

No. 1206

Refugio County,

Vs.

Calhoun County.

vs.

In the District Court of

San Patricio County, Texas.

4th Judicial District

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the County of Refugio, a duly existing county of the State of Texas, and a body corporate and politic as provided by law, hereinafter styled plaintiff, complaining of the County of Calhoun, also a duly existing county of the State of Texas, and a body corporate and politic under the law, hereinafter called defendant, and of which the Honorable Howard G. Hartsog is the duly qualified and acting County Judge, and the Honorable Frank E. Wedig is County Commissioner of Precinct No. 1, the Honorable Ernest Kabela, is County Commissioner of Precinct No. 2, the Honorable Wayne Lindsey is County Commissioner of Precinct No. 3, and the Honorable Clarence Barton is County Commissioner of Precinct No. 4, all of whom reside in Calhoun County, Texas, upon whom service of citation may be had for said defendant; and for cause of action respectfully represents unto the Court:

1. This suit is brought under the provisions of Article 1591, revised Civil Statutes of Texas, for the purpose of establishing the boundary line between said County of Refugio and said County of Calhoun; and is brought in the District Court of San Patricio County, Texas, which county is in an adjoining judicial district whose boundaries are not affected by this suit, and the county seat of which is nearest the county seat of Refugio County, the county suing; and is authorized by an order of the Commissioners Court of Refugio County, duly passed and entered in the Minutes of said Court.

2. That plaintiff, Refugio County, is a duly existing county of the State of Texas, and was one of the original "precincts" or counties of the Republic of Texas, and recognized as such by the Constitution of 1836, and is the successor of the Mexican Municipality of Refugio, the original boundaries of which comprised the ten littoral leagues between the Guadalupe River-Coleta Creek on the north or east and the Nueces River on the south or west, and extended to the Gulf of Mexico,

Refugio Co Bdry Line 6

including Saint Joseph's and Mustang Islands. That its boundaries subsequently were reduced and redefined by several Acts of Congress of the Republic and Legislature of the State of Texas, to-wit: Act of December 2, 1841, (GL II, 678) establishing the line of Colliad County; Act of March 31, 1846, (GL II, 35-36), defining the boundaries of Victoria County; Act of April 4, 1846, (GL II, 1354) (GL II, 1392) reestablishing San Patricio County; Act of December 8, 1857, (GL IV 883-884) creating Lee County, and Act of September 18, 1871, (GL VII, p. 3) creating Aransas County. That as the consequence of all which, Refugio County now has a common boundary with Calhoun County in San Antonio Bay, originally regarded as a part of Espiritu Santo Bay; as hereinafter more particularly alleged.

3. That defendant Calhoun County was created, as aforesaid, by Act of April 18, 1846, (GL II, 1354).

That thereafter, by Act of September 1, 1956, (GL IV, p. 522) the boundaries of Calhoun, Victoria and Refugio Counties were changed as therein defined.

That thereafter, by Act of February 11, 1860, (GLV, 236), the boundaries of Calhoun County were again changed; said Act, which defines the present boundaries of Calhoun County, being in words and figures substantially as follows, to-wit:

"CHAPTER 178

An Act to define the boundaries of Calhoun county.

Section 1. Be it enacted by the Legislature of the State of Texas, That hereafter the boundaries of Calhoun county shall be as follows: beginning at the West corner of the survey of Valentine Garcia, at the Western extremity of Lavaca Bay; thence to the North corner of a survey known as the Juan Nepomuceno Cisneros league; thence with the North-west boundary of said league to the Guadalupe river; thence down said river to its mouth; thence around the Northern and Western margin of the Espiritu Santo Bay, to a point bearing North-west from Cedar Pass or Bayou (which divides Matagorda from St. Joseph Island); thence South-East to the said Cedar Bayou, and with the aforesaid Cedar Bayou to the Gulf; thence with said Gulf, and South-East margin of Matagorda and Pelican Islands to the division line between the counties of Calhoun and Matagorda, as heretofore established; and thence with the line of Calhoun county, as now defined, to the place of beginning.

Sec. 2. That this act take effect and be in force from and after its passage.

Approved 11th February, 1860."

That the boundaries, as defined in the last alleged Act, were ratified and confirmed by the revised statutes of 1879, article 734, defining the boundaries of Calhoun County, Texas, and Article 884 defining the boundaries of Refugio County,

Texas.

4. That as provided by said several Acts and said articles of the Revised Civil Statutes of 1879, there has existed and now exists a common boundary between Refugio County and Calhoun County, which extends from the mouth of the Guadalupe River, thence around with the northern and western margin of that part of originally Espiritu Santo Bay, and now known as San Antonio Bay, to the boundary line between Refugio and Aransas Counties.

That the exact location of said common boundary is not sufficiently definite and well defined, and never has been established in the mode and manner prescribed by law. On the other hand Calhoun County is wrongfully claiming and asserting that said boundary from the mouth of the Guadalupe River follows the shoreline of Espiritu Santo (present San Antonio) Bay, and around the shore line of Hynes Bay, immemorially a separate and distinct body of water, until it rejoins Espiritu Santo (present San Antonio) Bay and thence again with the shoreline of the latter Bay to and beyond the Refugio-Aransas Counties line, which corner in the J. C. Solberg Survey, as defined in said act creating Aransas County.

5. Plaintiff alleges that the true and correct boundary between the Counties of Refugio and Calhoun, as defined by said applicable Acts, is a line extending from the mouth of the Guadalupe River, where it empties into Espiritu Santo (present San Antonio Bay), thence with the center of said Bay and along the same offshore course through what is now San Antonio Bay and which formerly was considered to be the northwesterly area of said Espiritu Santo Bay, to the intersection of said medial with or opposite to the northerly terminus of the Refugio-Aransas Counties boundary line.

In this connection plaintiff alleges that when used in connection with or applied to a littoral boundary of a county or a state the term "margin" of a bay means the middle of the body of water involved and not its shore line; and that such call should be so construed by this Court.

6. In the alternative, in the event the Court should construe such call for the "margin" of Espiritu Santo Bay as meaning the shore line of said Bay, and not the middle of the southwestern area of former Espiritu Santo Bay, plaintiff alleges that the true and correct boundary line between the Counties of Refugio and Calhoun is a direct line across the confluence of Hynes Bay with present San

Antonio Bay, without deflecting from San Antonio Bay and measuring the shore line of Hynes Bay; that all of Hynes Bay is within Refugio County.

Wherefore, premises considered, plaintiff Refugio County prays that defendant Galhoun County be cited to appear and answer herein, and that upon final hearing hereof this Court determine where such boundary line is located, and order that the true boundary line be surveyed and marked in the manner prescribed by statute, to the end that such line may be established as the law requires; and for removal of cloud; and for costs; and for all such other and further relief, both general and special, in law and in equity, to which the plaintiff may show itself justly entitled.

Count, Attorney of Refugio County, Texas

Attorney for

By _____
Attorneys for Plaintiff, Refugio County
Title Building
Refugio, Texas.

By _____
JERRY RYDIER, Clerk
1899
J. B. ...
Refugio Co. ...
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File No. Refugio Co. Boundary

Refugio Co. vs. Calhoun County

Co. - Plaintiffs Original Petition

Filed June 4 1963

JERRY SADLER, Com'r

By H. Forbes

Calh. 58261

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