

Jeff Davis Co. Bdry line ①
Division Line between
Jeff Davis & Presidio
Counties

Fixed by decree of Court
Filed March 8th 1904

Commissioner.

1 + 2 revision filed 3-8-04
Emm

JUDGMENT OF LOWER COURT.

Feb. 23, 1903.

Jeff Davis County,

No. 197. vs.

February 23, 1903.

Presidio County.

On this day in open Court the above entitled and numbered cause being regularly reached and called for trial, came both the plaintiff and the defendant by their attorney and announced ready for trial, and a jury having been waived submitted the issues of fact as well as of law to the Court.

And the Court having heard the pleadings, the evidence, and the argument of counsel, and duly considered the same, and it appearing to the Court that the true and correct boundary lines of said plaintiffs, Jeff Davis County, are as established and defined in the Act of the Legislature. Approved March 15, 1887. Originally creating said Jeff Davis County, and are as follows: to-wit:

Beginning at what, at the time of the passage of said Act was the North-west corner of Brewster County, the same being the south-west corner of section 10, in Block W.J.G. 5, then in Presidio County; thence in a westerly direction to the south-east corner of El Paso County on the Rio Grande River; thence along the line of El Paso County Northwardly to the corner of El Paso and Reeves Counties; then southwardly along what then constituted the North line of Presidio County to the North-east corner of said Brewster County thence southwestwardly along the north boundary line of said Brewster County as said line was defined by the act of Legislature originally creating said Brewster County to the place of beginning; and further appearing to the Court that the true and correct boundary and dividing line between Jeff Davis and Presidio Counties at the present time is a line described as follows, to-wit: Beginning at the South-east corner of Survey No. 36, certificate No. 3376, Original Grantee G.C. & S.F. Ry. Co.; thence due ^{West} to the South West corner of the said section 10, in Block W. J. G. 5; thence in a Westwardly direction to the South-east corner of El Paso County on the Rio Grande River; and that the same is marked and can be easily identified upon the ground; it is therefore the opinion of the Court that the Plaintiff, Jeff Davis County, by reason of the premises, is entitled to the relief and to recover judgment against

said defendant Presidio County, as prayed for in her petition.

It is therefore the order, judgment and decree of the Court that the boundary and division line between said Plaintiff, Jeff Davis County, and said defendant, Presidio County, be and the same is hereby established as follows, to-wit:

Beginning at the South East corner of Survey No. 36, Certificate No. 3376, Original Grantee G.C. & S.F. Ry. Co.; thence due West to the Southwest corner of section 10, in Block W. J. G. 5; thence in a westwardly direction to the South-east corner of El Paso County on the Rio Grande River.

And it is the further order, judgment and decree of the Court that said defendant Presidio County, be and she is hereby prohibited, enjoined and forever restrained from assessing or collecting taxes, or causing the same to be assessed or collected upon lands or other property situated within the boundaries of said Jeff Davis County, as said boundaries are defined in the said act of the Legislature, Approved March 15th, 1887, originally creating said Jeff Davis County, and as said boundaries are hereinbefore set out.

It is further ordered that the Plaintiff, Jeff Davis County, do have and recover from the defendant, Presidio County all costs in this behalf expended for which let execution issue.

Approved,

J. M. Goggin, District Judge.

O.K.

Gillett & F & D.

JUDGMENT OF THE COURT OF CIVIL APPEALS.

Wednesday, November 11, A.D., 1904.

Presidio County, Appellant,
No. 2815. vs.
Jeff Davis County.

Appeal from the District Court of
El Paso County.

This cause came on to be heard on the transcript of the record and the same being inspected, because it is the opinion of the Court that there was no error in the judgment; it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed; that the appellant Presidio County, and its sureties, W.B.Latta and George E. Wallace, pay all costs in this behalf incurred and this decision be certified below for observance.

OPINION.

Presidio County, Appellant,

No. 2815.

vs.

From El Paso County.

Jeff Davis County, Appellee.

The County of Jeff Davis brought this suit in Ward County and the venue was by agreement changed to El Paso County. The proceeding was to have the boundary between the two counties adjudicated and defined, as having been authorized by the Act of 1897. Sayles Civ. Statutes, Art. 898 a. Prayer was also for a decree enjoining Presidio County from assessing and collecting taxes within the disputed district. The decree was for Jeff Davis County.

Certain facts, and we think all the material facts, are undisputed.

Fort Davis was originally the County seat of Presidio County, which county then embraced what is now Presidio, Jeff Davis and Brewster Counties.

On July 14, 1885, an election was held in Presidio County, for the purpose of determining whether or not the County seat should be removed from Ft. Davis to the town of Marfa. The result was 502 votes in favor of the County seat remaining at Ft. Davis and 391 in favor of Marfa. On July 25th, the County Judge entered an order in the minutes of the County Court reciting the number of votes for and against, and declaring the result to be in favor of Marfa, although it had not received a two-thirds vote. Neither Ft. Davis nor Marfa was situated within five miles of the geographical center of the county.

Soon after the election all the county officers were removed to Marfa, except that of the County Treasurer, who remained at Ft. Davis. We shall not dwell on this fact, further than to mention that in litigation growing out of his act, the Supreme Court, on practically the same facts presented in this record, held with him that the removal of the county seat was invalid. (Caruthers vs. State, 67 Tex. 132, decided in following year, 1886.)

The legislature of 1887 created Jeff Davis County out of part of Presidio's territory, the act defining the boundary line between them. This line was within 12 miles of Marfa, but more than that distance from Ft. Davis.

The Legislature of 1888 passed an act defining the boundaries of Jeff Davis, which changed the said boundary line to another place, and the territory between the two lines is the occasion of this controversy. The 2nd section of the latter act recites that as the former boundary

line was placed "within less than twelve miles of Marfa, the county seat of Presidio County, * * * this creates a doubt as to its constitutionality, therefore an imperative public necessity exists, etc."

The legislature of 1891 by a general law validated county seats which had been created and circumstanced as Marfa was. From 1886 to the time of the creation of Jeff Davis County out of its territory, Marfa was the de facto county seat of Presidio County for all public business pertaining to organized counties, and so continued until its status ~~as such~~ was set at rest by this validating Act.

In reference to the Act of 1889 changing the boundary between Presidio and Jeff Davis Counties: The line as there defined was within 12 miles of Ft. Davis; and no proposition for a change in the boundary was submitted ^{to} a vote of the electors of the Counties.

The testimony discloses that both lines as enacted are ascertained without difficulty or dispute on the ground.

Both counties have asserted jurisdiction over the disputed strip, since 1889, the evidence tending to show that Presidio has been the more emphatic and persistent in this respect, and more generally recognized as having jurisdiction over this territory.

Under the 1st assignment of error ^{it is insisted} that the Act of 1898 (Art. 808 a) ~~it is insisted that it merely gives one county authority to sue another county to have the boundary line located on the ground as defined by the legislature; that the authority given the courts does not extend to determining which of two or more lines defined by the legislature is the legal line, and to fix such line.~~ This position is sought to be maintained by reason of the decision in *Madalupe County vs. Wilson County*, 58 Tex. 230, at which time there was no enactment conferring upon the District Court jurisdiction to establish a boundary between Counties, it being held to be a political question; and further by the peculiar wording of the Act of 1898.

It is our opinion that the Act, giving the District Court power to determine where the boundary line is located, necessarily embraces power to determine all matters incident to the existence of such line. If a law defining such a boundary were for some reason unconstitutional, it would hardly be contended that the Court should nevertheless proceed to ascertain and locate it as described in the Act. It seems clear to our minds that if two or more lines have been enacted, the legislature intended that such one of them as should control in law should be the one for the Court to judicial

ly establish. We, therefore, overrule this assignment.

Our second conclusion is that the Court did not err in holding that Ft. Davis remained the legal County seat of Presidio County, notwithstanding the declaration of the result of the election in 1865 in favor of Marfa; and notwithstanding the fact that the public business appertaining to Presidio County ^{was} transacted at Marfa from that time, and that Marfa was uniformly treated as the County seat by the officers and the public, ^{up to and after the time} ~~until~~ Jeff Davis County was created out of its territory in 1887.

This being so, the next conclusion follows, viz: That the boundary line between the two counties as defined in said last named Act, being more than twelve miles distant from Ft. Davis, ~~for that reason could~~ ^{of the prohibition of} not be violative of Art. IX, Sec. 1, clause 2nd. of the Constitution. Our ^{was} view is that by "County seat" said clause has reference to the legal county seat, and not a mere de facto one resorted to as such by common consent and usage.

The next conclusion is that the Act of 1889, which comes within the purview of clause 3 of section 1 of Art. IX, was never effective, because the proposition to detach from Jeff Davis County a part of its territory, and to attach same to Presidio, which would have been the direct effect of this Act, was never submitted to a vote of the electors of both counties, as required.

The consequence is that the latter act did not effect a change from the boundary as established in the Act of 1867, - which was and remains the legal boundary between the two counties, unless as contended by appellant this is rendered otherwise by the validating Act of 1891, or by stale demand and the statutes of limitations. The two last named defenses clearly have no application in this case, and whatever else may have been the effect of the validating Act, we think it cannot be given the force of changing conditions by reference back, to the extent of rendering unconstitutional an Act that was constitutional at the time it was passed.

Under Art. III, Sec. 56 of the Constitution, the legislature is denied power to pass any local or special law locating or changing county seats, and this ^{prohibition} ~~prohibition~~, we think, precluded the legislature from validating the proceedings by which Marfa was selected as the County seat of Presidio County by any enactment which related to that County alone. Therefore the legislative recognition of Marfa, which might be implied by the legislature's act in passing the law of 1887 creating Jeff Davis County, whereby it cut off that portion of Presidio County, which

contained Ft. Davis, and the express recognition of Marfa as the County seat of Presidio found in the Act of 1889, should not have any influence whatever in determining the question of its legality as the County seat of Presidio County at the date of the passage of said acts.

These views are substantially those of the trial Judge, stated in his conclusions.

Affirmed.

(Signed) J. H. James,

Chief Justice.

Delivered and filed November 11, 1903.

JUDGMENT OF THE SUPREME COURT.

IN THE SUPREME COURT OF TEXAS.

Presidio County,

vs.

4th. District.

Jeff Davis County.

February 4th, 1904.

This day came on to be heard the application of Presidio County for a writ of error to the Court of Civil Appeals for the Fourth District, and the same having been duly considered, it is ordered, that said application be dismissed for want of jurisdiction; That the applicant Presidio County and its sureties, W. B. Latta and George E. Wallace pay all costs on this application.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court on the application for writ of error in the above styled cause.

Witness my hand and the seal of said Court,
this the 27th day of February, A.D.1904.

F. T. Connerly, Clerk,
By J. E. Myrick, Deputy.

Motion for rehearing
overruled Feby. 25th,
1904.

Endorsed: Application No. 4036. Presidio County vs. Jeff Davis County. Copy of Judgment in Supreme Court. Application for writ of error dismissed for want of jurisdiction. Filed in the Court of Civil Appeals at San Antonio, Texas, Feb. 29, 1904. H. E. Hildebrand, Clerk.

County 55498

San Antonio, Texas, March 3, 1904.

I, H. E. Hildebrand, Clerk of the Court of Civil Appeals of the Fourth Supreme Judicial District of Texas, do hereby certify that the foregoing is a true and correct copy of the Judgment of the lower Court, of the Judgment of the Court of Civil Appeals, of the Opinion of the Court of Civil Appeals, and of the Judgment of the Supreme Court, in cause No. 2815, Presidio County, Appellant, vs. Jeff Davis County, Appellee.

IN TESTIMONY WHEREOF I hereunto set my hand with the seal of said Court, this the same day and date above written.

H. E. Hildebrand

Clerk.

Jeff Davis Co. Bdry line

No. 2815. ①

In Court of Civil Appeals

FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS,

SAN ANTONIO.

Presidio County,

Appellant,

VS.

Jeff Davis County,

Appellee.

Certified copy of Judgment
of the lower court, both of Appeals,
Opinion, and Judgment of S. C.

Filed 3-8-1904

H. E. Hildebrand

H. E. HILDEBRAND, CLERK.

count 55500