

RAINS COUNTY ROLL SKETCH NO. 2  
(IN FLAT FOLDER)

TRANSCRIPT OF HEARING  
S. F. 15942

FILED JUNE 27, 1958

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Rains Co. Roll Sketch #2  
(IN Flat Folder)

TRANSCRIPT OF PROCEEDINGS

ON VACANCY HEARING

S. F. 15942

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HEARING OF THE APPLICATION TO PURCHASE AN ALLEGED VACANT AREA IN RAINS COUNTY, TEXAS, SCRAP FILE NO. 15942, FILED BY BYRON R. TINSLEY, HELD BEFORE THE HON. BILL ALLCORN, COMMISSIONER OF THE GENERAL LAND OFFICE, IN AUSTIN, TEXAS, APRIL 17, 1958.

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B E F O R E

HON. BILL ALLCORN, COMMISSIONER  
OF THE GENERAL LAND OFFICE

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A P P E A R A N C E S

Hon. Egbert V. Smith, Surveyor, P. O. Box 312, Austin, Texas

PROPONENTS:

Hon. Byron R. Tinsley, P. O. Box 667, Orange, Texas, appearing in behalf of himself.

Hon. Frank A. Boyse, Boyse City, Texas, appearing in behalf of Hon. Byron R. Tinsley, Applicant.

Hon. Oscar W. Holmes, 3307 Big Bend Drive, appearing in behalf of Holmes Engineering Company

OBSERVERS:

Mrs. Egbert V. Smith, Austin, Texas

Hon. Joe R. Humphrey, 2518 Wooldridge Drive, Austin, Texas

A. W. Ashworth, Sr., 1104 Reagan Terrace, Austin, Texas

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TRANSCRIPT OF PROCEEDINGS

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PREPARED BY THE GENERAL LAND OFFICE

FROM RECORDING OF HEARING

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MORNING SESSION

9:00 O'CLOCK A. M.

APRIL 17, 1958

AUSTIN, TEXAS

WALLACE: Has everyone signed appearance slips?

ALLCORN: We first hear from our surveyor. If you will, please sir, if you will hold up your hand and be sworn, we will go right into the matter. Do you swear that the testimony that you give will be the truth, the whole truth and nothing but the truth, so help you God?

SMITH: I do.

ALLCORN: Thank you very much. I am going to ask Mr. Wallace at this time, if he will, to open this matter in connection with any questions that he may have in mind or any particular inquiries. First let me ask this, in case there is someone here who is not somewhat thoroughly familiar with our purpose, and I am sure that everyone is. This is a matter of an application for the purchase of a vacant area in Rains County. This gentleman is the surveyor who has gone and made the survey and has report and information, of course, of which we are very glad to receive at this time, and I am going to ask Mr. Wallace, if he will, to go ahead with the proceedings and make inquiries, etc. Let's also make this very clear, sir, if at any time you have any question concerning this proceeding that you would like to ask Mr. Wallace or me or anyone else, we certainly want you to.

WALLACE: Does anyone wish to make a statement in advance of the hearing? This is a hearing on the application of Mr. Byron R. Tinsley of Orange, Texas, to purchase an area of alleged vacant land in Rains County. The application is number S.F. 15942 and covers an area in Rains County, described in the application as follows:

"FIRST TRACT: On the North by the Nathaniel G. Crittenden Survey, on the East by the John Tollett Survey, on the South by a vacancy, and on the West by Robert Earl Survey.

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SECOND TRACT: On the North by a vacancy and John Tollett Survey, on the East by the J. Anderson Survey, on the South by the L. Griffith Survey, and on the West by the Robert Earl Survey."

The purpose of this hearing is to afford the Applicant and all interested parties the opportunity to present evidence and arguments to support their contentions as to whether or not the vacancy exists as alleged, and to present 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 cross-examined by the opponents, if any.

Additional evidence and witnesses may be presented by both sides. All interested parties and Applicant are permitted to make a closing statement.

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.

We will now proceed with the hearing by having Mr. Smith take the stand and give a narrative of his findings.

SMITH:

The work for this survey began November 18, last year, at the SE corner of the Nathaniel G. Crittenden Survey, at which location is the intersection of a league-line road on the East line of the Crittenden, on the North line of the Lanier, like that, and at this intersection is Flats Store. Within a short distance is the U. S. Geological Survey Triangulation Station TCB-20, which is within a yard of Flats Store. The traverse of this survey was conducted on the North Central Texas Coordinate System, and from the Triangulation Station and this SE corner, the line was traversed Westward along the fence that is supposed to be along the Crittenden South line. About in this position, the traverse was deviated to the North and with the objective becoming the

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location of this Creek crossing. With this purpose in mind that the SW corner of the Crittenden Survey is defined by the distance from a creek in this direction and a branch in this direction.

WALLACE: Mr. Smith, for the benefit of the record, when you say this direction, would you designate the direction. Is it South or West, for example.

SMITH: The record calls for from this corner a creek crossing to the North 3040.2 varas. From this point a branch crossing.....

WALLACE: Let me interrupt again, Mr. Smith. When you say this point, would you designate the point they stand for, please.

SMITH: The SW corner of the Crittenden is defined in reference with a branch crossing to the East at 400 varas. So with those two creek and branch references, a corner was placed there, a marker was placed at that corner. The Robert Earl Survey, which is in this general area, was surveyed in 1870 by Perry and 1871 by Perry. In other words, Perry put in two sets of field notes. Then, in 1885, it was surveyed and patented on the field notes of W. S. McCurley. The field notes of the previous surveyor are very pertinent and interesting to this case because they define certain ties and lines that we will be interested in. Perry began at the East corner of John Terry and went NW a certain distance, then North and he called for a post on the South line of Hunt County. On this call he gave several references to creeks and branches. The ones that we might be most interested in are the two closest to Perry's NW corner of the Earl Survey. Then his next call was East 98 varas to the Sabine River. Let's go examine this corner further. On the ground, it was found that there was a branch or Slough where Perry called for it in these two positions and at 98 varas from the River West in such a location that all of his calls fit. There was found that Bois de Arc Post, that we might presume was the post that he called for on the South line of Hunt County. Perry's next call goes Eastward crossing the Sabine River at 98 varas, crossing edge of a slough, and he calls to adjoin the John Tollett Survey. Now keep in mind that these are not the patent field notes. They are field notes of Perry of 1870 and 1871. Perry's field notes of 1870, he marked, Perry marked the trees and these corners and called for them to be marked ~~X~~. Perry, like I said, called for this adjoiner, then his next call was South crossing a lake along this line. He went ahead and went South. We will come to that in a second, but the survey work as we

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went through it last year and the beginning of this year, we are satisfied with the position on the ground, at lease, was found because of these three references to this line. Then this line was followed in such a way that the creek crossing was found to the East of the proper place and the South edge of a slough was found in the rights place and a total distance in variance with his record of maybe three or four varas was found a 48" Water Oak that had some very old marks on it and I'm calling that that is the original tree by Perry. So, with that as a reference mark, a witness tree, a corner a 3/4" steel stake was placed there and three other trees marked. From that corner the traverse was run South and the boundary of Little Cedar Lake was encountered with a very indefinite line, that is, with a rain or two it could vary the horizontal displacement of this lake's location by ten or 15 varas. So, there is nothing positive about the edge of this lake. Perry continued South and gave us two creek crossings in the neighborhood of the Southwest corner of the John Tollett Survey. Our traverse last year was down this line to this corner and then to prove the SW corner of the John Tollett Survey, to references from both Perry and the original survey or of John Tollett who was Thomas D. Brooks in 1841, we varified the fact that there is a creek crossing as Brooks called for to the North of this corner and a creek crossing to the East as Brooks called for it. At this SW corner of the John Tollett Survey was found a marked tree with a definite X on it. Perry called for a marked tree there, the same type tree and so it was presumed that this marked tree was the one that Perry had marked. Then the traverse was run a record of 550 varas to the East and a corner placed on the South line of the John Tollett. Then the traverse was run South crossing the Sabine River at a distance not in accord with the record.

GIBERSON: Can I interrupt Mr. Smith?

SMITH: Yes sir.

GIBERSON: Are you through establishing the SW corner of this John Tollett, or are you going back there? Now you had established it as Perry found it on the ground and I was going to ask you..... if you are going to discuss it further I don't care to ask questions now.

SMITH: All right sir.  
I will restate that there was a creek crossing.....

GIBERSON: Well, now was that called for by Brooks or.....

SMITH: By Brooks.

GIBERSON: All right, he found that creek crossing.

SMITH: Yes sir.

GIBERSON: Well, what about his bearing trees there that Brooks called for?

SMITH: Brook's bearing trees are Ash, both Ashes.

GIBERSON: That's right. Well, did you find either one of those?

SMITH: No sir.

GIBERSON: You did not find Brooks'?

SMITH: No sir.

GIBERSON: Well, then, you are not sure that you found the SW corner of the Tollet as it was established by Brooks, is that right?

SMITH: Well, we have a creek crossing to define that corner to the North at 436 varas and a creek crossing to the East, that Brooks called for.

WALLACE: At what distance did you find the Creek crossing to the East?

SMITH: I would have to.....

WALLACE: 740 varas?

SMITH: Brooks came from the East to the West and you just subtract his total distance from.....

WALLACE: About 740 varas.

SMITH: Yes sir. And that creek is located in this manner. (Points to creek location)

GIBERSON: Well, you think that with those two creek crossings that you did find the distance of the SW corner of the John Tollett?

SMITH: It is reasonably certain, yes sir.

GIBERSON: Thank you.



- SMITH: The tree that was found there, it is my opinion that it was marked by Perry in 1870.
- GIBERSON: Yes, but that wouldn't have anything to do with your patent. . . . .
- SMITH: That's right. Then from this point that is 550 varas to the East of this SW corner of the John Tollett, the traverse was run South crossing the Sabine River and went all the way to this NE line of the Thomas W. Anderson Survey, at which point a search was made for any marked trees of any kind, but none were found at that point. The traverse was continued S 45 E to the record distance and there was remains of a cross fence. We must be very careful when we speak of fences and the remains of fences in this area, because there are very few standing fences. So, I would like to rehearse this factor that Brooks, the surveyor of the John Tollett, when he came in this direction, from East to West to this corner to the SW corner of the Tollett Survey and then North, he called for a creek at 436 varas and he called to cross a lake, and he continued to the NW corner of the Tollett on the South line of the Crittenden Survey. Perry called for the West line of the Tollett, he called for a lake in the position in which it was found, he called for a creek in the same position on the ground that Brooks had called for, although they were going in different directions. It is my presumption that when Perry called for the SW corner of the Tollett it was the SW corner that Brooks had placed on the ground. Then, let us discuss the field notes of McCurley of 1885 by which the Robert Earl was patented. He began at the same point at the East corner of the John Terry Survey and went with the Terry line to the Terry North corner.
- GIBERSON: Let me interrupt just a minute. How did you say you found that beginning point here?
- SMITH: Sir, I've never found that on the ground. I've found the Terry's NW corner by the natural references to the River and the two sloughs, creeks.
- GIBERSON: Then you just went your call distance from your beginning point there?
- SMITH: Up into here? (Points to map)
- GIBERSON: No, from there on back the other way, reversed your calls, to find your beginning point.
- SMITH: To find this beginning point?
- GIBERSON: Yes.

- SMITH: I've never found that point.
- GIBERSON: Well, I know, but you knew where it was on the ground by reversing your calls and going your call distance from that creek up there, didn't you? That's the way you found it, wasn't it? I mean that's where you think it is.
- SMITH: That's correct, yes. McCurley's field notes began at the same point. Go with the Terry NE line, to the Terry's North corner, then East 197 varas to the SE corner of the Simeon Atwood Survey, then North with Atwood East line, passing the SE corner of the Jobe D. Rains Survey to the NE corner of Rains. In all the calls of McCurley, the Adjoining lines are defined by the original bearing trees. He made no marks of his own. I think that's significant. He called at each corner for the NE corner of the Rains and the same trees that R. A. Terrell had marked in the Survey of Rains.
- GIBERSON: Did you find any of those trees?
- SMITH: No sir. McCurley's next call was East crossing the Sabine River at no specified distance on a bearing and distance only at a point at which he called for the same two trees that Perry had marked at this point and called it the West line of the John Tollett Survey.
- GIBERSON: He didn't call to be at the West line of the John Tollett Survey?
- SMITH: No sir. He didn't call it to be that, but he called for the same trees that Perry had marked and called on the West line of the John Tollett.
- GIBERSON: Yes, but what I was getting to, was that he didn't call for an adjoinder there did he?
- SMITH: No, sir. McCurley, the patenting Surveyor for the Robert Earl, called for the same trees that Perry had called for and then his next call was South and the same distance to the lake. McCurley's calls continue South and give a river crossing at 2600 varas, but he doesn't mention anything adjoining the Tollett or that he is passing the SW corner of the Tollett. At his NE corner of the Earl, he crosses the lake at the same distance at which the previous survey of Perry had crossed it. He crosses the Sabine River at 2600 varas and establishes his South or SE corner for the Robert Earl on the NE line of the Thomas W. Anderson Survey. I might interject at this point that McCurley calls for two

trees at his South corner of the Robert Earl, which are identical to the two trees that had previously been marked by Perry at this corner. (Points to corner) - Some 1100 varas to the SE. It might be worth while to point out the differences along this line and between Perry's work and McCurley's work. . . . . adjoined the John Tollett Survey, he crossed a lake and several sloughs. The significant ones are these two, which are the nearest to the SW corner of the John Tollett, and then his traverse was to the East, where as, McCurley did not call to adjoin the Tollett, but called for the same two trees which had been marked by Perry and called to go South and come to the edge of the lake at the same distance that Perry had called for.

GIBERSON: Did he name that lake ?

SMITH: Well, no sir. They just called it a lake. Then the discrepancy in McCurley's work will show up here. He called for the Sabine River at 2600 varas. This is a very good approximation of the location of the Sabine River in this neighborhood. If McCurley had actually come from the NE corner of the Rains, his called bearing distance, and then come South, his next call South, he would hit no lake. It would be between these lakes, (points to map). He would strike the River at some considerable distance before his call for it, and not only would he strike it once, he would strike it five times.

ALLCORN: Excuse me. How many times did he hit the River ?

SMITH: He called to hit it once.

ALLCORN: Once, I see.

SMITH: One time at 2600 varas. 2600 varas would be somewhere like this. (points to map) And then, keep in mind that the trees he called for at this point are the trees that had been marked previously by Perry at this point. Then both of them, Perry from this point goes back, goes back to the point at beginning, N 45 W and McCurley, wherever his point was here, either this line extended or here, traverse to the place of beginning.

GIBERSON: Let me ask you a question. In other words, you are saying that McCurley was on the West line of the Tollett ?

SMITH: That's right.

GIBERSON: All right, McCurley down there at his SE corner, didn't he call to tie to the North line of the Thomas Anderson ?

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- SMITH: He did.
- GIBERSON: Well, you are going to have to bring him on down there then, would you not?
- SMITH: Right here. That's my contention that he did come on down this line across the River at a different place from which he called for it.
- GIBERSON: You think that he crossed the River, and didn't call to cross it?
- SMITH: He called to cross it, but at a different magnitude of distance from his corner up here.
- GIBERSON: You are saying then that extend your West line of the Tollett on down that that would eliminate part of 12762 Scrap File, is that right?
- SMITH: Yes, sir. It brings up a conflict between McCurley's and Perry's work or line in this manner. McCurley called for a corner that we might feel certain is established at this point, then he agreed with Perry on the bearing distance to a lake. McCurley gives no information, except he crosses the River at 2600 varas, which would be before you come to the SE corner of the Tollett, and even if he is coming down this line, he would be several hundred varas to the North, with his river crossing. So, it looks like we have to choose one or the other, whether the river crossing or the lake crossing is more significant in reference to McCurley's patented field notes. He did call for the same trees and therefore the same corners that Perry had established on the West line of the Tollett.
- GIBERSON: Did he call for that tree to be at his NE corner?
- SMITH: He certainly did.
- GIBERSON: You are putting him up there, several hundred varas North of his NE corner, aren't you?
- SMITH: I'm putting McCurley's corner at the same corner that Perry located it on the ground, right there. (Points to map).
- GIBERSON: Do you think that's McCurley's NE corner?
- SMITH: By the trees that he called for and were established by Perry. He calls for the same trees. It is my contention that it must be the same corner. To conclude this portion of it then, it seems, whether he intended to or not, McCurley established

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the line for his East line of the Robert Earl Survey then at the same location as Perry previously located it. Perry adjoined the John Tollett Survey.

GIBERSON: You think that you found that original tree on that line?

SMITH: It seems so, yes, sir.

GIBERSON: That's the tree that McCurley called for to be his NE corner?

SMITH: Yes, Sir. This would cover Tract 1, which would be this alleged vacancy between the Tollett and the Earl. For Tract 2 it might be pointed out that the original file of Scrap File No. 12762 included this area of Tract 2 but was patented only to the River, so it had been filed on previously. To determine just what are the limits of this Tract 2, this line, which seems to be McCurley's East line of the Earl was extended to the River and at 550 varas, a line was run South to the River, which would make three sides of this Tract 2 and then the River was traversed for the closing side.

GIBERSON: You think you found anything on the Anderson Survey over there?

SMITH: Well, along this line are the remainings of an old fence, which is very close to 550 varas from the SW corner of the John Tollett Survey, which is the beginning point, East 550 is the beginning point and the NW corner of the Joseph Anderson Survey, so it was my theory that it was the West line of the Joseph Anderson Survey that I was following right into there. (Points to map).

GIBERSON: You didn't find the NW or the SW corner on your Anderson Survey?

SMITH: No, sir. There was one more factor that is relevant here. A creek crossing at 420 varas by Surveyor Terrell, while survey for Thomas W. Anderson, his beginning point was here, the Northernmost corner of the Anderson and his last call from the Easternmost corner of the Anderson was N 45 W and he crossed a creek at 420 varas. And then that creek and this corner then are in the proper relative position on the ground. Then the Surveyor for both these Scrap Files 12762 and 10485 call for a distance N 45 W from this beginning corner. The creek was very close to where these corners should be. If you notice I have placed a steel stake at that point, to mark the trees for future references. Then between the Southernmost corner of the Scrap File No. 12762 and the NW corner of the Joseph

Anderson, the line has been run to place it exactly on the ground for the East boundary of the Scrap File in which we are interested in here.

GIBERSON: You went the call distance there?

SMITH: The call distance is from here. (Points to map) There is no one records of this distance.

GIBERSON: I mean on your Anderson.

SMITH: The Anderson's call distance is .....

GIBERSON: That's what I mean.

SMITH: I have looked at that corner for any marker and I found none. The placement of this line has been defined or determined by this Southmost corner of Scrap File 12762.

GIBERSON: The way you established that West line of the Anderson, as I understand it now, would be that you crossed the SW corner of the John Tollett from your two creek calls.

SMITH: That's correct.

GIBERSON: Now by establishing the SW corner of the John Tollett.....

SMITH: Pardon me. Also at this corner was a tree called for at the SW corner of the Tollett by Perry, who was not a patenting surveyor, but he did call for a tree and it is there, and I am calling to his tree.

GIBERSON: And then the Anderson begins some 550 varas from the SW corner? Is that right, and that's the way that we have established that NW corner of the Anderson, and you followed the course and distance on that line.

SMITH: This line?

GIBERSON: Yes.

SMITH: Well, that wasn't the determining factor of locating this line. Really how to locate it is to come up where this Surveyor, J. T. McKain for Scrap File 10485 came up this line this distance and the Surveyor, J. W. Bateman. They both established a corner on this line and then went North to the SW corner of the Joseph Anderson Survey.

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- GIBERSON: You are assuming though that they found it themselves by doing that, aren't you?
- SMITH: That's right.
- GIBERSON: They came in here years later, didn't they?
- SMITH: That's right.
- GIBERSON: But I'm talking about disregarding that later survey. Could you establish it the other way?
- SMITH: Your asking, could I have established the SW corner of the Joseph Anderson Survey, or did I? I found nothing to prove it's locality.
- GIBERSON: I don't mean SW corner, I just mean the position of the West line of the Anderson. ....
- SMITH: I have only bearings.
- WALLACE: Does that conclude your narrative, Mr. Smith?
- SMITH: Yes, sir.
- WALLACE: Mr. Tinsley, do you desire to cross examine the Applicant?
- TINSLEY: Well, I only had a couple of questions for information purposes only.
- WALLACE: Would you state your name first, please and who you are representing please for the record?
- TINSLEY: I'm Byron R. Tinsley, and I represent the Applicant and from Orange, Texas. Mr. Smith in this initial survey, if your contention was right, would that change the North line of the Robert Earl Survey, as it was initially shown on the map?
- SMITH: It seems that if we followed surveyor's - McCurley's field notes from the NE corner of the Jobe R<sub>a</sub>ins Survey, which is here, to a point on the ground, which we have established here, that he would be traversing from the NE corner of the Rains to the NE corner of the Earl, as was established by Perry, which would be a diagonal line.
- TINSLEY: Well, under that contention then, the North line would be changed?

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- SMITH: Yes, sir.
- TINSLEY: That's all I have to say.
- WALLACE: Mr. Smith, do you remember the description in the application of the First Tract, how it is bounded?
- SMITH: Yes, sir, I do.
- WALLACE: The application states that it is bounded on the North by the Nathaniel G. Crittenden Survey, on the East by the John Tollett Survey, on the South by a vacancy and on the West by Robert Earl Survey. Now under the construction of the area, as you have it on your sketch, would there be a vacant area to the North of the NE corner of the Robert Earl Survey, as you found it on the ground?
- SMITH: Yes, sir, there would be.
- WALLACE: Did you return the field notes for that area?
- SMITH: No, sir. Would you like for me to point out the area?
- WALLACE: Yes, would you just follow the area around there that would be vacant under your construction and within the application.
- SMITH: There is a strip between the Rains and the Worrall by which neither calls to adjoin and this strip continues EW and even between McCurley's called bearing and distance, to where the corner supposedly is, that strip continues, so that there is a vacant strip between the McCurley line of the Earl and the Crittenden. And then by this diagonal line that would make from the NE corner of the Rains to the NE corner of the Earl, as established by Perry and used as the NE corner of the Earl by McCurley.
- WALLACE: It would be a little bit difficult to state just how much of that area is embraced within the description of the application, would it not?
- SMITH: Well, I have the distances between this corner and this corner and this corner. (Points to map) In other words, I know their location on the ground. I do not know this area back in here.
- WALLACE: Well, would you consider that area back in there to the West of the NW corner of the J. D. Rains to be embraced within the application.
- SMITH: No, sir.

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- WALLACE: What I would like to have, if it is possible for you to do so, is the vacant area that you would consider to be embraced in the application from its description.
- SMITH: Tract 1 of this application, as I see it, is between the Earl and the Tollett. Tract 2 is South of the Tollett, West of the Anderson, East of the Earl and North of the Sabine River.
- WALLACE: According to your construction the Earl has a common corner on the line of the Tollett, does it not?
- SMITH: Yes, sir.
- WALLACE: It is a little difficult to show an area between the Tollett and the Earl, although you do find a vacant area to the North.
- SMITH: That's true.
- WALLACE: It is also a little difficult to determine the limits of that going West, as it applies to the application, is that true?
- SMITH: It would be difficult, yes, sir.
- WALLACE: Is that the reason that you did not return field notes for that vacancy area embraced in the application.
- SMITH: It seems to me that this area that is possibly vacant, is not described or called for by the application.
- WALLACE: In other words, it is your conclusion, then, that the vacant area is all outside of the application? Is that true?
- SMITH: Yes, sir. Mr. Tinsley, did you desire to examine the applicant?
- TINSLEY: Yes, sir, if I may. Mr. Smith, as I recall the application, we went straight up on your dotted line. As I recall the application, we took that line and went straight up to the Crittenden. If the North line of the Earl angles, then from the angle point, North to the Crittenden is also embraced in the application, so, couldn't we say that there is a small square up there.
- SMITH: This portion?
- TINSLEY: Yes.
- SMITH: You might say that, yes.

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- TINSLEY: Judging from your conclusion, if the North line of the Earl is changed then that area would be vacant would it not? Just that one little portion there at the top.
- SMITH: It is my contention that there is no area between the Earl and the Tollett that is vacant, but that there is an area to the North of the Earl and South of the Crittenden that is possibly vacant.
- TINSLEY: What about the area from the North line of the Earl, as you have it drawn at the angle?
- SMITH: It is possibly vacant, but it doesn't seem to me that the application would apply to the land, unless it was between the Earl and the Tollett for Tract 1.
- WALLACE: If you will, let's follow this description side by side here. First it says that it is bounded on the North by the Nathaniel G. Crittenden Survey, and bounded on the East by the John Tollett. At least part of the area qualifies, then, doesn't it? Would you point out the area that qualifies for those two?
- SMITH: Those two lines that you called for would be the South line of the Crittenden, right here. (Points to map.)
- WALLACE: Let's take the whole vacant area as you found it, as it applies to this bounding.
- SMITH: Okay. From the SW corner of the Crittenden, along the South line of the Crittenden, to the Northwest corner of the John Tollett, then with the West line of the Tollett South to the NE corner of the Earl.
- WALLACE: Qualified up to there?
- SMITH: Yes, sir.
- WALLACE: That's on the North and on the East? Then it's qualified here. The description here is on the South by a vacancy. Now under your construction, that does not fit, does it?
- SMITH: It evidently applies to Tract 2, does it not? Under my construction, this Tract 2.....
- WALLACE: Under your construction, there is no vacant area immediately South of the vacant area that you found to be existing up there, below the North line of the Earl?

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- SMITH: There is no vacancy between the Earl and the Tollett, yes, sir.
- WALLACE: But, now, the application doesn't state that there is, it just gives that boundary of the survey. Then it says on the West by Robert Earl Survey. We qualified it down to the NE corner of the Earl, did we not? Let's see if we can qualify anymore of it. Bounded on the West by the Robert Earl Survey. Can you qualify anymore of it from that boundary?
- SMITH: Well, the Robert Earl line, which we have constructed between these two known points on the ground, is to the SW of that area, mostly South.
- WALLACE: But if you followed it all the way to the West boundary, of course, you would come to the River on out beyond?
- SMITH: Yes, that's right.
- WALLACE: I have no further questions to ask.
- ALLCORN: Excuse me just one minute, please sir. (Goes to map.) According to that information, you feel that there is a vacancy from here, here, back to the NE corner of the Earl Survey.
- SMITH: It seems that there would be.
- ALLCORN: And there may then be vacancy between this NE corner and this SW corner of the Crittenden Survey. Whatever vacancy there is out in here you don't know? You didn't survey that?
- SMITH: That's correct.
- ALLCORN: According to your survey there is a vacancy here, (points to map) over to the Tollett Survey up to the NW corner of the Tollett Survey to the SW corner of the Crittenden Survey, but you did not search out farther to the West.
- SMITH: I have established what I think to be the NE corner of the Rains Survey on the ground.
- ALLCORN: I see. All right. But from this corner, you did not search for the West. From this point you did not search from the West, nor from this point did you search it farther. Any vacancy you did not search it farther North or West from this point?  
(Points to map)

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Rains Co. 1847

SMITH: Let's put it this way. From this point, the NE corner of the Rains, I made a search in a Northerly direction for any lines that might be there.

ALLCORN: All right. I see.

WALLACE: Is there anyone else present, who has a comment to the existence of the vacancy? Is there anyone here in opposition to the vacancy as found by Mr. Smith? Is there anyone present, who would care to make a statement regarding the matter? Do you have any further evidence that you would like to introduce at this hearing, Mr. Tinsley?

TINSLEY: No, sir, I don't.

WALLACE: Does anyone desire to put any additional witnesses or evidence in the record? Is there anyone here that desires to claim as a Good Faith Claimant on the area found to be vacant by Mr. Smith? Mr. Huntley, I believe you said that you were a land owner in the area, do you find that you are affected by this in any maneer?

HUNTLEY: I don't see that I am, as I understand it. He lost me a good deal, but I don't think that the possible claim we have is affected by the vacancy he talks about.

ALLCORN: Now, Mr. Huntley, out of which original patent do you own your tract of land or does it come out of more than one original patent there.

HUNTLEY: Mr. Allcorn, frankly, it is difficult for me to describe, because I haven't had a lawyer to go into it enough to know how. We picked up some reports that there is some land, I believe out of the Joseph Anderson, and I think that it probably is that little triangle in there that. . . . It's right down by the Iron Bridge Road. I know where the land is and so far as the title is concerned, the recorded titled to this 3.2 acres, I believe, nothing has taken it away from my Father's estate, but frankly, I know so little about it. I was just trying to get a little bit of incite in the whole set up, maybe from this. I don't think I have any interest whatsoever in this area. May not have in the other, I am not sure, I'll be honest with you.

WALLACE: Is there anyone else here that would like to make a statement? The hearing then will be brought to a conclusion.

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WHEREUPON, IT BEING 10:20 A.M., THIS HEARING WAS CLOSED.

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