

To the Hon R.M.Hall
Commissioner of the General Land Office
Austin, Texas.

Sir:

By this Mail we transmit to you the affidavit of W.S.Lempert, Clerk of the County Court of Presidio County, for the use of Jeff Davis County in re the boundary controversy between Jeff Davis El Paso and Reeves Counties.

And in so doing we beg leave to submit our reasons for asking you to determine this controversy in favor of Jeff Davis County.

In the first place it is clearly established by a large preponderance of evidence, and so determined by your honor at a former hearing of this question, that the boundary line between these Counties is erroneously located upon the ground, that the true San Martine~~s~~ Spring called for by the acts defining these boundaries is some 28 miles N.W. from that now called San Martine~~s~~ on the S.P. Ry.

But it is earnestly urged by the opposition that these lines have been "fixed upon the ground, though not in strict conformity with the law" by the Commissioners' Courts of their respective Counties. Jeff Davis County is bound by their surveys. Your honor, we think, very properly, following the cases of Jones V Powers 65 Texas 207 and Rockwall County V. Kaufmann County 69 Texas 172 held that if the line between these Counties had been once run, marked upon the ground and established in accordance with law it would be the boundary line regardless of mistakes or inaccuracies committed. And in view of the great policy of the law, Viz: that these lines must be fixed and known in order that private rights may not be jeopardized by their uncertainty we yield ready assent to the ruling. It is a true and just holding.

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But we earnestly insist that the opposition have not brought themselves within the letter or the spirit of the rule prescribed in these decisions and followed by your honor.

In Jones V. Powers, (65 Texas 213) this is the language used:- "If the Statute be complied with, the line run, marked, reported to and approved by the Commissioners Court then the Act of May 12th, 1846 as does the Act of April 22nd, 1879 declares that "the line so surveyed and marked shall thereafter be regarded as the true boundary line between the Counties"

"Under all the laws made for the purpose of furnishing a method by which the lines of a County may be actually established upon the ground, it may be held that if the lines have once been definitely fixed upon the ground by an actual survey made reported and approved, as required by the statute that a County court has no power to direct another survey to be made and thereby establish a boundary line different from the one established at some former period".

"When a County line has been once run, marked upon the ground and established in accordance with law it can not be said to be indefinite. It may be incorrect, but nevertheless well defined. None of the statutes seem intended to give power from time to time to County Commissioners Courts ^{to correct} what may have been incorrect in the establishment of a County line on the ground, but seem intended to give a means by which the line or lines may be made definite and certain, and when so rendered, in accordance with the statute, whether correctly run ~~or~~ ^{or} ~~marked~~ ^{marked} or not, the statutory declaration that "the line so run and marked shall thereafter be regarded as the true boundary line between the Counties" ought to be given full effect and held as a prohibition to any further action looking to the establishment of some other line". Then af-

ter a discussion of the policy of the law this language is used:-
"There is, however, as before said, not sufficient evidence to
show that the line between the Counties has ever been legally es-
tablished".

In other words this case, (that in 69 Texas affirms it)
holds that if the line has been established as required by the
statute then that errors of the surveyor will not vitiate the work.

But it makes a cardinal principle that the line must be estab-
lished in accordance with the law authorizing the survey, all the
preliminary steps strictly complied with. These preliminary steps
required by the statute are clear, unmistakable:- They are as follo
Lows:- (Vide Sayles R.S. Arts 686 et seq.)

1. When the Court shall be convinced that the boundary
line is indefinite they shall appoint a surveyor to establishit (a)
by doing the work on the ground, (b) marking the initial corners
by posts describing minutely the kind to be used, (c) the end ~~of~~
each mile to be marked the same way.

2. His fieldnotes shall give an accurate description of
all natural objects on or near the line.

3. Art 689. "It shall be the duty of the court making
such order to cause a copy thereof to be sent to the County Courts
of the Counties interested in such boundary, stating the time and
place, which time ~~and place~~ shall not be later than twenty days
after the meeting of the County Court of the County notified for
the commencement of the survey, and such notice shall be given at
least ten days before the meeting of said County Court - - -".

4. Surveyor to take oath and give bond.

5. When the line shall have been surveyed and marked as
herein provided it shall be the duty of the surveyor to make due
return of the fieldnotes and map to the County Court, which field-

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notes and map shall be recorded by the clerk and a certified copy thereof returned to the General Land Office.

6. If either of the surveyors appointed to run and mark such line shall fail to attend at the time and place appointed, the one in attendance shall proceed alone to perform the duties assigned him and make his report to the County Court of the County employing him, which being approved by such Court, shall be recorded as evidence of the line in question, and the line so surveyed and marked shall thereafter be regarded as the true boundary line between the Counties. An inspection of the testimony before your honor fails to show that anyone of the opposing counties complied with these requirements.

Upon the contrary it is evident that they were disregarded in nearly every particular.

Taking El Paso first:- We ask an inspection of the fieldnotes returned to your office by the surveyor Randolph and the endorsement made thereon by Mr Pressler of your office. A most cursory examination will convince your honor that that survey was never made on the ground, no proper fieldnotes returned. Provisions 1 & 2 disregarded. Provision 3 (Art 689) makes it the mandatory duty of the court ordering the survey to give the Counties adversely interested notice "at least ten days before the meeting of said County Courts" of the time and place of the survey.

Mr Lempert in his affidavit says that they received a notice of El Paso County's intended survey on 8th September, 1886, and the next regular term of the Presidio County Court was on November 1886, and attaches that notice, or a certified copy to his affidavit.

This notice cannot certainly be binding upon Presidio County for no time or place is *given for* beginning said survey.

It was therefore impossible for the surveyor of Presidio County to meet the El Paso County Surveyor, the line is several hundred miles long, and under the law the *time of making the survey* the survey was anywhere within 20 days from the day of November 1886, the date when the Commissioners Court of Presidio County met

An inspection of this work, however, will show that the work was done on the day of before the Commissioners Court met in Presidio County.

Then in all fairness, what can these Counties urge? Violate the law. Attempt snap judgment, and now plead estoppel.

The line established ex parte shall be final only when the surveyor notified regularly and properly shall fail to attend under such a notice?

But what of Reeves and Pecos Counties? They too plead estoppel. Now let your honor remember that he who asserts an estoppel must prove every requirement and step of the estoppel.

The two former judges of these Counties say: the notice was given. This is all. Not one word as to the compliance with the law as to requirements 1, 2, 3, 4, 5 & 6. Merely that the notice was given. Nothing to show that it was better than the notice to El Paso. Nothing as to whom it was given. We cannot weigh it because it is a bare assertion. But what do the records say? And your honor needs no comment from us on the value of record evidence

Those of Jeff Davis County show that no notice was received, officially at least. Mr Lembert, County Clerk from 1884 to the present time, during which time these surveys are alleged to have been made says:- "He has made a careful and thorough examination of the records of his office and particularly of all of the records and papers connected with the Commissioners Court of Presidio County and affiant **finds** that there is no notice of any kind

relating to the establishing of the County line between Presidio and Pecos, or Presidio and Reeves Counties, and he has examined the minutes books of the Commissioners Court and the County Court and can find no reference whatever to such notice having been received. And he further states that by reason of his long connection with his office if any such notice had been sent to the Commissioners Court of Presidio County and arrived safely in his hands as Clerk of said Court he would have filed same". The Clerk of Presidio County, a part of which Jeff Davis then was, with his records before him, though clerk through all the time covered by the alleged surveys, never received the notice and can find no trace of it.

The records of your honor's office shows some refused office work, but none in compliance with the statute concerning these surveys.

Therefore under all the facts in this case, we think, Jeff Davis County entitled to an order of survey establishing the true line from San Martines N.W. 28 miles from that now called San Martines.

Hoping that your honor will see this as we do, We are

Yours Very Respectfully,

West & McGowan.

Attorneys for Jeff Davis County.

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Witnesses for Jeff Davis County.

Wm. D. ...
Korea very respectable.

Hoping that your honor will see this as we do, we are
Mortimer.

the time from Sam McElrath N. W. 38 miles from what now called San
Jeff Davis County entitled to an order of removal establishing the
therefore under all the facts in this case, we think,
these answers.

like work, but none in compliance with the statute concerning

The records of your honor's office shows some records of
the alleged answers, never received the notice and can find
records before him, though clerk throughout all the time covered by
Davis County, a part of which Jeff Davis then was, with his
as Clerk of said Court he would have held same. The Clerk of
Commissioners Court of Presidio County and arrived early in his hands
from with his office if any such notice had been sent to the com-
ceived. And he further states that by reason of his long connec-
and can find no reference whatever to such notice having been re-
the minutes books of the Commissioners Court and the County Court
and Record, or Presidio and Reeves Counties, and he has examined
relating to the establishing of the County line between Presidio

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1886

El Paso Co. Dry line
~~But~~

State of Texas }
County of Presidio } Before me the undersigned
authority duly commissioned and quali-
fied under the laws of Texas to administer
an oath on this day personally appeared
W. S. Lempert, well known to me, and who
being by me duly sworn on oath did
state as follows:

That Affiant has been County Clerk of
Presidio County ever since ^{your} the year 1884
and as such County Clerk he has the custody
of all books, papers and records of any character
belonging to or appertaining to the Commissioners
Court of Presidio County from its organi-
zation down to the present time and
Affiant further states that he has made
a careful and thorough examination
of the records of his office and particularly
all the records and papers connected with
the County Commissioners Court of Presidio
County, and Affiant finds that there is
no notice of any kind relating to the
establishing of the County line between
Presidio and Pecos, or Presidio and Pecos
Counties. And Affiant further states that
he has examined the minute books of the
County Court and also of the County Com-
missioners Court and can find no ref-
erence whatever to such notices having
ever been received. Affiant in this con-
nection would state that by reason
of his long connection and acquaintance
with the records of the office he now holds
that if any such notices had ever
been sent to the Commissioners

and ~~copies~~ ^{copies} papers to ~~affiant~~ ^{affiant} hands as clerk of said County Court of Presidio County, that he would have ^{kept the same and made} run a cross the same or some record of same. And Affiant would further state on oath that in the year 1887 he was County Clerk of Presidio County, and Ex officio Clerk of the Commissioners Court of that County, and that he has no recollection whatever of having received in his capacity as an officer of the Court as its clerk, or to have received from any of the then Commissioners of Presidio County or from anyone else any notice whatever with reference to the location of the Boundary line between Reens and Presidio County. And Affiant further states that if such notice had been received by him he would as was his custom as well as his duty have filed same among the records of the Commissioners Court of Presidio County.

Affiant would further state that so far as El Paso County is concerned with reference to the boundary line between said County and Presidio that the only notice of any character that appears among the records and papers of his office is one a copy of which is hereto attached and marked "Exhibit A" and asked to be considered with this affidavit as appears from the face thereof the same was filed Sept 8th 1886. and that upon the examination of the minutes of meetings of said Court he finds that the most regular meeting was held in November 1886. after Sept 8th 1886. the filing of said paper, and that no other record or notice of any

Character is to be found among the records
and papers of the Commissioners Court.
so far as giving notice by El Paso County
of a wish to fix boundary between Counties
and he verily believes that save the matter
set out in Exhibit A. no other notice was
given

W. S. Sempert

Sworn to and subscribed before me
this 11th day of August 1890.

B. F. Adams
Co. Judge Presidio Co. Tex

"Exhibit A."

Notice having been received from the Commissioner of the General Land Office that the dividing line between El Paso and Presidio Counties is not sufficiently defined and is thereby creating much trouble and confusion.

It is, therefore ordered by the Commissioners Court of El Paso County - that John P. Randolph be and he is hereby appointed as Surveyor to ascertain by actual survey the Boundary line between said Counties in accordance with an Act of the Legislature of the State of Texas entitled "An Act establishing and prescribing the manner of ascertaining the boundaries of Counties" Approved April 22nd 1879.

Said survey shall be made in the following manner.

The 105th meridian of West Longitude as established by the U.S. Boundary Surveyors in 1859, on the Boundary line of between Texas and New Mexico shall be adopted and run South to its intersection with the Rio Grande which intersection shall be regarded and accepted as the initial point of the boundary survey. A straight line from this initial point to San Martin Springs in the Apache Mountains shall be run and posts or mounds of stone or earth capped with stone such as are required by law shall be erected at the end of each mile and such posts or stones shall bear the inscription "El Paso and Presidio County line".

The initial monument at the Rio Grande and at San Martin shall be built of stone and mortar two feet square at the base and not less than five feet high and bearing the proper inscription.

Proper connection shall be made to the corners of all surveys through which said line shall run.

When said work is completed field notes properly certified to and giving full descriptions of all monuments and posts and connections made to surveys, with a map showing the topography of the country through which said line passes shall be filed with the County Clerk of El Paso County.

The County Judge shall at once examine the said plat and field notes and if found to be in conformity with law and in accordance with this order, he shall approve an account allowing for said surveying, Three dollars per mile for each mile actually run, and Eight dollars a piece for each monument or post erected. Provided the correctness of said account shall have been previously sworn to by said John P. Faudolph before some one authorized to administer oath upon the approval of said account by the County Judge, the County Clerk shall draw a warrant on the general fund in favor of said John P. Faudolph for the full amount of said account so approved, and deliver the same to him or his order.

Before entering upon the duties imposed by this order, the said John C. Caudolph shall take the oath of office prescribed by law for County Surveys and shall enter into a bond to be approved by the County Judge ^{and} payable to the County Judge of El Paso County and his successors in office in the sum of Two Thousand dollars with ten or more sureties, conditioned for the faithful performance of his duties.

It is further ordered that the Clerk of the County Court of El Paso County shall make a transcript of this order certify thereto and forward the same to the Judge of Precinct County, within the next ten days, September 4th 1886.

The State of Texas }
County of El Paso. } J. P. Clark, Clerk of
the County Court of El Paso County, Texas
do hereby certify that the above and foregoing
is a true and correct copy of the original
order as it appears in the minutes of the
Commissioners Court of El Paso County,
Texas. at Vol 2 p -

Given under my hand and seal of said
Court at office at El Paso Tex. this 6th
September A.D. 1886.

Seal

J. P. Clark.

C. C. C. E. P. Co. Tex

by O. A. Sorazolo, Deputy.

Filed Sept 8th 1886.

W. S. Lempert.
Clerk.

THE STATE OF TEXAS,

County of Presidio

I, W.S. Sempert

Clerk of the County Court of Presidio

County, Texas, do hereby certify that

the foregoing is a true and correct copy of the original Copy of the order filed in this office and now on file in my office.

now on file in said Court, in Book _____ on page _____

Given under my hand and the seal of said Court, at office in Marfa

this the 15th day of July A. D. 1890

ATTEST:

W.S. Sempert Clerk.

By _____ Deputy.



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the enclosed failed
to designate the time
and place to begin
the survey of Co
Presidio & Presidio Co
& otherwise defective
Beaman

Filed Aug.
1890
/has

Filed in the Genl. Land Office

August, 1890.

W.S. Sempert
CHIEF CLERK.

El Paso Co. Bony