

months of June, July, and August, 1923	1,708.06
To pay Charles L. Black for services as special Associate Justice of the Supreme Court, in the case of Mrs. J. G. Wirtz vs. W. O. W.	72.20
To pay the Butt Company for the over-payment of franchise tax due to the enactment of House Bill No. 13, of February 28, 1923	65.75
To pay the Chicago & Eastern Illinois Railway Co. of Chicago, Illinois, per diem, 1921	4.00
To pay Chas. Romine, sheriff Bosque County, for sheriff's fees in felony cases	301.71
To pay D. F. Williams, sheriff Wood County, for sheriff's fees in felony cases	133.15
To pay G. W. Moore, sheriff King County, for sheriff's fees in felony cases	4.50
To pay W. M. Ellison, sheriff Caldwell County, for sheriff's fees in felony cases	124.30
To pay A. R. Mace, sheriff Lampasas County, for sheriff's fees in felony cases	142.70
To pay D. S. Meredith, sheriff of Gregg County, for sheriff's fees in felony cases	84.15
To pay B. Neighbors, sheriff Gonzales County, for sheriff's fees in felony cases	318.35
To pay Louis Bringman, sheriff Cooke County, for sheriff's fees in felony cases	132.60
To pay Will Rushing, sheriff Robertson County, for sheriff's fees in felony cases	71.25
To pay J. F. Bader, sheriff Medina County, for sheriff's fees in felony cases	146.20
To pay The Investors' Mortgages Security Company, Limited, of Edinburgh, Scotland, for overpayment of franchise taxes 1908 to 1917	9,308.00
To pay The Second Alliance Trust Company, Limited, of Dundee, Scotland, for overpayment of franchise taxes 1908 to 1917	5,056.00
To pay the United States Mortgage Company of Scotland, Edinburgh, Scotland, for over payment of franchise taxes 1908 to 1917	8,084.00
To pay Herman Hospital Estate of Harris County, for payment under protest on an excess valuation, 1923	4,327.38
To pay A. L. Bartley, Bexar County, witness fees for being witness in Ninety-fourth District Court	28.14
To pay, C. O. Harris for services as special district judge of Thirty-fifth Judicial District to service for 14 days	153.30
To pay The Miller Petroleum Company for excess franchise taxes paid, 1922	1,840.70
To pay Onalaska Live Stock Company due for taxes paid in error by said company, 1919, 1920, 1921	32.18

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39th Leg.
1925

To pay W. L. Scott, Wichita Falls, Texas, for services as special district judge of the Eighty-ninth Judicial District to 6 days, 1923	65.70
To pay Manhattan Electrical Supply Company, Inc., 17 Park Place, New York, N. Y., as refund for franchise tax illegally assessed 1921-1923	78.67
To pay Crowell, Geagin & Grant, a partnership, for payment of gross production taxes paid the State of Texas, 1919 to 1921, said payment not being required by law and paid under mistake	546.82
To pay L. R. Crowell, Dallas, Texas, for payment of gross production taxes paid the State of Texas, 1919 to 1921, said payment not being required by law and paid under mistake	128.00
To pay Schauerhammer and Roench, at Bellville, Texas, for witness fees of J. H. Dehnel in State of Texas vs. Foster Bell, assault to murder case	14.56
To pay Two States Telephone Company for services rendered to Court of Civil Appeals of Texarkana, Texas, September 1923 to January 1925	155.00
To pay Rydal Oil Company for payment of gross receipt tax and pipe line tax, overpayment, 1923	93.18
To pay J. B. Dooley for services as special district judge, Dallam County, Texas, 1923	32.85
To pay James W. Bass, Collector of Internal Revenue of the first collection district of Texas, for internal revenue taxes, 1919 and 1920	219.45
To pay A. B. Reed, witness fees, 1923	20.40
To pay Kenneth Turner, witness fees, State of Texas vs. D. L. Payne	9.30
To pay Bruce McLean, witness fees, State of Texas vs. D. L. Payne	9.42
To pay J. A. Johnson, sheriff Dimmitt, Texas, subpoena of witnesses, 1922	5.42
To pay Mrs. Kate Chambers Sturgis and Mrs. Stella J. MacGregor (nee Stella J. Chambers), the only children and heirs at law of the late General Thomas Jefferson Chambers, share and share alike, in full settlement of their right, title, interest and claim whatsoever against the State of Texas, in and to the land out of the Chambers grant in Travis County, Texas, to which the State of Texas now asserts title or to which the State of Texas has heretofore asserted title. Satisfactory and conclusive proof of heirship has been made before the Senate Finance Committee, but upon delivery of the warrant, claimants shall file with the Comptroller certificate of the county judge of Galveston County, Texas, where claimants reside, proof of being the children and heirs at law and the only children and heirs at law of the said Thomas Jeffer-	

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son Chambers, said proof to be in part affidavit of at least three credible witnesses who have known the Chambers family that said named two claimants are the only children and heirs at law of said Thomas Jefferson Chambers, such affidavits to accompany the certificate; and it is further provided that said named parties shall execute and deliver to the State of Texas a good and sufficient warranty deed to be prepared by the Attorney General of the State of Texas, conveying to the State of Texas title in and to said Chambers grant of land in Travis County, Texas _____

Vol 374
Page 204
TRAVIS Co.
Deed Recs.

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Deed Recorded
in Travis Co.
Deed Records
Vol 374
Page 204

20,000.00	
To pay estate of L. Ward, deceased, for losses sustained to cattle in transit to market by reason of the quarantine on account of foot and mouth disease in September, 1924 _____	777.05
To pay J. E. Harding for losses sustained to cattle in transit to market by reason of the quarantine on account of the foot and mouth disease in September, 1924 _____	758.87
To pay William M. Vaughan of Silverton, Texas, for services rendered to the State of Texas for six months during the year 1861 for which he was never paid, being under the command of Captain Sul Ross as a private, and having been mustered out in September, 1861, his services being at the rate of \$25.00 per month, making a total of _____	150.00
To pay World Book Company, for overpayment of gross receipts tax, 1924 _____	720.55
To pay Consolidated Textile Corporation, to refund overpayment of franchise tax, 1922 _____	667.25
To pay Herring-Showers Lumber Company, to refund franchise tax paid in advance for the year ending April 30, 1923, the company having been dissolved before the tax was due _____	82.50
To pay Aherns and Ott Manufacturing Company, Fort Worth, Texas, for refund of overpayment of franchise tax, 1910 to 1917 _____	2,648.00
To pay Lawyers Co-operative Publishing Company, Rochester, New York, for books for the Court of Civil Appeals, Dallas, Texas, Fifth Supreme Judicial District, 1922 and 1923 _____	877.50
To pay Frank L. Huebner, for services rendered as private State police from February 1, 1873 to February 28, 1873 _____	80.00
To pay Troy Smith, Tyler, Texas, for services rendered for five days as special district judge, Seventh Judicial District, 1922 _____	54.70
To pay J. H. W. Williams, Austin, Texas, for services for seventy-eight days rendered as member of the University land board, 1923 and 1924 _____	780.00

TEXAS LAW REVIEW

PROCEEDINGS OF THE
FIFTIETH ANNUAL MEETING
OF THE

TEXAS BAR ASSOCIATION

HELD AT
GALVESTON, TEXAS
JULY 2, 3, AND 4, 1931

JULY 2, 1931—MORNING SESSION

The meeting was called to order at 10:00 o'clock A.M., at the Convention Room of the Galvez Hotel, Galveston, Texas, by the Honorable R. L. Ball, President of the Texas Bar Association.

PRESIDENT BALL: *Gentlemen of the Bar*, it is a great pleasure to me, and indeed an honor, to preside and call to order the Texas Bar Association in its Fiftieth Annual Meeting. We will open the meeting by having the Invocation by Rev. Marius S. Chataignon, of the Sacred Heart Catholic Church of Galveston.

THE INVOCATION

REV. MARIUS S. CHATAIGNON, of Galveston: Our Father who art in heaven, hallowed be Thy name. Thy kingdom come, Thy will be done on earth as it is in heaven. Give us this day our daily bread, and forgive us our trespasses as we forgive those that trespass against us. And lead us not into temptation but deliver us from evil. For Thine is the kingdom and the power and the glory, forever. Amen.

PRESIDENT BALL: We will now have the address of welcome by Honorable Ballinger Mills, of Galveston. (Applause.)

ADDRESS OF WELCOME

MR. BALLINGER MILLS, of Galveston: *Mr. President, Members of the Texas Bar Association, and Ladies*: We all know that this meeting is in celebration of the fiftieth anniversary

Donated
by
Mr. Sneed

sent them down to me. I tendered the first one, and it was adopted. I still think Judge McClendon will agree with me that we made no mistake in amending the bill.

PRESIDENT BALL: That is fine, that is splendid. I wanted you all to know that it was through the coöperation of the members of both Houses, of both the House and the Senate that we were so fortunate in getting those measures through.

The Council invites the attendance of members of the Bar whenever they may meet.

We have the good fortune of having with us Judge Cofer who will give us an address on a little history that will be very interesting. He will give his own subject, because he can give it more satisfactorily than I can. (Applause.)

THE CHAMBERS CLAIM TO THE CAPITOL OF TEXAS

MR. R. E. COFER, of Austin: *Mr. President, Ladies and Gentlemen:* Last August I was at the meeting of the American Bar Association in Chicago. There were some lady lawyer from Kansas there, and Mr. Frank of Dallas and I were so fortunate as to be invited to a dinner given by those lady lawyers from Kansas. After the dinner, one of those ladies had an interesting case to tell about, and they imposed upon the men present to relate some interesting case that they had handled.

I had recently had the claim of the Chambers heirs to the Capitol of Texas before the Legislature, and so I undertook to detail before these Kansas lady lawyers that very interesting story.

The next day we were going up Lake Michigan on an excursion given by the Committee there, and as I passed along the corridor in the vessel I heard someone say, "There he is there he is." And I looked around, and those ladies were pointing at me.

And some Dallas lawyers called me over and said, "What kind of a story is this you have been telling these ladies? They had gotten the story mixed a little bit, and I told them the facts. The Dallas lawyers said they never heard of any such thing. They had not nor have many members of the Association. The story is engaging and may interest you.

The facts are that the only title that the State of Texas has to its Capitol is a deed from two old ladies who live in Galveston, daughters of General Chambers. The deed was written six years ago, and recorded at the Court House in Travis County, and is the only scratch of a pen on any record, anywhere in the world, where Texas has any title to that land.

And they said, "You have got to give that story to the Bar Association." I wrote out a paper in some detail for the McLennan County Historical Society last February. I w

not attempt to read that paper to you here, but will give you briefly some of the facts. I think it is one of the most interesting stories in Texas history, and has never before been recorded. It is certainly the most interesting law case I have ever had.

The two daughters of General Chambers are Mrs. Kate Sturgis and Mrs. Stella MacGregor. Mrs. Sturgis, for a number of years has been a member of the teaching staff of the public schools of Galveston, and is still retained, I believe, at least until recently.

The claim was placed in my hands by the daughter of Mrs. Sturgis, Mrs. Katherine Evans, who is Deputy Clerk of the Federal Court at Houston. She came into my office in 1925, bearing a letter from a very prominent man in Texas, and when I read the letter I felt sure that it was one lawyer getting off a hard proposition on another lawyer, and getting rid of them. He said:

"These ladies have a claim. I think they need a lawyer at the Capitol, and I have recommended you. I want you to take charge of their case and see what you can do with it."

I said, "Ladies, what is your claim?"

And they said, "We are claiming the Capitol."

I said, "Well, you don't make much of a claim. My time isn't so very valuable. I don't mind wasting my time, but I would hate to waste your valuable time with that claim."

Mrs. Evans, who is a very intelligent woman, said, "Don't turn us down. They have all turned us down with that same statement that it is a waste of time."

I knew my friend was just getting them off on me, but I said, "Ladies, I will read your papers."

They had General Chambers's portfolio. They said, "How many days will it take you before you can read them over? We will stay around Austin for a few days."

I said, "I will read them today. Come back this afternoon."

I began to read that portfolio of papers, and I found the most interesting collection of history that I have ever found gathered together in one collection of papers. I had not read thirty minutes until I saw that these women just as certainly owned the Capitol grounds of Texas as I own my home.

That any individual should seriously lay claim to the title to the twenty-five acres of ground upon which the ten-million dollar granite Capitol of Texas now stands sounds so audacious, as to almost immediately convict without further evidence such claimants and their abetting attorneys of having fostered upon an innocent and credulous public one of the monumental jokes of the present generation. More amazing still are the established facts that within the very recent past such claim was not only put forward, but it was sustained by clear and indisputable proofs, that it found favor in the eyes

of the 39th Legislature of Texas at its Regular Session in 1925, and that finally in that recent year of grace the State of Texas acknowledged the superior title of the Chambers heirs to her great State Capitol and did them tardy though incomplete justice upon the ninety-year old claim of their ancestor to Capitol Hill in Austin. Concurrently with this fact, Mrs. Kate Sturgis and Mrs. Stella MacGregor, the only daughters and sole surviving heirs of the late General Thomas Jefferson Chambers, executed their warranty deed to the State of Texas to the land upon which the Capitol of Texas now stands.

It is my purpose in this paper to set out the salient points of this most remarkable claim, accompanied with such of the evidentiary proofs and authorities as brought conviction to the Legislature, and so lifted this ancient "Chambers' claim" from the realm of fiction and romance into the plane of actuality. While the claim was pending before the Legislature, it was the occasion of much banter and merriment. Those who knew nothing of its merits were often ready to condemn the claim unheard. They often assailed it as a fake. The claimants' attorneys were daily greeted with the jocular inquiry, "When are you and your clients going to move into the Capitol?" and similar queries. One member of the House of Representatives excused himself for the day from attendance upon the sessions and stated to some of his colleagues that he would spend the morning in the County Clerk's office of Travis County and make examination of the records. By his attitude, if not by his words, he promised that at the end of that examination, he would soon explode the Chambers Claim and rid the Legislature once and for all of the biennial recurrence of that nightmare. Generally among the members of the Legislature the claim was classed among other notorious fake claims, which appear at each Session and have been made footballs for amusement during leisure hours of the two bodies.

As one of the attorneys for the claimants, who had a very modest part in bringing the claim to a successful issue, I am not reluctant to confess that when the claim was first presented to us by Mrs. Katherine Sturgis Evans, granddaughter of General Chambers, who accompanied her mother and aunt, Mrs. Sturgis and Mrs. MacGregor, to Austin about this business, it sounded most incredible, and we were loath to undertake it. The high character of these excellent women, and the business acumen of Mrs. Evans, who holds the important post of Deputy U. S. District Clerk at Houston, Texas, at once gave color to their claim at least. Others had dismissed them and their claim without consideration of the evidentiary value of the important papers supporting their claim.

A brief examination of the papers not only convinced us that there was merit in the claim, but we soon came to understand why in the years ago such men and able attorneys as Governor O. M. Roberts, Governor J. S. Hogg, and Major Buck Walton labored so assiduously though unsuccessfully to get recognition for General Chambers's claim. Accordingly my firm accepted the employment and undertook the task of again presenting and prosecuting the ancient claim before the 39th Legislature of Texas, which convened in Austin in January, 1925. We did this with much trepidation and misgiving, because the claim had been presented to most every legislature since Texas became a State, only to meet with disapproval.

The record shows that Governor Roberts presented the claim to several legislatures. He was convinced of its justice, because its merits and the evidence had been before him when he was Justice of the Supreme Court of Texas, in a case to which I shall hereinafter advert. Moreover, it seems that the Legislature gave scant attention to Governor Roberts and his very able written briefs and arguments. We discovered copies of these briefs and arguments in the portfolio of General Chambers's papers, and found them to be of the greatest value in our efforts. Governor Roberts never ceased in his efforts, first for his friend, General Chambers, and afterwards for the latter's two daughters, Mrs. Sturgis and Mrs. MacGregor. I have been told by some old citizens of Austin, observers of many sessions of the Legislature, that Governor Roberts in his old age spent days and days of the sessions walking back and forth from one house to the other with his brief case in hand, working earnestly in behalf of the Chambers claim, but only to meet with failure in session after session from the members, who refused to investigate the merits of the claim.

I believe that Governor Roberts made the mistake possibly in conceding that the claim was barred by limitation, if I am permitted to criticize the efforts of so great a man and lawyer. It seems that Governor Roberts conceded that the claim might be barred and appealed to the Legislature to waive limitation and pass on the claim on its merits. He would argue the Sovereign State could not afford and ought not to rely upon limitation against two women, who had no forum in which to bring their plea against the State. However, the members apparently seized upon limitation as a defense and uniformly made short shift of the measure. At any rate, Governor Roberts's long fight before the Legislature continued up to his death and ended unsuccessfully with his passing.

When the two heirs and daughters of General Chambers then turned for assistance to Governor Hogg, who, after his retirement from the office of Governor, was then practicing

law in the Capital, he remarked to them in his plain, blunt manner, that if they would take and act upon his advice, he would take their case, otherwise he would not. He said he would under no circumstances press the claim before the Legislatures; that he would not go fawning like a sycophant before the members of the two Houses begging them to do justice. He said he would only represent them in court.

Here, however, the difficulty arose that the State cannot be sued without its own consent. The Legislature had not only rejected the claim but had also consistently refused to give consent to General Chambers and his heirs to sue the State in its own courts. Sometimes I wonder at our adherence to this doctrine, that the State is not amenable to suit. It is a part of the ancient maxim of the Common Law that the King can do no wrong. The United States Government as long ago as 1857 abandoned this sovereign prerogative and established a high Court of Claims, where the citizen having cause of action against the Government could bring suit thereon and assert his rights like a free man. But the Sovereign State of Texas has never remedied this gross injustice and anomaly of the Common Law, and even to this day closes the doors of its own courts to its citizens upon their claims against the State, just as well as unjust, except upon consent given by the Legislature to sue.

Since the Legislature would not give consent to the Chambers heirs to sue, Governor Hogg conceived the idea of bringing the issue before the courts in a unique way. He advised the two daughters of General Chambers that if they would enter upon the Capitol grounds and take possession and build a log cabin and move in and exercise proprietary rights, he would defend them against any legal action the State might take to oust them. In this way he contemplated getting the merits of the old, long standing Chambers claim before the court for adjudication. Mrs. Sturgis and Mrs. MacGregor, gentle ladies that they are, were unwilling to be the actors in so spectacular a proceeding. So this opportunity passed.

Before this, that great and profound lawyer, Major Buck Walton, who was assisting Governor Roberts with the claim, conceived the idea of getting the claim before the courts in a novel manner, as is disclosed by a letter written from Austin to Governor Roberts by Major Walton, while the former was spending the summer at Marble Falls. The letter recites that at last an opportunity had arisen to get the Chambers claim before the courts; that the State of Texas had filed a suit in the District Court of Travis County for Sand Island, lying in the Colorado River within the city limits of Austin; that he had prepared and filed in this a plea of intervention in behalf of the Chambers heirs, laying claim to the title to this land and thus affording an opportunity to vindicate the Chambers

title under the same Mexican land grant, covering the entire "Government Tract" of land of which the Capitol grounds are a part. After this intervention was filed, the State for some reason, perhaps rather than meet the issue with the Chambers claim, discontinued the suit. Thus failed this well conceived idea, and the hope of the heirs again rested with the Legislature. Though the claim was presented at most every biennial session, little progress was made with the claim until in 1924 preceding the convening of the 39th Legislature in January, 1925.

At this time Mrs. Katherine C. S. Evans, daughter of Mrs. Sturgis, and granddaughter of General Chambers, determined that she would marshal the evidence again and again present the ancient claim, then almost ninety years old. Accordingly she engaged attorneys and they prepared for the legislative battle which followed. They filed the claim for \$100,000.00 and prepared to sustain the same by proof and exact facts.

The interesting evidence, facts and law, upon which the claim was sustained before the Legislative committee will now be outlined and presented with sufficient fullness to make clear this remarkable claim. The details will read like some romance from some far off Graustark. It is difficult to conceive that such a story could be unfolded in our very midst and as a part of the current annals of our own State in the prosaic and recent year of 1925.

The following is the genesis of the Chambers claim to the Texas Capitol, and outline of the evidence sustaining the same.

In his early manhood and prior to the Texas Revolution against Mexico, General Thomas Jefferson Chambers went to Mexico to practice law. He was naturalized as a Mexican citizen. He was well educated, a talented lawyer, versed not only in the Common Law of England prevailing in our American States, but also in the Spanish laws and the Civil Law prevailing in Mexico. He spoke Spanish fluently, and thus equipped, a career of great public usefulness soon opened out before him in addition to the splendid private practice which quickly came to him.

At that time Texas was a part of the Mexican State of Coahuila and Texas, and, as such, a part of the Mexican Confederacy.

The district lying north of the Rio Grande known as Texas, having been opened to colonization, was rapidly being settled by English speaking people, largely from the Southern States of the American Union. These English speaking people were never satisfied with the strange Mexican laws founded upon the Civil Law derived and brought from Spain. Especially did they chafe at the absence of a jury system. To them the ancient common law jury of twelve men was a cherished institution, as it is and ever has been in colonies settled by English-

men. This discontent grew and foreboded the Texas Revolution of 1835.

Young Chambers was chosen to represent the Texans at Monclova, capital of the State of Coahuila and Texas, before the Congress of the Mexican State. It appears that the Mexican Congress, scenting the rising tide of dissatisfaction and revolution across the Rio Grande, became willing and desirous of pacifying the Texans by according to them an administration of laws in the District of Texas, patterned after the English system and especially providing for jury trials. This was in accord with the constitution of Coahuila and Texas. Article 192 of said constitution provides that "one of the main objects of the attention of Congress shall be to establish the trial by jury in criminal cases, to extend the same gradually, and even adopt it in civil cases, in proportion as the advantages of this valuable institution become practically known." Laws of Coah. and Texas, p. 339.

In compliance with this constitutional provision, the Congress enacted decree No. 277. By it Texas was formed into the "Superior Judicial Circuit of Texas." Trial by jury was directed; the office of Superior Judge was created, naming his qualifications, etc., and said Judge's salary was fixed at \$3,000.00 per annum, payable in vacant land at the rate of \$100.00 per sitio (league).

This act or decree was signed by the Mexican Governor, Villascenor, on April 17, 1834. Laws of Coah. and Texas, p. 270. One of the very last acts of this Congress was the Decree No. 286, of date May 5, 1834, which provided that "during the approaching recess of Congress the executive may appoint provisionally the Superior Circuit Judge of Texas, mentioned in the law relative to jurors without adhering to the provisions of Article 17 of said law in respect to making that appointment." Laws of Coah. and Texas, p. 276.

Following this, Governor Villascenor appointed Thomas Jefferson Chambers as such Superior Judge of Texas, issuing to him his commission dated at Monclova, June 16, 1834. The commission was written in Spanish and recited that: "I have thought proper to appoint him provisional Superior Judge of the Circuit of Texas, for the administration in all its extent, according to the jury law of the 17th of April past."

General Chambers at once entered upon his new office. He found it necessary to work out the new proposed system of jurisprudence to be applied to the large "Circuit of Texas." He prepared an elaborate act, which has come to be known as the "Chambers Jury Law." It was much more than a jury law, and included a comprehensive system of practice which became the foundation of the Practice Acts now prevailing in the Texas courts. Thus, to General Chambers belongs the credit of bringing to Texas the jury system and substituting

the English for the Spanish judicial system in our courts. Much interesting biography of General Chambers could be recited in this connection. But we come back to our subject.

Being entitled under this commission to thirty leagues of land, General Chambers began to locate the same and perfect his title thereto. The heirs are in possession of these title papers, constituting what is referred to herein as the Mexican Land Grant. It is a copy from the General Land Office of Texas, in Spanish, accompanied by a translated copy in English, duly certified, showing titles to and rights of possession of several tracts (the Government Tract included) amounting in all to about twenty-nine and one-half leagues of land.

This interesting document, now old and falling to pieces, contains:

1st. The application of Chambers to the Governor, Villascenor, under date of July 29, 1834, as follows:

"The citizen licenciado, Thomas Jefferson Chambers, Superior Judge of the Circuit of Texas, with due respect before your excellency, I represent that, desiring to proceed to my circuit, with the object of entering upon the discharge of the duties of my office and it being necessary to arrange the mode of receiving my salary, in order to subsist, which salary I am to receive in lands, according to the law relating to the matter. I request your excellency to deem proper to appoint a commissioner, and in his default, any of the alcaldes of Texas, to issue the corresponding titles, and I will receive thereby favor and justice."

2nd. The decree of the Governor thereon, as follows:

"Let the petition be granted, and for that purpose, I appoint the citizen, Ira R. Lewis, and in his absence, any alcalde of the municipality in whose jurisdiction the land for which the petitions may be, to issue the corresponding titles to him according to the laws. Let there be given to the party interested a copy of his petition, and of this decree, that by applying with it to the Commissioner, the consequent effects may result." Copy given July 30, 1834.

3rd. A designation of the lands to the Commissioner on the 31st of July A.D. 1834, next to the last tract of which was one of "eight leagues on the eastern margin of the Colorado river, near the foot of the mountains."

4th. A reference to the empresario for his consent, and consent by Robertson, to locate the lands within the colony of the Nashville Company.

5th. Application to the Commissioner by Chambers for possession and title to the tract selected on the Colorado River, at San Felipe, June 18, 1835.

6th. The title issued by J. R. Lewis, on the 20th of June, 1835, at San Felipe, being the last one issued for the several tracts. It recites the authority and object of his commission;

the designation of the land by Chambers; that it is vacant; that he had had it surveyed scientifically, setting out the boundaries of the survey; that he placed and put Chambers in possession, real and true, of the aforesaid land, and granted and conferred the same to him forever, etc.

7th. Order of J. P. Borden, Commissioner of the General Land Office, to Ira R. Lewis, to deliver over to General Chambers the original titles that belong to the General Land Office, to be by him delivered to the said Borden, in accordance with the joint resolution, passed December 14, 1837. This order was dated at the City of Houston, March 30, 1836. (The joint resolution referred to, provides, "That it shall be the duty of every person or persons, who may have in his or her possession, or control, any titles or documents whatever, which relate to lands, and which by the laws now or hereafter (heretofore) existing in Texas, have been and are considered archives, to deliver the same to the Commissioner of the Land Office, on his order, within sixty days after the final passage of this act.") Hart Dig. Art. 1385.

8th. The report of said Ira R. Lewis to the said Borden of the titles belonging to General Chambers, including the one on the Colorado, and covering the site of the present City of Austin; and reciting their delivery to Chambers in pursuance to this order, dated Matagorda, January 20, 1840.

9th. Certificate of S. Crosly, Commissioner of the General Land Office, and of the Spanish Clerk, authenticating the foregoing as copies of the original on file in the office, dated at Austin, November 4, 1856.

10th. Receipt taken by Ira R. Lewis from Chambers reciting the delivery of the certain titles, the eight leagues on the Colorado included, dated January 20, 1840, purporting to be a duplicate, and certificate of John P. Borden that he had received in his office the documents set forth in the receipt, February 7, 1840.

The foregoing documentary evidence, comprising the famous Chambers Grant, is analyzed and set forth in detail just as it appears in *Chambers vs. Fisk*, 22 Tex. 504-537, in order that the authentic details of the remarkable Chambers Claim may appear to the reader. General Chambers must have been a most careful and painstaking lawyer to have given such careful and exact attention to the details of his title. And as we shall see, this carefulness on his part stood him in good stead when his grant and titles were afterwards challenged in the courts.

General Chambers knew Texas well. Doubtless, the location on the banks of the Colorado appealed to him for the same reasons that caused Mirabeau B. Lamar to choose the same location for the Capital of Texas; and caused him as he stood upon Capitol Hill and looked down the valley between

the hills which is now Congress Avenue, to dream dreams, and to fancy in his imagination the sweep of empire along that avenue yet to take form.

At any rate, the violet crowned hills of the Colorado appealed to General Chambers, and he located and had surveyed "scientifically," as his written muniments aforesaid shows, eight leagues of his grant on the banks of the Colorado right where the village of Waterloo later appeared, and still later the burnished minarets of Austin, the permanent Capital of the Republic and the State. The official map of said location is now in the archives of the General Land Office Building in Austin, and shows precisely the location of the eight leagues of land in Travis County, and which includes the Government Tract.

Other locations under the grant were made in other parts of the State, particularly in Chambers County, named for General Chambers. There today, near Anahuac, the County seat, stands the decaying remnant of the old Chambers homestead, called Chambersia. Autobiographical notes of the General indicate the desire of his heart to have a winter residence in Chambers County near the coast, "where Mexico's Gulf tells to its shingled beach, its sea blown tales in accents soft and low," and to have a summer hacienda on Mount Bonnell in Spanish fashion, after the manner of a Spanish grandee, and near where today is pointed out the rock where the Indian maiden and her lover leaped into the depths below to escape their pursuers and vindicate their honor. Thus, our talented and besides romantic General prepared to make annual comparison of the grandeur of "old ocean's purple diadem" with the violet beauty of the Colorado Mountains, "where the flowers ever blossom and the beams ever shine." Which would have stirred his romantic soul the more, we wonder?

General Chambers's grant and titles were vigorously assailed and disputed by other claimants of the land, among them Josiah Fisk, for whom the village of Fiskville, five miles north of Austin, is said to have been named. In fact, the people derided the Chambers title, and the State Government apparently gave little heed to it. Spanish land grants were not in favor. It therefore became necessary for Chambers to vindicate his titles and claims, and he brought an action of trespass to try title against Josiah Fisk and a number of other defendants to recover the eight leagues of land lying at the foot of the mountains on the east side of the Colorado River, in Travis County, as located under his Mexican Grant.

The case, entitled T. J. Chambers vs. Josiah Fisk, et. al., was tried in the District Court of Williamson County before Hon. Nat M. Burford, trial judge. The court held the Chambers grant void and excluded the title papers hereinbefore outlined from the jury. A verdict and judgment for defendants

necessarily followed. Thereupon, General Chambers appealed to the Supreme Court of Texas and brought his cause before that high tribunal. In that Court, General Chambers appeared for himself along with his counsel, J. W. Harris. John Hancock, the well known Austin lawyer, and the widely known Andrew Jackson Hamilton, sometime Attorney General and Governor of Texas, appeared for Fisk and others, the defendants and appellees.

The Supreme Court, in an opinion by Justice Roberts, the old alcalde, afterwards Governor of Texas, and Professor of Law in The University of Texas, reversed the judgment of the lower Court and in an extensive and very thorough and able opinion, reported in the 22nd Texas Reports at pp. 504-537, sustained the title of Chambers and his famous Mexican Land Grant, as evidenced by the papers aforesaid. After a masterly review of the case, Justice Roberts concludes the opinion in these words:

"We have arrived at these conclusions upon the main questions at issue, because we have not been able or willing to repudiate the right of what was then our own State, Coahuila and Texas, to the ownership of her vacant domain, and her right to dispose of it, as attempted by her in this case, in accordance with the rights assumed by her in her constitution and laws, virtually and plainly recognized by the Federal authorities in 1830, and never sought to be controlled or prevented, except on reasons of Federal policy, in reference to the introduction of colonists from the United States of the north, and then only in 1835, when the overgrown usurped power of the general government was on its march to the annihilation of the States (see Kennedy's History of Texas, pp. 96-113); and because we are not prepared to deny the right of the State to establish a system of judicature adapted to the wants, principles and intelligence of her Texas citizens. The judgment is reversed, and the cause remanded."

The opinion is worthy of study not only of lawyers but of students of history. It gives a splendid outline of the frame and structure of the government of the Republic of Mexico and of its Federal system and the powers of the Federal Government and of the States, respectively.

Thus was General Chambers's title vindicated by the judgment of the Supreme Court of Texas. By the award of this highest tribunal of the State, the princely domain of eight leagues of 35,427 acres became his. I wonder if he did not stand on the top of Mount Bonnell at eventide and cast his eyes to the east so far as he could see, and gaze over this domain of his, as fair as met the gaze of that other patriarch Abraham from the top of Mount Moriah. To the right lay the Government Tract and the Capitol grounds of the State.

All this and more were embraced within the domain which the Supreme Court held belonged to Chambers.

But that was in 1858. There was great political unrest in the land. The Civil War came on soon after, in 1861. General Chambers was assassinated in 1865. His business was heavily involved and in confusion. Others were in possession of his lands. His daughters and heirs were never able to realize the fruits of their father's legal victory in the courts. So they took up the task of seeking recognition and settlement at the hands of the Legislature.

On January 4, 1839, the Congress of the Republic of Texas passed an act to locate the Capital of Texas. The Commissioners, appointed under this act, selected the present site of Austin, where then stood the very small village of Waterloo. One history gives its population as forty souls. President Lamar is said to have influenced the decision, as we have mentioned before, and it was announced March 23, 1839.

An act of Congress was then passed directing the condemnation of the "Government Tract" and appropriating \$15,000.00 to pay such judgment as might be given in the proceeding. This condemnation proceeding was instituted before the County Judge of Bastrop County, and judgment rendered therein on April 3, 1839. The courthouse at Bastrop was burned in about 1885, and all the records destroyed, including the record of the condemnation proceeding. Such record was never transferred to the new County of Travis. So perished all record evidence of title in the State.

Strange to relate, among General Chambers's papers was found a certified copy of this condemnation proceeding, which Governor Roberts had the forethought to obtain, in 1887. This illustrates the care and attention Governor Roberts was giving the claim. The two daughters of General Chambers thus became possessed of this valuable document. In the hearing before the Senate Committee in 1925, when this instrument was produced before the Senators, it was a most dramatic moment indeed when it developed before them and they came to know that the elderly refined daughter of the General held in her hand and possession the only written evidence of the State of Texas to its Capitol.

It was pointed out that this condemnation was brought against claimants under headrights, inferior and subsequent to the Chambers Grant and location. General Chambers and his grant had been ignored and he was not made a party to the court proceeding. The Texas Government officials then seemed to think very little of Mexican Land Grants. The Supreme Court had not then spoken as it did twenty years later in *Chambers vs. Fisk*. We are led to wonder what results might have followed if this case had been decided in 1838 instead of 1858.

Since General Chambers was not a party to the condemnation suit, it followed upon elementary principles that he was and now his heirs were in no way or manner bound thereby. As he had not parted with title voluntarily by deed and as the State had not asserted its right of eminent domain against him, title remained in him and his heirs. Then when the Supreme Court in 1858 upheld his grant he stood seized with as perfect a title as the law is capable of bestowing. What is more, his title had been through the mill and had stood the acid test and had the seal of approval of the highest court, a thing very few titles have.

The omission of General Chambers from the condemnation proceedings at Bastrop was at once the strength of his claim and the weakness of the State's title as against the Chambers claim and title.

The State was thus left with limitation as its only defense. The briefs and arguments of Governor Roberts before the Legislature in his latter years in behalf of the Chambers heirs seem to concede that the claim was barred. His argument was upon the high ground that the State should waive aside limitation and hear and decide the case on its merits.

This admission and concession were fatal. The uninformed legislators were loath to believe there was anything to the claim, and since so great a lapse of time had passed, they were willing to rely upon limitation. At least, the claim failed to gain recognition, and in 1925 it was about ninety years old, when presented to the 39th Legislature. It was hopelessly barred and stale in the minds of practically all the members and most other persons. Therefore, it was very difficult for the Legislature at first to see any merit in or basis for the claim against the State. The disposition of this 39th Legislature seemed to be to treat the claim as previous legislatures had done.

However, when the cogent evidence herein outlined was produced by the two gentlewomen and their attorneys, the thoughtful members of the Senate Finance Committee comprehended the strength of the claim. However, some of them seemed willing to fall back on limitation and asked the effect of the ninety years lapse of time.

This defense was answered by the decisions of the Supreme Court of Texas in the case of:

Stanley vs. Schwalley, 85 Tex. 348, and,

City of El Paso vs. National Bank, 96 Tex. 496.

The first of these decisions was rendered by Chief Justice Stayton, and the second by Justice Williams. While the Supreme Court of the United States reversed the Stanley case (147 U. S. 508: 162 U. S. 255) and held that the United States as a sovereign could rely upon limitation, yet the Texas cases established the juster and more humane rule as applicable to

the State of Texas, as expressed in the 8th syllabus of the report.

"Where limitation begins to run.—Limitation runs when the right or cause of action accrues and not before. This right does not exist unless facts exist which authorize the owner to sue the party aggressing upon the property claimed." 85 Texas, p. 349.

In the course of the opinion, Judge Stayton uses this expressive language:

"For it would be contrary to reason to hold that it was the intention of the law making power that a right should be barred by failure to bring an action within a prescribed time, when at the same time right to bring an action was denied." 85 Texas, p. 363, near bottom.

The State, through its Legislature, had not only refused the Chambers claim through three generations, but had also consistently denied the right to sue the State on the claim. Accordingly, the plea of limitation was met and answered by the above Supreme Court decisions.

Did the Chambers heirs own the Capitol Building?

This point was never decided. A member of the Senate Committee during the hearing asked this question. He had in mind the plea of Improvements in Good Faith, under the Statute, now Texas Rev. Stat. 1925 Arts. 7393 to 7401, inclusive.

Under these statutes, where one man builds a house on another's land in good faith, the court rendering judgment for the true owner of the land is required to value the land and the improvements separately, and provide that the plaintiff may in one year pay into court for the defendant the value of the improvements. If the plaintiff fails to make such payment, then the defendant may within the next six months pay into court for the plaintiff the value of the land, and then plaintiff may not have a writ of possession. And if neither makes such payment, then plaintiff may recover both land and improvements. See the provisions in full in Rev. Stats. Tex. 1925, Title 124, Part 2, Art. 7393.

In such case, however, the improvements must have been erected in good faith, as the statute requires, and it appeared that in 1884, when the cornerstone of the Capitol was laid, the Chambers claim was then before the Legislature and had been at most every biennial session. So that the Capitol was built with full notice, and as against the Chambers heirs, the plea of improvements in good faith could not be sustained.

In this situation, the title to the improvements as well as the land appeared to rest in the two daughters and heirs of General Chambers. Their right and title appeared clear. The Supreme Court had upheld their father's grant and location. The same tribunal had answered the defense of limitation.

The statute cited seemed to settle the point, and the improvements also belonged to them.

The Senate Committee arose and was ready to report upon the evidence in favor of the Chambers heirs.

THE SUCCESSFUL HEARING IN 1925

After their many rebuffs and failures, the Chambers heirs, Mrs. Sturgis and Mrs. MacGregor, had determined to make a final effort in 1925 to get recognition from the 39th Legislature, and attorneys were engaged to present the case. It was determined to present the claim to the Senate and, accordingly, the claim was filed with the Senate Finance Committee, of which Senator John Davis of Dallas County was Chairman. One hundred thousand dollars was asked by the heirs.

As before, the committee was disposed to view the claim lightly, and it was difficult to get a hearing. The ladies were insistent for a hearing, and finally Senator Davis granted them one hour's time to present their claim to the next meeting of the committee.

Mrs. Sturgis and her daughter, Mrs. Evans, accompanied by their attorney, appeared before the committee at the appointed time. Some of the Senators were inclined to treat the hearing as a perfunctory proceeding and were anxious for the hearing to be over. Their impatience was appeased by the promise that the presentation should not exceed the hour's limit. Within that time the evidence and documents hereinbefore outlined were presented and in sufficient detail to make them clear, and the holdings of the legal authorities stated. At the end of the hour the committee arose apparently convinced of the justice of the claim. Senator Davis, the Chairman, called the women and their attorney and, addressing them, said: "Well, ladies, I have been greatly surprised at the testimony offered. I want to apologize for any impatience manifested, because I am inclined to believe that you own the Capitol, and I think the committee will recommend the settlement of the claim if the amount can be agreed upon." The Senator indicated that in his opinion \$40,000.00 would be satisfactory to him and, he thought, to the committee. This sum was tentatively agreed upon and the committee was ready to report.

The Austin papers published the sensational item that the Senate Committee had recognized and agreed to allow the Chambers claim. The next morning, when Senator Davis reached his desk, two young women of Austin were waiting for him. They were laboring under some excitement and stated that they had read the newspaper account of the allowance of the Chambers claim; that they were granddaughters of James Rogers; that they had always understood in their

family that they had some kind of a hold on the Capitol, but didn't know what it was; but that if the Chambers claim was good, then their grandfather's claim was better than it, for he had come to Waterloo two years before Chambers.

Senator Davis informed these ladies that he had been so surprised at the development of the Chambers claim that he was ready to expect anything and would accord them a hearing. He did so and notified the attorney for the Chambers heirs.

When this hearing came on, the two Rogers heirs were ably represented by attorney. He made a forceful presentation of the claim. At the conclusion of his argument, a motion was made to reject both claims and let the courts decide between the Chambers and Rogers claimants. The attorney for the Chambers heirs asked for and was accorded the privilege of making a reply. Thereupon, he pointed out that in the Bastrop condemnation judgment said James Rogers was a defendant and \$3,000.00 of the \$15,000.00 appropriation was awarded to him. His heirs claimed he had never been paid this judgment. They are doubtless right about this. There is no record to show they were paid. Instead it appears that shortly after this condemnation General Chambers filed his Land Grant in the General Land Office on February 7, 1840, giving public notoriety to his paramount claim and title.

Thereupon, the committee excused everybody, and after the Executive Session announced its decision in favor of the Chambers claim, and fixed the amount at \$20,000.00. Thus, the only effect of the Rogers claim was to cut the Chambers allowance from \$40,000.00 to \$20,000.00.

The Chambers heirs decided, nevertheless, to accept this amount, and so the Senate Committee made the claim an item in the Miscellaneous Claim Bill, which was reported in a few days to the Senate.

When the bill and committee report came before the Senate, it was sponsored by the Committee Chairman, Senator John Davis. As soon as the Chambers item was reached, the Senator was bombarded with many questions from all parts of the chamber. He patiently answered these and announced that when they were through he proposed to seriously present the Chambers claim. He did this in an able argument presenting the facts and law in support of the claim as herein outlined. He concluded in substance by stating that the evidence was so conclusive that if the claim were voted down, he would offer immediately a resolution giving the Chambers heirs the right to sue the State, and that, in his judgment, as a lawyer, the State had a chance to settle a very dangerous claim for a small sum, because it seemed that consent to sue could no longer be refused after such a showing of merit, and

he was inclined to think that at the end of an action of trespass to try title the two Chambers daughters would come marching up Capitol Hill with the sheriff in front of them armed with a writ of possession to take over the Capitol.

The Senate was convinced, and when the vote was taken, the Chambers claim had won in the Senate by practically a unanimous vote. It was made an item in the Miscellaneous Claim Bill, and provided that these two gentle ladies should make formal proof of heirship before the County Judge of Galveston County, and should execute a warranty deed to the State of Texas.

The bill then went to the House of Representatives. It was near the end of the session and impossible to get a hearing before the full committee. The Representatives were uninformed as to the merits of the claim, and many of them biased and prejudiced. When the Senate Bill came on the floor a motion was made to strike out the Chambers \$20,000.00 item, and after a spirited discussion this motion prevailed. This was not the first time the Chambers claim had passed in one House and failed in the other. It seemed that the claim had met its usual setback.

The Senate refused to accept the amendment and asked for a free conference committee. Thereupon, the Chambers heirs and their attorney went before this conference committee. The House members, as well as the Senate, heard the evidence, were convinced, and placed the Chambers item back in the bill, and the conference committees reported to the two Houses. The Senate speedily adopted the report without dissent. In the House the bill had unrelenting enemies, and they sought to defeat the conference report, the rules not permitting its amendment. There was a warm debate and contest, but the conference report emerged triumphant and was adopted by a majority vote.

The bill then went to the Governor, Mrs. Miriam A. Ferguson. She agreed to sign the bill, and did so with a gold fountain pen provided by the attorney for the Chambers heirs, and so the measure became a law.

These legislative proceedings appear in full in the Senate and House Journals of the 39th Legislature, 1925.

In keeping with the stipulations of the bill, due proof of heirship of the two daughters was made before the County Judge of Galveston County. Their attorney drew up the warranty deed, and same being approved as to form by the Attorney General, Hon. Dan Moody, was sent to Galveston for execution. There, on March 25, 1925, said deed was duly signed with the same gold pen the Governor had used in signing the bill. The pen was then placed in the Rosenberg High School Museum, labeled, "The pen with which the Chambers heirs deeded the Capitol to the State of Texas."

The duly executed deed was then returned by the heirs to their attorney, and by him delivered to the State Comptroller, and warrant for the \$20,000.00 received and transmitted to the two dear old ladies. The long ninety-year-old fight for recognition was over, and the two daughters had vindicated and made good their father's claim. They had deeded the great Capitol to their beloved State of Texas. Was ever a stranger story told? Were ever two daughters of Texas more signally honored? They prized the rare distinction more than the State's Treasury Warrant.

Go look upon the Capitol of Texas. It will do you good. Study for a while what it stands for. It will lift up your horizon and broaden your vision immeasurably. Henry W. Grady as a boy first beheld the Capitol at Washington and wept, being moved by the thought that it was his country's home. The fathers placed it in the Constitution of Texas in 1875 that a Capitol should be builded on the commanding Capitol Hill in Austin and appropriated 3,000,000 acres of the public domain to pay for it. The architects patterned its bulbous dome like unto the dome at Washington and St. Paul's in London and St. Peter's in Rome. The builders did not stop until they had placed the Statue of Liberty six feet higher than the statue in Washington. The rule of a free people had placed that statue on that high pedestal, and in the glowing phrase of Daniel Webster, "clothed that figure with the most beautiful face that ever adorned that angel form."

Almost from the day of its building the two cannon of Major General Chambers had guarded the entrance to the magnificent pile. In 1925, so very recent as that, his daughters and granddaughter entered the portal between those two dogs of war, now silent in peace, bearing in their hands the ancient titles of their father, and read the decision of the Supreme Court, now housed on the third floor of the building, decreeing the validity of that title to the land on which they stood to General Chambers and his heirs forever. The two elderly ladies looked up into the vaulted dome, lifting itself heavenward in mimicry of the sky's arching dome, and proclaimed their heirship and in the name of their father claimed their inheritance. The Legislature accepted their proof and heeded their claim, and the State accepted the deed from those two heroic daughters of the early hero of Texas. (Applause.)

You may be interested in a further word about the passing of this most interesting man.

After the close of the Civil War, General Chambers returned to his home, which still stands in the town of Anahuac, in Chambers County, only to find the same in possession of enemies. He tells of this in a printed circular found in his portfolio of papers.

Certain persons had taken advantage of his absence and his distressed financial condition caused by the war and had brought suit upon obligations, and had levied attachments, serving General Chambers by publication. Judgment had gone against him and his land foreclosed upon. Said home and library were in possession of one McDonald and another. This greatly distressed General Chambers. He would ride daily upon his mule by his home, and see others in possession thereof. One day, while on such excursion, he was fired upon from ambush.

Another day, while he was passing the old home, he discovered McDonald away. He at once dismounted, hitched his mule at the front gate and entered and took possession of the familiar old place. Later, McDonald and his henchman returned. They recognized the mule and knew at once that General Chambers was in possession and that they had him to deal with. They went to the rear of the house and entered another part of the building. Then they made overtures to Chambers for a parley. Suspecting treachery, he carefully loaded his gun, one of the old weapons of the time, a double-barreled gun, one barrel a rifle and the other a shotgun. With his foot against the door he carefully opened it and there stood McDonald and his companion with cocked guns. As Chambers stepped out they raised their guns, but he was too quick for them and killed McDonald with one barrel and desperately wounded the other with the second.

The Grand Jury would not even indict General Chambers. Because of attacks made upon him in an election campaign, he published and distributed a circular in his defense, giving the full details.

Suits were brought, and the fraudulent sales set aside, and General Chambers and his family reentered the old home. His family then consisted of his wife, and his two daughters, Kate, then twelve years old, and Stella, age six months (the Chambers heirs). One night in March, 1865 (variously stated as the 13th, 15th and 16th) he was sitting in his library with his back to an open window, and his little six months old daughter, Stella, upon his knees. An assassin's shot rang out from the dark and the General fell dead, surrounded by his wife and two little daughters.

Thus closed the career of this remarkable man, lawyer, judge, soldier and citizen. The aftermath has been told, how the little girls grew to womanhood, finally vindicated their father's land grant, convinced an unwilling Legislature, and became the grantors to the great sovereign State of Texas of its magnificent Capitol. (Applause.)

PRESIDENT BALL: We will stand adjourned until 9:00 o'clock tomorrow morning, for the business session. We will meet