

Statement of Facts - State of Texas vs.
F. B. Olcott, Cause 17090
12/18/1902

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William Shirriff

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I.

Agreed
Statement
of Facts.

AGREED STATEMENT OF FACTS.

Filed Dec. 18, 1902

MAPS AND SKETCHES SENT UP WITH TRANSCRIPT.

The State of Texas) In the 26th. Judicial District Court
No. 17090. vs.) Page.

Map No. 1, referred to in Agreement of Parties as "Exhibit C", and referred to in Transcript on page..... 29.

Map No. 2, referred to in Transcript on page..... 30.

Map No. 3, purporting to have been made in June, 1873, referred to in transcript on page..... 31.

Map No. 4, being copy of original map filed in Land Office December 17th. 1873, by R. M. Elgin, Chief Clerk, and referred to in Transcript on page..... 34.

Map No. 5, being map of Mitchell County, and referred to in transcript on page..... 35.

Map No. 6, attached to depositions of Geo. W. Polk and referred to in Transcript on page..... 39.

For the purpose of the trial of this cause the following facts are agreed upon by the parties to this suit:

(See Index to Transcript on next Page.)

Certificates 43/5543, 43/5544, 43/5545, 43/5546, 43/5547, 43/5725 and 43/5764, were issued to the Houston & Texas Central Railway Company under the provisions of the Act of January 31st, 1859, "An Act to encourage the construction of railroads in Texas by donations of lands," on the 9th. day of January, 1873, and were located, respectively July 1873 upon surveys Nos. 81, 83, 85, 87, 89, 485 and 523, in Block 97, H. & T. C. Ry. lands; described in plaintiff's petition; which said lands lie in the counties of Mitchell, Scurry and Borden, as stated in the exhibit to plaintiff's petition.

Said certificates were located and surveyed July 1873 by the surveyor of Jack Land District, and the field notes thereof were returned to the General Land Office November 18, 1873.

II.

Agreed
Statement
of Facts.

43/5 AGREED STATEMENT OF FACTS. by the
Commissioner of the
Filed Dec. 18, 1902 to the Houston &

The provisions of the Act of January 31st, 1854, "An Act to
The State of Texas) In the 26th. Judicial District Court
encourage the construction of railroads in Texas by donations
No. 17090. vs.)
F. P. Olcott et al.) of Travis County, Texas, at Austin.
surveys Nos. 81, 83, 85, 87, 89, 445, 523, 81, and 83, in

Block 97. Be it remembered that on the trial of the above en-
titled cause, the following is all of the material evidence
introduced on the trial of said cause, to-wit:

Plaintiff introduced the following, to-wit: The
certified copy of certificate and field notes; the certified
copy of field notes of the surveys sued for in this cause, and
it is not necessary to further describe them, except that they
are shown also in the agreement of parties introduced on trial
of said cause, which is as follows, to-wit:

For the purpose of the trial of this cause the follow-
ing facts are agreed upon by the parties to this suit:
Certificates 43/5543, 43/5544, 43/5545, 43/5546, 43/5547, 43/5725
and 43/5764, were issued to the Houston & Texas Central Railway
Company under the provisions of the Act of January 31st. 1854,
"An Act to encourage the construction of railroads in Texas by
donations of lands," on the 9th. day of January, 1873, and were
located, respectively July 1873 upon surveys Nos. 81, 83, 85,
87, 89, 445 and 523, in Block 97, H. & T. C. Ry. lands; des-
cribed in plaintiff's petition; which said lands lie in the
counties of Mitchell, Scurry and Borden, as stated in the ex-
hibit to plaintiff's petition.

Said certificates were located and surveyed July 1873
by the surveyor of Jack Land District, and the field notes there-
of were returned to the General Land Office November 18, 1873.

Certificates 45/6077, 45/6078, 45/6079, 45/6080, 45/6081, 45/6082, 45/6083, and 45/6084, were issued by the Commissioner of the General Land Office to the Houston & Texas Central Ry. Co. on the 10th. day of January, 1873, under the provisions of the Act of January 31st. 1854, "An Act to encourage the construction of railroads in Texas by donations of lands," and were located, respectively, July 1873 upon surveys Nos. 629, 631, 633, 635, 638, 639, 641, and 643, in block 97, H. & T. C. Ry. Co. lands described in plaintiff's petition; said locations and surveys were made by the surveyor of Jack Land District, July 1873, and field notes thereof returned to the General Land Office on November 20th. 1873.

Each and all of said certificates were issued for 53 miles and 4160 feet of main track and 2 miles and 721 feet of sidings from Corsicana in Navarro County to Dallas in Dallas County; and also 31 miles and 3420 feet of main track and 4902 feet of sidings from Dallas in Dallas County to McKinney in Collin County, making in all 88 miles and 2643 feet of roads.

For surveys or sections Nos. 81, 83, 85, 87, 89, 445 and 523 as stated in the aforesaid exhibit, no patents have issued; for surveys 629, 631, 633, 635, 637, 639, 641 & 643 as shown in the aforesaid exhibit, patents were issued to the H. & T. D. Ry. Co. on May 15th. 1889.

On the 10th. day of May, 1873, Robert M. Elgin, as agent for the Houston & Texas Central Railway Company, delivered to W. A. Benson, surveyor of Jack Land District, two hundred Land Certificates issued by the Commissioner of the General Land Office to the Houston and Texas Central Railway Company on the 10th. day of January, 1873, numbered from 45/6037 to 45/6236 and at the same time delivered to the said surveyor his file upon certain vacant lands, describing the same by metes and bounds, a certified copy of which said file with

the certificate of the said Benson is hereto attached, marked "Exhibit A", and made a part of the facts herein agreed to.

There is also on file in the General Land Office a certain receipt, signed by the said Benson, surveyor of Jack Land District, a certified copy of which marked "Exhibit B" is hereto attached, and made a part of the facts herein agreed to, subject to legal objection as being immaterial and irrelevant.

It is agreed that the certified map or sketch issued by the Commissioner of the General Land Office October 2nd, 1901 and marked "Exhibit C" shows correctly the limits of the Elgin File on May 10th, 1873 herein referred to; and the location of the said several surveys of land described in plaintiff's petition, with reference to the limits or boundaries of the said file.

It is agreed that surveys 81, 83, 85, 87, 89, 445 and 523 described in the exhibit to plaintiff's petition are within the limits of the aforesaid Elgin file, and that surveys 629, 631, 633, 635, 637, 639, 641, and 643, described in the exhibit to plaintiff's petition are, and were at the date of the said file, outside of the limits and boundaries of the aforesaid Elgin file of May 10th, 1873, but this does not preclude defendants from showing said map to be incorrect or that it is admissible or binding on defendants.

It is agreed that each and all of the defendants herein hold, and claim title to, said land, under and by virtue of said locations, surveys and patents herein referred to.

Either party to this agreement may introduce any other evidence not embraced in this agreement, subject to such legal objections and exceptions as may be properly made thereto.

Thence N. 75 E. 9 miles to the T. S. Reese, Survey No. 276 Block No. 2 made for Assistant Attorney General, Counsel for H. & T. Co. Thence N. for quantity the plaintiff. the District line. Thence E. to the pt. T. D. Cobbs, Excluding all valid subsisting For Olcott & Trust Companies.

Ashby S. James,
The original file of C. R. Kinchen,
together with the cert Counsel for Defendants, are filed in my office this 10th. day of -----, to which I certify.

Page 115 Plaintiff next offered copy from Genl. Land Office of file made by R. M Elgin as agent of the H. & T. C. Ry. Co. on May 10th. 1873, as follows:-

B. Endorsed: 4) File 5588. Parish Ser: 5588 Fan.

To the Surveyor of Jack District: G. Shelby,

Chief Clerk By virtue of 200 certificates issued by the Commissioner of the General Land Office to the Houston and Texas Central Railway Company on the 10th. day of Jany. 1873 numbered from 45/6037 to 45/6236 inclusive I hereby enter and file upon the following vacant lands in your district, to-wit:

In Young District on the waters of the Colorado and the Double Mountain Fork of the Brazos. Beginning on the line between Bexar and Young District where it strikes the West boundary of Block No. 26 survey for the H. & T. C. R. W. Co. Thence with the West boundary of said Block and Block No. 25 made for the same company to the N. W. corner of the latter. Thence East about 20 miles to the W. boundary of an entry made for the H. & G. N. R. R. Company by Nelson. Thence N. with said boundary to its N. W. corner (about 4 mi.) Thence East with North boundary of said entry to the West boundary of Block No. 2 made for the H. & T. C. R. R. Co. near the N. W. corner of Section No. 235 of said Block. Thence N. 15 W. with the west line of Block No. 2 about 3 miles to its N. W. corner.

Thence N. 75 E. 9 miles to the N. E. corner of survey No. 276 Block No. 2 made for the H. & T. C. R. W. Co. Thence N. 8 miles. Thence W. for quantity. Thence S. to the District line. Thence E. to the place of beginning. Excluding all valid subsisting files, entries and surveys. Commissioner of the General Land Office on Robt. M. Elgin. July, 1873.

The original file of which the above is a copy together with the certificates therein named were filed in my office this 10th. day of May, 1873, to which I certify. of Page 115 Book A. of Survey No. 170 (one hundred and seventy)

Block No. 25 made for the said H. W. A. Bensen. Co. Thence West to the N. E. corner of said survey D. S. J. L. D. with the East

Endorsed: 4) File 5588. Fannin Script. H. & T. C. Ry. Co. Application. Filed Feby. 15/89. R. C. Shelbey, Chief Clk. \$1.00 (9) No. 26, H. & T. C. Railway. Thence

South to the General Land Office, Austin, Texas, Sept. 27, 1901.

I, Charles Rogan, Commissioner of the General Land Office of the State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the original, together with all the endorsements therein now on file in this office.

In testimony whereof, I hereunto set my hand, (seal)

and affix the seal of said office the date last above written.

Charles Rogan,
Commissioner, General Land Office.

The plaintiff also introduced certified copies of the certificates issued to the Houston and Texas Central Railway Company which is likewise shown in the foregoing agreement, except that said certificates were dated prior to March, 1873.

Office of the State of Texas, do hereby certify that the above

and foreg Plaintiff then introduced file made by Mr. Elgin
dated August 5th. 1872, as follows:-

To the Surveyor of Young or Jack Land District;

By virtue of (40) Forty certificates issued to
the Houston and Texas Central Railway Company by the Commission-
er of the General Land Office on the 1st. day of July, 1872,
numbered from 27/1601 to 27/1640 I hereby file upon and enter
the following vacant land in your district on the head waters
of the Colorado River; beginning at a point two miles East of
the N. E. corner of Survey No. 170 (one hundred and seventy)
Block No. 25 made for the said H. & T. C. Railway Co. Thence
West to the N. E. corner of said survey. Thence with the East
line of said Block No. 25, and Block No. 20 to the S. E. corner
of survey No. 1, Blk. No. 25. Thence East to the N. E. corner
of survey No. 1, Block No. 26, H. & T. C. Railway. Thence
South to the S. E. corner of survey No. 120, Blk. No. 26.
Thence East to the N. E. corner No. 121, Blk. 26. Thence
North & West so as to avoid the Reservation of the M. E. P. &
Pacific Railroad to the beginning.

Robt. M. Elgin.

Land Agt. H. & T. C. R. W.

August 5th. 1872.

The original entry of which the foregoing is a copy,
was filed in my office this 5th. of August, 1872.

E. B o o n,
Surveyor Jack Land District.

(4) File 6792. Fannin Script. H. & T. C. Ry. Co.
Application. Filed Feb. 15/89. R. C. Shelley, Chief Clerk.
2/15/89. Shelley. 75¢ (T). S. 6792.

General Land Office, Austin, Texas, April 5, 1902.

I, Charles Rogan, Commissioner of the General Land

28. Office of the State of Texas, do hereby certify that the above

and foregoing is a true and correct copy of the original, together with all the endorsements thereon now on file in this office.

In testimony whereof, I hereunto set my hand, who made the demand and affix the seal of said office the date fact must be the testimony of last above written.

Charles Rogan,
Commissioner, General Land Office.

Counsel for plaintiff then introduced in evidence certified copy of sketch No. I certificate dated Oct. 2nd. 1901, being the same sketch referred to in the agreement herein as Exhibit C. By agreement of the parties and order of the Court this sketch is not copied herein but is to be sent up to the appellate Court with this record in this case as a part of same.

Defendant objected to its admission because it did not purport to be a copy of a map in use or on file in the General Land Office, but purports to be made from data in the Land Office with a view of proving the delineations of a reservation upon a sketch bearing date February 5, 1902, and does not show it to be a copy of an original map on file and in use in the General Land Office at the date when the said reservation was created and when same purports to have been delineated upon the map. The said reservation itself as delineated upon the map seems to be a conclusion of the Land Commissioner and represents merely that it is the northern boundary of the Texas and Pacific Reservation. The date that the act of the Legislature became a law is merely a conclusion of the Land Commissioner, as both the law and the time when it became the law are matters of judicial knowledge and not of fact. All of said sketch

29. shows same to be a conclusion of the Land Commissioner as to

the facts and is not a sketch of the facts as they existed in the land office and upon maps in use in the Land Office. The first requisite of any map is that it must be an archive of the Land Office in use in the Land Office. If the officer who made the designation is living the best evidence of that fact must be the testimony of the living witness, unless a judgment, perfect in itself, shows the fact. If the map showed when the designation was made in the Land Office a certified copy of it would be admissible, but this certificate, in the absence of proof showing when it was made, is not admissible. Objection overruled and defendants excepted and tenders this as his bill of exception.

Plaintiff next introduced certified copy of map from Genl. Land Office, certificate dated Feby. 5th. 1902, marked map No. 2, which was objected to on the same grounds urged to map No. 1, which were overruled and excepted to, and this map is also by agreement and order of the Court to be sent up with the record in this case, as a part of the Statement of Facts.

LOUIS C. WISE, witness for plaintiff, sworn, testified:

My name is Louis C. Wise. I hold the position of Chief Draughtsman in the General Land Office and have held it for the last eight years. Some time previous to that time I had been employed in the Land Office as compiling draughtsman for seven years. I have the original of the map of which that map is a sketch, so far as it shows the territory in dispute. This map was filed in June, 1873, and has been in use ever since.

Defendants object to the admission of this answer for the reason that the date of the map itself does not show the date when the reservation was placed upon the map; the

delineation is, in fact, delineated in 1853, as shown in the Dillingham case; and because there is no evidence to show when the delineation was made upon the map; and because the map speaks for itself and the testimony is hearsay. Objection overruled and defendant excepted to the ruling of the court and tenders this his bill of exception. ~~the witness has not shown him~~ I don't know when it was filed as a matter of fact, of my own knowledge. I don't know from my own personal knowledge, except from this date, how long the map has been in use in the General Land Office; I have seen it there for the last eight years. It comes from the Land Office as an original map.

~~matters~~ Plaintiff introduced in evidence the original referred to above map, purporting to be made in June, 1873, and everything contained in it, over the objection of defendants, which was overruled by the Court. Defendants excepted for same reasons as foregoing and tender this his bill of exception. This being an original map on file in the Ld. Office, it is agreed by the parties with consent of Court, that the original map shall not be filed but that a copy thereof duly certified should be substituted for original and sent up with the record as a part hereof. ~~Counsel for plaintiff:~~ Yes, sir; that these surveys

~~are with~~ Q. That map introduced, called Map No. 2, is a copy from this map of the territory in dispute - the map you have just testified about. A. Yes. ~~th line was. There is nothing~~

~~to show~~ Q. Please compare Map No. 1 with Map No. 2, and say how the Northern line of the Texas and Pacific reservation as delineated on No. 1 compares with the northern line of the reservation as delineated on No. 2, and show how the surveys in dispute correspond with the location of the Texas and Pacific Reservation. A. (The Comparison was made by the witness pointing out on the map the matters inquired about, with verbal explanations which the reporter was instructed to omit from

the record.) Defendants objected, because it is incompetent for witness to show by maps any particular position that one survey occupies with respect to another; and because it is a conclusion of the witness, and a matter for the Court to ascertain from the facts before it, and the witness has not shown himself competent to testify, not having run the lines or done anything to enable him to correctly place and delineate the same on the maps.

The objection was sustained, the Court remarking that it was not admissible because it was testimony as to matters to be determined by the Court from all the evidence.

Q. Where is the north line of the Texas & Pacific reservation?

Defendants object for the reason that the map speaks for itself.

The Court: I don't know that I understand exactly the theory of the State in introducing this evidence. Are you seeking to show by maps that these particular surveys are within that boundary?

Counsel for plaintiff: Yes, sir; that these surveys are within the reservation between the north and south lines. We show the location with reference to the north line, and it becomes immaterial where the south line was. There is nothing to show the distance from this point to this point on the map, and therefore it is necessary to show this line to know where these surveys came.

The map was admitted in evidence over the objection of defendants and they now tender this as their bill of exception thereto.

Counsel for plaintiff: We wish to show that the

32. line delineated in 1873 on the map of 1873 corresponds to

this line as delineated on Map No. 1, because it is necessary to show how the surveys are located in reference to that line.

Q. Examine these two maps. State how the northern line of the Texas and Pacific reservation as shown on Map No. 2, corresponds with the same line as shown on map No. 1.

A. The Northern line of the Texas & Pacific reservation shows on Map No. 2 made in 1873 appears to be two and one eighth miles north of the same line as delineated on Map No. 1. (Witness further testified about other distances and surveys by pointing them out, with verbal explanations, which the reporter was directed to omit from the record.)

Q. I want to read the boundaries here of the Elgin file of the 10th of May, 1873. Show the Court where that is on that map. (pointing to another map).

Defendants object to the admission of any testimony about the location of surveys, except the position as occupied at time survey was made with reference to where the reservation was then delineated on the map in the Land Office. The objection was overruled and defendants then and there excepted, and tender this their bill of exception. Scurry County? A. Yes.

Counsel for plaintiff: The map is introduced to show the northern line of the Texas & Pacific reservation. We want to show where the Elgin file is with reference to this map. The agreement is that this shows the Elgin file, but we want the witness to point it out (reads the calls of the field notes). The surveys sued for from 629 to 643, both inclusive, are up here as shown by the testimony of the witness, lying east of the boundary of this file. Scurry County. Show how this line

Q. Have you a map showing the location of the points Memphis, El Paso & Pacific reservation? A. Yes.

the testimony of the witness, an original old map from the General Land Office, compiled, showing the designation of the center and north and south lines of the Memphis, El Paso & Pacific reservation, filed in the General Land Office December 17th. 1858 by Robert M. Elgin, Chief Clerk. This map being an original from the Land Office is agreed with consent of the Court that a certified copy be filed and sent up with the record as a part hereof.

Defendants objected to the admission of this map for the reason stated in the foregoing objection; the objection was overruled, defendants excepted for the same reason and here tender this their bill.

Q. Is there anything there by which you can determine where that line is with reference to these surveys on this map (pointing to another map).

Defendants object, because it is an opinion of the witness, who is not qualified to speak; objection is overruled and defendants except and tender this their bill.

Q. Is this the North line of Mitchell County, according to this map. A. Yes.

Q. This is the South line of Scurry County? A. Yes. This is an original map in use in the Land Office.

Counsel for plaintiff: We have shown how these lands lie in reference to the northern line of the Texas and Pacific reservation, but in order to be certain and leave the matter entirely beyond dispute, we wish to show how they lie with reference to the sixteen mile reservation of the Memphis, El Paso & Pacific Railroad.

Q. This is Mitchell County. Show how this line runs with reference to Mitchell County. A. (The witness points out on the map).

The North line of the old Memphis, El Paso & Pacific

reservation as shown by the official map of Mitchell County in connection with the sketch introduced showing the delineation of the Memphis, El Paso & Pacific reservation, is four miles south of the north boundary line of Mitchell.

Defendants object, because it is a conclusion of the witness, and for the same reasons stated in the foregoing objections. Objections overruled and defendants except and tender this their bill.

Q. How long has this map been in use in the Land Office?

A. It was made in December, 1889, it is the official map of Mitchell County now in use in the General Land Office.

Defendants renew their objections; and further object, because the map was made in the land office and long years after the rights of the parties accrued; and because it is merely an opinion of the draughtsman. Objection overruled and defendants except and tender this their bill.

Plaintiff introduced then the map of Mitchell County over the defendants objection. This being an original map from said Land Office by agreement of parties and consent of the Court a certified copy is to be filed and sent up with the record as part of this statement of facts. Witness further testified with reference to the maps that the squares representing sections were each one mile square, each side representing one mile on the maps.

Upon cross examination by Counsel for defendant Wise testified that he formerly lived in Abilene, Texas, and was a witness in the case of Wilson vs. Dillingham, cited in the Court of Appeals.

The witness was asked if it was not generally known in the Land Office by him and others connected with it, that

the maps introduced in evidence were not correct in reference to the reservation and the 100th. meridian. In answer he stated that there was a misunderstanding about it. He was then asked, Was it not generally understood that it was not correctly delineated. His answer was, No, Sir; it is now, yes sir. The hundredth meridian was attempted to be established a number of years ago, but I don't suppose it was correctly established until proper observations were secured at Abilene. These maps do not attempt to show the true position of it. It is possible to delineate correctly the reservations on these maps and show how the lands are located, from the center line of the Memphis, El Paso & Pacific reservation, because it is defined by statute and surveyed. I do not remember the year, think about 1873; do not remember whether after. Do not know that those surveys in question are excessive; there are a great many things that I am in charge of that I do not know. My duties in the land office are to superintend the work in the draughting department. Do not know that any of the surveys have been re-surveyed or are excessive. All witness knows is what the map shows; don't know who put it there; suppose it was some official. Don't know that there are maps of Scurry, Fisher and Borden of 1853. Do not know of any map prior to 1853. Remember seeing at Abilene a map showing the east line of the one hundredth meridian; the north and south lines were put on from the map of Taylor of 1858; that map was in use. The law requires us to designate the one hundredth meridian and the north and south lines. I was not an official then; that was on the map of 1853. Twenty years after the reservation was created that was put there after it was created. Do not know how many old maps this reservation is shown on. These were the most ancient landmarks I found; this map of 1873. I don't remember seeing it

on the map of 1872; don't know there was such a map of that territory. I don't remember how many times there have been changes of this reservation; don't know of any. The maps show some little variations in respect to the reservation at different places; about two and one-eight miles. I didn't survey either of the lines; I don't suppose anybody has ever surveyed the north boundary of the eighty mile reservation.

Q. Is the file (Elgin file) placed upon that map by actual survey or by approximation?

A. The survey intended to survey it subsequently. Witness was asked if he knew whether the distance of the file (Elgin file) was correctly represented by actual survey or by calculation in the land office, the course from east to west. He answered I would have to compare them closely, have the draughtsman check them to see that they keep within the boundaries of their designation.

Q. The file you read running from east to west, or from west to east, if you like, there is nothing to indicate that this ground was plotted within the file in accordance with any actual survey on the ground? Is it not an approximation?

A. It is not an approximation; it is an actual survey to keep the thing within the limits.

Q. To do that on the ground, can you tell from the reading of the file the formation of these surveys, the calls for the different surveys, whether or not the actual surveys would put these surveys within the file, those you claim to be outside the file, that the State claims?

A. Those would be outside the designation.

Q. And would not that depend upon the accuracy of the surveys on the ground, whether these would be outside or in, or the file would be here or here?

office. A. I think so; it could not be shown otherwise without a survey.

Q. In other words the true position of this ground with reference to the file could not be accurately shown without a survey?

A. No, it could not. Ask me that question again; let me answer it. I could state it could be; we could project the delineation and survey it on paper as well as on the ground. Should the survey be made on the ground it would agree with the paper plat, which is more correct than a man can survey on the ground. I can take a designation of ten miles square and survey it more accurately on paper than on the ground.

Q. Then these surveys call for various other surveys; Block 26 No. 2 of the Great Northern reservation and call to run along the line of No. 2 a certain distance, etc.

A. Yes sir.

Q. All of the locative calls or descriptive calls call for certain data which itself must be correct before the land embraced in the bounds can be accurately determined.

The Court: Counsel is arguing with the witness rather than eliciting testimony.

Counsel for defendants: I want to show the want of accuracy in the map.

The Court rules that the question is inadmissible, defendants except to the ruling of the Court and tender this their bill.

Upon re-direct examination by plaintiff witness testified that the 23rd. meridian west of Washington and the one hundredth meridian is the beginning; it is the eastern boundary of the reservation; this is sixty-odd miles west of the 100th. meridian. Did not compare the map; did not compile
38. it. It was not compiled; it was traced from data in the

office. It was not compiled from maps of Scurry, Mitchell and all the other counties. Those maps are on a 2000 vara scale and this is on a 4000. The land in controversy is about 50 or sixty miles west of the 23rd. meridian.

DEFENDANTS TESTIMONY.

Defendants then offer in evidence receipt from W. A. Benson, surveyor of Jack Land District, which is as follows, to-wit:- the answers of Geo. W. Polk, marked "Exhibit A" has been Rec'd. Jacksboro, Jan. 31, 1873, of J. J. Dinkins, the following land script issued to the Houston & Texas Central Railway Co to-wit: 42/5512 to 43/5561, inclusive; also 43/5562 to 44/5581 inclusive. 300 certificates, filed to be surveyed. It also shows Pacific Rec'd W. A. Benson. shown on the Land Office maps when the file was D. J. L. D.

Endorsed. 6) File 6623. Fannin Script. H. & T. C. Ry. Co. Rec'pt. for Certs. Filed Feby. 18/93. Wm. Bramletts, Chf. Clk. 50¢. S. 6792. W. A. Benson's receipt for certs. Nos. 42/5512 to 44/5811. 6623. 79. I think we established

The defendants then offered in evidence the map and sketch attached to the deposition of Geo. W. Polk and J. E. Elgin and referred to by R. M. Elgin. This map by agreement of parties with consent of the Court is to be sent up with the record as a part of same. Marked Exhibit A and as a part of this statement of facts.

Also offered in evidence two files made by R. M. Elgin introduced by plaintiff as stated. and covering all

Defendants then read the depositions of the following witnesses: J. E. Elgin, Geo. W. Polk, C. C. Gibbs, and R. M. Elgin, as follows:-

DEPOSITION OF WITNESS, J. E. ELGIN.

I reside at Rockport, Texas. I am a lawyer.

Yes. I located land certificates for the said Company, the H. & T. C. Ry. Co.

I located Block 97 and did part of the surveying in person. There was a file made and I presume it to have been in writing, as I know of no other method in which it could have been made. I have no copy of the file and the map attached to the answers of Geo. W. Polk, marked "Exhibit A" has been examined by me and I identify it as a copy of the working map used by me. It shows the surveys numbered from 1 to 956. Block 97 is intended to have been covered by the file and the lands of Robert M. Elgin applied to me to survey. It also shows Pacific Reservation as it showed on the Land Office maps when the file was made.

Surveys 1 to 956 I, in connection with Geo. W. Polk and Geo. W. Angle, surveyed all of Block 97. Surveys Nos. 81, 83, 87, and 89 were surveyed by myself and Geo. W. Polk, on the 16th. and 17th. of July, 1873. I think we established the corners on the ground to several of these surveys. On the 16th. of July, I started at a point on the East line of Block 97 as far South as near the western terminus of the center line of the Memphis & El Paso 16 mile reservation as delineated on the General Land Office maps. Mr. Polk worked southward also, but west of me. We camped together that night and the next day worked north and westward, following the course of the Colorado River, and covering all the territory embraced in Surveys Nos. 81, 83, 87 and 89. These were the first two days we worked on Block 97. The work about Section 445, if my memory served me correctly, was done by Geo. W. Angle, as he turned North on the same day that Mr. Polk and myself turned South. Sections 629,

631, 633, 637, 639, 641 and 643, Block 97, were surveyed principally by myself on the last day or two as we worked on Block 97, about August 3d. I had the previous winter put in the most northern corner of Block No. 3, a pile of stone without bearings (i. e. near-by trees or natural object; there may have been some distant mountain bearings), and was the only one who could hope to find the corner, so did the work of making the connection. I think it was our last day's work on 97. Office as far west as the Colorado River. Yes; that is, about all the lines on rivers and creeks were run, and many others, but not every line in every section of the Block. I ran one of the compasses. I left Austin along about the 1st. of June, with working maps and notes of all previous surveys and the Pacific reservation as then delineated, a copy of the Nelson file; i. e. the International & Great Northern Block lying between 97 and No. 2, Houston & Texas Central Ry. Co.; and my own notes of Blocks Nos. 2 and 3, made the previous winter. Went to Waco and started my party from there. Met Mr. Angle and Mr. Polk with another section of the party somewhere west of Camp Colorado. Did some work in Runnels and Taylor Counties. Then proceeded to Block No. 2, Houston & Texas Central Ry. and beginning at a corner I had established on that Block the previous winter, ran a line across the Nelson file made for the International & Great Northern R. R. Co., to Block 97, where we proceeded as detailed. We had five ox wagons, several burros and thirty three men, some mounted and some on foot. There were no settlements west of Camp Colorado in Coleman County, no roads except the old abandoned post of Ft. Chadbourne. We traveled almost entirely across the country which was open generally with little difficulty except at the creeks, where we had to make our own crossings.

Horses, burros, and wagons were the only means of transportation at that time. The country was generally open prairie, much freer from brush and mesquite than at the present day. It took us over a month to get to Block 97, but we did some work in Runnels and Taylor Counties. I do not know where the reservation was marked on the Land Office map. The 16 mile reservation, known, I believe then as "Memphis & El Paso Reservation" was designated on the maps of the Land Office as far west as the Colorado River, when I first became familiar with its records in 1873. I do not remember seeing the 40 mile reservation, or Texas & Pacific Reservations on the maps before the latter part of 1873 or in 1874. If placed on the map prior thereto, I had no notice. I do not know who delineated them, nor how many times. I only know there were certificates deposited with W. A. Benson, at Jacksboro to cover surveys by me. I do not know their number. As to the nature of the file, or what became of the original, I know nothing. It took about three months to make the trip; less than three weeks of actual work was done on Block 97. Field books containing full notes were kept in duplicate. From these, after our return, working maps were made and the field notes taken from this map on file in the Land Office and Surveyor's Office. A map was also made to file in each of these offices. One set of our field books, I think, was deposited with the Houston & Texas Central Ry. Co.; another set, the originals, was retained each by the surveyor making them, Angle, Polk and myself. I kept mine for many years but most of them are now lost or destroyed. The working map that we used I have recently seen and identified in the office of Col. C. C. Gibbs, and I identify the map

attached to the answers of Geo. W. Polk to these interrogatories, marked "Exhibit A" as a correct copy of the same.

I cannot say just when the field notes were filed but it must have been at least as late as October, perhaps November, 1873.

In May, 1873, I was having working sketches made at the Land Office. The Reservation was designated on the maps of the General Land Office by three lines; one center line and a parallel line to it on each side, North and South eight miles from the center line. The center line extended across the State from East to the Colorado River. The North line did not reach quite to the river, and the South line I think crossed it. At the west end of these lines on the Colorado, they were connected by a North and South line connecting the three lines and showing the terminus of the Reservation.

We used a Surveyor compass. No allowance was made for convergence of meridian lines. There was no actual survey made at that time west of the Colorado River, from which the Land Office could have delineated the Reservation.

All of Block 97 was actually surveyed upon the ground before the reservation went into effect. Including the time required to take the field notes to Jacksboro and have them signed, nearly two months was required to draw up the map and make out the field notes.

The last settlement of the line of the present Pacific road was on Hubbard creek. There were even no cattle as far west as Phantom Hill, or the present site of Abilene, but an abundance of buffalo and mustang horses. We saw the last white man at Camp Colorado and the first one on return at Fort Griffith. There were a good many Indians in the country, from whom we were not inclined to seek information.

Our only facilities for locating older surveys and avoiding conflicts, was the data taken from Austin, description of country by older surveyors, and our own skill in finding landmarks. The records in the Surveyor's Office were meager and we depended on the General Land Office for data.

I do not remember the exact calls of the file
or files, do not remember the number
of the
ANSWERS TO CROSS INTERROGATORIES.

I know there was one file in writing by Robert M. Elgin prior to the middle of May, 1873. The Application was directed to W. A. Benson, District Surveyor of the Young Land District. I don't know the exact calls of the file. I don't know the number of the certificates. There were about 500 certificates in all; about 200 in the May file and about 300 others had been previously filed. The file was sent to Jacksboro.

I have no copy of this file. After the location of Blocks 2 and 3 by me in the winter of '72 and '73, Rob't. M. Elgin applied to me to locate 500 sections more for the Houston & Texas Central Ry. on the upper waters of the Colorado and Brazos west and North of Blocks 2 and 3, Houston & Texas Central Ry., and a file was made to cover the territory. I discussed with Robert M. Elgin the territory to be covered which was to be all the territory west of Blocks 2 and 3, and to follow along the North line of the M. & E. Reservation to its western terminus; then lap around it and to the South as far as we found good country and prior surveys would permit. Before the file was made, we discovered a file of the International & Great Northern Ry. covering part of this territory, next to Block 2, and left it out. My recollection is that the Company had some certificates at Jacksboro to cover this work, and 200 more were sent with a file early in May. I do
44. not remember any numbers of any certificates, or the calls

of the file or files, but do remember the territory R. M. Elgin instructed me to survey.

I know nothing of the number of the certificates to which surveys were applied, as I could not remember them and have no data now by which to go.

I do not remember the exact calls of the file or files, do not know how many files were made nor the number of the certificates. I was the deputy of Benson and did the work in the field. My instruction was to locate 500 certificates, covering the territory shown on the map attached to the answers of Geo. W. Polk and marked "Exhibit A". I discussed the matter of the territory to be covered with Robert M. Elgin and the surveys covered that territory. And I used the certificates sent to Jacksboro at that time, and others which I think were at Jacksboro, to cover the work.

Application was made to me as Benson's deputy, to make surveys for 500 Houston & Texas Central Certificates, and the certificates, or about that number, were filed in Benson's office, but what were the numbers of the certificates I cannot say.

Early in the spring of 1873, Robert M. Elgin, spoke to me about these surveys. We several times discussed the location between then and the last of April or first of May. I became aware that the Texas & Pacific Ry. Bill, giving that road an eighty mile reservation, was before the Legislature. When I informed Robert M. Elgin that he would better get in his file and let me work as quick as possible. My recollection is that we then discussed the file and drew up one or more, giving a general outline of the country we wanted to cover; that we could not make the file very specific on account of meager data, but it was sufficiently

definite to identify the ground and so keep others out of the field, and that I would be on the ground so soon that the actual surveys would subserve all purposes. This file was hurried to Jacksboro as quickly as possible. I may have taken it myself, but am not certain, and I was instructed to make the surveys as soon as I could get the necessary field notes and working maps from the General Land Office. This was early in May. The land I was instructed to survey was the land west of the terminus of the Texas Pacific Reservation and a block of the International & Great Northern Ry. lands, and west and north of Block 2 and 3, Houston & Texas Central Ry. and east and north of some old locations on the Upper Colorado River, which I think were Blocks Nos. 25 and 26. I understood this to be the land intended to be embraced in the file.

Early in May the application was made by Robert M. Elgin to me to make the survey of about 500 certificates, 200 of which were embraced in a file made about the same time and the remainder I understood to be in the surveyor's office at Jacksboro.

My memory at this period of thirty years is indefinite. I have a shadowy recollection that I took the file to Jacksboro and filed it in Benson's office, but cannot say. I have the firm conviction that the files and certificates were in the Surveyor's office, but cannot now say how I came by that conviction, whether from seeing them there, or from evidence derived from the ordinary manner of transacting business. I do not know whether original or copy of file was ever filed in the General Land Office.

My survey embracing the 500 certificates in Benson's hands was made from the 15th. of July, to the 4th. or 5th. of August, 1873.

The designation of the Texas Pacific Reservation, as shown on the maps of the General Land Office about the last of May, or first of June, 1873, did not include within the reservation sections 81, 83, 85, 87, or 89. There was no designation on the General Land Office maps at that date which included either sections 445, 629, 631, 633, 635, 637, 639, 641 or 643 within any reservation. My working maps were made late in May by Land Office draughtsmen, and the reservation was shown as in the map attached to the answers of Geo. W. Polk and marked "Exhibit A". I know of no ten mile reservation ever being designated on the maps of the General Land Office. There was a sixteen mile reservation of which the center, the north and south lines were designated on the maps of the General Land Office as far west as the Colorado River, but no further. At the time the files and surveys of Block 97 were made, I know of no other reservation being designated on the maps of that office.

DEPOSITION OF THE WITNESS C. C. GIBBS.

I reside in the City of San Antonio and my business and my occupation is that of Land Commissioner for the lands originally granted to the Houston & Texas Central Railway Company, the Texas & New Orleans Railroad Company, the Galveston, Harrisburg & San Antonio Railway Company, and the Gulf, West Texas & Pacific Railway Company. Yes, I have had connection with the lands formerly granted by the State of Texas to the Houston & Texas Central Railway Company, as the agent for the care and sale of same since January 1, 1889. I have been since that date the

custodian of the records of land titles, archives, etc., pertaining to the land grants and lands formerly owned by the Houston & Texas Central Railway Company. I am still the custodian of said records and they are now in the City of San Antonio, and as stated they are in my charge as Land Commissioner of the lands originally granted to the Houston & Texas Central Railway Company, now the property of Mr. F. P. Olcott.

All I know about the survey and location of Block 97 is from the records of this department. There were files made covering the lands known as Block 97, copies of which I attach hereto, marked "Exhibit B" and "Exhibit C". The files are the same that were offered by plaintiff, and dated May 10th. 1873, and Aug. 5th. 1872. We also have a receipt from the surveyor of that Surveyor's District, showing that the certificates were received by him. I attach copy of the original receipt (marked "Exhibit D") from the surveyor, the original being in the General Land Office at Austin. This is the same receipt heretofore offered by defendants. There is also a sketch showing the location of the lands in said block attached to the depositions of Mr. Geo. W. Polk, marked "Exhibit A", and which is included as a part of this answer, and which sketch, I understand, was made from data obtained from the General Land Office, by Mr. Polk, Chief Clerk in this office, about the time the files referred to were made. This map, I believe, is designated or understood as a "working map" and has been shown to and examined by Mr. R. M. Elgin and Mr. J. E. Elgin, other witnesses who have testified in this case, and identified by them as the map referred to. This map shows the sixteen mile reservation as terminating near the Colorado River. (c) The file referred to, as also the map and sketches, all have reference

to Block 97 and the surveys in question in this suit.

The surveys as shown by the records of this department, constituting Block 97, are numbered 1 to 956 inclusive. All I ever had to do with these surveys was as Land Commissioner of the lands originally granted to the Houston & Texas Central Railway Company and the custodian of the papers in connection therewith since the year 1889.

ANSWERS TO CROSS INTERROGATORIES.

I know nothing personally of the files made or applications to a Surveyor to survey any of the land known as constituting Block 97; I only know what the records of my office show as stated in my answers to direct interrogatories and by the exhibits attached. I can give no personal information as to what was done with the files or applications. I have attached notice of the files or applications and receipt, as stated, marked "Exhibit B", "Exhibit C", and "Exhibit D", respectively. I personally know nothing of the file or application, made by Robert M. Elgin to the surveyor of Jack Land District, W. A. Benson, filed by him in his office May 10, 1873, but have attached copies of same to my answers, marked "Exhibit B" and "Exhibit C". I do not know personally whether it is a fact or not that the surveys referred to being the surveys embraced in plffs petition from 629 to 643 were all located and surveyed by virtue of this file of May 10, 1873. My only knowledge is what the papers show. I do not know, but do not think they do lie within the limits of the file as shown by the map attached marked

"Exhibit A".

I cannot say whether or not application was ever made to Mr. Benson, or any other surveyor to survey any lands by virtue of certificates 27/1643, 43/5544, 43/5545, 43/5546, 43/5547 and 43/5725. All I know is from the file or application and receipt, copies of which are hereto attached, marked "Exhibit B" and "Exhibit C" respectively, calling for the certificates in question.

I cannot state at what date the applications were made to locate the 300 certificates referred to in Benson's receipt. It shows itself, I presume. The receipt shows that the same was in the hands of the surveyor on the 31st. day of January, 1873.

I do not know personally what land was embraced in the file referred to and it would require considerable time and work to make the description necessary at this time.

I cannot from personal knowledge say where application was filed and recorded by the surveyor by whom it was made, or whether or not the original or a copy thereof was ever filed in the General Land Office, but the attached exhibits show the original receipt filed in the Land Office and a copy of the original file from the Surveyor's office filed in the General Land Office.

The survey was made on Block 97 between July 15th. and August 3, 1873. I do not know whether Mr. W. A. Benson is now living or dead, understand he is dead.

I cannot say where the records of his office were kept by him in 1872, or at this time.

I have never examined the records of the Land Office in regard to the designation of the Texas & Pacific Reservation, therefore cannot answer this question.

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I am not sufficiently advised to answer this

question. I presume it would require the records and the exact date on which the reservation was placed there to answer this question, and it would then be but an opinion.

I do not know whether the central line of the Memphis, El Paso & Pacific 10 mile reservation and the north and south lines thereof, were designated on the map of the General Land Office, at the time, or prior to the date of any of the files or surveys of Block 97. There was a 16 mile reservation designated on the maps at the time the survey was made. Block 97 is shown to lie east and north of this reservation. As explanatory, my connection with this department was not until long after these lands had been located and surveyed. I succeeded Major Robert M. Elgin, who had charge and hence all my knowledge and information comes since then.

"Exhibit A."
DEPOSITION OF THE WITNESS GEO. W. POLK.

I reside in the City of San Antonio, Bexar County, Texas. I am Chief Clerk in the Office of C. C. Gibbs, Land Agent.

I have been and am now connected with the lands originally granted by the State of Texas to the Houston & Texas Central Railway Company. In 1873, I was employed as surveyor in making location of said lands in what was known at that time as Young Territory; and at this time as Chief Clerk in the office of Mr. C. C. Gibbs, Land Agent for Mr. F. P. Olcott, the owner of said lands. Mr. C. C. Gibbs, Land Agent, is the custodian of the former records, land titles, archives, etc. pertaining to the land grants formerly owned by the Houston & Texas Central Railway Company. They are now in his possession in his office in the City of San Antonio, Bexar County, Texas. I am Chief Clerk in the office

of Mr. C. C. Gibbs, Land Agent.

In the year 1873, I was employed as a surveyor in the location of the surveys comprised in Block 97, and know that the survey of this block was made on the ground by myself, Mr. J. E. Elgin, and Mr. Geo. W. Angle. Files covering the lands known as Block 97 were made by Mr. R. M. Elgin, formerly Land Commissioner of the Houston & Texas Central Railway Company, both verbally and in writing, to Mr. J. E. Elgin, as Deputy Surveyor. Copies of these files are attached to the depositions of Mr. C. C. Gibbs, marked "Exhibit B" and "Exhibit C" and are made a part of this answer. The originals are on file in the General Land Office. The surveys embraced in these files are those now embraced in Block 97, and are numbered from 1 to 956, inclusive. I attach hereto a sketch showing these lands and mark the same "Exhibit A."

The surveys which constituted Block 97, made in the name of the Houston & Texas Central Railway Company are numbered 1 to 956, inclusive. I was connected with the survey of this block as a surveyor, and assisted in running some of the lines thereof.

I surveyed some of these lands upon the ground. A portion of the party with which I was connected in making these surveys, was organized at San Antonio, and a portion was organized at Waco. The main body of the surveying expedition started direct from San Antonio to San Saba, Texas, and were to join the party from Waco at or near the mouth of the Concho river, but the junction was made on Elm Creek, at crossing of the old Fort Chadbourne and the Camp Colorado Roads. The party consisted of about 35 men, with four or five ox teams. Some of the men were mounted. In this manner

52.

53.

original Block 97. Means of transportation in those days was altogether by wagon and horseback. The country was unsettled. We left San Saba on June 19, 1873; traveled across country and reached the mouth of the Concho river on June 24, 1873; crossed the Colorado River and joined the Waco party on Elm Creek at the crossing of the Ft. Chadbourne and Camp Colorado roads. The party was supplied with sketches furnished from the Land Office. I do not know where those maps and sketches are at this time. I do not know when the reservation was placed upon the Land Office map. I can give no information as to when the Reservation lines were marked upon the maps, or by whom.

The file referred to as having been made by J. H. Dinkens was made at the instance, as I understand, of Mr. R. M. Elgin, the Land Commissioner at that time. I know nothing personally about the receipt purporting to be signed by W. A. Benson. Copy of same is attached to Mr. Gibbs' depositions, marked "Exhibit D".

There were files and applications made by Mr. R. M. Elgin to Mr. J. E. Elgin, District Surveyor, but I cannot ascertain whether or not the certificates mentioned in Benson's receipt were included in the application and do not know where to look for it. The object and purpose of this application, as I understand it, was to hold this unappropriated public domain to be located and surveyed by virtue of the certificates referred to.

Besides myself, the party was in charge of Mr. Geo. W. Angle and Mr. J. E. Elgin, who assisted in making the surveys. The survey of Block 97 was commenced on July 15, 1873, the surveying party being divided into three subdivisions, one in charge of Mr. Angle, and one in charge of Mr. Elgin, and one in charge of myself, there being practically three parties in making the surveys. We commenced work on Block 97 on

July 15, 1873, and completed the survey on or about the 3d. day of August. Field notes, maps, sketches, and other data were prepared. Field notes were all prepared and filed in the General Land Office. There is a map on file in the office of Mr. C. C. Gibbs, from which the field notes were prepared, copy of which map is attached hereto, marked "Exhibit A". The field notes I think were returned to the Land Office some time in the month of November, 1873.

I do not know, nor have I any means of ascertaining how the reservation was designated on the maps of the General Land Office. The map referred to as "Exhibit A" was compiled from working maps obtained from the General Land Office. I am unable to say from what point the projections on these working maps were made.

The ordinary magnetic compass was used in making this survey. No allowance was made for divergence or convergence of lines. I do not know how the designation of the reservation could have been made on the maps at that time with any certainty from data accessible in the General Land Office.

I do not know how much of Block 97 was actually surveyed upon the ground before the reservation went into effect. After making the survey, the notes were not made up until some time during the month of November, 1873.

At the time these surveys were made, the country was absolutely unsettled and the facilities for doing the work properly were not good. I can say nothing in respect to the Surveyor's Offices and records for the care of data in these offices, as I never visited them.

ANSWERS TO CROSS INTERROGATORIES.

The application to survey the lands embraced in Block 97 was made verbally and in writing. It was made by Mr. R. M. Elgin, former Land Commissioner of the Houston &

Texas Central Railway Company. I do not know the date of the application. The application was made to J. E. Elgin, a Deputy Surveyor of Jack Land District. It included all the unappropriated public domain lying between Blocks 2, 3, and 25 of the Houston & Texas Central Railway Co., running northwest for quantity. I am unable to give the field notes. I am unable to give the numbers of the certificates it covered. There was turned over to the Surveyor 500 certificates. He had previous to that 300 certificates turned over to Mr. Benson, Surveyor. He also had 200 certificates filed May 10, 1873, which file will give the numbers. He also had certificates 1601 to 1640, inclusive.

I am unable to say what became of the original file, but presume it is on file in the General Land Office.

Copy of this file is attached to the interrogatories of Mr. Gibbs and Mr. Elgin. The file or application made by Mr. Robert M. Elgin to the surveyor of Jack Land District is the same referred to in Cross Interrogatories 2 and 3.

The records of Mr. Gibbs' office show that the certificates mentioned in these interrogatories covering surveys 629, 631, 633, 635, 637, 639, 641 and 643, were surveyed by virtue of this file, and the application made to J. E. Elgin, Deputy Surveyor. The land covered by the certificates mentioned in the last interrogatory, was not considered as lying without the file mentioned. The file covered all unappropriated public domain that would come within the limits of its area. The land covered by these certificates was unlocated at the time, and it was the intention of the parties making the file to embrace it therein, and it was so located and surveyed.

55. The certificates mentioned in these interrogatories

were among those turned over to Mr. J. E. Elgin, Deputy Surveyor, to be located in territory embraced in Block 97.

Application was made to J. E. Elgin, as heretofore stated. It was made some time in May, 1873. It embraced all the land occupied by Block 97. The survey and location was made by Geo. W. Angle, J. E. Elgin and myself, between July 15, 1873, and August 3, 1873. The certificates which were surveyed and embraced in this file, are referred to in my answer to the 1st. Cross interrogatory.

I have stated heretofore that the application was made verbally and in writing by R. M. Elgin to J. M. Elgin, sometime in May, 1873.

The lands embraced in the file referred to were situated between Blocks 2 and 3, and north and west.

I have no means of ascertaining whether or not the file or application was recorded in the surveyor's office, or whether or not it was ever filed in the General Land Office.

Survey of Block 97 was made between July 15, 1873 and August 3, 1873.

I do not know whether Mr. W. A. Benson is living or dead.

I do not know where the records of this office were kept by him in 1872 or 1873, or at this time.

The General Land Office maps showed that the reservation of the Texas & Pacific Railway known as the "16 mile reservation" ended at the Colorado River. The surveys of Block 97 were made west of the reservation and were not included therein. There was no designation made on the map at that time that would include within the reservation Sections 81, 83, 85, 87 and 89.

The designation of the Texas & Pacific Reservation referred to in the preceding answer would not include Sections

45, 629, 631, 633, 637, 639, 641, and 643.

The center and the north and the south line of the "16 mile reservation" referred to in answer to the 15th. cross interrogatory were designated on the maps of the General Land Office at the time and prior to the date of the files of surveys Block 97. This reservation as stated terminated at the Colorado River, and Block 97 was surveyed west thereof.

DEPOSITIONS OF WITNESS R. M. ELGIN.

I reside in Houston, Harris County, Texas, and am engaged in the printing and stationery business. I was connected with the lands of the Houston & Texas Central Railway Company from the year 1866 to 1891, was Land Agent for the company from 1866 to 1882. G. C. Gibbs is the present custodian of the archives. I have no connection with them whatever. In the latter part of the year 1872 and early in 1873 J. E. Elgin, a deputy surveyor of Jack Land District surveyed for said Company two Blocks of land Nos. 2 and 3 east of Block 97 and other land on the waters of the Colorado. I had a large number of land certificates to be located and the only fields where sufficient vacant lands could be found were beyond the settled portions of the state, was infested by hostile Indians and was almost terra incognita. In discussing the question of making location with him I learned that there was probably a large body of good land west of said Blocks Nos. 2 and 3. I accordingly contracted with said J. E. Elgin as deputy surveyor to survey 500 certificates and pointed out the body of land lying west of said block and east of Block 25 and 26, H. & T. C. Railroad Company and a sufficient number of certificates were placed in his hands or at his disposal to fill the contract. The certificates were all issued to the Houston & Texas Central Railway Company and the transaction was made by me as the Land Agent of said Company about the

1st. of May, 1873, exact date not remembered. The application was made directly to the deputy surveyor verbally. But to prevent some other deputy from going into the same territory it was supplemented by a written file. I believe the file dated May 10th. 1873, a copy of which has been shown me and is hereto attached marked Exhibit A is the file to which I allude.

To the best of my belief now and at the time the file was made none of it is embraced in the 16 mile reservation of the Memphis, El Paso & Pacific R. R. Co. as shown upon the maps in the General Land Office at that time. I have seen a map on file in the office of G. C. Gibbs which I recognized as the map of Block 96 from which the field notes were made and which was therefore called the working map, a copy of which will be made and attached to the interrogatories. That map shows the 16 mile reservation as terminating near the Colorado River as shown by the map in the General Land Office at that time. The Block contains 966 surveys numbered consecutively from 1 to 966 inclusive.

I was the Land Agent, sometimes called the Land Commissioner of H. & T. C. R. R. Co. and the head of the Land Department. The locations were made by me and the surveys under my supervision so far as was consistent. I did not survey the land, was not with the surveying party at any time during the survey. I only made the file, received the field notes from the surveyors and completed and filed them in the General Land Office. I do not remember from what points the entire party started. J. E. Elgin with a part of the outfit started from Waco. They had maps from the General Land Office of surveys supposed to be contiguous and perhaps some little data from the District Land Office at Jacksboro. I do not

58. know what route they traveled; there were no direct roads

to the point of destination and much of the way was perhaps without any road. My advice was to take as few horses as they could get along with, but to take ox wagons and burros, as oxen and asses would offer less temptation to attacks and trouble with the Indians. The only means of transportation was by private conveyance, as wagons, horses, and burros. It was about a month's travel by ox team. They had some maps and sketches from the Land Office. I do not know where they are now; were probably worn out by the time the work was completed.

There have been several reservations. I cannot tell when any of them was marked on the maps of the Land Office. I never saw the reservation created by the Acts of 1873 on any map until after these surveys were made. The surveyors would not have seen or known of it until after they were made, for they left the settlements before or about the time of the passage of the act creating it and had no communication with the civilized world until August 1873. I do not now remember when I first saw it and have no information as to when, how or by whom it was designated or whether it was designated on the map more than once. J. H. Dinkins to whom that receipt was given was in my office and employed while I was Land Agent of the H. & T. C. Ry. Co. and the certificates mentioned therein were filed in the surveyors office for me and by my instructions.

In answer to the third interrogatory I allude to the wild and unknown character of the country in which it was necessary to locate land certificates at that time. So little was known of the vacant territory that it was not only impracticable but impossible to make a file describing minutely and particularly any tract of land. A file or location, if made at all, could only be general in the description, because no one could describe the land of which he knew nothing. So

the selection of the land and the making of the surveys had to be entrusted in a great measure to the surveyor or locator on the ground. A surveyor could not make a survey without a certificate, but he could without a written file; but no surveyor carried papers of such value as land certificates with him on a surveying expedition where they would be exposed to destruction by the weather, loss or other casualty, but he would leave them in his office or other safe place. The certificates mentioned in that receipt were filed in the surveyors office to cover surveys to be made by deputies in the field. I do not recollect particularly, but believe that these certificates and some others were left under the particular control of J. E. Elgin and that it was understood so at the time I state this from the fact that some of them were used by him on a block of surveys made previous to Block 96 and the remainder in it. I do not know that there was any written application or file calling for these numbers, but they were subject to the use of the surveyor and if a written file or designation required more certificates to fill it than were named in the file the surveyor could use these to complete it. I believe this is plainly the object and purpose of the receipt. There were also other certificates in the surveyors office or in J. E. Elgin's hands for a like purpose, among them a certificate No. 27/1640. I was not with the surveying party and do not remember who was in the party except those above, J. E. Elgin, G. W. Angle, and G. W. Polk, nor what each one surveyed. Do not remember how long it took them to do the work. The field notes were filed by me in the Land Office on the 18th. of November, 1873.

60. The first designation filed was that of the original Southern Pacific Railroad, under the Act of August, 1856, which reserved the vacant lands within 2 degrees of latitude across

the State. I was chief clerk in the General Land Office when it was filed and placed the file mark on it. I can only speak of it from memory as I have not seen it for years, but circumstances impress it on my mind. It was a long map several yards long with one straight line running from the Rio Grande River to about where the East line of Taylor County now is, representing the 32nd. parallel of latitude, which is designated as a center line of the reservation. Going east from this point it took a direction a little north of east and I do not now remember its course. There were lines crossing this at regular intervals representing the 100, 101, 102 and 103 degrees of longitude. El Paso which was represented a few miles south of the line of Fort Phantom Hill which was represented on its whole length from the Rio Grande to the Clear Fork of the Brazos. The reservation was first designated on the map in the General Land Office from this map. My understanding has always been that the location of the 32nd. parallel of latitude and the 100th. meridian of longitude was obtained from observations taken by the United States Army officers at Fort Phantom Hill and from that point the projections were made. I probably got that impression from the facts that while connected with the General Land Office from 1848 to 1865 I never heard of any observations being taken to establish the latitude and longitude in the interior of Texas, except that taken at Phantom Hill. I do not know that that observation was ever filed in the land office, but from conversation with Mr. C. W. Pressler, Chief Draughtsman in the Land Office, I know that he used it in compiling his map of Texas. According to late maps of Texas, it looks to me that the 32nd. parallel is at least 10 miles further south than the designation would place it, showing the unreliability of the designation in an astronomical point

of view at least. The center line of this reservation was supposed to be on the 32nd. degree of latitude and was the basis of the later reservation. The next reservation was the 16 mile reservation of the Memphis, El Paso & Pacific Railroad. It was intended or supposed to follow the line of the 32nd. parallel of latitude from about where the east line of Taylor County crosses it. At the time these surveys were made there had been designation of it west of a point just beyond the Colorado River so far as I know or believe. Field notes of a survey of the center line were filed in the Land Office about the year 1860. I cannot say certainly about the year as I have nothing to show and there was nothing to picture it on my memory. The survey I think purported to extend from the east boundary of the State, not a great way from where Texarkana now is, to a point west of and near the Colorado River within a mile or two of where the town of Colorado, Mitchell County, is now represented. I was not connected with the Land Office when the reservation of 1873, known as the 40 mile reservation was made and do not know how or when it was designated or represented on the map. The ordinary surveyor's compass and chain were used in making these surveys and no allowance was made for the convergence or divergence of meridian lines. I do not think there was any data on file in the General Land Office at that time. I never heard of any observations that would justify it. I have no data by which to tell how much of the block was actually surveyed; three compasses were run in surveying it and they had the means of checking each other. From their reports they ran lines enough where streams and other local objects were to be found to make the landmarks to identify the survey with reasonable facility. On smooth prairie destitute of natural or artificial landmarks, it was usual to leave

the running or dividing lines and setting corner for a future survey when it could be done with more safety.

It took about two months to draw the map, make out field notes, take them to Jacksboro, have them recorded and returned to the General Land Office. According to the records of the office of Mr. Gibbs, I filed the field notes and certificates in the Land Office on 18th. of November, 1873.

In my answer to the first and fifth interrogatories I have mentioned the wild and unsettled condition of the country. The country west of Coleman, Callahan, and Shackelford Counties was entirely uninhabited, except by hostile Indians. It was perilous to go even with a large working party into the country and sustenance for a long period could not be carried. The surveyor had to carry his fire arms as well as his compass and keep a vigilant look out for Indians as well as landmarks. The surveyor's offices were kept in a very primitive style and the locator and surveyors had to depend for maps principally on copies from the General Land Office. Railroad Land Certificates were located and surveyed in large bodies and the number of certificates belonging to a particular company would be counted and little attention given to their several numbers, not much more in fact than is now given to the numbers on bank notes. If a hundred certificates were put in a deputy's hands to survey half of them in one place it made no difference to anybody whether he used the lowest or highest numbers, and it so happened that sometimes when particular numbers were mentioned in making a file, other numbers would be used in making out the field notes and those mentioned in the file used for different sections and never noticed, one valid land certificate issued to a company was as good for 640 acres as another.

ANSWERS OF R. M. ELGIN TO THE CROSS INTERROGATORIES.

In my answer to interrogatory third I stated that I made a verbal application to survey the land now known as block 797 which was supplemented by a written file. It was made by me. I do not remember the dates of the original application. It was about the 1st. of May, 1873. It was made to J. E. Elgin, Deputy Surveyor of Jack Land District. It embraced the vacant land between blocks 2 and 3 and block 25 of the H. & T. C. Ry. Co. running north and west indefinitely for quantity. I have not got the field notes. I placed at the disposal of the surveyor 500 certificates. I cannot from memory or the limited data in my possession undertake to name every one of the 500 with the corresponding survey. He had subject to his control the 300 certificates mentioned in Benson's receipt, contained in the sixth interrogatory to which I refer for the numbers. He had the 200 certificates mentioned in the file dated May 10th. 1873, to which reference is made for numbers, besides these he had in his hands or in the surveyor's office 40 certificates numbered from 1601 to 1640.

To second Cross Interrogatory he answers:

I do not know what became of the original file. The copy hereto attached seems to indicate that the file in the General Land Office is only a copy.

To the Third Cross Interrogatory he answers:

It is here attached marked "Exhibit A".

To the Fourth Cross Interrogatory he answers:

That is the document to which I refer in my answers to the last two cross interrogatories.

To the Fifth Cross Interrogatory he answers:-

They were surveyed by virtue of this file in connection with verbal application made to the Deputy Surveyor.

To the Sixth Cross Interrogatory he answers:

In the lights in which the files and surveys were made, the condition surrounding the surveyor and the location, it is not. In a large irregular body of land 500 miles distant that he had never seen and most of which had never been trodden by the foot of civilized man, it is not reasonable to expect a surveyor to run it out with precision and exactness. No man at that day who knew anything about surveying on the frontier would have expected such a thing. Files whether written or verbal were necessarily construed to be in a great measure merely suggestive and the surveyor was compelled to use discretion and allowed great latitude. From three to five per cent is allowed as reasonably excess or deficit in a survey carefully made by compass and chain. Certainly much more latitude is reasonable in a file made at random or by conjecture.

To Seventh Cross Interrogatory he answers:

There were among the certificates placed in the hands of J. E. Elgin, deputy surveyor, to be used in surveying the land included in block No. 97, as stated in my answer to direct interrogatory third and the first cross interrogatory.

To the Eighth Cross Interrogatory I have stated to whom it was made, when made, what land was embraced in the file. My answer to the seventh direct interrogatory states what I know as to the making of the surveys and when made; and in my answer to the first cross interrogatory I state what certificates were filed by me.

To the Ninth Cross Interrogatory he answers:

In my answer to direct interrogatory one and six I have given the facts as to the 300 certificates, named in the receipt. It was made verbally by me to J. E. Elgin, Deputy Surveyor, about May 1st. 1873.

To the Tenth Cross Interrogatory he answers:-
No very definite description was given. It was not possible to do so from the knowledge we had of the country which was uninhabited. The main idea was to take up the vacant land between blocks two and three. We had no means of knowing the distance between those blocks and had to estimate it from such uncertain information as was at hand.

As stated in answers to direct interrogatories, the verbal file was supplemented by the written file hereto attached, which is certified as being recorded and a copy filed in the General Land Office. The whole file was of such notoriety that no locator trespassed upon it until long after it was perfected by survey and recorded field notes. The exact date I cannot give but was in July, 1873, may have been commenced in June.

Surveyed in 1873 under file of three hundred certificates described in Benson's receipt.

To the Thirteenth cross interrogatory he answers:
I do not know. When I last heard Benson which was many years ago he was old, infirm and totally blind.

Yes. The 16 mile reservation according to the ruling of the General Land Office for years before the surveys were made terminated near the Colorado River and was so marked upon the map. The surveys being west of that point not included in it. That ruling was never reversed before these surveys were made to the best of my knowledge and belief and I was pretty conversant with the Land Office affairs up to that time.

My last answer would apply also to sections 445, 629, 631, 633, 635, 637, 639, and 643 as to their being within the 16 mile reservation. I have no map in my possession showing
66. it and have no recollection of its position in reference to
67. it was placed over an old map. There are surveys out on this

any particular survey. I presume that the 16 mile survey is referred to, as I know of no 10 mile reservation. It is a fact that the 16 mile reservation was designated as far west as the Colorado River but not west of that point, and such was noted on the maps in the General Land Office before those surveys were made.

ERNEST VON-ROSENBERG, a witness for defendants, being sworn, testified as follows:-

My position is that of draughtsman in the General Land Office; I have held it since January 1, 1876. I think I am familiar with the records of the Land Office. My business is that of compiling and examining clerk. I know the Texas & Pacific reservation as the maps show it. The only map I know of in the General Land Office showing the date when the Texas & Pacific reservation was delineated is this map of Young territory, dated June 1873; that was compiled by Mr. Kloppenbach. The maps of the office are compiled from the field notes and connecting lines returned to the office. The lines constantly change. After the country is settled up it shows conflicts with the old maps considerably, sometimes. This map is not in use in the Land Office now, and has not been since about 1875 or 1876. I think 1876. There is nothing on it to show when the reservation was placed on it, the date when the reservation was placed on it. The map was not in use until after June, 1873. I know by experience in compiling maps; a map is not in public use until it is finished, and that was in June, 1873. I mean to say it was not in public use until it was finished. I could not tell the time this was put on. I could not testify to that at all; can only say the map was first put in use in June, 1873. Cannot tell from the rulings of the map whether it was placed over an old map. There are surveys put on this

map put on since its making. These were put on; Block
No. Southern Pacific Ry. Co., - this was put on; and
Block No. 2, they were all put on after the map was made;
and survey No. 5 and H. F. was put on later than this, and
Block D. These boundaries of counties were put on afterwards -
the yellow lines. Block B, T. & P. Ry. Co. was put on by
Mr. Kloppenbach. As near as I can remember the Texas &
Pacific reservation was created in May, 1873. I had two
brothers who followed this occupation who left Austin July
6th, 1873; they were out six months surveying the T. & P.
lands.

Q. Look at this red line and say why it is over
the black.

Plaintiff objects because the Court can see it as
well as the witness. Objection is sustained.

Counsel for defendants: My object is to show by
date of the surveys that the map could not have been made
at the time.

The Court: It is immaterial as to when the Texas &
Pacific reservation was actually delineated on the map.

Counsel for Defendants: I take the position that
the act of the Legislature was inoperative until this condition
was complied with.

The Court: I fail at this time to see the materiali-
ty of the testimony as to when it was placed on the map. The
witness can only testify as to the dates of those under the
line. To the action of the Court sustaining said objection,
defendants then and there excepted and tender this their bill.

Continuing the witness testified: No, there is
nothing on the map to show the date. The map of Taylor only
shows the 16 mile reservation of the Memphis, El Paso & Pacific.

68. The different red lines are the 100th. meridian. The 100th.

meridian is the east boundary. Lands in the east boundary of the Taylor County map on the east boundary of the reservation, according to the Taylor County map are west of the 100th. meridian. The north line of the 80 mile reservation would extend far enough to include them; it is west of the 100th. meridian, being the east boundary of the 80 mile reservation. They occupy the same place they occupied all the time on the map, except I think there are two changes. Distance in the changes are about two miles.

Survey made of the land embraced in that map, made of that block and returned to the Land Office was re-surveyed in 1888, or somewhere along there, 1887, 1888 or 1889. About that time the State had appointed Mr. Chalk to go with the surveyor appointed by the owners of the block and had to go with him to classify and see how they were examined. When the surveys were not patented the excess was given to the school sections. That is what you call a block of surveys on that map. Heavy black lines all around indicate block lines.

CROSS EXAMINATION.

I did not go into the Land Office until 1876, January 1st. My brothers started out July 6, 1873 to survey the Texas & Pacific blocks; they were chainmen and flagmen under the employ of the railroad. They left Austin July 6; they stopped at Phantom Hill and went west to the Colorado river to what is now Martin and Howard Counties; they went for the purpose of sectionizing the 80 mile reservation.

RE-EXAMINATION.

No; they went by way of Fort Concho overland. One of my brothers is here; he was one of the chainmen; the other one is away.

The Court admitted the special acts in evidence of 69. 1856, incorporating the Memphis, El Paso & Pacific Railway Co.

and other special acts relating to the matter of this suit, including Railroad Charters, land grants, etc.

The witness further testified that Block D, notes on said map, was returned November 23, 1872; Washington County was returned Feb. 8, 1873; H. & T. C. surveys Nos. 1 and 2, Blk. #2 were returned Feb. 12, 1873; block E. of the H. & G. N. was returned Aug. 9, 1873; block 2, H. & G. N. was returned Aug. 9, 1873; Southern Pacific Survey No. 3, Block No. 1, was returned Oct. 26, 1863; H. & G. N. survey No. 17 and 18, Block No. 7, were returned Oct. 6, 1873; Southern Pacific surveys No. 2, 3, and 4 Block No. 3, were returned Oct. 26, 1873; H. & T. C. survey Block L was returned Jan. 7, 1874; that these all appear plotted on said map, some of which were surveyed and field notes returned and filed in the General Land Office, as stated, prior to the date when said map purports to have been made; and the balance returned plotted thereupon long after its date. It cannot be told from an inspection of the map when the reservation was designated thereupon.

The foregoing statement of facts has been fully examined and the same contains all the material testimony introduced in evidence on the trial of the case, and hereto signed and agreed as such statement of facts and approved by the Court.

T. S. R e e s e,

Attorneys for Plaintiff.

T. D. Cobb, Ashby S. James,

C. R. Kinchen,

Attorneys for Defendants.

The foregoing Statement of Facts examined by me
70. this 18th. day of December, A. D. 1902, with the following

qualifications of all bills of exception therein contained relating to the introduction by plff. of maps or copies of maps from the General Land Office, viz: It conclusively appeared from the map introduced by defendants in evidence in connection with the testimony of the witnesses Polk, J. E. Elgin and R. M. Elgin, and stated by Polk and J. E. Elgin to be a copy of a working sketch used by them in making the surveys in question, that all of the 14 sections of land in controversy were within the Texas and Pacific eighty mile reservation.

R. L. P E N N,
Judge.

(Endorsed) No. 17090. The State of Texas vs.
F. P. Olcott et al. Agreed Statement of Facts. Filed Dec. 18,
1902. Jas. P. Hart, Clerk.