"BEGINNING at Corner No. 11, the Southwest corner of the G. W. Smyth Survey, Abstract No. 366, a stake for corner from which a Water Oak 9" bears N. 88 W. 2.1 varas; a Pine 20" bears S. 28 E 4.6 varas; a Pine 12" bears S 82 W 8.8 varas;

THENCE East with the South Boundary Line of said G. W. Smyth Survey, 2,386 varas to corner No. 14, the Southeast corner of said G. W. Smyth Survey, a stake for corner on the West bank of the Sabine River under the bridge on Texas Highway No. 6, no bearing trees available;

THENCE down the said River with its meanders as follows: S. 6 E 310 varas, and S 19 W 240 varas to a stake for corner at Corner No. 13, from which an Elm 24" bears S 64 W 2 varas, A Gum Stump bears S 1.2 varas;

THENCE West 2,352 varas to Corner No. 12, a stake from which a Sweet Gum 5" bears S 62 E 4.6 varas; a Hickory 4" bears N. 82 E 7/10 of a varas;

THENCE North 501 varas to Corner No. 11, the place of beginning, the Southwest corner of the G. W. Smyth Survey, and containing 212.4 acres of land."

There are no oil wells within five (5) miles of either of the two surveyed tracts of land. This concludes my report.

MR. GIBERSON: Does the proponent have any questions to ask Mr. Dominy?

MR. ALLCORN: Did you say that there was no production within fifteen miles?

counter #7327

D

MR. DOMINY: Five miles.

MR. ALLCORN: All right. Thank you.

MR. PERKINS: Goind back to your report, on Page 5. Now, I want to make this clear here on this Paragraph 9 here, as I understand your statement, you found no evidence of a corner at where you've got a tree marked.

MR. DOMINY: That's right.

MR. PERKINS: And no bearing trees marked on either one, either the Terry or the Droddy.

MR. DOMINY: That's right.

MR. PERKINS: All right. Now on Number 1 here, I couldn't get it clear from the report here. You...it is your opiniontthat that stump you found was the stump called for in Shelby's field notes to be the southwest corner of the Mary Davlin

MR. DOMINY: The post oak tree will fit and the stump hole will fit.

MR. PERKINS: On your corner No. 1.

MR. DOMINY: That;s right.

MR. PERKINS: If that is the tree that he called for, it would be corner number 1 on your plat. Now the original field notes of the Terry Survey, according to Mr. Shelby's original field notes, what (inaudible).... Then they had called for this boundary line to be from Corner No. 1 to No. 5 on the north boundary line here.

D

MR. DOMINY: That's right.

MR. PERKINS: On the Mary Davlin, do you remember where you began on this line.

MR. DOMINY: Not off hand.

MR. PERKINS: Do you remember whether you went clockwise or counterclockwise. Whether you went 1-5 or 5-1.

MR. GOODRICH: I believe 5-1, Bill. To the McMahon Survey and came around the Allbright and Droddy and then would wind up going from 5 to 1.

MR. PERKINS: Now, did you, I think there is an error in one place there, a typographical error in your report. On one distance there. All right, now you said in your report on Page 7 in Paragraph 19: "At Corner 5 I found the following marked trees", now you say these trees are not called for in, referring to your Corner No. 5.

MR. DOMINY: Reads "19 to...."

MR. PERKINS: In your opinion, how old would you say those markings were?

MR. DOMINY: Probably 50, 60 70 years old. I didn't chip them to actually tell.

MR. PERKINS: Let me ask you this then. On Paragraph 18 right above it, your call for 19 to 20, I believe you found that to be 1264 varas.

D

MR. DOMINY: Yes, that's right.

MR. PERKINS: Let me ask you something, Mr. Giberson. Will I have a chance to ask him more after this develops? In other words, I may be wasting my time doing some of this. I'll come back to it.

MR. GIBERSON: Are there any other proponents? If not, why...

MR. RICHMOND: I would like to ask a question, Mr. Giberson.

MR. GIBERSON: Are you a proponent?

MR. RICHMOND: Yes, sir. Mr. Dominy, I'm Arthur Richmond. At Corner No. 9 do you recall what kind of territory that was?

MR. DOMINY: Sandy bottom.

MR. RICHMOND: Were there any relief bridges?

MR. DOMINY: Yes.

MR. RICHMOND: Do you recall off hand whether there were any other bridges around there?

MR. DOMINY: No, I don't. There may be some along through there, but I don't recall any bridges. I was running lines. I didn't check any bridges anywhere except at this point, here at No. 9 and the river bridge at No. 14.

MR. RICHMOND: Would you say that this land is overflow land?

MR. DOMINY: It is at this point, I would say it was a slough. Bottom land.

MR. RICHMOND: The major portion of the two tracts then would be in the river bottom.

counter 47327

D

MR. DOMINY: No, it wouldn't be in the river bottom.

MR. RICHMOND: It is subject to overflow, then.

MR. DOMINY: I don't know whether it would be overflow or not. I couldn't answer that question.

MR. RICHMOND: Now, on Corner No. 14, you stated that didn't fit the calls in the Shelby for the Terry. Would it fit the calls for the G. W. Smyth?

MR. DOMINY: From 14 south fit the Smyth? I couldn't answer that question because I didn't run this line.

MR. RICHMOND: That's all.

MR. GIBERSON: Do the opponents have any questions?

MR. WHITWORTH: May I make inquiry if there are any other proponents? Or representatives of proponents?

MR. GIBERSON: Thats in order.

MR. MONTGOMERY: If I may, I'm a surveyor, Mr. Giberson. I would like to ask Mr. Dominy some questions, if I have the privilege.

MR. GIBERSON: As I pointed out in the beginning, we are going to give everybody an opportunity to ask questions twice or three times if necessary. We are not going to follow the regular rules of civil procedure. We are just attempting to now get all those on one side lined up, you might say and the other side lined up so that we can kind of group them together. Now,

D

do you consider yourself an opponent or proponent?

MR. MONTGOMERY: I'm in favor of the vacancy, yes, sir.

MR. GIBERSON: All right. You go ahead then and ask your questions. Would you state your name, please?

MR. MONTGOMERY: I'm Howard Montgomery. I've done some survey work for Mr. Richmond. Mr. Dominy, your corner No. 14, did you find any evidence of the original bearing trees there?

MR. DOMINY: I did not.

MR. MONTGOMERY: Did you find any bearing trees at all there? I believe it's your opinion that it is the southeast corner of the G. W. Smyth. Upon what grounds, if you couldn't find any original trees or any kind of trees there, did you base that opinion?

MR. DOMINY: Because I ran the line from No. 11 to No. 14.

MR. MONTGOMERY: That was course and distance as called for by the original survey? Didn't you prove No. 11 as being the original corner of the G. W. Smyth?

MR. DOMINY: The distance that I got for the west boundary line of it. There may not be the original trees there, this has been a hundred and thirty years ago, and there are very few of the original bearing trees standing there, if any.

MR. MONTGOMERY: Did you make your opinion as to the location of the southwest corner of the Smyth , which is corner No. 11 as being course and

D

distance from what corner?

MR. DOMINY: The lines from this recognized corner to the recognized corner here, is without a doubt, maybe one vara different from the patent notes.

MR. MONTGOMERY: You would be running from the Northwest corner of the Smyth to the southwest corner?

MR. DOMINY: Well, either way, from north to south.

MR. MONTGOMERY: What I'm trying to get at, did you prove the Northwest of the Smyth as being the original northwest corner by the original field notes?

MR. DOMINY: I don't know whether this is from the patent notes, because like I say the trees...both these are recognized corners.

MR. MONTGOMERY: Yes, sir. That's what I'm trying to get at. You based it upon recognition of corners, not from the original bearing trees.

MR. DOMINY: The answer to that question may be yes.

MR. MONTGOMERY: Now, let me ask you back over at corner No. 13. When you come down the Sabine River, that's the southeast corner of tract No. 2. I believe you said you found an elm and a sweet gum stump there?

MR. DOMINY: Yes, that's right.

MR. MONTGOMERY: Do you know when they were established, those corners?

MR. DOMINY: No, I don't know.

MR. MONTGOMERY: They were established...

MR. DOMINY: I found those is a set of field notes for a tract of land that I believe Southern Pine Lumber Company bought later, there's a tract here,

D

I believe it calls for 200 acres, and I believe these trees are called for in that set of field notes.

MR. MONTGOMERY: That was about 1898, wasn't it?

MR. DOMINY: I believe so.

MR. MONTGOMERY: 1898. You don't know who the surveyor was that made those field notes.

MR. DOMINY: No, sir, I don't.

MR. MONTGOMERY: That would be a junior survey or a subdivision survey in reference to the Jesse Terry, would it not?

MR. DOMINY: Yes, sir, it would.

MR. MONTGOMERY: And those bearing trees that were established there in 1898 at Corner No. 13, you found them to be standing, one tree and one stump.

MR. DOMINY: Yes, sir.

MR. MONTGOMERY: And that surveyor who made that survey, did he not think he was at the northeast corner of the Terry at that time?

MR. DOMINY: I can't answer that.

MR. MONTGOMERY: Let me ask you this, Mr. Dominy. If you recotnized the Corner No. 1 as being the original northwest corner of the Terry, and the southwest corner of the Davlin, then upon the same principle or basis upon which you recognize the south line of the Smyth between your Corners No. 14 and 11, you can't prove either one as being original, they're

D

just recognized corners. The course and distance, would it be as fair, or would it be reasonable to.. if you run from No. 1 to your corner at the southeast corner of the...I don't know what corner that is.

MR. DOMINY: Corner No. 5.

MR. MONTGOMERY: No, sir. The southeast corner.

MR. DOMINY: Corner No. 10.

MR. MONTGOMERY: If you ran a line from that proven Corner No. 1 which you recognize to be the original corner, run course but not distance, because I believe you said there was an error, if you ran that distance to this corner out here, you would have what surveyors know as a swinging corner, or a free line, because you couldn't tie it down. That's true, isn't it?

MR. DOMINY: Yes, sir.

MR. MONTGOMERY: All right. Would it be as reasonable from that corner which you can't prove, but which is recognized, from Corner No. 1 to your Corner No. 10, I believe you say that is the true line...what I'm trying to get at, I disagree with a little bit on this tract No. 2, then wouldn't it be as reasonable to go from the corner which you can't prove the course and distance that A. J. Shelby said in establishing this lower north line of the Terry. (inaudible)

MR. DOMINY: You mean going from No. 10 down. Now, what I'm basing my opinion on, a line running from No. 3 to No. 9 is what he said he did. But since we are shifting this line down..I don't think he ever ran this line here. from 1 east to No. 3. He calculated that and the error would fall in the distance there, he wouldn't necessarily have had to go on south that course and distance because the error is from Corner No. 9 down to 11 you could easily

D

come down to the recognized corner of the Smyth Survey...he thought he went that distance, but he didn't.

MR. MONTGOMERY: I agree with you there, he didn't. He didn't do a lot of things that he said he did, I agree with that. But what my basis is, if you are going to construct the south line of the G. W. Smyth from two corners which you can't prove but from recognition and running a course from one, thenwouldn't it be just as reasonable to come on out there which you do accept and come on down there the course and distance like Shelby said for them to get this tract No. 2 in, which fits this surveyor in 1898 as being the true north line. The lower north line of the Terry. And you've got the bearing trees to prove it, and he was there just 63 years after the original survey was made.

MR. DOMINY: I think if you would shorten that line to fit the distance from 10 to 11, he thought he was going that full distance, and since we are dropping this line down here, he didn't go that distance.

MR. MONTGOMERY: How are you going to chop off these other lines, the west line of your tract No. 2, which is your line between your Corner No. 11 and 12, how are you going to account for that line and the line between Corner No. 11 and No. 13 on the river, which is a junior survey corner which proves...

MR. DOMINY: I didn't quite follow you.

MR. MONTGOMERY: I said how are you going to account for the location of that line, there is nothing on record to locate those lines that I know of except the lower North line of the Jesse Terry.

D

MR. DOMINY: There's a line there.

MR. MONTGOMERY:: Yes, there is a line there. That's what I'm saying, how are you going to deny that right or give the line above that supercedance over that line as being the Lower North Line of the Jesse Terry?

MR. DOMINY: I'm basing my opinion that that was the North... the Terry line is from 11 to 14 on account of shifting this line down from 3 to 9 down to 1 to 10.

MR. MONTGOMERY: You are shifting down 386 varas and all I'm asking you to shift is 108 varas.

MR. DOMINY: Where did you get that 108?

MR. MONTGOMERY: Well, from your Corner No. 10 to your Corner No 11 is 608 and I believe 8/10 varas, so he called for that line to be 500 varas in his original and patent notes, so you are only off a hundred varas, and here you are off 386 varas.

MR. DOMINY: You're off more than two miles on this line.

MR. MONTGOMERY: That's right. What I'm getting at...just a question from one surveyor to the next, on what basis would you deny tract No. 2 as being a vacancy and upon the same principle with a greater discrepancy accepting tract No. 1?

MR. DOMINY: I think I've answered that, Mr. Montgomery.

MR. MONTGOMERY: Why, yes sir. That's your opinion. That's all I want.

counter 17334

D

MR. PERKINS: On your No. 11 there, now did you say you found any trees there? You've got a square there. The only reason that'a a square is because it's your opinion that is the original survey corner. And there are also lines going from that corner, what you have marked No. 12.

MR. DOMINY: Yes, sir.

MR. PERKINS: And there are also well established lines running east and west. Is there an established line between 11 and 12?

MR. DOMINY: Yes, there is.

MR. PERKINS: How old would you say that line is?

MR. DOMINY: Probably 60 or 70 years old. I couldn't pin it down.

MR. PERKINS: You have your Corner No. 11 marked in a square, you have your Corner No. 12 marked with a circle. Now the only reason for the difference in those two corners is because in your opinion No. 11 is that... is an interior survey corner of the Terry Survey.

MR. DOMINY: That's what I think, yes, sir.

MR. PERKINS: And you're basing that on your geing in...its better not to drop that line down the extra...to make it be the correct distance and you don't believe that should be done.

MR. DOMINY: I don't believe so because...(inaudible).

MR. PERKINS: That corrects the error. I believe he made a distance on the West boundary line of the two surveys. But you create another error over here when you correct that. It could also be corrected by establishing Corner No. 12 in lieu of Corner No. 11.

counter #7335

MR. DOMINY: I didn't quite get your question.

MR. PERKINS: If you let Corner 12 represent that interior corner of the Jesse Terry Survey instead of Corner 11, see you have...in other words if you had the square down at 12 and the circle at 11, that would also correct the error.

MR. DOMINY: Well, yes it would.

MR. PERKINS: And then the entire survey, the entire field notes on both surveys would then be reconciled on the ground.

MR. DOMINY: Well, there are so many discrepancies it's hard to reconcile a number of things.

MR. PERKINS: Well here it's a question of which way to correct those discrepancies.

MR. DOMINY: Like I pointed out in my report, I think when I ran the lines from 1 to 9 it doesn't necessarily have to hold that you go that same distance south to Corner No. 12 in the field notes of the Terry because it's off over here between 1 and 3.

MR. PERKINS: There is no reason, though, it's true you did not necessarily have to go that same distance that he calls for between 10 and 11 or 10 and 12, but you could correct that call by correcting that distance.

MR. DOMINY: Yes, you could correct the distance, you could make it a hundred and something instead of 500.

MR. PERKINS: Or you could make it 600....

MR. DOMINY: That's right, 600 and something.

MR. PERKINS: He calls for 500 and something. And your correction is making it a hundred and something instead of 500 by correcting it, bringing

D

it down to 12 would make it 600. There is no other evidence on the ground to give 11 precedence over 12 in your opinion other than just shortening the call.

MR. DOMINY: That's right.

MR. PERKINS: There's no evidence to establish 14 than there is to establish 13, your corners 14 and 13. You found no evidence on the ground.

MR. DOMINY: There's no marked trees at 14, but there is a marked tree at 13 and a stump, that fits.

MR. PERKINS: That's all.

MR. GIBERSON: Does anyone else have any questions? Are there any other proponents?

MR. MONTGOMERY: Mr. Dominy, there is one other question. I believe you said you walked down the South line of the Jesse Terry, which is the north line of the A.S. Droddy.

MR. DOMINY: I did, yes, sir.

MR. MONTGOMERY: I believe you said you didn't survey that line and you didn't find any original bearing trees either at the southwest corner of the Terry or at the southeast corner of the Terry, is that true?

MR. DOMINY: Yes.

MR. MONTGOMERY: But you just recognized that corner and you found that old line. Would you say about what would be the oldest evidence you found on that line to the best of your knowledge?

counter 47337

D

MR. DOMINY: I couldn't hardly answer that, Mr. Montgomery. This line is well marked and painted, painted red, I believe, and at least part of the way, maybe all of the way.

MR. MONTGOMERY: Now if you move the South Line of tract No. 2 to your Corner No. 12, and your Corner No. 13, did you find evidence of an old marked line through there?

MR. DOMINY: Yes.

MR. MONTGOMERY: Would you say about how old it was?/

MR. DOMINY: It was...the pine trees had little humps on..like you find, but the Trees, I don't think are old enough to have the original bearing trees for the Terry Survey.

MR. MONTGOMERY: Would you say there were any other trees besides pine trees in that area?

MR. DOMINY: Yes, sir.

MR. MONTGOMERY: There are big oaks there about three or four feet in diameter.

MR. DOMINY: I don't know if four feet, I don't think...

MR. MONTGOMERY: You don't think they could have the original markings on them?

MR. DOMINY: There's a possibility they could.

MR. MONTGOMERY: Would you say that the South Line of the Terry could have had the original markings on it?

MR. DOMINY: It could have.

D

MR. MONTGOMERY: It could have, but you didn't know how old it was?

MR. DOMINY: Most of the merchantable timber in the whole area has been cut. Both hardwood and pine.

MR. MONTGOMERY: It would be very difficult as a surveyor to determine where the lines between Corners, your Corners No 13 and Corner No. 12 would be of the same age as was the South Line of the Terry, which is the N North Line of the A.S. Droddy. It would be very difficult for a surveyor to determine which one of those lines would be older, would it not?

MR. DOMINY: You could chip those trees and check...but I didn't do that?

MR. MONTGOMERY: You didn't chip the trees. But it would be very difficult unless you did chip the trees, wouldn't it?

MR. DOMINY: You kind of guess at the age of a tree, sometimes you can tell.

MR. MONTGOMERY: Now from your Corner No. 4 to your Corner No., I believe it's No. 6, which is the southwest corner of the vacancy, did you find evidence of an old marked line through there.

MR. DOMINY: From one to four?

MR. MONTGOMERY: Yes.

MR. DOMINY: I did from four to five, but I say one tree marked here, but there has been quite a bit of surveying done in here from time to time.

counter 47339

D

MR. MONTGOMERY: Mr. Dominy, as a surveyor, you see, you say Number 2 is not a vacancy and I say it is, that's what the whole question is about. As a surveyor, I'm asking just to learn...now on the line from the age of the line from Corner 4 to 5, how old would you think that would be, Mr. Dominy?

MR. DOMINY: I don't believe I could answer that, Mr. Montgomery.

MR. MONTGOMERY: You couldn't answer that any more than you could between 12 and 13 or the south line of the Terry Survey?

MR. DOMINY: I don't know whether to answer that.

MR. GIBERSON: Any other questions? Do the opponents have any questions they would like to ask?

MR. WHITWORTH: I'm B. F. Whitworth, representing Southern Pine Lumber Company in opposition to both of these applications, and before I start interrogating the surveyor, may I see his original report a minute? Mr. Dominy, do you have a copy of your report? Would you please turn to Page 12? At paragraph you number 34, your report reads: "If Prissick was not on the ground, then his calls for the lines, corners and bearing trees of these surveys must be honored." I'm thinking you meant Shelby there instead of Prissick. (NOTE: IN THE SURVEYOR'S REPORT WHICH HAS BEEN INTERPOLATED INTO THIS TRANSCRIPT AS READ BY MR. DOMINY AT THE HEARING, THESE CORRECTIONS HAVE BEEN INCLUDED WITHIN PARENTHESES AND MARKED WITH AN ASTERISK (*)

MR. DOMINY: It's a possibility , because I was talking ...

counter 97340

D

MR. WHITWORTH: You were talking about - in the other paragraph above that - about Shelby, and I was just wondering if you meant Prissick or Shelby.

MR. DOMINY: If it's surveys that he surveyed, then it's Shelby, if not, Prissick.

MR. WHITWORTH: That should be Shelby, then.

DOMINY: I think so.

MR. WHITWORTH: Would you request that that be changed, there?

MR. DOMINY: Yes, I would.

MR. WHITWORTH: Now, sir, will you please look on Page 17 of your report which is the last page of the report exclusive of the exhibit. Paragraph 41 said: "I further conclude that tract number..." and the typewriter has got 1 and I believe...

MR. DOMINY: That should be No. 2.

MR. WHITWORTH: I believe it's changed on this one here to No. 2.

MR. DOMINY: That should read tract No. 2.

MR. WHITWORTH: Now, Mr. Dominy, you stated there a while ago in answering a question that Mr. Montgomery asked you that at your southwest Smyth or Martin you didn't find anything that might have been evidence of any original bearings there?

MR. DOMINY: Not in the patent notes.

MR. WHITWORTH: I direct your attention to Page No. 10 of your report. And paragraph No. 28 you have this: "at corner No. 11 the field notes of Prissick call for the following at the southwest corner of the G. W. Smyth, " and one thing called for there by the Prissick field notes was a Sweet Gum bearing North 45 East 9.9 varas. Wasn't it?

counter 47341

D

MR. DOMINY: Yes, sir.

MR. WHITWORTH: Now you come on down there and you say that at "this corner my No. 11, I found the following", and among the things you found there, the last item is a Sweet Gum stump North 45 East 9.9 varas. Now that Sweet Gum stump bears the same relationship as the sweet gum called for, up there in the field notes. Do you think that might possibly have been the stump of the original Sweet Gum tree?

MR. DOMINY: Well, it could have been.

MR. WHITWORTH: All right, sir. Now, the field notes of the Jesse Terry Survey call to begin at the southeast corner of the lower corner of the Martin or Smyth, is that correct?

MR. DOMINY: I believe that's correct, yes, sir.

MR. WHITWORTH: And those notes to the Terry call for a maple and a sycamore to be bearing trees there, do they not?

MR. DOMINY: Yes, sir.

MR. WHITWORTH: I believe in your report you said that at that point there is a bridge.

MR. DOMINY: Yes, sir.

MR. WHITWORTH: That is the highway you show running there crossing there and there is a bridge across the river.

MR. DOMINY: Yes, sir.

MR. WHITWORTH: Now, I believe your report further states that you talked to Mr. Haralson who is present at this hearing and that Mr. Haralson said that he had seen the old maple tree standing there at that corner.

D

MR. DOMINY: Yes, sir.

MR. HARRALSON: May I correct that, please sir?

MR. WHITWORTH: All right, Mr. Harralson.

MR. GIBERSON: Pardon me just a second. If you are going to offer this in evidence, we would like to swear you at this time. (Mr. Harralson sworn in.)

MR. WHITWORTH: You're Mr. Joe Harralson?

MR. HARRALSON: Yes.

MR. WHITWORTH: Do you want to make any statement about what you told Mr. Dominy?

MR. HARRALSON: The statement I would like to make is I don't know that it was an old Maple tree. That was years ago. For me to say it was the original tree would be incorrect.

MR. WHITWORTH: Well, I don't think that Mr. Dominy said you said it was an original tree, he said in his report that you told him you had seen a Maple tree there.

MR. HARRALSON: It was a corner.

MR. WHITWORTH: It was a corner...

MR. HARRALSON: It still is.

MR. WHITWORTH: And there was a maple tree there at one time.

MR. HARRALSON: Well, there were some trees there marked. I think it was a Maple. It definitely wasn't a Sycamore.

MR. WHITWORTH: All right. Is there anything further you would like to say at this time?

D

MR. HARRALSON: No.

MR. WHITWORTH: Now, Mr. Dominy, the Mary Davlin Survey calls to begin at the corner of what used to be called the Hickman Labor, but later was called the McMahon Labor? Or vice versa?

MR. DOMINY: Yes.

MR. WHITWORTH: That's up there on the river further up there?

MR. DOMINY: Yes.

MR. WHITWORTH: All right, and then it calls to come down the river from that beginning point to the river corner , upper river corner of the Albright does it not?

MR. DOMINY: Yes, that's right.

MR. WHITWORTH: And then it calls to run with the north line of the Albright in a westerly direction to the Northwest corner of the Albright?

MR. DOMINY: Yes, sir.

MR. WHITWORTH: And at that point the field notes of both the Davlin and the Albright, if you'll recall, call for an ask tree and a pine, I believe, or some other tree, but it calls for an ash, did it not? Is that correct?

MR. DOMINY: I remember seeing two trees it called for, but... I have it somewhere in my report, but I don't know just exactly where it is now, but I believe that's right.

MR. WHITWORTH: All right, now at that point, did you find any evidence of a corner being marked up there at the time you were out there?

MR. DOMINY: Yes, sir.

counter 47344

D

MR. WHITWORTH: There was a corner marked there? And I ask you if you took that to be the recognized corner, northwest corner of the Fleming Albright?

MR. DOMINY: That's correct.

MR. WHITWORTH: Now, the Davlin notes at that corner call to run south how far?

MR. DOMINY: One thousand varas.

MR. WHITWORTH: One thousand varas, and on that call in the Davlin notes call to cross a road, do they not?

MR. DOMINY: That's right.

MR. WHITWORTH: At about 700 varas.

MR. DOMINY: That's right.

MR. WHITWORTH: Now at a distance of about 713 varas, or something like that from that northwest corner of the Albright, as you recognized it to be, did you find evidence of that old road?

MR. DOMINY: I did. I have indicated in on the map.

MR. WHITWORTH: All right, now, the Davlin notes call to run through the southwest corner of the John Droddy, do they not?

MR. DOMINY: That's right.

MR. WHITWORTH: Now, what corner number marks your southwest corner of the Droddy?

MR. DOMINY: Number 6.

counter 17345

D

MR. WHITWORTH: Number 6. At that point did you find a corner marked up on the ground?

MR. DOMINY: Yes sir, it was very well... several trees.

MR. WHITWORTH: Now that's not a great distance south of that highway there, is it?

MR. DOMINY: Eighty-six varas, I believe, south of the highway.

MR. WHITWORTH: All right. Now from that point, that is the southwest corner of the Droddy, and you took that to be the southwest corner of the Droddy didn't you?

MR. DOMINY: Yes, sir. That's right.

MR. WHITWORTH: Did you find any evidence anywhere else of a corner that you thought could be the southwest corner of the Droddy other than that point?

MR. DOMINY: No sir, I didn't.

MR. WHITWORTH: All right. Now the field notes of the Davlin from the southwest corner of the Droddy call thence to run west, do they not?

MR. DOMINY: That's right.

MR. WHITWORTH: And at the terminus of that line running west, they called for a corner marked by a post oak and a black jack, I believe.

MR. DOMINY: That;s right.

MR. WHITWORTH: Now, if you would run west from what... is that 6?

MR. DOMINY: Number 6, yes, sir.

D

MR. WHITWORTH: If you run west from Point 6, would you intercept any other markings or corner that you've got there?

MR. DOMINY: You hit at Number 3.

MR. WHITWORTH: You hit at Number 3.

MR. DOMINY: Yes, sir.

MR. WHITWORTH: All right, but now you say that at Number 3 you didn't find any evidence of a post oak or a black jack.

MR. DOMINY: That's right.

MR. WHITWORTH: But at some distance south of there at the point you've got marked corner No. 1, you did find a post oak stump, didn't you?

MR. DOMINY: Yes.

MR. WHITWORTH: How far is that point from point three?

MR. DOMINY: I don't have that. It's evidently 386, I don't know just...

MR. WHITWORTH: Approximately 386.

MR. DOMINY: Yes, sir.

MR. WHITWORTH: It is approximately the same distance as it is between your Corners 6 and 5.

MR. DOMINY: Yes, sir.

MR. WHITWORTH: Now, from that point, fur the terminus of the line that Mr. Shelby said he ran west from the southwest corner of the Droddy... from whatever that terminus is, then Mr. Shelby said he ran north, did he not?

D

MR. DOMINY: Yes.

MR. WHITWORTH: All right. I don't think we need to follow any more around there, there is no question in your mind but that on the north line of the Davlins survey there is a great big difference in actual distance on the ground and the distance Mr. Shelby called for, I believe you said two miles.

MR. DOMINY: Yes sir, at least two miles.

MR. WHITWORTH: Now getting back to the Terry field notes, we said those notes, Mr. Shelby said to begin laying that in from the lower corner of the Martin, which is the Smyth also.

MR. DOMINY: Yes, sir.

MR. WHITWORTH: Then he called to go down and he gives meanders does he not?

MR. DOMINY: Yes, sir.

MR. WHITWORTH: Now, beginning at what you took to be the lower corner or the southeast corner of the Martin or Smyth, and meandering down to the point you have designated, what's that next point there?

MR. DOMINY: 13.

MR. WHITWORTH: Running down that far, you did meander the river, did you not?

MR. DOMINY: I did.

MR. WHITWORTH: And did those meanders of the river as you found it when you were out there, fir meander calls given by Mr. Shelby in his field notes starting out from his...

MR. DOMINY: I don't believe they did, no. I know they didn't.

MR. WHITWORTH: All right. Now, he did meander or call to follow the meanders of the river down to the corner of the Adny S. Droddy Survey,

counter 7734B

D

did he not?

MR. DOMINY: That's right.

MR. WHITWORTH: And you have... did you find a corner there at that point?

MR. WHITWORTH: A marked corner. And what number does that bear on your plat?

MR. DOMINY: Number 15.

MR. WHITWORTH: Number 15. Now did you recognize that to be and take that to be the southeast corner of the Terry Survey?

MR. DOMINY: Yes, I took it to be. Like I said, I didn't meander the river all the way down here, but I walked down here to this line and to that corner, and there's a well marked line established there and recognized by the...

MR. WHITWORTH: Now, did you actually survey out and measure the line running west from that point?

MR. DOMINY: From 15 west?

MR. WHITWORTH: Yes.

MR. DOMINY: No, sir, I didn't. I went to both corners, but I didn't run the line.

MR. WHITWORTH: All right. Now at some distance west of what you took to be the southeast corner of the Terry and... did you find what you took to be the southwest corner of the Terry?

MR. DOMINY: Yes, sir.

D

MR. WHITWORTH: Now where is that point in relation to the highway there?

MR. DOMINY: It's in the edge of the right of way. It's within the highway right of way on the north side, of the center line.

MR. WHITWORTH: All right, sir. Now by what number on your plat have you designated what you took to be the southwest corner of the Terry Survey?

MR. DOMINY: Number 16.

MR. WHITWORTH: All right. Now from the southwest corner of the Terry, Mr. Shelby and his field notes called to run north, did he not?

MR. DOMINY: That's right.

MR. WHITWORTH: Do you call the distance he said he went north from there?

MR. DOMINY: 2525 varas.

MR. WHITWORTH: 2525 varas. Did you survey that line running north from your Point 16?

MR. DOMINY: Yes, I did.

MR. WHITWORTH: Now, at 2525 varas, did you make any search for a corner?

MR. DOMINY: I did.

MR. WHITWORTH: Did you find any evidence whatsoever?

MR. DOMINY: No, sir. I did not.

MR. WHITWORTH: How far from your Point 16 is your Point 1 where you found the old post oak stump?

counter 47350

MR. DOMINY: 208 varas farther north, I believe 208. The difference of 2525 and 2733, from the 2525 point on north to Number 1.

MR. WHITWORTH: All right, so you in running up to what you took to be the northwest corner of the Terry you exceeded the called distance in Mr. Shelby's field notes by some 200 or more varas.

MR. DOMINY: That's right.

MR. WHITWORTH: All right. Now, tell me, the northwest corner of the Terry Survey, Mr. Shelby called to run east, did he not?

MR. DOMINY: That's right.

MR. WHITWORTH: And didn't he call to pass the John Droddy Survey?

MR. DOMINY: That's right.

MR. WHITWORTH: And didn't he call to go to the northwest corner of the Smyth?

MR. DOMINY: That's right.

MR. WHITWORTH: Now as you have reconstructed that, you have disregarded that passing call for the Droddy, have you not?

MR. DOMINY: Yes, sir.

MR. WHITWORTH: And you disregarded that call for the northwest corner of the Smyth?

MR. DOMINY: That's right.

MR. WHITWORTH: Now, Mr. Dominy, just assuming for the purposes of this question that your location of the northwest corner of the Terry is correct, that is at your Point 1, as a surveyor, don't you think it would have

D

been more proper to disregard the call for the course and to honor the call for that corner up there that you know to be there, the northwest corner of the Smyth? He calls to go to the northwest corner of the Smyth. Now wouldn't it be more proper to disregard your call for a course of east and run the line from your Point 1 to your Point, I believe, is that 9 over there?

MR. DOMINY: Yes, sir. I don't think he ever did go up there.

MR. WHITWORTH: Well, I say as a surveyor, well, if he didn't go there, as a surveyor you reconstructing it, when he called to go there, if he wasn't actually on the ground, wouldn't you follow the footsteps that he said he made?

MR. DOMINY: I couldn't follow it because the course is...

MR. WHITWORTH: Well, you can disregard course can't you, and follow it?

MR. DOMINY: Yes, but I would have to have a broken line to go from 1 through 6 to 9. You have to have a broken line at number 6.

MR. WHITWORTH: Well, as a surveyor, if you had to, wouldn't you, and wouldn't it be proper to disregard the passing call to go to the object that you say is on the ground, which is the northwest corner of the Smyth?

MR. DOMINY: Well, you could run a line from No. 1 to No. 9, but it would throw this all out and the area around No. 6, it would throw it all out of line.

MR. WHITWORTH: Well, you've disregarded, to construct those surveys like you've got them, Mr. Dominy, you have disregarded Mr. Shelby's call and his field notes of the Davlin to run west from the southwest corner of the Droddy, haven't you?

counter 47352

D

MR. DOMINY: Yes.

MR. WHITWORTH: And he said that's what he did.

MR. DOMINY: Yes.

MR. WHITWORTH: And you've also disregarded his call where he said he ran in the Terry notes, when he said he ran to the northwest corner of the Smyth, you've disregarded that, too, haven't you?

MR. DOMINY: Yes.

MR. WHITWORTH: And so far as your work and so far as your research, there is no other place where the southwest corner of the Droddy is located except where you located it, is there?

MR. DOMINY: That's right.

MR. WHITWORTH: And based upon your work and your research there is no other place where the northwest corner of the Smyth is located, is there?

MR. DOMINY: That's right. I think it's truly located on the ground just there.

MR. WHITWORTH: Now, Mr. Dominy, Mr. Shelby according to his notes and he said he surveyed the Davlin and the Terry and the Theophilus Hickman which was over there to the west of the Davlin in a range of two days, didn't he back there in Ocrober of 1838?

MR. DOMINY: I don't remember how long.

MR. WHITWORTH: Well, he said he surveyed the Davlin on October 26, 1838, and he said that he surveyed the Terry on October 27, 1838, and he said he surveyed the Theophilus Hickman on October 27, 1838. Now that's what his field notes show. Now I believe you've already said that Mr. Prissick

D

had lain in the Smyth and the John Droddy just a short time before that and you say that you think if Mr. Shelby was on the ground at all, that he surely found those corners that Mr. Prissick had marked up for the southwest corner of the Droddy and the northwest corner of the Smyth.

MR. DOMINY: That's right.

MR. WHITWORTH: He should have found them. I believe those other surveys were just a few months before the Terry and the Davlin. Well then you have concluded from that and other evidence that Mr. Shelby just didn't go all around thses surveys, is that correct?

MR. DOMINY: That's right.

MR. WHITWORTH: You just don't think he did.

MR. DOMINY: If he had, there wouldn't have been a discrepancy of m more than two miles on the north line up here. That's why I'm discrediting quite a bit of his work.

MR. WHITWORTH: All right. Then Mr. Dominy, you say then in your report, and I take it that's the way you feel about it, that it may be just a legal conclusion as to how you wo uld construct these lines from the point that you say is the northwest corner of the Terry and the southwest corner of the Droddy?

MR. DOMINY: Yes.

MR. WHITWORTH: But your conclusion is that tract No. 1 up there, that we call tract number 1 which is the approximately 70 acre tract, you think that is a vacancy?

MR. DOMINY: Yes, sir, I do.

counter 17354

D

MR. WHITWORTH: But your conclusion is, based upon your work, that Tract No. 2 or the approximately 200 acre tract there is not a vacancy but is a part of the Terry survey?

MR. DOMINY: Yes, sir, I do.

MR. WHITWORTH: No further questions.

MR. GIBERSON: Does anyone else have any questions they would like to ask at this point?

MR. BURKE: Mr. Giberson, I'm Ward Burke, also representing Southern Pine, I want to get Mr. Dominy to mention one other correction in his report, and I believe it is corrected and I would like to have the original report to reflect that. It's on Page 5, Mr. Dominy, in Paragraph 13 you said you meant that to be the west boundary line instead of the east?

MR. DOMINY: That's correct.

MR. PERKINS: I'd like to ask Mr. Dominy a question. Mr. Dominy, we haven't talked about this Corner No. 4. You have a circle around it. Now why did you circle that, make that a circle corner. Did you find any...

MR. DOMINY: There's some trees there marked like this corner. I don't believe I have that in my report, but it's a recognized corner, Southern Pine Lumber Company, they've recognized it and they have this line marked up and painted their color, they use blue to makr their lines, and this line is marked blue, and they recognize it's their corner.

counter 47355

D

MR. PERKINS: Do you know in relationship with that corner and the south boundary line of the Davlin and the North boundary line of the Terry...

MR. DOMINY: It's in line.

MR. PERKINS: Based on those field notes, you have seen those field notes...

MR. DOMINY: Yes, I have.

MR. PERKINS: And it is supposed to represent the north boundary line of the Terry.

MR. DOMINY: That's right, and the field notes, I don't remember. But SouthernPine Lumber Company tract, they recognized this.

MR. PERKINS: And also that judgment that you have set out in your Exhibit A also recognizes it as the south boundary line of the Davlins.

MR. DOMINY: That's right. There's I believe a 100 acre tract in here in the southeast corner, I think of the Davlin Survey, there's a tract out there that's recognized.

MR. PERKINS: And this corner Number, your Corner No. 4 is a corner that belongs to Southern Pine Lumber Company and it is represented as being in the north boundary line of the Terry Survey?

MR. DOMINY: That't right.

MR. RICHARDSON: Mr. Dominy, I'd like to ask you a question. I'm Milton Richardson representing the Attorney General's office. What do you have for your distance between points 1a nd 5, your points 1 and 5?

MR. DOMINY: 1082.

MR. RICHARDSON: And what your 20 represents again...

D

MR. DOMINY: That is the north...it's the end of the line of the Williams Survey in the north.

MR. GOODRICH: If you'll pardon me, Mr. Richardson, I can explain that. It's supposed to represent the northwest corner of the Isaac McMahon or the Hichman Survey. Which is the northwest corner of the Isaac McMahon Survey is 1264 varas from your northwest corner of the Mary Davlin, is that right?

MR. DOMINY: That's right.

MR. PERKINS: Mr. Dominy, there is also an established line between 1 and 5 on your No. 1 and your No. 10, is that correct?

MR. DOMINY: Like I say, I didn't find any marks along this line here.

MR. PERKINS: From 4 to 10 then.

MR. DOMINY: From 4 to 10 is well marked.

MR. PERKINS: That's all.

MR. WHITWORTH: One more question, please. Mr. Dominy, you made a statement a while ago in response to a question by Mr. Perkins, that I just want to see if you meant it. When you said that the line from, I can't see those numbers very well. Is that 4?

MR. DOMINY: Yes.

MR. WHITWORTH: From 4 to 5 was painted the Southern Pine line?

MR. DOMINY: Yes.

MR. WHITWORTH: And you also said in that connection that Southern Pine recognized that to be the north line of the Terry Survey? Now did you mean that?

D

MR. DOMINY: Well...

MR. WHITWORTH: Or is that just a conclusion of yours?

MR. DOMINY: It may be a conclusion, but Roland recognized it, a surveyor for the company.

MR. WHITWORTH: He recognized it as a line of the Southern Pine Lumber Company tract of land, did he not?

MR. DOMINY: Yes, sir.

MR. WHITWORTH: Have you ever found anything in the records that you researched on or anything else that shows that Southern Pine Lumber Company recognizes that line to be the north line of the Terry Survey?

MR. DOMINY: I don't know whether I can answer that or not. A copy of the abstract would show it.

MR. WHITWORTH: I'll ask you, Mr. Dominy, if you ever looked at a Deed, an abstract copy, a certified copy, or any other copy of a Deed from Powell Lumber to Temple Lumber Company dated May 8, 1926, recorded in Volume 37, Page 419 of the Deed Records of Newton County that describes a good many tracts of land, among other tracts of land, the land in the Jesse Terry Survey, one tract described as the 14th tract, being 200 acres of land, and I think it's that one, and the other one described as the 15th tract, being 50 acres of land, and I think it will show that it's that tract right there and another one described as being 1852 acres of land, being part of the Jesse Terry and part of the John Allen or N. H. Carrol, where is the N. H. Carrol?

counter 17358

D

MR. DOMINY: That's it.

MR. WHITWORTH: Did you ever check that Deed?

MR. DOMINY: Yes. I've read that Deed, but I don't believe I could answer that question.

MR. WHITWORTH: All right, now, the 1852 acre tract had for its north boundary line the line up there from 4 to 5 which you said is painted with Southern Pine Paint.

MR. DOMINY: Yes.

MR. WHITWORTH: Now, that Deed doesn't say that's the north line of the Terry Survey, does it, Mr. Dominy?

MR. DOMINY: I don't know. Like I said a while ago, the abstract copy of the Deed will show it. I don't remember it off hand.

MR. WHITWORTH: ell, when you said that Southern Pine recognized that line there, from 4 to 5, to be the north line of the Terry, youre not certain about that now, are you?

MR. DOMINY: Well, talking with the Southern Pine representative, they claim that to be the...

MR. WHITWORTH: The north line of the 1852 acre tract.

MR. DOMINY: And the north line of the Terry...from 4 to 5 is the north line of the Terry Survey. That's my understanding. They are here to answer that.

MR. WHITWORTH: Just to pin it down, which one of the representatives of Southern Pine recognized that to be the north line of the Terry Survey?

counter 17359

D

MR. DOMINY: I'd say Roland Goodrich, because he works in that area.

MR. WHITWORTH: Well, did Roland ever tell you that he recognized that to be the north line of the Terry Survey?

MR. DOMINY: I can't answer that.

MR. WHITWORTH: That's all.

MR. PERKINS: Mr. Dominy, evidently he said something, did he not, to make you believe that he thought perhaps that was the north boundary line of the Terry?

MR. DOMINY: Well, he probably told me that, but I just can't remember...exactly whether he did or didn't, but I think it is, and I'm sure they thought it was because they recognized it.

MR. PERKINS: Your statement to me was based on somebody's statement to you connected with Southern Pine. You had some reason to indicate to me that they recognized that to be the north boundary line of the Terry?

MR. DOMINY: That's right.

MR. PERKINS: That's all.

MR. MONTGOMERY: Mr. Dominy, I'd just like to ask one or two more questions, as a surveyor.

MR. WHITWORTH: Well now, may we inquire, Mr. Examiner, is Mr. Montgomery representing anybody in this hearing, or what is his...

MR. MONTGOMERY: Just as a surveyor, Mr. Giberson.

D

MR. WHITWORTH: What is his interest in this matter?

MR. MONTGOMERY: Representing Mr. Richmond as a surveyor trying to find the facts.

MR. GIBERSON: I think that's your answer. I don't see any objection...

MR. WHITWORTH: I just wanted to know who he is representing.

MR. ALLGORN: As I understand it you are not representing any party or parties.

MR. GIBERSON: He said he is representing Mr. Richmond.

MR. MONTGOMERY: As a surveyor. Mr. Dominy, in your research work in this area, did you find that the Jesse Terry Survey had been subdivided into a west portion and an east portion?

MR. DOMINY: Well, there's a line running from No. 4 south.

MR. MONTGOMERY: Do you know that that line from No. 4 south would be the east line or a 930 acre tract cut off years ago as the Mc Farland tract?

MR. DOMINY: I've seen the McFarland notes in the abstract copy of the Deed and I believe...

MR. MONTGOMERY: Did McFarland have a west portion cut off the Terry? Then there would be some 1800 or 1900 acres of the east portion left, would it not?

MR. DOMINY: I don't know how much.

MR. MONTGOMERY: There would be a certain amount on the east side.

counter 47361

D

MR. DOMINY: That's right.

MR. MONTGOMERY: Did you, in your research work find in Volume R, concerning a description of this east portion which would be some 1800 or 1900 acres of land.

MR. DOMINY: I saw that Deed.

MR. MONTGOMERY: Do you know that Temple Lumber Company or Southern Pine Lumber Company title came down through that same chain of this 1800 acres in the east portion?

MR. DOMINY: I know they claim it, but as far as knowning the chain of title, I do not.

MR. MONTGOMERY: Do you know, Mr. Dominy whether some... this surveyor in 1898 who established these bearing trees at your point No. 13 was surveying off this east portion of the Jesse Terry Survey?

MR. DOMINY: I don't believe I can answer that.

MR. MONTGOMERY: You don't know whether he was doing that. And you don't know whether this is the same land that Temple Lumber Company has acquired in later years from W. A. Powell Lumber Company.

MR. DOMINY: It's like Mr. Whitworth said a while ago, the Southern Pine Lumber Company bought two tracts of land, and I suppose they... by field notes.

MR. MONTGOMERY: One more thing, Mr. Dominy, and then I'm through as a surveyor. I believe you stated that all of this survey work may be a legal question, and I believe Mr. Whitworth brought that out, asked you to re-emphasize it. Also, isn't it a possibility that it may be a question of fact and

D

not just a question of law, due to the confusion in the area?

MR. DOMINY: Well, I don't know hardly how to answer that question, Mr. Montgomery. But I know that it's going to take some legal study to work out...the discrepancies to determine what's what. What I've done, I've shown my opinion.

MR. GIBERSON: Let me interrupt here, please sir, if you will, to eliminate some of these questions and problems. I think that it will be our determination. It's up to us to determine whether it's a legal or a fact. The question of the mere fact that he testified that it is or isn't, isn't going to affect our decision one way or the other, so I think we're just...if you have some question to ask him in relation to something he found on the ground or some fact, well the purpose of this hearing is to determine the facts, now we'll determine whether it's a fact question or a law question. So the mere fact that the surveyor thinks it is or isn't with all due respect to him, is not going to affect us one way or the other. So if you have some questions that any of you want to ask the surveyor pertaining to what he found on the ground, that'll be fine. If you want to ask him his conclusion, that'll be all right too, but the conclusion is going to be reached by the Commissioner of the General Land Office as to whether it is or isn't a vacancy. You can certainly ask him his opinion.

MR. MONTGOMERY: That's all I have to ask.

MR. GIBERSON: I have a few questions, but before I do ask my questions, I would like to ask if you gentlemen plan on making a closing statement. If you

counter 9363

D

do, it's twelve o'clock and I believe it might be best that we recess for lunch and come back and it will give us plenty of time, otherwise we might drag on until two or three o'clock. If you plan on doing that, we'll be happy to hear from you, but I just wanted to get your ideas at this point.

MR PERKINS: I plan on making a brief statement. I would prefer that we have lunch, but either way is all right.

MR. GIBERSON: If you prefer that and we don't have anyone who objects to it, why if it's all right, we'll recess at this time and we'll come back. It will also give you a little rest, Mr. Dominy. We'll recess until 1:30. Is that all right with everyone?

RECESS

IT BEING 1:30 o'clock, THE HEARING WAS RECONVENED.

MR. GOODRICH: Roland Goodrich for Southern Pine. Cliff, you said you figured that tree at Point 1 there was approximately 200 years old. Did you make any effort to determine how large the tree would have been at the date of that survey?

MR. DOMINY: What's your question again, now?

MR. GOODRICH: Did you make any effort to ascertain how large that post oak...

MR. DOMINY: How large or how old?

MR. GOODRICH: How large it would have been at...on the date that the Davlin and the Terry Surveys were made.

counter 47364

D

MR. DOMINY: I made a guess the tree was probably 200 years old.

MR. GOODRICH: But you don't have any idea, or you didn't make any effort to determine how large it would have been in 1838.

MR. DOMINY: No, the heart of the tree was hollow. You couldn't county rings to the center of it because the center of the tree is gone.

MR. GIBERSON: Does anyone else have any further questions? There are a few points I would like to clear up for my information. On each of these squares and circles, now the squares you have identified those as original corners? In your own mind?

MR. DOMINY: As corners that can be proved or fairly well established corners. Maybe not patented corners, but corners that you can maybe identify.

MR. GIBERSON: The only thing at the present time I'm interested in is patented corners. As far as subdivision corners or field notes that have been cancelled or any other field notes, my questions from here forward are limited only to your patented corners. Now, can you identify any patented corners on the ground, can you identify any patented corners on the ground. By bearing trees or markings on the ground any corner on any survey?

MR. DOMINY: I feel I can answer that in the affirmative. All these corners, the original trees are not there, but there are other trees there and lines running from there, that you could say they are original corners. Does that answer?

counter 17365

D

MR. GIBERSON: Now, Mr. Dominy, you're merely giving me your opinion that the original corners and of course that's the only thing a surveyor can do when he goes out in the attempt to retrace the footsteps of an original surveyor, but what I'm asking you is, do you have any bearing trees or any other methods of identifying those corners for sure, other than the fact that they are occupied lines and there are tree stumps or something that are possibly in the same position. Do you have any evidence as to base your findings on. In other words, let's take this Corner No. 1. At that particular point according to the working sketch that I have before me, the original surveyor, Mr. Shelby, surveyed this survey in 1838. Now my question is, in locating the southwest corner of the Davlin Survey, did you find any identifying trees or any marks that would lead you to believe that you found that original corner on the ground?

MR. DOMINY: That post oak will fit the call and the stump hole will fit the black jack.

MR. GIBERSON: Now, is it true that in this area, it's piney woods county with trees all over the area, and as far as the stump hole is concerned, you can't be sure that is the same hole at all. But it does fit. That is as far as you can go on it.

MR. DOMINY: Like I mentioned before, the turpentine companies dig up these stumps and process them and they have gone through there and pulled up all of these stumps and you find stump holes all through these.

D

MR. GIBERSON: And there is no way of telling that this is the stump hole that held the tree that identified this corner, the bearing tree. Now, you say you found a post oak and what was that bearing?

MR. DOMINY: South 85 West 7 varas, I believe.

MR. GIBERSON: Now, that's close enough to this. According to our field note records, the original records, this post oak had a marking of JR on it. Did you find any markings on that tree?

MR. DOMINY: No, sir, the stump is about...

MR. GIBERSON: Oh, there's only a stump left.

MR. DOMINY: It was cut two or three years ago and a section of it's gone.

MR. GIBERSON: Well, did you find...no complete tree standing. You found one stump and one stump hole.

MR. DOMINY: That's right.

MR. GIBERSON: That's the only identifying tree that you have at the corner.

MR. DOMINY: There are some other trees marked at that corner.

MR. GIBERSON: Do they fit the bearing calls.

MR. DOMINY: I don't know of them being called for anywhere. But there's a marked corner at No. 1.

MR. GIBERSON: But you don't know who marked that corner. It could have been anybody for any purpose.

MR. DOMINY: That's right.

D

MR. GIBERSON: Now, let's move from there on over to this one. In other words, we can't be sure about that, but in your opinion it's the original corner.

MR. DOMINY: I'm not sure about that.

MR. GIBERSON: You're not sure about that from the evidence on the ground. Now, let's go to our senior survey in this particular area. I believe that would be the Droddy. It was surveyed May 16, 1838. And by good surveying practices, and you correct me if I'm wrong, the normal procedure would be attempting to locate your senior survey in the area and then build from there, is that right?

MR. DOMINY: Yes, sir. That's right.

MR. GIBERSON: Now, have you attempted to locate the Droddy Survey?

MR. DOMINY: Well, yes, I did. This is a relatively new territory to me. I haven't done any work in this vicinity before, and I was carried to this corner and pointed out as being the southwest corner of the Droddy Survey. In checking on up the line, it seems to bear it out that it belonged there.

MR. GIBERSON: Now, at the northwest corner of the Droddy Survey you have a square marked there indicating that in your opinion that is the original corner. Did you find any bearing trees or any markings to tie you down on the ground?

MR. DOMINY: Yes, sir. That corner's well marked.

MR. GIBERSON: Now, what markings did you find there?

counter 17368

D

MR. DOMINY: I'll have to refer to my notes.

MR. GIBERSON: Would you do that, please. It's important to me to know whether we found any corners on the ground.

MR. DOMINY: That's Corner No. 7, the field notes of the Albright and Droddy Surveys called for the following: Post from which a pine marked JD bears S. 85 E 5.3 varas; Pine marked JD bears South 1 deg. East 12.6 varas.

MR. GIBERSON: Did you find any of those bearing trees?

MR. DOMINY: At this Corner I found the following : Pine 20" N 30 E 4.1 varas, xx; Pine 20" S 62 W 8 varas, xxx; Pine stump S 33 E 5.7 varas.

MR. GIBERSON: Well, then, none of those trees fit the calls. They're marked trees, but we don't know who marked them.

MR. DOMINY: That's right.

MR. GIBERSON: Let me ask you another question. Did any of those trees have the marking of JD on them?

MR. DOMINY: No, sir.

MR. GIBERSON: According to the working sketch which I'm looking at, the original field notes in this Droddy Survey call for a post pine, it says here, marked JD S 85 degrees, you read those off, and also a pine marked S.. marked JD S 1 degree E 12.6 varas. Do I understand you to say that you couldn't identify any bearing trees there?

MR. DOMINY: There are just other trees marked there.

MR. GIBERSON: Other trees marked, but you couldn't identify that positively as the original corner.

D

MR. DOMINY: As I said before, the stumps have been torn up.

MR. GIBERSON: There are no identifying marks on any of the trees that you could tie them to our patented field notes. Is there any other way that you could put the original...this senior survey on the ground?

MR. DOMINY: I don't know of any way that we could.

MR. GIBERSON: That's the best method. Of course, it is possible maybe to put one on the ground from your junior surveys, but the acceptable method of establishing survey lines and so forth is to find your senior survey in the area and look for the original corners and tie yourself down. In other words we are looking for a starting point, and back to my original question, and I'll ask it again. Do you have a starting point in this area that we can tie ourselves down to definitely?

MR. DOMINY: Nothing original.

MR. GIBERSON: No original point.

MR. DOMINY: No, sir. That is, trees marked at the corners that you can actually identify.

MR. GIBERSON: I'm not criticizing you in any way, I'm trying to clear this up in my own mind, in other words all the corners that you call original corners are corners that have been either pointed out to you or corners that are occupation corners in the area, or corners that you have established by going course and distance from some corner that's been pointed out to you as an original corner. Is that correct?

D

MR. DOMINY: That's correct, yes, sir.

MR. GIBERSON: There's no way that you can put the Mary Davlin on the ground for sure, is there?

MR. DOMINY: No, sir.

MR. GIBERSON: Where did you begin your survey work?

MR. DOMINY: The first day when I went out, I went all through there, and I went from place to place and tried to run all the lines in the whole area. I don't have my field book with me, but I ran all the lines as I've pointed out in my report.

MR. GOODRICH: I may point out, Mr. Giberson, that if you'll check his report on Corner 8, you'll find that he... (inaudible)

MR. GIBERSON: Would you tell me what you found at the northwest corner of the Albright Survey?

MR. DOMINY: An ask 8" North 33 1/3...

MR. GIBERSON: Pardon me just a second, did you say North?

MR. DOMINY: These were some trees that I found there: an ash 8" North 33 1/3 W 3.8 varas, pin oak 18" S 31 3/4 W 6.8 varas, pin oak 18" N 58 E 2.8 varas, Pine stump hole N 20 E 5 varas, Ash stump hole S 33 W 8 varas, and I believe these last two are the same as called for in the...

MR. GIBERSON: Yes, you're correct, the last two calls on the stump holes fit.

counter 47371

D

MR. GOODRICH: Another thing I would like to point out that maybe I ought to ask in the form of a question, Mr. Dominy, going south then from that point you cross an old road at the distance called for, too, didn't you?

MR. DOMINY: Approximately 700 varas from... Corner 8 running South.

MR. GIBERSON: Continuing on south the called distance, where would that take you?

MR. DOMINY: I got 1023 to this corner. The field notes call for each one of these surveys, the Albright and the Droddy are supposed to be 500 varas, but the total distance as I measured it is 1023, I believe that's correct.

MR. GIBERSON: I think that's all the questions I have. If there's someone else who has a question they would like to ask or if there is something they would like to clear up, or go into, we would be glad to hear from you.

MR. PERKINS: Let me ask you one question, Mr. Dominy. On this road that ...is that mentioned in the original patent of the Droddy?

MR. DOMINY: Yes. It's not traveled now.

MR. GIBERSON: If there are no further questions, be seated if you would like to, and if there are any closing statements...

MR. PERKINS: I don't know... Corner No. 4 has been recognized as being either the south boundary line of the Davlin or the north boundary line of the Terry, but some... of course there are some instruments in this abstract which refer to it, in particular this McFarland Deed, which you all are probably familiar with. Now, what I'd like to do if there's no question from you all is to agree or stipulate or whatever may be that there is a Deed from Terry to McFarland dated October 27, 1846, purporting to convey a tract of land...

counter 47372

D

MR. BURKE: In other words, Bill, you want that Deed admitted in evidence.

MR. PERKINS: Yes, sir. Actually not all of it, but I'd just as soon have all of it. Iwill have a copy made.

MR. GIBERSON: That'll be fine, as far as stipulating the instrument, if there's no objection.

MR. BURKE: No objection.

MR. GIBERSON: That'll be fine. If you'll send a copy of that Deed.

MR. PERKINS: This Corner No. 4 is on the line between corner No 1 and No. 5.

MR. GIBERSON: That's just a subdivision corner and has nothing to do with patented field notes.

MR. PERKINS: That's right.

MR. BURKE: That is the first Deed out of the patentee.

MR. GIBERSON: Now, would you like to make a closing statement?

MR. PERKINS: Now, as I understand it, neither Mr. Goodrich nor Mr. Nelson are going to testify. In other words, there is no more evidence. Do you customarily submit any kind of written memorandum on it, or is it all verbal?

MR. GIBERSON: You mean on the closing statement?

MR. PERKINS: Yes, sir.

MR. GIBERSON: Well, we'll take down any statement that you make on

our recorder and it will be recorded and typed up in our record and we'll read the report for what it's worth. You go ahead and make any statement you like for what it's worth and we'll be glad to listen to you.

MR. PERKINS: I'll make this as brief as possible...

MR. GIBERSON: You're not obligated, now, to make any closing statement. I want you to understand that, it's just up to you. Whatever you'd like to do.

MR. PERKINS: I understand that. Since we have gone over so much, there's just a couple of observations I would like to make. You all do not have a plat before you. Since we are being very informal, if I make a statement that there is some disagreement on, please stop me and we'll correct it. We've pretty well established that not many of these corners in this length of time due to the cutting and whatnot, stumping that's been done could be established by locating on the ground the original call trees marked by the original patentee or marked by the original patentee's surveyor, Shelby, when he made the survey. Now this is pretty clear that this corner would be No. 15 to Corner No. 16 and Corner No. 19, and probably others, there's not too much doubt in all of our minds that they have...that those corners can be located and dozens of people have found them over the years and they are well established corners on the ground as shown here on the plat.

MR. GIBERSON: Before you get any further than that, I would like to say that if there isn't any doubt in any of your minds, I would like to have that in evidence, I mean I would like to have you agree to that, for what it's worth, if there's no doubt but that those corners are there on the ground and can be located.

counter 47374

D

It's very important to me, because...

MR. PERKINS: That's what I mean. I just referred to 15, 16 and 19..

MR. GOODRICH: To do that, I think I'll have to explain a little bit...

MR. GIBERSON: Now, it's all right with me. I'm not trying to interrupt you on your closing argument, but I would like...if you are going to say that we all agree that these are the corners, I would like to know just that everybody does agree.

MR. WHITWORTH: Southern Pine, who is opposing this application, will stipulate and agree that Point 15 on the Dominy plat is the southeast corner of the Terry Survey; that Point 16 on the Dominy plat is the southwest corner of the Terry Survey; we further stipulate that Point 19, with the explanation given by Mr. Dominy that this part of the map up near 19 is not drawn to scale, but Point 19 does represent the correct position of the northwest corner of the Mary Davlin Survey; we further will stipulate that Point 8 is the recotnized, and we believe is the proven location of the northwest corner of the F. Albright Survey; we believe and will stipulate that Point 7 on the Dominy plat is the southwest corner of the F. Albright and the northwest corner of the John Droddy; we will further stipulate Point 6 on the Dominy plat is the southwest corner of the Droddy survey and that Point 9 on the Dominy plat is the northwest corner of the Martin or Smyth Survey and that Point 11 is the southwest corner of the Smyth Survey; and that Point 14 is the southeast corner of the Smyth Survey.

counter 17375

D

Now if there are any other points I have not covered that you might be in agreement on, why if you will call it to my attention, we will see if we will stipulate. We think the point of difference here between the applicant and proponent and the Surveyor for the Land Office and Southern Pine Lumber Company is first the location of the northwest corner of the Terry and the southwest corner of the Davlin and furthermore there is a difference of opinion as to how the dividing line between the Davlin and the Terry should be run even if the Surveyor for the State is correct in his location of the northwest Terry and Southwest Davlin.

MR. GIBERSON: Did you follow him?

MR. PERKINS: Yes. And insofar as Joe Stegall is concerned, the applicant here, and I'm not sure of Mr. Whitworth's wording, but these 6, 7, 8, 9 11 and 14 Corners that you mentioned we agree and stipulate that, I hate to go so far as to say those are the same corners, but those have been well established and always recognized as those respective survey corners, and as far as I am concerned they are that. There isn't much evidence other that the line, but they have always been recognized as those survey corners. With that behind us, I agree with Mr. Whitworth that the questionis: (1) where.. if Corner No. 1, as Mr. Dominy has marked up here, is that the correct corner, is that the corner that Mr. Shelby marked in his field notes, and if so, where to draw this line which separates the Davlin from the Terry Survey. Now our position, of course,

D

has become apparent, we ... Shelby started, according to his field notes, either at Corner 13 or 14, of course that is in dispute, as to where he started. But there is no question, at least according to Mr. Dominy there seems clear that is seems impossible to reconcile Shelby's field notes with the meanders of the Sabine River there, Mr. Dominy tried for a while and they just wouldn't fit and he gave up. In other words, from our known Point 15 here is impossible to go back and determine whether 14 or 13 or some other corner around there is his beginning corner. But that as it may, he began someplace there, and ostensibly ran his line down to 15 and called for 16, and then up to either 1 or 3 or some other point. Of course, the Surveyor for the State determined that it is his opinion that he has found a stump hole and a stump which correspond with the original calls made by Shelby at Point No. 1, that would confirm No. 1 as the corner, there's no evidence at all, in spite of all the stump holes and stumps that are around there and trees to support No. 3 or any other point other than No. 1. There are other markings to indicate that this has always been recognized as a corner there. And that along with the other evidence seems to establish that this was the corner to which Shelby referred. And if you recall, there was not much error, possibly 2 or 3 percent on that distance. The distance found by Mr. Dominy and the distance found by Mr. Shelby. Now, the question is how to reconcile... where to establish this line here. Of course, I recognize that like Mr. Whitworth pointed out there is a certain amount of emphasis placed on the calls to these points, but considering all the facts, and considering the fact that this has been a recognized line across here as early as 1846, which was only eight years after this was surveyed, Terry himself conveyed this portion of the

D

land to McFarland, referred to the south boundary line of the Davlin Survey and this has been recognized as that corner, and he called for the same trees that Shelby called for when he established this corner. And of course that line would correspond with this line which Mr. Dominy saw here. The same holds true as Mr. Dominy pointed out this has been marked as the property line. There's some question as to whether that's the survey line, but he thought that it has been recognized as the survey line used by Southern Pine, which is of course opposing the vacancies. But we maintain that what happened was that the property line should be perhaps as Mr. Dominy said Shelby never was on the ground here, but we measure this line up or this one down one or the other, in these surveys establish this corner at this point and then the Surveyor thought he was here, he thought or else he thought that this was down here. And of course we maintain that this is the north boundary line of the Terry and the south boundary line of the Davlin. I don't know otherwise whether there is any question about the north boundary line of the Terry and the south boundary line of the Davlin are the same line. Possibly we've got a vacancy all the way across here, but I don't think that's so, but all that's clear is that Shelby established this line as a common line. This line is the common line and wherever we place it will be the north line of one and the south line of the other. Now, consequently... this... (inaudible)... that is also supported by the judgment, 1906 judgment which was exhibited in Mr. Dominy's report which purports to establish the boundary line

counter 47378

of the Mary Davlin, it specifically purports to do it, and it...(inaudible)... D you extend the line on down below the Dorddy southwest corner you pass it up and go up this way, and this establishes this line here as the south line of the Davlin. Which would also be the north boundary line of the Terry. That leaves 69.89 which we commonly refer to as the 70-acre tract out here by itself, which is what we maintain is a vacancy. Now going on from here, trying to retrace his steps, then he calls after he meets Point 10 back to point 5 on Mr. Dominy's Plat Point 10, that leaves a 69.89 acre tract outside of the Terry and outside of the Davlin Survey. Then continuing with Mr. Shelby's field notes of the Terry Survey from Point 10 on he has a call to go south 500 varas, now Mr. Dominy goes only 115 varas, from Mr. Dominy's Point 10 to Point 11, the difference between Point 10 and Point 12 is about 616 varas. I see no reason to cut it off and make it No. 11. There is some evidence that that has been a corner, no evidence that it was an original interior corner of the survey, no evidence which would coincide to support the original field notes by Shelby, but there is evidence that later on that has been recognized as a corner, however there is also evidence that 12 has also been recognized as a corner. There is a line from 11 to 14, there is also a line that will go from 12 to 13. It seems just as realistic at least to me, that the 616 vara call is much nearer what Shelby had in mind, and what he did in trying to retrace his steps than cutting it down to 116 varas, where he called for 500 himself. And I think that this point, from Point No. 10, the call should go down to Point No. 12 and then of course the call would be about the same from either point. And that the ending point and beginning point of this Point 13, consequently this 212.4 acres is left. Like I said, Point No. 1 is the recognized corner ever since '46 as being the same as Mr. Dominy has it here and as the south boundary line of the Davlin and the north boundary line of the Terry has

D

been recognized as being where Mr. Dominy has located it here. I don't think there is any question about the 70-acre tract. Point 12 is a much more reasonable place to locate the interior corner of the Terry and attempt to reconcile these field notes on the ground than Point 11. I believe that's all.

MR. WHITWORTH: Is there any further statement from any other proponent of the vacancy? I'll make a short closing statement for the opponents. Since we have stipulated with the applicant and agreed to certain corners as found and located by the Surveyor for the Commissioner, I don't know it is necessary to say what I have in mind saying right now. If you feel like it isn't, stop me, and we will save just a few minutes. I think under the evidence presented in this hearing there is no question but that Point 8 on Mr. Dominy's plat correctly reflects the ground location of the northwest corner of the Fleming Albright Survey. We have stump holes found at that point on the ground that corresponds exactly with the ash tree and pine tree called for in the original field notes of the Fleming Albright Survey and of a corner of the Mary Davlin. We also have evidence that that is a corner that is well marked at this time and apparently it is a corner that has been recognized throughout the years at the northwest corner of the Albright and an interior corner of the Davlin. The field notes of the Albright and of the Davlin both from that point call to run south and to cross an old road at 700 varas. The evidence here shows that approximately that distance there is evidence of an old road. There is also evidence of a corner at Point 7 on the Dominy plat, and the called distance, approximately the called

D

distance, may be a little excessive a corner is found at Point 6 which apparently is the corner of and has been recognized as the corner of the ... southwest corner of the John Droddy. So I think that aside from the stipulations and the agreement that we had with the respective corners that the northwest corner of the Albright, southwest Albright, northwest Droddy, and the southwest Droddy and the northwest Smyth corners and I think the southwest Smyth corners are pretty well established in the record here. Nobody has come forward with any evidence of any other ground location for those corners, so I think we can say that they are established not only by the evidence but also by the stipulation. Now, proceeding from that point, when we check the field notes of the Davlin Survey we find that Mr. Shelby in coming from what at the river corner of the McMahon Labor, when he leaves the southwest corner of the Droddy he called to run west to a point where he says he marked two trees. A post oak and a black jack and he says he marked those two trees with the ltters JD. Now we have evidence that at Point 1, which is not west of the southwest corner of the Droddy, that we hv have evidence that at Point 1 there was found the stump of a post oak tree, that was old enough to have been the original post oak called for. Now that evidence may be ... (inaudible)... That was the original southwest corner of the Davlin established by Mr. Shelby. If it is, then it is the northwest corner of the Terry, because I think there is no question but that Mr. Shelby made common corners. Now, there has been stipulation... conclusions that Mr. Shelby wasn't on the ground at very many points in his survey there, and I am in agreement with that

counter 17381

D

conclusion, I think the evidence compels that conclusion. Now whether he was on the ground here and actually marked those trees or not, I don't know. Where he says he marked something or where he calls for marked trees, that apparently there had been no marked trees there before. I don't know why he called for them unless he was actually there. So apparently Mr. Shelby was over on the west line of the Terry and the west line of the Davlin. Now that may be the corner, I can't say that it is not. We think that is up here at Point 3, but we have offered no evidence of finding anything there, and I say frankly we don't find anything there. We established that merely by extension from Point 6 westward, becaus e that's what the man said he did. Then when we take the Terry field notes, and we begin at the southeast corner of the Smyth and run around, he comes over here to where we have agreed the southwest corner of the Terry is, he calls to run 2525 varas north. Well, you run that distance and the evidence shows you find nothing. But at 2733, you do find the old post oak stump. Assuming that the post oak stump is the common corner between the Terry and the Davlin and that it is the northwest corner of the Terry, we think that rules of surveying would more fully justify a disregarding of a call for course and to run the line to the known recognized established corner over here even if it means coming up to the Droddy corner and breaking the course and running on over the Smyth corner. I don't know of any rules of surveying that would prevent you from doing that. And I think certainly if Mr. Shelby was not on the ground between the northeast corner of the Terry, Imean the northwest corner of the Terry and the upper northeast

D

corner, then I don't think we have any calls there save and except the footsteps that he himself by his own words said he made. Lined up here at the corner of the Smyth after passing John Droddy, because if he didn't make any footsteps across there, I don't know of any rule that would require you to run a straight line eastward from 1 through 4 to 5 to this Point 10. Now that's our position on the 70 acre tract. It may possibly be a vacancy. But now in no event, in our opinion, can Tract No. 2, or the so-called 200-acre tract, the tract that Mr. Dominy found to contain 212.4 acres, under no possibility do we think that is a vacancy. We don't think there is any evidence. We agree with the conclusion reached by the Surveyor for the Commissioner that it is not a vacancy. Now this matter of saying that if Mr. Dominy is correct, that this north line, upper north line of the Terry comes over to Point 10, that then you've got to run 608 varas down here or 500 varas because the field notes call to run that. Those field notes call for something else. The field notes call in the first instance as I said for the upper northeast corner of the Terry to be at the northwest corner of the Smyth, and then they call to run south to the southwest corner of said survey, so in any event if you come over here at 10 they say you should then, there is no justification whatsoever for running south any further than the southwest corner of the Smyth Survey, and we're in agreement with the applicant as to where that southwest corner is. And there's no evidence that it's at any other point that at Point 11. So we say that if the upper north line of the Terry is bound to be from 1 to 10 on the Dominy plat, then the lower line of the ... lower North line of the Terry under the evidence must be from Point 11 to Point 14 on the Dominy plat, and therefore there cannot be any vacancy as shwon

D

conclusion, I think the evidence compels that conclusion. Now whether he was on the ground here and actually marked those trees or not, I don't know. Where he says he marked something or where he calls for marked trees, that apparently there had been no marked trees there before. I don't know why he called for them unless he was actually there. So apparently Mr. Shelby was over on the west line of the Terry and the west line of the Davlin. Now that may be the corner, I can't say that it is not. We think that is up here at Point 3, but we have offered no evidence of finding anything there, and I say frankly we don't find anything there. We established that merely by extension from Point 6 westward, becaus e that's what the man said he did. Then when we take the Terry field notes, and we begin at the southeast corner of the Smyth and run around, he comes over here to where we have agreed the southwest corner of the Terry is, he calls to run 2525 varas north. Well, you run that distance and the evidence shows you find nothing. But at 2733, you do find the old post oak stump. Assuming that the post oak stump is the common corner between the Terry and the Davlin and that it is the northwest corner of the Terry, we think that rules of surveying would more fully justify a disregarding of a call for course and to run the line to the known recognized established corner over here even if it means coming up to the Droddy corner and breaking the course and running on over the Smyth corner. I don't know of any rules of surveying that would prevent you from doing that. And I think certainly if Mr. Shelby was not on the ground between the northeast corner of the Terry, Imean the northwest corner of the Terry and the upper northeast

counter 17382

REPORT OF SURVEY OF ALLEGED VACANCIES OUT
OF JESSE TERRY SURVEY, ABSTRACT NO. 423,
NEWTON COUNTY, TEXAS

THE HONORABLE BILL ALCORN, COMMISSIONER
GENERAL LAND OFFICE
AUSTIN, TEXAS

Dear Sir:

Pursuant to authority from you contained in your letter to me dated the 28th day of July, 1960, I proceeded to make an actual survey on the ground of two alleged vacancies in Newton County, Texas, doing my field work on August 9, 10, 11, 22, 23 and 29, and September 13, 1960. In addition to work done on the ground, I consulted with persons who had been familiar with this area or had lived in the area for forty or fifty years, consulted and studied field notes of adjoining surveys and such other surveys as I thought might be helpful, and consulted with Registered Surveyors who have done extensive surveying in the area.

My investigation concerned two tracts of land alleged to be vacancies in Newton County, Texas, about 17 miles Northeast of the Town of Newton, the County Seat, bounded as follows:

> Tract No. 1. General Land Office SF 16039: 70 acres of land, more or less, bounded on the North by the John Droddy Survey, Abstract No. 89, on the East by the G. W. Smyth Survey, Abstract No. 366, on the South by the Jesse Terry Survey, Abstract No. 423, and on the West by the Mary Davlin Survey, Abstract No. 93.
>
> Tract No. 2. General Land Office SF 16040: Bounded on the North by the G. W. Smyth Survey, Abstract No. 366, on the East by the Sabine River, on the South and on the West by the Jesse Terry Survey, Abstract No. 423.

Reference in this report will be made to plat attached hereto as Exhibit "A". On this plat, squares represent points I consider to be established corners at or about the location made by the original surveyor, upon whose field notes the appropriate survey was patented. Circles represent corners I could not prove. | Patent calls for distances are enclosed in parentheses and distances I chained on the ground are not enclosed in parentheses. I have numbered the

E

counter 17385

corners for easy reference in making this report. Some of the lines and corners are well established and have been long recognized by people familiar with the area as the correct lines and corners. As to other lines and corners, there was little or no evidence to be found. Practically all of this area represents cut over lands from which all of the original timber has been removed that was merchantable, and since the cutting of the timber, operations have been conducted by turpentine companies to remove the pine stumps. Also for convenience, I am numbering the paragraphs of this report.

1. The main question in issue is a determination of the correct location on the ground of the upper and lower North Boundary Lines of the Jesse Terry Survey.

2. I made a careful survey of lines between the following corners, and made careful search for all corners either on these lines or at the termination of these lines as follows:

From corner No. 1 through No. 2, No. 3 and up to No. 19; * North Boundary Line of Mary Davlin Survey; (Not on plat)

From corner No. 1 through No. 4 to No. 5, then up through corner No. 6 to No. 7 to No. 8;

From Corner No. 6 to Corner No. 9 to Corner No. 10 to Corner No. 5;

From Corner No. 9 through No. 10 to No. 11 to No. 14 down the Sabine River to No. 13, West to Corner No. 12, back to Corner No. 11;

Did not meander the Sabine River from Corner No. 13 to Corner No. 15, but went to Corner No. 15;

Did not run the South Boundary Line of the Terry Survey, being the North Boundary Line of the A. S. Droddy Survey, Abstract No. 86, being the line from Corner No. 15 to No. 16, as this was a well established line;

Ran the line from Corner No. 16 through No. 17 and No. 18 to Corner No. 1.

3. Pertinent surveys were laid out as follows:

(a) Richard Williams, Abstract No. 19, patented on field notes of Wm. Ewing, dated September 17, 1835;

E

counter 77386

(b) Isaac McMahon Labor, Abstract No. 297, patented on corrected field notes; (originally called the Theopolis Hickman Labor and was called for in the Davlin field notes as such and the Davlin field notes called for same bearing trees at common corners as the corrected field notes on which the Isaac McMahon was patented.)

(c) A. S. Droddy, Abstract No. 86, patented on the field notes of William Prissick dated May 1, 1838;

(d) John Droddy Labor, Abstract No. 89, patented on the field notes of William Prissick dated May 16, 1838;

(e) G. W. Smyth Survey, assignee of Mitchell Martin, Abstract No. 366, patented on the field notes of William Prissick dated June 10, 1838;

(f) Theopholis Hickman Survey, Abstract No. 143, patented on the field notes of A. J. Shelby, dated October 27, 1838;

(g) Mary Davlin Survey, Abstract No. 93, patented on the field notes of A. J. Shelby dated October 26, 1838;

(h) Jesse Terry Survey, Abstract No. 423, patented on the field notes of A. J. Shelby dated October 26, 1838;

(i) S. H. Smyth Survey, assignee of A. F. Albright, Abstract No. 28, patented on the field notes of S. H. Smyth dated July 20, 1848;

(j) J. F. Brack Survey, Abstract No. 728, patented on the field notes of G. W. Gray dated December 14, 1880;

(k) J. N. Smyth Survey, Abstract No. 594, patented on the field notes of J. A. Dubose dated December 17, 1880;

(l) J. M. Cloud Survey, Abstract No. 678, patented on the field notes of G. W. Gray dated February 5, 1890.

4. When Shelby endeavored to lay out the Theopholis Hickman, the Mary Davlin and the Jesse Terry Surveys on October 26 and 27, 1838, the A. S. Droddy, the G. W. Smyth and the John Droddy Surveys had already been surveyed and patented. Since all of these surveys are well located on the ground today, as shown by this report, I believe that Prissick actually laid off these surveys on the ground and that the lines and corners would have been easily identifiable by Shelby in October of 1838. Although the F. Albright was patented on field notes dated July 20, 1848, Shelby called for its lines and corners in his field notes of the Mary Davlin Survey and therefore the Albright Survey must have been actually laid out on the ground prior to the time Shelby made his surveys in October, 1838.

E

counter 77387

(a) Although I did not believe it necessary to survey the lines and corners of the Richard Williams Survey and the Isaac McMahon Labor, first called the T. Hickman Labor, these had been surveyed, according to the field notes, before Shelby attempted to lay out the Theopholis Hickman, Mary Davlin and Jesse Terry Surveys. Therefore, it is evident that Shelby was planning to take up the vacant land lying South of the R. Williams and I. McMahon Surveys, lying West of the Sabine River, the F. Albright, the J. Droddy and the G. W. Smyth Surveys; and lying North of the A. S. Droddy Survey.

(b) He would have found it almost essential to survey the Theopholis Hickman, but he could easily have only surveyed the West Boundary Line of the Davlin, calculated his Sabine River calls and the lines and corners of the surrounding surveys above mentioned from maps and field notes, and made the field notes for the Davlin and Terry Surveys from this information. Since, as herein shown, it is impossible to make Shelby's field notes fit on the ground, some such hypothesis is necessary in order to try to reconstruct these surveys. P.10

5. Although the J. F. Brack, the J. M. Cloud and the J. N. Smyth Surveys were junior surveys and laid down from forty-two to fifty-two years after the Terry and Davlin Surveys, their calls for the West Boundary Line of the Terry, the North Boundary Line of the Adam S. Droddy and part of the West Boundary Line of the Mary Davlin Survey are entitled to some weight, and indicate that G. W. Gray in 1880 and 1890, and J. A. Dubose in 1880 thought that the line from No. 16 North through Corners No. 17, 18, 1, 2 and 3, to No. 19 was the West Boundary Line of the Jesse Terry and the Mary Davlin Surveys. They must have found some evidence to support their opinions.

6. At corner No. 16, Shelby called for the following as the Southwest corner of the Terry Survey:

> Hickman's East Boundary, a stake from which a
> Black Gum marked "TH" North 29 deg. West 7.7 varas, and a
> Black Oak marked "TH" South 45 East 6 varas.

7. This corner is now in the edge of the right-of-way for State Highway No. 63 or 45 and no evidence of these original bearing trees could be found.

counted 47388

E

However, this is a well marked corner, showing that it has been recognized as the Southwest corner of the Jesse Terry Survey since at least December 14, 1888, when G. W. Gray laid down the J. F. Brack Survey.

8. Although Shelby did not call for the Terry Survey in the Davlin field notes and did not call for the Davlin Survey in the Terry field notes, he called for the same bearing trees at the N. W. corner of the Terry and the S. W. corner of the Davlin, as follows:

(76)

A post from which a P.O. marked "JR", bears South 86 deg. West 7 varas, and a
Black Jack marked "JR" bears South 65 deg. East 4.5 varas.

9. I did not find any evidence of the Black Jack, but I found a corner marked up at this point on the line between Corners No. 16 - 3, from which corner the stump of a Post Oak bears S. (76) 86 West 7 varas. This stump indicates that the Post Oak tree was cut down some two or three years prior to the time I was on the ground, but I scraped the stump carefully and used a magnifying glass in an effort to count the rings. Although I could not count all the rings, I am satisfied that this Post Oak tree was 200 years or more old when it was cut, and I believe it was the Post Oak tree marked by Shelby.

10. At corner No. 2, Shelby called for the following bearing trees for the Southeast corner of the Theopholis Hickman Survey:

A Pine S. 19 E. 12.4 vrs., marked X;
A Pine N. 50 E. 12 vrs., marked X.

11. At this same corner, J. A. Dubose, in surveying the J. N. Smyth Survey in December, 1880, called for the following bearing trees:

Pine South 17 East 12 varas;
Pine North 37 West 6.5 varas.

12. At this point, I found the following:

Pine 14" N. 70 W. 7.6 varas, marked X;
Red Oak 5" S. 85 W. 3.4 vrs., alligator;

13. This is a well marked corner and I am satisfied it is the Southeast corner of the Theopholis Hickman and the Northeast corner of the J. N. Smyth Survey on the West East Boundary Line of the Mary Davlin Survey.

counter 47389

E

14. Shelby called the West Boundary Line of the Terry Survey from Corner No. 16 to Corner No. 1 to be 2,525 varas, but at 2,525 varas North from Corner No. 16 I did not find any evidence of a corner, and did not find any evidence of a corner from that point northward until I reached Corner No. 1. The line from Corner No. 16 to Corner No. 1 is 2,733 varas, being 208 varas longer than Shelby called it to be.

15. I ran North on the recognized West Boundary Line of the Mary Davlin Survey from No. 1, following an old well marked line to No. 19, a well marked corner on the South Boundary Line of the Richard Williams Survey. At this No. 19 I found the following:

Black Jack 9" N. 31 W. 9.4 varas;
Post Oak 10" N. 56 E. 7.9 varas;
Sand Jack 6" N. 67 E. 3.2 varas;
Sand Jack 6" S. 68 E. 6.5 varas;

At the Northwest corner of the Mary Davlin, Shelby had called for the South Boundary Line of the Richard Williams, and the following:

Pine marked "TH" brs. S. 33 deg. 30' E. 3-7/10 varas;
Pine marked "TH" brs. N. 45 deg. W. 5-3/10 varas;

I found the distance from No. 1 to No. 19 to be 3,227 varas, and Shelby called this to be 3,150 varas. Since this is not a great discrepancy, and since Line No. 16 - 19 is the recognized West Boundary Line of the Terry and Davlin Surveys and since I believe the Post Oak stump at No. 1 is the stump of the original bearing tree called for at this point by Shelby, I believe No. 1 is the Northwest corner of the Terry Survey and the Southwest corner of the Davlin Survey.

(a) I ran East on the North Boundary Line of the Davlin and the South Boundary Line of the R. Williams, and at 1,264 varas reached the upper N.E. corner of the Davlin. Shelby called this distance to be 6,168 varas and at this corner called for the following:

Beech marked "TH" brs. S. 38 deg. 15' E. 5-6/10 varas;
White Oak marked "TH" brs. W. 7-1/10 varas;

counter 17390

At this corner I found the following:

Pine 15" S. 4.7 varas;
Sweet Gum 5" S. 28 W. 7 varas;
White Oak 26" W. 5.6 varas. (I believe this is the original witness tree)

16. Finally, the judgment in the case of R. C. Shindler vs. Lutcher & Moore, et al, rendered in the District Court of Newton County, Texas, on October 9, 1906, affirmed an appeal, a copy attached hereto as Exhibit "B", found that Corner No. 1 was the Southwest corner of the Mary Davlin Survey and the Northwest corner of the Jesse Terry Survey, that Corner No. 19 was the Northwest corner of the Mary Davlin Survey and that Corner No. 2 was the Southeast corner of the T. Hickman Survey, Abstract No. 143.

17. I made a search for a corner at No. 3, but did not find any evidence of a corner or any evidence of a line going East from this point. A line running due East from No. 3 would go to No. 6, the Southwest corner of the John Droddy Survey, but I did not find any facts to support establishing a corner at No. 3. P14

18. From corner No. 1 to corner No. 5, which corner is directly South of corner No. 6, the Southwest corner of the Droddy Survey, is a distance of 4,082 varas, instead of 6,200 varas as called in Shelby's field notes. It is incredible that Shelby made such an error in his chaining, and it is my opinion that he did not run this line at all on the ground and attempted to calculate this distance. As a result, he did not realize that a line running due East from corner No. 1 would not strike the Northwest corner of the G. W. Smyth Survey, my corner No. 9. I did not find evidence of any old line from corner No. 1 to corner No. 4, but did find some marks of a line probably sixty or seventy years old from corner No. 4 to corner No. 5.

19. At corner 5, I found the following marked trees, although these trees were not called for in any of the field notes or patents of either the Terry, the Davlin, the Droddy or the Smyth Surveys, to-wit:

Pin Oak 24" N. 37 W. 3 varas, xxx;
Pin Oak 12" N. 83 E. 5.2 varas;
Maple 6" N. 37 E. 3.6 varas.

counter 47391

E

20. At corner No. 6, Prissick called for the following at the S. W. corner of the John Droddy Survey;

A Post from which a Pine marked "JD bears N. 8 deg. W. 5.5 varas;
Pine marked "JD" bears South 16 deg. West 9 varas;

The field notes of Shelby of the Davlin Survey called for these same bearing trees and for this Southwest corner of the J. Droddy Survey. I found the following at this corner:

changed record

Maple 8" N. 19 E. 6.4 varas;
B.G. 14" N. 55 E. 8 varas;
B.G. 20" N. 67 E. 3.5 varas;
Hickory 5" S. 85 E. 2.2 varas;
R.O. stp. S. 9 E. 15.4 varas.

21. At Corner No. 7, the field notes of the Albright and Droddy Surveys called for the following:

Post from which a Pine marked "JD" bears S. 85 E. 5.3 varas;
Pine marked "JD" bears South 1 deg. East 12.6 varas.

At this corner I found the following:

Pine 20" N. 30 E. 4.1 varas, xx;
Pine 20" S. 62 W. 8 varas, xxx;
Pine stp. S. 33 E. 5.7 varas.

22. At corner No. 8, being the Northwest corner of the Albright Survey, its field notes called for the following:

Post from which an Ash marked "WH" bears S. 33 W. 8 varas;
Pine marked "WH" bears N. 20 E. 5 varas;

I believe the field notes of the Davlin call for this same corner, because the Davlin field notes called to begin on the West bank of the Sabine River at the Southeast corner of the Theopholis Hickman Labor, then to go down said River to the Northeast corner of the Fleming Albright Labor, then to go,

"with the North line of said Labor S. 89 deg. 30' W. at 1650 vrs.,
a stake from which an
Ash marked "WH" bears S. 35 W. 8 varas;
Pine marked "WH" bears N. 20 E. 3 varas.

Thus the Davlin notes call for the same distance from the Northeast corner of the Albright to its Northwest corner (my No. 8) as do the Albright field notes, and call for the same trees, except the Pine is called to be a distance of "3 varas" instead of "5 varas".

E

counter 47392

At this corner, I found the following:

Ash 8" N. 33-1/3 W. 3.8 varas;
Pin Oak 18" S. 31-3/4 W. 6.8 varas;
Pin Oak 18" N. 58 E. 2.8 varas;
Pine stp. hole N. 20 E. 5 varas;
Ash stp. hole S. 33 W. 8 varas;

The stump holes are correct for the original bearing trees, and I am convinced this is the original Northwest corner of the F. Albright Labor, and an interior corner of the Davlin.

23. The field notes of the Albright called for its West Boundary to be 500 varas in length, the field notes of the John Droddy called for its West Boundary Line to be 500 varas, and the Davlin field notes called for this total distance, being from Corner No. 8 to Corner No. 6, to be 1,000 varas.

24. I found this distance to be 1,023 varas, and 700 varas South from Corner No. 8, I found the evidence of the old road called for in the field notes of the Davlin Survey by Shelby.

25. The line from Corner No. 6 to Corner No. 8 is an old, well established line, with old hacks and marks and corners No. 6, No. 7 and No. 8 are old, well established and recognized corners.

26. At Corner No. 9, the field notes of the J. W. Smyth called for a stake from which:

White Oak marked "S" brs. S. 31 E. 10.5 varas;
White Oak marked "S" brs. S. 89 E. 5.2 varas. P-17

Shelby's field notes of the Terry call for the following at this corner: (33)

"Martins N.W. corner, from which a White Oak brs. S. 31 deg. E. 10-5/10 vrs;
Water Oak brs. S. 87 deg. E. 5-4/10 vrs;

At this corner No. 9, I found the following:

A Hub, from which:
White Oak 24" S. 38 E. 2.8 varas;
White Oak 14" N. 84 E. 5 varas; and marked with an alligator.

There was an old, well marked line going East from Corner No. 9 toward the Sabine River, but I did not run this line to the river.

E

counter #7393

The field notes of the Smyth, made by Prissick called for the line from Corner 9 to Corner 11, the West Boundary Line of the Smyth, to be 500 varas, and I found this distance to be 494 varas.

27. At Corner No. 10, not a patent corner, I found the following:

S.G. 15" S. 87 W. 10.4 varas; and I marked a
P.O. 6" S. 17 E. 6.9 varas.

I did not find anything at this point that would indicate it was a corner of either the Smyth, the Terry or the Droddy Surveys.

28. At Corner No. 11, the field notes of Prissick called for the following at the Southwest corner of the G. W. Smyth:

A stake from which a White Oak marked "S" bears S. 24 E. 5 varas;
Sweet Gum marked "S" bears N. 45 E. 9.9 varas.

Shelby's field notes of the Terry called for this to be an interior corner of the Terry Survey and called for the following:

A stake, S.W. corner of said Survey, from which a
Water Oak brs. S. 24 deg. East 5 varas;
Sweet Gum brs. N. 45 deg. E. 9-9/10 vrs; each marked "S". p. 18

At this corner, my No. 11, I found the following:

Water Oak 9" N. 88 W. 2.1 varas;
Pine 20" S. 28 E. 4.6 varas;
Pine 12" S. 82 W. 8.8 varas;
S.G. 8" E. 9.4 varas;
Pin Oak 9" N. 68 E. 12.6 varas;
S.G. stp. N. 45 E. 9-9/10 varas.

29. In running the line between Corner No. 11 and Corner No. 14, being the South Boundary Line of the Smyth Survey, I found the distance to be 2,386 varas, whereas Prissick called this distance to be 2,306 varas. Corner No. 14 is under the State Highway Bridge across the Sabine River and there was no evidence of any corner. However, I talked to Joe Harralson, an old settler in this area, who was employed by the State Highway Department in helping to clear right-of-way when this highway was first built and the bridge constructed. He remembers seeing the old Maple at this corner with the old marks upon it, but does not remember the Sycamore.

E

counter #7394

30. At this corner, my No. 14, Prissick called for the following witness trees:

Maple marked "S" South 33 deg. East 5.9 varas;
Sycamore marked "S" South 15 deg. 30 min. West 15.3 varas.

These are the same witness trees called by Shelby in his field notes of the Terry, and as already mentioned, he calls for these witness trees and the Southwest corner of the Smyth Survey to be the beginning point of the Terry Survey. I surveyed down the river from Corner No. 14 to Corner No. 13 and started running on South from No. 13, but it was obvious that the field note calls of the Terry Survey as given in Shelby's field notes were radically different from the present course of the River, and I did not find any evidence that the River had made such radical changes as would be indicated by the difference between Shelby's calls and the present course of the River.

At Corner No. 13, I found the following:

Elm 24" S. 64 W. 2 varas; and gator
Gum stp. S. 1.2 varas;

I found no evidence that this was a corner of the G. W. Smyth Survey or the beginning corner of the Terry Survey.

31. On the line from Corners No. 13 to 12 and from 12 to 11, I found some old marks and hacks that indicated this line was probably sixty to seventy years old, indicating that it was probably surveyed about 1890 to 1900. I did not find any evidence of a corner at my No. 12, and I marked the following:

S.G. 5" S. 62 E. 4.6 varas;
Hickory 4" N. 82 E. 7/10 varas.

I did not find any evidence or any bearing trees at this Corner No. 12 that would indicate that this was the original Southwest corner of the G. W. Smyth Survey, or that it was the original interior corner of the Terry Survey.

32. I did not meander the Sabine River from Corner No. 13 to No. 15, but went to Corner No. 15. At Corner No. 15, Prissick in surveying the Adam S. Droddy Survey, called for the following:

Post on West bank Sabine River from which a
Sycamore marked "AD" bears N. 87 deg. 30 min. 4.6 varas;
Sycamore marked "AD" bears S. 48 E. 7.4 varas;

counter 47395

I found the following at this corner:

Willow 14" N. 40 W. 7/10 varas;
Willow 12" S. 28 W. 11.2 varas;

This is the corner called for by Shelby in surveying the Terry, and the evidence on the ground indicates that this is a well established corner and the line going West from this corner is an old, well marked line and recognized in the community as the North Boundary Line of the A. S. Droddy Survey and the South Boundary Line of the Jesse Terry Survey.

33. In summary, the evidence indicates unmistakably that the Fleming Albright, and John Droddy and the G. W. Smyth Surveys are correctly located on the ground today according to the field notes made by the surveyors upon which patents were issued, and that the same is true of the North Boundary Line of the A. S. Droddy Survey, Abstract No. 86. A. J. Shelby, in writing the field notes of the Mary Davlin, Abstract No. 93, dated October 26, 1838, and the field notes of the Jesse Terry, Abstract No. 423, dated October 27, 1838, called for the lines and corners of the Albright, Droddy and Smyth Surveys. In addition, at common corners, he called for the same bearing trees called for by William Prissick in his field notes of the John Droddy on May 16, 1838, and in his field notes of the G. W. Smyth on June 10, 1838. If Shelby was actually on the ground, the conclusion is inescapable that he was actually on the lines and corners of the Albright, Droddy and G. W. Smyth Surveys as the lines and corners established by Prissick would have been plainly visible and evident.

34. If ~~Prissick~~ SHELBY was not on the ground, then his calls for the lines, corners and bearing trees of these surveys must be honored.

35. For the same reasons, Shelby's calls for the North Boundary Line of the A. S. Droddy, Abstract No. 86, must be honored. 21

36. It is evident from the work I have done, and from the facts to be found on the ground, that A. J. Shelby did not run all the lines on the ground of the Mary Davlin and the Jesse Terry Surveys. It is possible, but doubtful, that Shelby began his surveying on the ground as he stated at the lower corner

E

counter 47396

of the T. Hickman Labor on the West Bank of the Sabine River (not shown on my plat) thence went down the Sabine River, around the Albright, Droddy and Smyth Surveys, down the River to the A.S. Droddy Survey, West on its North Boundary Line to Corner No. 16, thence North through Corner No. 17, 18, 1 and 3 and on up to the Northwest corner of the Davlin and back to his place of beginning. However, it is my opinion that Shelby actually only established Corner No. 1 on the ground, and probably surveyed the Theopholis Hickman and the West Boundary Line of the Mary Davlin Survey. This is the finding of the District Court of Newton County in the Judgment in the Schindler case, copy attached as Exhibit "B". By reason of the fact that the North Boundary Line of the Davlin Survey is only 1,264 varas in length, when Shelby called it to be 6,168 varas, and, from a study of the field notes of surveys named in this report, and from a study of the working sketch of this area prepared by the General Land Office, it is difficult to believe that Shelby actually surveyed the North Boundary Line of the Davlin Survey.

37. If Shelby actually did as much surveying on the ground as above stated, it is my firm opinion that he did not survey on the ground any line going East from No. 1 or No. 3, or from any point on the line between Corners No. 16 to No. 3, and that he did not run any lines West from either Corner No. 6 or Corner No. 5. It is my opinion that he endeavored to calculate the division line between the Mary Davlin and the Jesse Terry Surveys without running the line on the ground. This is the only way to account for the discrepancies in the actual location of various points on the ground. 22

38. SUMMARY OF ESSENTIAL FACTS:

In my opinion, the following facts are established by evidence found on the ground, by the original field notes of the surveys mentioned, by general acceptance of land owners as evidenced by established lines and corners, and, by the judgment mentioned, copy attached as Exhibit "B":

(a) That No. 1 is the corner established on the ground by A. J. Shelby

E

counter #7397

in October, 1838, as the Northwest corner of the Jesse Terry Survey and the Southwest corner of the Mary Davlin Survey;

(b) That Corner No. 6 is the original Southwest corner of the John Droddy Survey established by William Prissick in May, 1838;

(c) That Corner No. 9 is the original Northwest corner of the G. W. Smyth Survey on the South Boundary Line of the John Droddy Survey, established by William Prissick in June of 1838;

(d) That Corner No. 11 is the original Southwest corner of the G. W. Smyth Survey as established on the ground by William Prissick in June, 1838, and that regardless of whether or not A. J. Shelby made this portion of his survey on the ground, this is the corner he intended to, and did establish as the interior Northeast corner of the Jesse Terry Survey;

(e) That the line between Corner No. 11 and Corner No. 14 is the original South Boundary Line of the G. W. Smyth Survey established by William Prissick on the ground in June, 1838, and that regardless of whether or not A. J. Shelby made this part of his survey on the ground, this is the line he intended to, and did establish, as the lower North Boundary Line of the Jesse Terry Survey; 23

(f) That Corner No. 14 is the original Southeast corner of the G. W. Smyth Survey as established on the ground by William Prissick in June, 1838, and that regardless of whether or not A. J. Shelby was on the ground on this portion of his surveys, he intended to and did establish this corner as the lower Northeast corner, and the beginning corner, of the Jesse Terry Survey;

39. QUESTION OF EXISTENCE OF ALLEGED VACANCIES:

(a) I do not believe that Tract No. 2, SF 16040, hereinabove described and shown on Exhibit "A", is a vacancy, being the land enclosed between the lines connecting my Corners Nos. 11, 14, 13, 12 and back to 11.

(b) There is no way to reconcile on the ground all of the calls in the field notes of the Mary Davlin Survey and those of the Jesse Terry Survey. In

E

counter #7398

order to complete these surveys, it is necessary to reject one or more of the calls for course, distance and corners in the field notes of both, and it may be solely a legal question from the facts I have found in this report.

(c) The only way to reconstruct the South Boundary Line of the Mary Davlin Survey and the North Boundary Line of the Jesse Terry Survey to avoid any vacancy is to find that the line connecting Corner No. 3 and Corner No. 6 is the common boundary line of these two surveys. As already pointed out, there is no evidence of any corner at No. 3 and no evidence on the ground that a line between Corner No. 3 and Corner No. 6 was ever run on the ground as the common boundary line of these two surveys. Therefore, I do not believe the line from No. 3 to No. 6 is the common boundary line between the Davlin and Terry Surveys.

(d) If, as Shelby stated, the lower South Boundary Line of the Mary Davlin Survey goes from the Southwest corner of the John Droddy Survey (corner No. 6) to the Post Oak corner (corner No. 1), and if, the upper North Boundary Line of the Jesse Terry is run as Shelby stated from the Post Oak corner (corner No. 1) to the Northwest corner of the G. W. Smyth Survey (corner No. 9), there is still a vacancy between these lines. Therefore, I do nct believe this method would be a correct reconstruction of the original boundaries between the Davlin and Terry Surveys.

(e) I believe the original and correct location of the boundary line between the Mary Davlin Survey and the Jesse Terry Survey is as follows, and for the reasons stated:

From Corner No. 8, the East Boundary Line of the Mary Davlin Survey should run due South through Corners No. 7 and 6 to Corner No. 5;

From Corner No. 5 a line should be run due West to Corner No. 1, as the South Boundary Line of the Davlin Survey and the North Boundary Line of the Terry Survey;

The North Boundary Line of the Jesse Terry Survey should run from

Corner No. 1 due East through Corner No. 5 to Corner No. 10, thence South to Corner No. 11 and thence East to Corner No. 14. I found old maps that showed this construction of the two surveys and found some old deeds calling for the Mary Davlin Survey to Corner No. 5. This solution is supported by the judgment, Exhibit "B", and the actual lines on the ground indicate this has been the accepted lines and corners of these portions of the Mary Davlin and Jesse Terry Surveys. I realize this would be extending the distance of the Mary Davlin East Boundary Line 386 varas further than Shelby called it to be, and it would also indicate that Shelby was mistaken as to the location of the Southwest corner of the John Droddy Survey. However, in view of the numerous and obvious errors in Shelby's field notes, this would not be a major change, would most nearly harmonize the calls of his field notes with the least amount of change, and would still honor Shelby's intent to have a common Boundary Line between the Terry and Davlin Surveys.

40. I therefore conclude that Tract No. 1, S.F. 16039, bounded by the lines connecting my Corners No. 6 to No. 9 to No. 10 to No. 5 and back to No. 6, is a vacancy, the field notes thereof being as follows:

> BEGINNING at Corner No. 9, the Northwest corner of the G. W. Smyth Survey, Abstract No. 366, on the South Boundary Line of the John Droddy Survey, Abstract No. 89, a 24" W.O. is S. 38 E. 2-8/10 varas, and a 14" W.O. is N. 84 E. 5 varas;
>
> THENCE West with the South Boundary Line of said Droddy Survey 1,023 varas to the Southwest corner of said Droddy Survey, which is Corner No. 6, an 8" Maple is N. 19 E. 6-4/10 varas, a 14" B.G. is N. 55 E. 8 varas, a 20" B.G. is N. 67 E. 3-5/10 varas, a 5" Hickory is S. 85 E. 2-2/10 varas, and a R.O. stump is S. 9 E. 15-4/10 varas;
>
> THENCE South at 386 varas to a stake for corner No 5, a 24" Pin Oak is N. 37 W. 3 varas, a 12" Pin Oak is N. 83 E. 5-2/10 varas and a 6" Maple is N. 37 E. 3-6/10 varas;
>
> THENCE East at 1,023 varas to a stake in the West Boundary Line of the G. W. Smyth Survey which is Corner No. 10, from which a 15" S.G. is S. 87 W. 10-4/10 varas, and a 6" P.O. is S. 17 E. 6-9/10 varas;
>
> THENCE North with the West Boundary Line of said Smyth Survey to the beginning, containing 69.89 acres of land by actual survey.

counter 17700

41. I further conclude that Tract No. 3, SF 16040, bounded by the lines connecting my corners No. 11 to No. 12 to No. 13 to No. 14 and back to No. 11, is not a vacancy, but is a part of the Jesse Terry Survey according to the field notes of A. J. Shelby, the original surveyor, the field notes thereof being as follows:

> BEGINNING at Corner No. 11, the Southwest corner of the G. W. Smyth Survey, Abstract No. 366, a stake for corner from which a Water Oak 9" bears N. 88 W. 2.1 varas; a Pine 20" bears S. 28 E. 4.6 varas; a Pine 12" bears S. 82 W. 8.8 varas;
>
> THENCE East with the South Boundary Line of said G. W. Smyth Survey, 2,386 varas to corner No. 14, the Southeast corner of said G. W. Smyth Survey, a stake for corner on the West bank of the Sabine River under the bridge on Texas Highway No. 6., no bearing trees available;
>
> THENCE down the said River with its meanders as follows: S. 6 E. 310 varas, and S. 19 W. 240 varas to a stake for corner at Corner No. 13, from which an Elm 24" bears S. 64 W. 2 varas, a Gum Stump bears S. 1.2 varas;
>
> THENCE West 2,352 varas to Corner No. 12, a stake from which a Sweet Gum 5" bears S. 62 E. 4.6 varas; a Hickory 4" bears N. 82 E. 7/10 of a vara;
>
> THENCE North 501 varas to Corner No. 11, the place of beginning, the Southwest corner of the G. W. Smyth Survey, andcontaining 212.4 acres of land.

There are no oil wells within five (5) miles of either of the two surveyed tracts of land.

This concludes my report.

Respectfully submitted,

E. C. Dominy

E. C. Dominy, Licensed State Land Surveyor.

counter 47401

E

R. C. SHINDLER | INSTRUMENT: JUDGMENT

DATED : AUGUST 9, 1906

TO FILED : NOV. 22, 1906

RECORDED : DB 2 Pg 131

LUTCHER & MOORE ET AL | DEED RECORDS NEWTON COUNTY

* * * * * * * * * *

C C C N C

EXHIBIT

NO. 908

R. C. Shindler | IN THE DISTRICT COURT OF NEWTON

vs. | COUNTY

Lutcher & Moore et al | October 9, A.D. 1906.

On this day this cause was called for trial, and thereupon the plaintiff R. C. Shindler announced to the court that he desired to dismiss his suit as to the defendants G. Gedell Moore, J. T. Ramsey, George L. Porter and E. J. Barrett;

WHEREFORE it is accordingly ordered that as to said defendants plaintiff's suit be and same is hereby dismissed without prejudice, and it is ordered that plaintiff pay the costs incurred in making them parties. Thereupon Plaintiff R. C. Shindler and the defendants W. H. Strak, Henry J. Lutcher and the Lutcher & Moore Lumber Company; and the executors of M. T. Jones, deceased, to-wit: T. W. House, A. J. Schureman, H. D. Timmons Jesse H. Jones and J. M. Rockwell, and the widow and heirs of M. T. Jones, deceased, to-wit: Mrs. Louisa Jone, W. E. Jones, Janette Jones, Jesse H. Jones, Mrs. Augusta Hunting and husband J. D. Hunting appeared by their respective attorneys and announced ready; - the defendants C. T. Darby, J. W. Darby, John Sterrett assignee of C. T. Darby and John

EXHIBIT "B"

counter 47402

W. Darby although duly served and although they had formerly answered failed to appear and defend, they having enetered into an agreement with plaintiff for judgment; - and the defendants J. C. Ramsey, Curtis Gunter and Frank Dunn although duly served and cited to trial, failed to appear and answer, but wholly made default. Wherefore it is ordered, adjudged and decreed by the court that the plaintiff R. C. Shindler do have and recover of the said defendants in default, to-wit: J. C. Ramsey, Frank Dunn and Curtis Gunter the premises in controversy and the title to and possess of same, said premises being the Mary Davlin survey situated on Sabine River in Newton County, Texas, for which let plaintiff have his writ of possession as against said defendants.

Whereupon it was announced to the court that the controversy herein between plaintiff R. C. Shindler and the defendants C. T. Darby, J. W. Darby, John Sterrett and John Sterrett as assignee of C. T. Darby and J. W. Darby, had been settled by agreement to the effect that plaintiff R. C. Shindler should take judgment against said defendants for and in consideration of a deed conveying an interest of seventy one (71) acres to one John Wahrenberger, vendee of said defendants. Wherefore it was accordingly ordered, adjudged and decreed by the court that the plaint[illegible] R. C. Shindler do have and recover of the defendatns C. T. Darby, J. W. Darby, John Sterrett and John Sterrett as assignee of C. T. Darby and John W. Darby the said premises in controversy and title to and possession of same, said premises being the Mary Davlin survey situated on the Sabine river in Newton County, Texas, but it is ordered in accordance with said agreement that the

counter 47403

plaintiff R. C. Shindler pay all costs incurred in making said defendants parties to this suit.

And it further appearing to the court that there was an agreement on file settling the controversy herein as between the plaintiff R. C. Shindler and the Executors, widow and heirs of M. T. Jones, deceased, deceased, who defendants herein they being T. W. House, A.J. Schureman, H. D. Timmons Jesse H. Jones and J. M. Rockwell independent executors of the last will and testament & the estate of M. T. Jones deceased, and Mrs. Louise Jones, widow, and Jesse H. Jones, and W. E. Jones, Miss Jennette Jones and Augusta Hunting, heirs of M. T. Jones, deceased, and J. D. Hunting husband of Augusta Hunting; Wherefore in accordance with said agreement, it is ordered, adjudged and decreed by the court that the following portion of the said Mary Davlin survey in controversy between plaintiff and said defendants, executors, widow and heirs of M. T. Jones, deceased, shall be divided between them as set out below said part of said Davlin survey so in controversy being described thus:

BEGINNING at the northwest corner of the Mary Davlin survey as herein fixed

THENCE north 89 deg. 30' E 1250 vrs., to a stake marked J N

THENCE S 1594 vrs to a stake for corner a pine 36 inches diameter brs, S 83 W 5 vrs,

THENCE N 89 deg. 30' E 650 vrs, to cor.

THENCE S 306 vrs. to corner,

THENCE S 89 deg. 30' W 1900 vrs, to corner in the west line of the Mary Davlin survey as fixed and located by this decree.

counter 47704

E 47

THENCE N 1900 vrs, to the beginning, containing 456 acres, more or less.

(a) Said executors, widow and heirs of M. T. Jones shall have and take judgment against palintiff R. C. Shindler for the following tract of 100 acres, more or less, part of said 456 acre tract, to-wit:

BEGINNING at the NW corner of the tract, part of said Mary Davlin survey known as the Runyan tract of 400 acres, said corner being on the south line of the Richard Williams league. A pine brs, N 54 deg. W 1 v. another pine brs. S. 44 E 10½ vrs.

THENCE S at 564 5/10 vrs, a post from which a pine brs, S 38 deg. E 6 vrs, and a red oak brs, W 81 E 6-3/10 vrs

THENCE E at 1000 vrs, a post from which a sweet gum brs, N 4½ and a pine brs, E 13 vrs,

THENCE N 564 v the S boundary line of the Richard Williams survey a post from which a white oak brs, S 8 E 8 vrs, and a pine brs, S 7 vrs,

THENCE W 1000 vrs, to the beginning, containing 100 acres more or less.

(b) The plaintiff R. C. Shindler shall have and take judgment against the said defendants, to-wit, said executors, widow and heairs of M. T. Jones for that portion remaining after deducting said 100 acre tract described above, of the said tract of 456 acres, more or less, that may be in conflict with said Runyan tract of 400 acres, more or less, (conveyed to W. J. Runyan by C. S. Hunt November 18th, 1849, by deed recorded in book A p 539 deed records of Newton County) and the Runyan tract of 200 acres, more or less, on said

counter 47405

Davlin survey (conveyed to W. J. Runyan by Mastin Brack by deed dated Dec. 8 1857, and recorded in book C p 109 said records) which said portion so in conflict and so to be adjudged in its entirety to plaintiff is described by metes and bounds as follows:

BEGINNING at the S.W. corner of said 100 acres described above,

THENCE south about 1030 vrs more or less, to the S W corner of said Runyan 200 acres refered to above,

THENCE west along the south line of said 200 acre tract 1000 vrs, more or less, to the intersection with the west line of said tract of 456 acres, mor or less in controversy or to a point immediately south of said line (If there is no intersection),

THENCE northward with said west line to the S E corner of said 100 acre tract on the west line of said 456 acre tract, said point being about 564 vrs, south of the S line of the Richard Williams survey,

THENCE west 1000 vrs more or less, to the beginning, containing about 180 acres.

(c) The remainder of said 456 acres in controversy, being about 176 acres shall be divided between plaintiff and said defendants, (the executors, heirs and widow of M. T. Jones, deceased) in the proportion of first, one-third thereof to plaintiff R. C. Shindler & then one fifth of the remainder to Plaintiff R. C. Shindler and four-fifths (4/5) thereof to the said defendants; and each shall have and take judgment for his share against the other.

Wherefore it is ordered, adjudged and decreed by the

counter 47406

court in accordance with said agreement that the plaintiff R. C. Shindler shall have judgment against said defendants, the said executors, as such and individually, and the said widow and heirs of M. T. Jones, deceased, and J. D. Hunting for said portions of said 456 acre tract so allotted to him andfor title to and possession of same, and likewise for all the balance of said Mary Davlin in survey except the parts of said 456 acre tract allotted and adjdged to them.

It is ordered, adjudged and decreed by the Court that the said executors, widow and heirs of M. T. Jones, deceased, and J. D. Hunting do have and recover judgment of the said R. C. Shindler for the said portions of said 456 acres so allotted to them, and for title and possession of same and their costs in this behalf expended for which let them have their execution.

Let each have his writ of Possession for the parts allotted to him or them respectively. It is further ordered that said executors, widow and heirs be released from all claims for damages for former trespasses.

Upon announcment of ready for trial as to issues between plaintiff and the defendants, Henry J. Lutcher, W. H. Stark and the Lutcher and Moore Lumber Company, a corporation, a jury of twelve good and lawful men, composed of F. W. McMahon and eleven others, were duly sworn and impannelled in this cause to try the same as between said parties, and after hearing the pleadings, evidence and argument of counsel and receiving the special issues submitted to them by the court retired to consider of their verdict, and after due deliberation, returned their verdict and answers under oath in open court as follows, to-wit:

counter 17707

1st. Was the Mary Davlin Survey actually made on the ground by A. J. Shelby, deputy surveyor on or before the 26th, day of October 1838?

Answer, No.

2nd. Was the Theophilus Hickman survey actually made on the ground by A. J. Shelby deputy surveyor on or before the 27th, day of October 1838?

Answer, Yes.

3rd. If you answer the last above question in the affirmative then you are asked the further question: Did or not said surveyor locate said Hickman survey to begin as claimed by defendants Lutcher & Moore, at a marked corner about 1265 varas south 89 deg. 30' west of the northwest corner of the I McMahon or T. Hickman Labor?

Answer, Yes.

F. W. McMahon foreman.

Wherefore in accordance with said verdict, it is ordered by the court that the true west line of the said Mary Davlin survey situated in Newton County, Texas being the land in controversy is situated and located and the same is hereby fixed and established thus:

BEGINNING at a point in the south line of the Richard Williams league survey situated in Newton County, Texas, on the Sabine river, which is now marked and designated on the ground as the north east corner of the Theophilus Hickman survey of 12½ labors, same being situated about 1265 vrs, more or less, south 89 deg. 30' west from the northwest corner of the I McMahon labor in said county (formerly called the Theophulus Hickman labor) witness a pine marked X brs S 32 30 E

3.4 vrs, and being the original witness tree called for in the Davlin and Hickman field notes,

THENCE south along on the old marked line now located on the ground, being the the true west line of the said Davlin survey, and the true east line of said Hickman survey, at a distance of about 3030 vrs passing the S E corner of said Hickman survey, as marked on the ground, witness a pine marked X brs, S 19 deg. E 12 4/10 vs another pine mkd, X bears N 50 E 12 vs. being the same witness tree called for in the original field notes continuing on in same course in all 3150 vrs, to corner witness a post oak marked X bears S 85 W 7 vrs, same being the corner now marked on the ground and being the original and true SW corner of the said Mary Davlin survey.

And it is ordered, adjudged and decreed by the court that the plaintiff R. C. Shindler recover of said defendants Henry J. Lutcher, W. H. Strak and Lutcher & Moore Lumber Company, a corporation, in accordance with said verdict, and likewise with their admission and agreement on file in this cause all of the land in controversy lying east of said line, and the title to and possession of same for which let him have his writ of possession. And in accordance with said verdict admission and agreement on file in this cause it is further ordered adjudged and decreed by the court that the said defendants Henry J. Lutcher, W. H. Stark and the Lutcher & Moore Lumber Company recover of the plaintiff R. C. Shindler all of the land in controversy lying west of said line, and the title to and possession of same for which let them have their writ of possession.

The said Mary Davlin survey as defined herein and as recovered by plaintiff of said defendants is more particularly

counter 47709

described as follows:

BEGINNING at the north west corner of the said I. McMahon labor (formerly Theophilus Hickman labor)

THENCE S 89 deg. 30' west along the south line of the Richard Williams league about 1265 vrs, to the north east corner of the Theophilus Hickman survey of 12½ labors as above described,

THENCE along old marked line now marked on the ground as the east line of the said Hickman surveyabout 3030 vrs, passing S E corner of said Hickman survey as above described and comtinuing on 3150 vrs in all to S W corner of the Mary Davlin survey which is also the N W corner of the Jesse Terry survey witness a post oak marked X bears S 85 W 7 vrs,

THENCE east along the south line of the Mary Davlin survey or the north line of the Jesse Terry survey about 4088 vrs, to corner in N line of Jesse Terry survey immediately south of the S W corner of the John Droddy survey of a labor,

THENCE north passing said S W corner of the John Droddy labor, and continuing on to the N W corner of the F. Albright labor, an old ash now standing marked X bears S 33 W 8 vrs,

THENCE N 89 deg. 30' E about 1000 vrs, (instead of 1650) to the N E corner of said Albright labor, from which formerly a gum marked W H S 85 W 7 vrs, a sassafras marked W H S 40 E 6.4 vrs,

THENCE in a general course more westerly to the S E corner of said I. McMahon (formerly Theophilus Hickman) labor,

THENCE S 89 deg. 30' W with the south line of said McMahon labor 2569 3/10 vrs, to its S.W. corner,

counter 47410

RECEIVED
SEP 26 1960
General Land Office

D-54J

THENCE north with the west line of the said McMahon labor 500 vrs, to the beginning.

It is further ordered that plaintiff R. C. Shindler pay all costs incident to prosecuting this suit and herein incurred by or against said defendants and that they have execution for the costs incurred in this behalf.

And it further appearing to the court that the plaintiff has filed a cost bond herein with ____ and ____ as sureties, it is ordered that said defendants recover their costs against plaintiff and said sureties, and that the officers of the court likewise recover of plaintiff and said sureties, the costs in this behalf incurred by plaintiff, for which let them have their execution.

aff'd. in 107 S.W. 941

To which judgment, so far as in favor of the defendants H. J. Lutcher, W. H. Stark and Lutcher & Moore Lumber Company the plaintiff excepts, and also the heirs, executors & widow of M. T. Jones decd.

THE STATE OF TEXAS |
COUNTY OF NEWTON | I, John M. Horger Clerk of the District Court of Newton County, Texas, do hereby certify that the foregoing is a true and correct copy of the original Judgment as the same appears of record in my office in book F page 503.

Given under my hand and seal of said court, at office in Newton this 22nd, day of Novr. 1906.

John M. Horger Clerk.

(SEAL) By J. A. Hancock Deputy.

counter 47411

October 31, 1960

Re: Vacancy applications No. 16039 and 16040 -
Joe W. Stegall.

Mr. Jack Giberson
Legal Division
General Land Office
Austin 14, Texas

Dear Mr. Giberson:

Enclosed is a copy of a deed which I would like for the commissioner to consider as part of the records inconjunction with our hearing on these vacancies.

I appreciate the courtesy extended by you and the land office while I participated in the hearing.

Very truly yours,

William Drew Perkins

Enclosure

(6)

Lufkin, Texas

RECEIVED
NOV - 1 1960
General Land Office

counter 47412

RECEIVED
SEP 26 1960
General Land Office

MARY DAVLIN
A-93
SURVEYED OCT. 26, 1838
BY A. J. SHELBY

F. ALLBRIGHT
A-28
SURVEYED JULY 20, 1848 BY SAM H. SMITH
(E. 1485 VRS.)

JOHN DRODDY
A-89
SURVEYED MAY 16, 1838 BY WM. PRISSICK (W. 2550)
69.89 AC.
SF 16039

G. W. SMYTH
A-366
SURVEYED JUNE 10, 1838 BY WM. PRISSICK
212.4 AC.
SF 16040

JESSE TERRY
A-423
SURVEYED OCT. 27, 1838
BY A. J. SHELBY

N. H. CARROL
A-23

19 — E. 1264 (616.8) — 20
(N. 3150) 2227
(N. 500) N. 516
(N. 500) N. 507
E. 1023
N. 386
W. 1023
S. 386
(N 89°30'W 6449)
E. 4082
N. 501
E. 2386 (E. 2306)
S 19° W 240 SGE 310
W. 2352
(N 2525 PAT.)
S. 2733 VRS.
HIGHWAY 63
SABINE RIVER

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

N

SCALE 1" = 200'

PLAT SHOWING THE RESURVEY OF THE NORTH LINES OF THE JESSE TERRY SURVEY AS TO POSSIBLE VACANCIES.

I, E. C. DOMINY, LICENSED STATE LAND SURVEYOR DO HEREBY CERTIFY THAT THE ABOVE PLAT IS A TRUE AND CORRECT SURVEY MADE BY ME ON THE GROUND SHOWING THE LOCATION OF ALLEDGED VACANCIES LOCATED BETEEN THE JOHN DRODDY AND G.W. SMYTH SURVEYS ON THE NORTH AND JESSE TERRY SURVEY ON THE SOUTH.

AUGUST 29, 1960

E. C. Dominy
LICENSED STATE LAND SURVEYOR

counter 7413

RECEIVED
APR 14 1961
General Land Office

WORKING SKETCH OF SURVEYS IN

NEWTON CO.

GENERAL LAND OFFICE···AUSTIN, TEX.

—BILL ALLCORN—COMMISSIONER—

Scale: 1 inch=400 varas Aug. 7, 1958
R. B.

Prep. for A. E. RICHMOND Burkeville, Tex.

THEOPHILUS HICKMAN
Sur. Oct. 27, 1838
By A. J. Shelby
ptd.

MARY DAVLIN
Sur. Oct. 26, 1838
By A. J. Shelby
ptd.

JESSE TERRY
Sur. Oct. 27, 1838
By A. J. Shelby
ptd.

ADAM S. DRODDY
Sur. May 1, 1838
By Wm. Prissick
ptd.

E. Allbright
Sur. July 20, 1848
By Sam'l A. Smith
ptd.

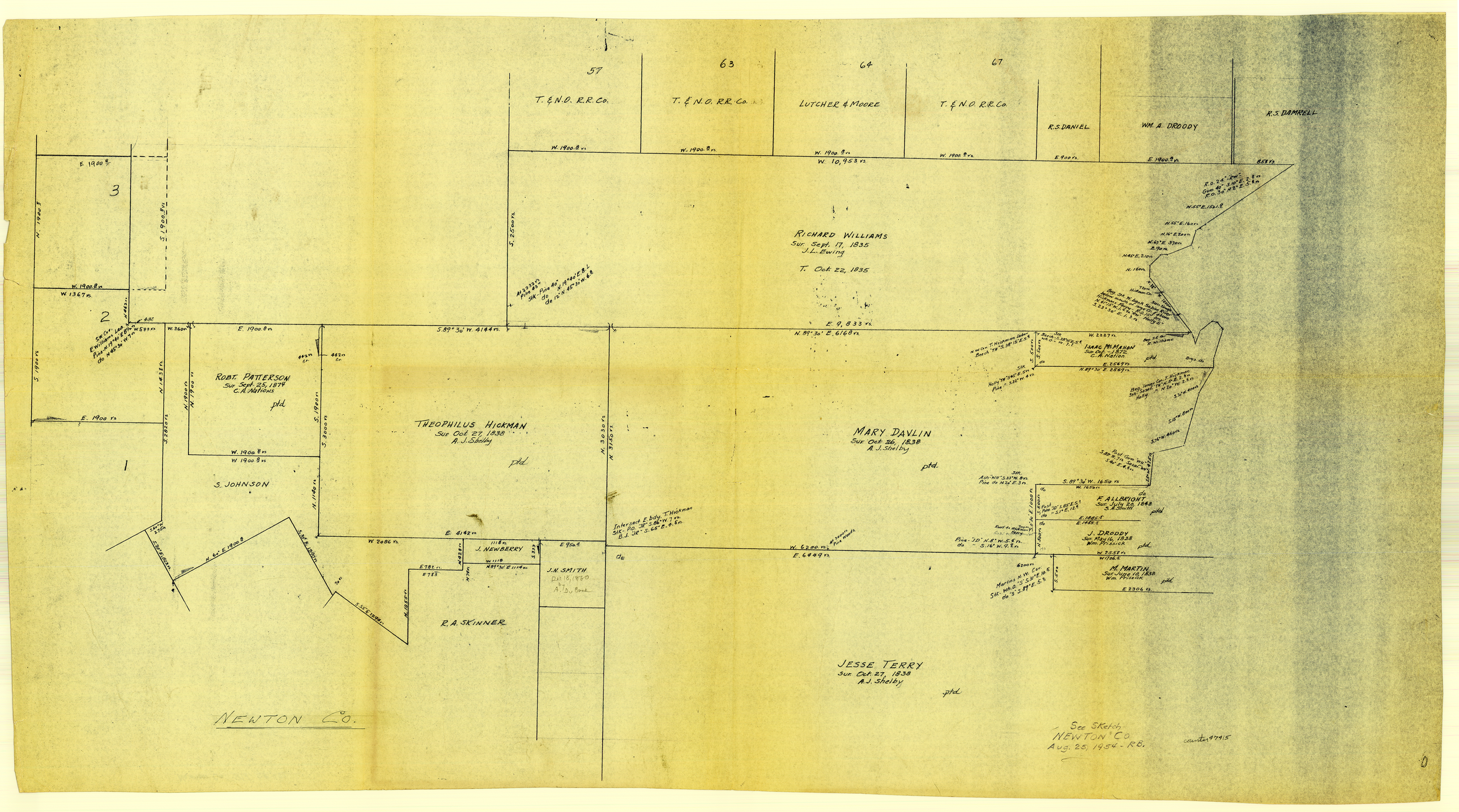
J. Droddy
Sur. May 1, 1838
By Wm. Prissick
ptd.

Mitchell Martin
Sur. June 10, 1838
By Wm. Prissick
ptd.

Isaac McMahon
Sur. Oct. 1872
By C. A. Nation
Var. 9° 20' E
ptd.

RECEIVED
APR 14 1961
General Land Office

Counter 4744


57
63
64
67
T. & N.O. R.R. Co.
T. & N.O. R.R. Co.
LUTCHER & MOORE
T. & N.O. R.R. Co.
R.S. DANIEL
WM. A. DROODY
R.S. DAMRELL
W. 1900.8 vs.
W. 10,953 vrs.
E. 1900.8 vrs.
858 vs.
S. 2500 vrs.
RICHARD WILLIAMS
Sur. Sept. 17, 1835
J.L. Ewing
T. Oct. 22, 1835
E. 9,833 vrs.
N. 89° 30' E. 6168 vrs.
S. 89° 30' W. 4144 vrs.
3
2
1
N. 1900 vrs.
S. 1900.8 vrs.
W. 1900.8 vrs
W 1367 vrs.
E. 1900.8
W. 360 vrs.
E. 1900.8 vrs.
S. 1900 vrs.
N. 1438 vrs.
E. 1900 vrs.
S. 2820 vrs.
ROBT. PATTERSON
Sur Sept. 25, 1874
C.A. Nations
pfd
N. 1900 vrs.
N. 1900 vrs.
W. 1900.8 vrs
W 1900.8 vrs
S. 1900 vrs.
S. 3000 vrs.
S. JOHNSON
THEOPHILUS HICKMAN
Sur Oct. 27, 1838
A. J. Shelby
pfd
N. 3930 vrs.
N. 3760 vrs.
MARY DAVLIN
Sur Oct 26, 1838
A. J. Shelby
pfd.
N. 1140 vrs.
E. 4142 vrs.
W. 2086 vrs.
W. 6200 vrs.
E. 6449 vrs.
N. 60° E. 1900.8
S. 30° E. 1900 vrs.
S. 55° E. 1894 vrs.
1118 vrs.
J. NEWBERRY
W 1118
N 89° 30' E 1114 vrs.
E 781 vrs.
E 788
S 333
E 950.2
J.N. SMITH
Pat 16, 1880
by
A. D. Boaz
R.A. SKINNER
JESSE TERRY
Sur. Oct. 27, 1838
A.J. Shelby
pfd
NEWTON Co.
See Sketch
NEWTON Co
Aug. 25, 1954 - RB.
counter 47415
D
E. 1900.8
N. 1900.8
S. 1900.8 vs.
W. 1900.8 vs
W 1367 vs.
1463 vs.
432
SW Cor. Leo
R. Williams
Pine N 19° 40' E 8 vs
do N 45° 30' W 7 vs
W. 539 vs
442 vs Cr.
442 vs Cr.
A 2233 vs
Pine 40
Stk. Pine 40° N 19° 30' E 8 L
do do 12 N 45° 30' W 68
Intersect E bdy. T. Hickman
Stk. P.O. JR 3.8 W 7 vs
B.J. Jr. S. 65° E. 4.5 vs.
1400 vs
Road to Newton
Pine 10" N 8° W. 5.6 vs.
do S. 16° W. 7.2 vs.
N. 6200 vs
Pine 10" N 8° W. 5.6 vs.
do S. 16° W. 7.2 vs.
6200 vs.
Martins N.W. Cor.
Stk. Wh. O.
do S. 5.3 E 10.6
do S. 5.89° E. 5.8
S. 5.8 vs
E 2306 vs.
M. MARTIN
Sur. Judge 10, 1838
Wm. Prissick
pfd
W 2357 vs.
W 1736.5
E. 1485.5
E. 1485.5
J. DROODY
Sur. May 16, 1838
Wm. Prissick
pfd
F. ALLBRIGHT
Sur. July 20, 1848
S.A. Smith
pfd
S. 89° 36' W. 1650 vs.
W. 1650 vrs.
Ash - WW S. 33° W. 8 vs.
Pine do N. 26° E. 3 vs.
Post Gum W. 2 vs.
Cedar W. 2 vs.
S. 80° W. 2 vs.
S. 46° E. 4.8 vs.
Post 20" S. 85° E. 5
do 11 S. 1° E. 12.8
E. 1200 vs
N. 3600 vs
E. 1200 vs
W. 2227 vs.
E. 2569 vs.
N. 89° 30' E. 2569 vs.
Stk.
Beech S. 38° W. 5.6
N.W.O. - T. Hickman Lder
Beech TM S. 38° 15' E. 5.6
Stk.
Holly TM S. 45° E. 10 vs
Pine 11 S. 32° W. 4 vs.
Beg. 2.6 ch. E. Williams
Beg. 26 ch. E. Williams
ISAAC McMAHON
Sur. Oct 1872
C.A. Nation
pfd
Beg. Ash 30" W. Jesse Sparks
Hickory 30" N. 45° W. 2 vs.
Pine 30" N. 45° E. 2 vs.
S. 22½° E. 1 vs.
Beg. Ash W. Jesse Sparks
Hickory 30" N. 45° W. 2 vs.
Pine 30" N. 45° E. 2 vs.
S. 22½° E. 1 vs.
Beg. Stk. Hickman Cor.
Pine 30" N. 45° W. 2 vs.
Hickory 30" N. 45° E. 2 vs.
S. 22½° E. 1 vs.
Holly 5
Beg. Stk. Hickman Cor.
Pine 30" N. 45° W. 2 vs.
Hickory 30" N. 45° E. 2 vs.
S. 22½° E. 1 vs.
Holly 5
Beg. Stk. Hickman Cor.
Pine 30" N. 45° W. 2 vs.
Hickory 30" N. 45° E. 2 vs.
S. 22½° E. 1 vs.
Holly 5
R.D. 25" Km
Gum 40 - S. 10° E. 2.8 vs
R.D. 30" N. 42° E. 5.8 vs
N. 55° E. 15 vs. 1.2
N. 55° E. 16 vrs.
N. 16° E. 20 vs.
N. 63° E. 37 vs.
2.9 vs.
N. 45° E. 2 vs.
N. 16 vs.
Beg. 2.6 ch. E. Williams
Beg. 26 ch. E. Williams
Beech 30" N. 45° W. 2 vs.
Pine 30" N. 45° E. 2 vs.
S. 22½° E. 1 vs.

RECEIVED
SEP 26 1960
General Land Office

N

SCALE 1" = 200'

PLAT SHOWING THE RESURVEY OF THE NORTH LINES OF THE JESSE TERRY SURVEY AS TO POSSIBLE VACANCIES.

MARY DAVLIN
A-93
SURVEYED OCT. 26, 1838
BY A. J. SHELBY

F. ALLBRIGHT
A-28
SURVEYED JULY 20, 1848 BY SAM H. SMITH
(E. 1485 VRS.)

JOHN DRODDY
A-89
SURVEYED MAY 16, 1838 BY WM. PRISSICK (W. 2550)

69.89 AC.
SF 16039

G. W. SMYTH
A-366
SURVEYED JUNE 10, 1838 BY WM. PRISSICK

212.4 AC.
SF 16040

JESSE TERRY
A-423
SURVEYED OCT. 27, 1838
BY A. J. SHELBY

N. H. CARROL
A-23

SABINE RIVER

HIGHWAY 63

19 — E. 1264 (6168) — 20

(N. 3150) 3227

(N. 500) N. 316

(N. 500) N. 507

(N. 500)

E. 1023

N. 386

S. 386

W. 1023

(N 89°30'W 6449)

E. 4082

E. 2386 (E. 2306)

N. 501

W. 2352

S 15W 240 SGE 310

S. 2733 VRS.

(N. 2525 PAT.)

Rejected
see Cl. Decree
in SF. 16039

1, E. C. DOMINY, LICENSED STATE LAND SURVEYOR DO HEREBY CERTIFY THAT THE ABOVE PLAT IS A TRUE AND CORRECT SURVEY MADE BY ME ON THE GROUND SHOWING THE LOCATION OF ALLEDGED VACANCIES LOCATED BETEEN THE JOHN DRODDY AND G.W. SMYTH SURVEYS ON THE NORTH AND JESSE TERRY SURVEY ON THE SOUTH.

AUGUST 29, 1960

E. C. Dominy
LICENSED STATE LAND SURVEYOR

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18

I, E. C. DOMINY, LICENSED STATE LAND SURVEYOR DO
HEREBY CERTIFY THAT THE ABOVE PLAT IS A TRUE AND
CORRECT SURVEY MADE BY ME ON THE GROUND SHOWING
THE LOCATION OF ALLEGED ANCHORS LOCATED BETWEEN
THE JOHN DRODDY AND C.W. SMITH SURVEYS ON THE NORTH
AND JESSE TERRY SURVEY ON THE SOUTH.

AUGUST 25, 1960

LICENSED STATE LAND SURVEYOR

File No. 26
Sexton County
Sketch
Filed Sept. 26, 19 60
BILL ELLEDGE, Com'r
By

ANCHORS
TERRY SURVEY AS TO POSSIBLE
THE NORTH LINES OF THE JESSE
PLAT SHOWING THE RESURVEY OF

SCALE 1" = 500'

N

SABINE RIVER

HIGHWAY 83

JESSE TERRY

A-43

SURVEYED OCT. 25, 1838

A-52

SURVEYED OCT. 25, 1838
BY A.L. SHELBY

MARY DAVLIN

A-32

SURVEYED OCT. 25, 1838
BY A.L. SHELBY

JOHN DRODDY

A-28

SURVEYED JUNE 10, 1838 BY MW. PRISSICK

A-395

C.W. SMYTH

SURVEYED MAY 12, 1838 BY MW. PRISSICK (M.S.B.)

A-58

E. ALLBRIGHT

SURVEYED JULY 20, 1848 BY SAM H. SMITH
(S. 1488 ARS.)

A-52

SURVEYED JUNE 10, 1838 BY MW. PRISSICK

SIS & AC.

A-43

M.H. CARROL

A-53