

LOCATIONS UPON ISLANDS ARE DECLARED NOT VALID

Journal
Vol. 1, p. 1289
" " " p. 1327
Journal
7 other

**TERRELL UPHeld IN SUIT BROUGHT
BY W. R. ROBERTS.**

SW. 110 p. 733

**Relator Applied for Mandamus to Force
Commissioner to Issue Patents to
Mustang Island Land.**

— 1908.

Special to The News.

Austin, Tex., May 20.—In awarding mandamus in the case of William R. Roberts, relator, vs. J. J. Terrell, land commissioner, the Supreme Court today invalidated the claims of Munsan and others to land on Mustang Island on the grounds that location upon an island is not valid. Roberts applied for mandamus to enforce the land commissioner to issue him patents to a tract of land on the island, but the commissioner refused, basing his refusal on the existence of an older claim asserted by Munsan under the location granted in 1892. The certificate was granted to William A. A. Wallace, otherwise "Big Foot" Wallace, under an act of the Legislature in 1889. Besides granting the certificate the act provided that the certificate might be located upon any of the vacant lands of the state, either within or without the several reservations created by law theretofore.

The land was granted to Wallace for his great services to the state. The contention of correspondents is that land upon islands comes within the language of the statute and were made subject to location. The other side contends that more specific authority is necessary to overcome the effect of other laws and the long settled policy of the state in withholding islands from locations and looking to their disposition in another way. The court says there can be no question of the existence of such laws and policy.

Justice Williams' opinion says:

"Whether for the reason that they are not within the repealing section or that they are within the saving provision, it is clear that the rules previously established concerning islands in force when the revision took place were still in force when the certificate was granted to and the survey was made for Wallace."

Again the opinion holds:

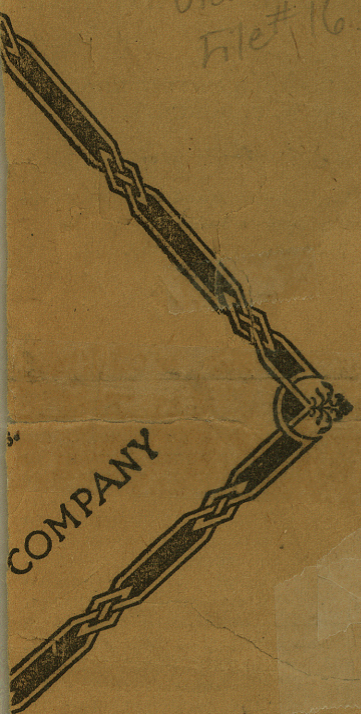
"That which is granted is land certificate evidence of a right to acquire public land such as had always been satisfied out of lands used for locations and surveys, of which land islands have never been a part. This right was granted to be exercised by a location and locations have always been required to be made upon land other than islands.

Further the opinion holds that: "Had it been intended to include islands in the act passed for Wallace's benefit there can be little doubt they would have been named."

"In view of the considerations, the court holds that the location in question was authorized and that it constitutes no no obstacle to the purchase by relator; therefore the writ prayed for will issue.

The effect of this decision of the court is to add approximately fifty acres of land to the aggregate which will be sold by the state in July. Munson's claim is declared void and the land commissioner is now free to dispose of the land claimed by him. Patents will of course issue to Roberts, his ten-acre tract being beyond interference from the land office.

old misc,
File # 16



COMPANY

interest in 180 acres of Reuben White survey; \$75.

O. C. Rush to E. C. Ward, lot 8, block 10, in Humble; \$170.

Peggy Jackson et al to Munson & Munson, five acres out of George L. Billows survey; \$1.

C. J. McCarty to Harris County, a tract of land out of John Brown league; \$1.

W. R. Noble et al to Harris County, a tract of land out of O. Smith survey; \$1.

Turning Basin Development Company to Harris County, a tract of land out of John Brown league; \$1.

W. T. Biggs and wife to J. J. Boone, lot 2, block 648, Engelke addition; other considerations and \$10.

Fondren Oil Company to O. C. Rush, lot 8, block 10, in Humble; \$50.

Luigi Cosimano and wife to Frank L. Cosimano, parts of lots 10 and 13, in Little York; \$5.

August Thonig et ux to J. W. Ojemann, described part of lot 4, out of J. D. Taylor league; \$1,000.

Willie Perry to Jerusalem Missionary Baptist Church, described part of 10-acre lot 15 of the J. S. Holman survey; \$500.

William A. Wilson Realty Company to F. W. Striebeck, lots 20 and 21, block 9, Riverside Park addition; \$2,000.

Mrs. Karoline Broetzmann to John Hume Jr., lot 5, block 1, South End Villa Tract addition; \$900.

O. M. Carter to Miss G. B. Van Horn, lots 16, 17 and 18, block 108, Houston Heights; \$280.

E. Sammons to T. L. Smith, lots 1, 2, 7, 8, 9 and 10, of Sammons subdivisions 15 and 16, in John R. Harris league, and of lot 14, in John R. Harris and Callahan & Vince survey, aggregating 27 1/2 acres; \$2,790.

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"Mistake"

Barnard vs Gool 44 T. 638.
William vs Simpson 16 T. 439 ~~1845~~ fronting on river &
run back for quantity & need they could &c

General principles in ascertaining lost lines and corners

1st In general, distance yields to course, or, in the absence of any circumstance bringing the mind to a contrary conclusion, the courses shall be first pursued contracting or extending the distances, as the case may require, to make the survey close.

2nd the beginning corner in the plat or certificate of survey is of no higher dignity or importance than any other corner of the survey.

3rd The order in which the surveyor gives the lines and corners in his certificate of survey is of no importance to find the true position of the survey.

Reversing the courses is a lawful and persuasive as following the order of the certificate.

4th That construction is to prevail which is most against the party claiming under the uncertain survey. It is his duty to show and establish his corners.

Phillips vs Ayres 45 T. 609. Raulall vs Gill 77 T. 351

Rules regulating surveys pertain to weight, not admissibility, of evidence

The rules which control surveys pertain to weight of evidence, not to its admissibility. Nor is there any rule of law which makes a call preclude the consideration of other evidence as to the true locality of the land.

So were the charge instructed the jury to regard calls, 1st natural objects, 2nd artificial marks

"Mistake"

Survey printing in
stream

64 Tex p 296. ³⁰⁵ *Agnes vs Harris*

44 Tex p. 638 *Barnard vs Good*

46 Tex p. 439 *William vs Simpson*

29 Tex p. 333 *Welder vs Carroll*

87 Tex p- 254 *RW Thomas vs WR Longden*

When a presumption is abandoned &c

Gallup vs Thacker 126 S.W. p- 1120.
Where a ~~presumption~~ failed to return papers to G.L.O, held he
being still in possession was good, See *Lane vs Hufferman*

82 S.W. page 1071.

Land sold to the State for Taxes & sold by the State as
School land, held to be void *Lovright et vs Walls* in

119 S.W. p. 721.

Old Co. Mico Bdry, Feb 10

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and 3rd course and distance, it was held that neither of these should absolutely control the other when that other most truly indicates to the mind of the jury the proper locality of the tract.

Booth vs Upshur 26 T. 70, Jones vs Burgett 46 T. 292
Booth vs Strickleman 26 T. 436

General rules governing calls.

It has frequently been said by the courts, that, in determining the relative importance of locative calls for different objects, preference should be ordinarily given: 1st, to calls for natural objects, such as rivers, lakes, creeks, springs, etc., 2nd artificial objects, such as monuments, adjacent surveys, marked lines and corners etc., 3rd, course and distance; but of these the first should control in preference to the last
Stafford vs King 30 T 257

Calls which are controlling
Natural objects, springs, streams, mountains, lakes etc. as above defined, control calls for marked lines, trees and stakes or artificial objects. So, too, the latter are controlled by calls merely for course and distance. But one and all of these must be applied to the particular case. And where it is apparent on the face of the grant that natural

count # 95461

objects were inserted by mistake, or were laid down by conjecture, without regard to rule, course and distance will control natural marks or boundaries

Booth v. Upsher 26 T. 64. Urquhart v. Bowleson 6 T. 311
78 T. 96.

A call for a natural object, as a river, a known stream, a spring, or even a marked tree, shall control both course and distance. Distance is more curing than course.

Departure from calls not made.

A departure from calls shall not be made which will make the survey repugnant to the known calls, nor to reach a line never run, nor a corner never established on the ground.

Anderson v. Stamps 19 T. 465. McCown v. Hill 26 T. 361.

Call for stream is call for centre; but call for public road only goes to edge of road.

Muller v. Landa 31 T. 273. Mitchell v. Bass 33 T. 259.

When calls are conflicting, preference given to more specific and definite.

If the calls are conflicting and contradictory, then preference must be given to those which in their application to the grant in question, are more specific and definite; in place

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of such as one merely general and indefinite or descriptive. Where the fieldnotes of a survey called for a fixed and marked natural object and also in the same call for the line of an other survey, the former is the controlling call and especially is this so when the line called for is itself of uncertain locality

Jones vs Leath 32 T. 324. 78 T. p. 96.

Course and distance control when

While the general rule in determining the location of a survey, where there are conflicting calls, is that course and distance must yield to natural or artificial monuments or objects, there are cases where course and distance will control natural marks or boundaries; as where it is apparent from the face of the grant that they were inserted by mistake, or were laid down by conjecture and without regard to rule. So a call for course and distance will prevail over a call for a natural object, when, by applying the calls of the grant to the land, the surrounding and connecting circumstances, adduced in evidence to explain the discrepancy, show that the course or distance is the more certain and reliable evidence of the true locality of the land. To hold otherwise would be to attach more importance to the general rule, which gives the highest dignity

Courtes # 75403

An Act ceding to the U.S. jurisdiction of certain lands
in this State for Public Purposes approved Dec. 19/1849. Genl. 3 p. 1546.

Decrees of 1823, 1825 & 1834 Art. 4144 Revised Statute as now
Where shortage exist on River front between old corners shortage or
excess should be proportional &c See Welder vs Carroll
29 Texas page 333 - 87 Texas p. 254 R. M. Thomson vs
W. R. Langdon &c

Where Receiver failed to return papers to G. L. O. held he
being still in possession, was good. See Lane vs Huffman
82 S. W. p. 1071.

Where a system of a Block of surveys are made and the interior
corners are identified the exterior corners can be located from the
interior See 124 S. W. page 438 Taft vs Ward
" " " S. W. " 440. Waller vs Ward

Yoakum Co. vs Slaughters from Civil court
Anaville in S. W. 160 page 1175

The following two cases in Liberty County

Goodson vs Fitzgerald 135 S. W. p. 696 no vacancy but an excess
in the Welch League of 995 aces 1st Texas C. Ap. p. 379 cases cited.

Stensoff vs Jackson 13 Texas Court Reporter p. 835 no vacancy
but an excess in the Silas Smith survey of 952 aces.

In Harris County - Goldman vs Hadley 122 S. W. p. 283
no vacancy an excess in Sur. 3 # & T. C. Ry. Co.

In Harris Co. Miller vs Campbell 171 S. W. p. 251 vacancy sustained.

In Mc Cleman Co. 41 S. W. p. 95 Cox vs Finks vacancy sustained.

From Clay County 80 Texas Reporter p. 392 Montague Co vs Clay Co. Ld &
Cattle Co. Surveys actually made, surveyor calls, official survey

150 S. W. p. 206 & 143 S. W. p. 609 Burke vs Bradmillers. Calls for width
& distance, calls for lines & a mkt. line did not conform to the line fixed by measurements, &
nothing to show who mkt. the line &c. held course & distance fixes the line & that the other
survey will go to it & not stop at an old mkt. line as to who mkt. it &c

to the call for a natural object, than to the reason of the rule. So, too, though course and distance constitute the third class of calls, they may control the other two classes, when, upon applying the calls of the grant to the land, the surrounding and connecting circumstances, adduced in proof to explain the discrepancy, show that course and distance is the most certain and reliable evidence of the true locality of the grant.

Robinson v. Dow 5 B.T. 506. Booth v. Upshur 26 T. 71
78 T. p. 96.

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The identification of land the desideratum
The identification of the actual survey, as made by the surveyor, is the desideratum of all the rules. And if course and distance alone, from a defined beginning point, will with reasonable certainty locate and identify the land, that will be held sufficient. Though in the abstract, other things being equal, a river, a natural object, and a call of the first class, prevails over a marked line, which is a call of the second class, and a marked line prevails over course and distance. Still, course and distance is made to prevail over all, when, upon applying the calls of the grant to the land, the surrounding and connected circumstances

Courtes 75465

Unorganized Cos. Holmes, Co. Judge vs Robison Ad. Court.
124 S. W. page 629.

accretion &c.

See U. S. Supreme Court, Nebraska vs Iowa (143 U. S. 359)

Where it is held that when grants of lands border on running water and the banks are changed by the gradual process known as accretion the riparian owner's boundary line still remains the stream; but when the boundary stream suddenly abandons its old bed and seeks a new course by the process known as avulsion, the boundary remains as it was in the center of the channel; and this rule applies even to a State when a river forms one of the boundary lines.

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adduced in proof to explain the discrepancy show that course and distance is the most material and reliable evidence of the true locality. The actual identification of the survey is the purpose sought to be attained by the application of these general rules; hence when they lead to contrary results, or uncertainty and confusion, that rule should be adapted which is the most consistent with the intention apparent upon the face of the grant, as ascertained from all the surrounding circumstances. And where it is shown that a tract of land sued for forms part of a block of surveys, the outer corners of the surveys in the block being known and identified, and from adjacent surveys the position of the land sued for is thus ascertained and fixed, such evidence of identity of the land sued for is sufficient, though no lines or corners can be found of the survey in controversy. So the fact that lines of a survey were not actually run will not invalidate the patent, provided the land can be identified with reasonable certainty; and where lines were not run, a mistake in a call for a river might occur, which, if made in a survey actually run, would be difficult to explain.

Old Co. Bldg. File #16

Sols on Galveston Island &c
Gammul Vol 3, pag 1020 Jones & Hall
State to issue ptd. on sur. made on Mustang, Matagorda, St Joseph & Holy
Islands. Gammul Vol 4, p- 509 } 7th Texas page 764 c
" " 1, p. 1327. } The State vs Delesdenier

Fraudulent Co. Inacos vs Texas & Galveston, Texas in Blot,
Vol 18 pag 421 Tex. Court Reporter or 99 S.W. p. 1040 -

Validating survey &c

Revised St. 1879 Art. 3921 validating survey made

Adams vs Railway 70 Tex. pages 270-271 &c

Paschal Dig. Vol. 2 Art. 7088 & 7089

act of April 25th 1871

Sayles Vol. 2, TW. 358-362

Surveys made in Austin & other Colonies act passed
Feby 5/1850 to prevent locations on land heretofore titled
or surveyed within the limits of the Colonies of Austin, De Witt and
De Leon Gammul Vol. 3. page 556 -

Accretion on the Rio Grande

Texas Civil Appd 3 Texas pag 63 & Denny & Lea vs Cotton

Fronting on Araucos Bay. Fulton vs Frandoliz

63 Texas Reports (Galveston Term) pag 330 &c -

Texas Townsh Co. vs Linnicutt, 31 S.W. 523 from Falls Co.

Araucos Pass Co vs Flippen 29 S.W. 813 from Araucos Co.

File No. 16
Old Miscellaneous County
General Principles in Surveying
Filed Dec 13 19 84
By GARRY MAURO, Com'r

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Strippelman 26 T 441. Booth vs Upshur 26 T 70.
Phillips vs Tyres 45 T. 606. Jones vs Burgett 46 T 285

77 T. p. 547.

See Paschal Dig. page 707. Islands. art. 4248

Islands shall not be located &c

26th Texas p. 217 D. C. Bowman & others vs D. Hardeman & others
from Burnett Co. Act of June 3/1837 for the Relief of
James Erwin "Provide, that no lands granted by the Government
shall be located on salt springs, gold or silver mines, copper or lead,
or other minerals or any Island of the Republic"

See Joint Resolution of Dec. 10/1836 (Hart Dig. art. 1779)
and the act of Jan 20/1840 (Hart Dig. art. 127,
Hart. Dig. art. 1829. " " " 1810."

See 7th Texas Reports page 76 &c The State vs Delesdenier
For validation of location on Islands

Journal Vol 3 page 1020 also Journal Vol 4 page 509.
" " " 1327 approved June 12/37.

Didn't convey excess See 7th Texas Civil at Lubbock
from Wharton Co. page 297 W. W. Lipscomb vs R. J. Underwood.

Atty. Genl. Opinion June 14/94

you do not state whether Col. Forsley was authorized to withdraw the cert,
but, I will proceed to give you my opinion on the hypothesis that he was the
owner of said cert. or agent of owner, for if he was not, his unauthorized
act in taking said cert. from the L. O. could not be considered as a "withdrawal"
as that term is used in the law, and therefore could not affect the validity of the
surveys, as the rights of the owners could not be injured by the illegal
act.

75469

Dykes vs Miller

25 Texas Sup. page 290

Transferred his cert. to the
State and located another
cert. on same land.

84 Texas page 290 &

Potter Co. H & T. C. Ry
on Canadian River

H & T. C. Ry vs T. G. McGhee
Land Co.

Location of cert. without
application & fee &c

Carroll McKimney et al
vs F. M. Grady

2974 Supreme Court
May 8/79 Term 1-1863

26 Texas p-45
51 " p-376

Location of Public Domain
Land cert. on public domain holds
it for 12 months &c cannot
be filed on by another party

Fisher & Miller Colonial
& Gammell Vol. 3 page 146
issuance of cert. &c 859

Castro Colonial volume of
cert. &c - 497. Genl Vol. 3.
New State - form 2. O. 787 - m. 3.

Validated under act

1889 as to recording
warrants made by one

Co. in amount
21st Legislature page 107

- 1 - 1463
See 77 Texas page 168.

Blk. 64 Fisher & Miller
Gammell Vol - 4 page 1443
copy of field notes can be filed

Fisher & Miller

to Relinquishment
by H. Sherwood
in Box. 3-1729

640-20-10-9-12-3
320-12-23-23-10-6

Blk. XXIV (16th Section)

As to validate the title
to land reserved from
location or patent at the
time titles issued thereby
Genl Laws approved July 179
Page 20 & 21 - vol 9.

& vol. 4 page 1065-1392

Beatty vs Marterson

Beas S. 57229

Baudera Co

77 Texas page 168

See Attorney Genl. Opinion
on the name of that claim Co
Letter file 248191
& 248192

Spanish Dept. see
Atlas Vol. 2 page 224
showing sketches &c
English field work

50th act page 48
Chap 52 - 1879.

Genl. Laws section 5
Special Session

Articles 3883 to 3886
R. S. governing the
issuance of Duplicate
Cert &c

45 Texas p. 607

77 " p. 351.

30 " p. 257

45 - " p. 608

Upset tract in Bl. 1006
Genl 4 - page 42 & 53