PECOS COUNTY ROLLED SKETCH

No. 114

CONTENTS

1) Report of Hearing held Dec. 18,1940
2) " from J.H.Walker, Jan. 7, 1941
3) " from James K.Avers, Jan. 30, 1941
4) " from J.H.Walker, May 20, 1941
5) " from J.H.Walker, May 11, 1941
6) " from Geo.T.Wilson, Aug. 21, 1942
7) " J.H.Walker, Aug. 27, 1942
8) " from Scott Gaines, Aug. 29, 1942
9) " from J.H.Walker, Sept. 8, 1942
10) " from Geo. T.Wilson, Sept. 9, 1942
11) " from J.H.Walker, Sept. 17, 1942
12) " from J.H.Walker, Nov. 11, 1942
13) " from J.H.Walker, Nov. 16, 1942

14) Exhibit of Fieldnotes
15) Report from J.H.Walker, Aug. 7, 1941
16) Pictures of the "Trandote" Co.
17) Clint Small's Report
18) Copy of J.A.Simpson Map
19) Tracing
20) Sketch by James K.Avera
21) Tracing of part of Pecos County Map (1873)
22) Photostat of certified copy of sketch from GLO now on file in A.N.Lea's office
23) Exhibit by University. Frank F.Friend's Sketch
24) Exhibit by University. Frank F.Friend's Sketch
25) Letter from Mr. Walker to Mr. C.F.K.Blucher
26) Copy of Letter from Cardinal Oil Co. to Mr. J.H.Walker

27) Copy of Letter from Bascom Giles to Byron L.Simpson

(See Tracing No.9, University Drawer, fro description of Friend's corners)

S.F. 14312
J.L.Nutt
Pecos County

See Rejection File 14312 (12-16-1942)

counter 48104

BASCOM GILES
COMMISSIONER
GENERAL LAND OFFICE
AUSTIN 14, TEXAS

CONTENTS

1. Report of hearing held December 18, 1940
2. " from J. H. Walker, January 7, 1941
3. " from James K. Avera, January 30, 1941
4. " from J. H. Walker, May 20, 1941
5. " from J. H. Walker, May 11, 1941
6. " from Geo. T. Wilson, August 21, 1942
7. " J. H. Walker, August 27, 1942
8. " from Scott Gaines, August 29, 1942
9. " from J. H. Walker, September 8, 1942
10. " from Geo. T. Wilson, September 9, 1942
11. " from J. H. Walker, September 17, 1942
12. " from J. H. Walker, November 11, 1942
13. " from J. H. Walker, November 16, 1942
14. Exhibit of Field Notes
15. Report from J. H. Walker, August 7, 1941
16. Pictures of the "Grandote" Cor.
17. Clint Small's Report
18. Copy of J. A. Simpson map
19. Tracing
20. Sketch by James K. Avera
21. Tracing part of Pecos Co Map 1873
22. Photostat of certified copy of sketch from G.L.O. now on file in A. N. Lea's office.
23. Exhibit by University. Frank F. Friends Sketch
24. Exhibit by University. Frank F. Friends Sketch
25. Letter from Mr. Walker to Mr. C. F. K. Blucher
26. Copy letter from Cardinal Oil Co to Mr. J. H. Walker
27. Copy of letter from Gascom Giles to Byron L. Simpson

PECOS COUNTY ROLLED SKETCH
NO. 114

WILLIAM SHINNERS

WILLIAM SHINNERS

Now Filed As
Pecos Rld. Sk. 180
(9-5-1980)

(See Tracing No. 9.
University Drawer
for description of
Friend's corners)

S. F. 14312

J. L. Nutt

Pecos County

See Rejection File 14312
(12-16-42)

counter 48105

Pecos Rld Sh. 114 (1)

SPEICAL HEARING ON UNIVERSITY APPLICATION

(to have Frank F. Friend's work accepted)

J. L. Nutt, Contestant.

- -

Before HON. BASCOM GILES

Commissioner of General Land Office

- - - - - -

WEDNESDAY, DECEMBER 18, 1940.

- -

counter 78106

Pecos Co RLD SK
No 114

See Tracing No. 7
University Drawer
for description of monument corners

counter 48107

SPECIAL HEARING ON UNIVERSITY APPLICATION

(to have Frank F. Friend's work accepted)

(J. L. Nutt, Contestant.)

- -

Before HON. BASCOM GILES

Commissioner of General Land Office.

- - - - - - - - -

WEDNESDAY, DECEMBER 18, 1940.

- -

APPEARANCES:

MR. J. H. WALKER, Austin, Texas,

MR. SCOTT GAINES, Austin, Texas,

MR. FRANK F. FRIEND, San Angelo, Texas,

MR. JAMES K. AVERA,

MR. J. L. NUTT,

- -

counter 48108

Pecos Co Rld Sk 114

Small: The Commissioner couldn't be up here today, and I think the best way to proceed is to let both sides present their theory of construction in this area, and Burt will take it down and we will study it at our leasure. And I think Mr. Friend should present his construction first and then we will hear Mr. Nutt.

Gaines: First the University wants to introduce the appointment of Holt and Thomson as official special surveyors for the purpose of surveying 1,000,000 acres of University land granted under the Constitution of 1876, as an endowment of the University, dated October 2, 1879, and made by the Commissioner of the General Land Office under authority of Art. 5025, Revised Civil Statutes of 1879, the original of this appointment is in Book 100. We have for convenience of the Commissioner, a copy of the statutes relative thereto. And we also introduce in evidence commission or appointment by the Commissioner of the General Land Office of Mr. Maurice B. Moore as Commissioner or Inspector on behalf of the State to accompany the surveyors, Holt and Thomson in the surveying and selection of the 1,000,000 acres appropriated to the University of Texas as an endowment under the Constitution of 1876, dated October 3, 1879, filed in letter Book 100, page 241, Land Office Records, and next we introduce the sketch by Maurice B. Moore, or certified copy thereof, filed in the General Land Office under File No. 534, under date of March 1, 1880, and dated December 15,

counter 48109

1879, and we have for convenience sake made a copy of the printed matter appearing on the sketch so it can be more easily read. We next introduce letter of transmittal from the Land Commissioner to the County Surveyor of Pecos County, District Surveyor, Thomas C. Nelson, Pecos County, dated May 14, 1880, which accompanied the field notes of the surveys of University Lands as made by Holt and Thomson under Authority of Art. 4027 of Revised Civil Statutes of 1879, and as required by that statute showing that these field notes were filed with the District Surveyor and were approved by the Land Commissioner. (On the sketch of Maurice B. Moore, it covered University Blocks 16, 17, 18, 19, and 20, which at that time was a part of the Pecos County District, and which is now a part of Pecos County. I think that lays the foundation for the more recent survey as made by Frank F. Friend under his appointment as special University surveyor--Mr. Friend's surveys being made by him under appointment, first by the Board for Lease of University Lands, and re-appointment by the Board of Regents of the University of Texas, under authority of Act of 1929, and its amendments by the Act of 1931. We haven't got certified copies of field notes filed by Holt and Thomson.

Small: They are all of record here.

Gaines: Yes, sir.

Small: That is all right, then.

counter 48110

Pecos Co Rld Sk 114

Gaines: We want to call Mr. Frank Friend. Mr. Friend state your name and occupation.

Friend: I am Frank F. Friend, special surveyor of University Land.

Gaines: You live at San Angelo.

Friend: I live at San Angelo.

Small: You can go right ahead and explain your survey of Block 19 of the University land and what data you used in attempting to relocate it.

Friend: The first thing we did was to procure all the data that might lend information as to the position of the Block on the ground. We had photostatic copies of all the University field notes. We also had photostatic copies of all the surveys adjoining Block 19 both on the south and on the west and that--and those field notes of adjoining surveys, the copies we got, included Jasper County School Land, Block 104, T. & St. L. Ry. Co., Blocks 125, T. & St. L. Ry. Co., Block 126, and also T. C. Ry. Co. Block 180½. We also had photostatic copies of University field notes covering Block 21, University Land, which lies not adjoining, but some two or three miles immediately west of Block 19, and also for two sections which I don't know just how to state its position, they cover what is known as the Middle Escondido Springs. That is survey 549, the individual, and 550, the State's alternate. I don't know the name of that section. The grant is in the name of J. V. Massey. First, I would like to state that survey No. 1, Block 19, calls for a stone monument at its northeast corner giving bearings, course and distance to what is known as the East Escondido Spring. This stone monument as we identi-

counter 18111

fied it and established it as the northeast corner, doesn't fit exactly but is reasonably near its position with respect to the spring as called. This--

Gaines: That is the East Escondido Spring.

Friend: Yes, sir, I don't remember those figures, but they are in the field notes of 6 and 1.

Gaines: Was that 740 varas by 1200 varas.

Friend: That is right, that is the way I remember it now.

Gaines: That is the connecting call for Sec. 1, University Block 19, to the East Escondido Spring--that is the connection.

Friend: That is the connection. Since I have known the spring it has always been a very definite point. The field notes say spring near stage stand. On my first visit to this point, the remains of an old dobe building could still be seen. At present, however, the sight of the stage stand has been plowed down and used as a field. Now, survey 549, calls its northwest corner to be a certain distance from Middle Escondido Spring giving course and distance. I don't remember what that is. I believe that is south 47 east 720 varas. We have run that. This corner of 549 is on the ground and I am sure it is accepted by all the surveyors. The spring, however, is not so definite. When one runs this course and distance, he lands near a little pool of water but the exact position of the spring is not clear,, is not definite, I will say. There is also what they call the West Escondido Spring which is at present very definite. It is covered by a small survey, I don't know the name of that. It is covered by a small survey of 320 acres and there are bearings or calls from this

spring, West Escondido, to its corner. Its corners are also marked on the ground, one of which is known as Sotol Camp, is that right, Old Sotol Camp, I think that is it. We ran out from this spring to the course and distance called for in this little survey made prior to the University and we identified its corners and they stand in close relation to the present day position of that definite spring. In 1926, before I was made special surveyor of the University Land, I was called upon by an oil company, working for an oil company who had leases on Jasper County School Land and some other surveys through these blocks south and west of Block 19, University, to locate their leases. Therefore, it became necessary to locate several corners on these blocks in here. These Blocks were put in I believe about a year after the University Land had been placed on the ground.

Gaines: In other words, they are junior to block 19.

Friend: These are all junior to 19.

Gaines: Does that include Jasper County School Land.

Friend: Yes, sir, everything in here was surveyed by the same man, L. W. Durrell, deputy surveyor of Pecos County at that time. These corners which you see in black are original corners which I identified as original marks placed by Durrell, and they all date, as far as these down here are concerned, they date right together within a few days of each other.

Gaines: In other words, on your survey plat there, those points indicated as black dots represent what.

Friend: It is the position I found L. W. Durrell, where I found him in these blocks.

Gaines: You say position, you mean ground marks.

Friend: I mean this map truely represents these corners as I found them on the ground.

Gaines: From marks onthe ground.

Friend: Yes, sir, from marks on the ground.

Gaines: That is illustrated by the heavy dots on the map.

Friend: Yes, sir, by these heavy marks. That is the northeast corner of Survey 1, Block 21, this point right here represents the position of the northeast corner of Sec. 1, Block 21, surveyed by Holt and Thomson for the University of Texas, and the notes are by Thomson, and say that from this northeast corner a point being course and distance from survey in Fort Stockton some eight or ten miles away. He first gives a call from Fort Stockton as being due east from this corner--

Gaines: So many miles.

Friend: So many varas, 55,000 I believe, I don't know just how many.

Gaines: The field notes state it.

Friend: Yes, sir, they state it on the field notes of Sec. 1, Block 21, they give this distance, being a point so far east of Fort Stockton to where he was and says this spring is so far east and so far south of that definite spring, and those course and distance calls from the spring will be west 1100 varas and north 2680 varas. That is the point all right, and the northeast corner of Survey 1, Block 21, he doens't stop it there, either. He says that the northwest corner of Survey 19, Block 19,is also course and distance from this point here. He puts that in the field notes.

Gaines: What is the distance and course.

counter 48114

Friend: Just a minute, I have had some medicine in my eyes and can't see very well. Thomson has it in his field notes--6830 varas to this corner down here. It is east 6830 varas and south--I can't find it.

Walker: 4650 varas.

Friend: And south 4650 varas.

Gaines: That is from where to where.

Friend: That is from this corner which is course and distance from the spring, he said this corner was also east 6830 varas and south 4650 varas to this corner here.

Gaines: That is to say that is the course and distance of a connection from the northeast corner of Block what

Friend: Block 1--Section 1, Block 21.

Gaines: Brock 21, Section 1 to the northwest corner of Section 19, Block 19, University Land.

Friend: That is right.

Gaines: That is the call in Thomson's notes.

Friend: Yes, sir, going from the spring, he says a stone on top of a mountain. We began at this spring and ran 1100 varas west and 2680 varas north.

Gaines: You say you began at the spring--what spring.

Friend: West Esdondido Spring. We landed on top of a mountain and found two rock mounds. There is no single stone set. And we found Mr. Durrell was up in there. Durrell was up in there and has surveyed sections around here north and we took that to be the Durrell starting point up there, but at such a short distance, it was my opinion as a surveyor that this corner up here was a little too far off for such a short distance, therefore, we never

paid any attention to any corner. We found two rock mounds up there. There is one reasonably close.

Gaines: About 60 varas of the corner.

Friend: That is the one over here. There is one in here, but not that close. At the point we used we never found any stone mound. We set a corner course and distance from the Spring.

Gaines: Did you run a line out from the northeast corner of Sec. 1, Block 21, so as to make connection with the northwest corner of Sec. 19, Block 19, and if so, give the course and distance as you ran it out.

Friend: Beginning at this point, or beginning at the spring and following out his two calls, beginning from here and following his two calls the one for the spring and the other for the northwest corner of Sec. 19, we ran those courses out and at that point we are placing the northwest corner of Sec. 19, Block 19.

Gaines: Do you show your distance and course on your map and there for your connection that you are speaking about, is that shown.

Friend: No, it is not on there.

Gaines: You have got that data.

Friend: Yes, sir, we have got that data but it doesn't show on this map. This map shows--

Gaines: You show on your map there the course and distance of your run and found on the ground by you from the West Escondido Spring to the southwest corner of Sec. 19, Block 19.

Friend: Yes, sir.

Gaines: How are your figures upon course and distance in

counter 48116

relation to Thomson's.

Friend: Thomson calls from here.

Gaines: In other words you put on your map Thomson's course and distance.

Friend: Yes, sir.

Gaines: And then you show your course and distance with the connection from the southwest corner of Sec. 19.

Friend: Yes, sir, Thomson's are in parenthesis. I want to state those figures differ slightly and I can explain the reason why.

Gaines: What do you mean those figures differ.

Friend: Thomson called to here. We have it 2½ varas north and south and 31½ varas east and west.

Gaines: In other words, a slight variation due to giving preference to well known points as run by you causes a little difference in distance.

Friend: That is right.

Gaines: How does your course work out.

Friend: It seems to me to fit reasonably close. Why those figures differ is due to the absence of markings on the ground. We would have placed this corner of Sec. 19 exactly as Thomson called from the spring, in the absence of identifying marks--it would have been an even four miles, if it were not for the fact we have a corner here.

Gaines: It would have been an even four miles from where.

Friend: The southwest corner of where we have placed Sec. 19 according to the calls from the spring four miles to the south of that stone mound here, and being what we know as Grand Dote,

being the common corner of Sections 4, 5, 6 and 7, in Block 19. Now, from Thomson's call south and east to that big corner--

Gaines: Is that marked on the map with a heavy dot.

Friend: Yes, sir, it is marked on the map with a heavy black dot. It would be 2½ varas one way and 31½ varas the other to get to Thomson's call to there. You would hit 2' varas south and 31 varas west of that big corner on Thomson's call. I don't say that big corner is an original corner placed there by Thomson.

Gaines: I believe you found the Grand Dote, what did you find there.

Friend: There is a large stone setting up right with a lot of large stones right by the middle stone, but the middle stone had fallen over. It was evidently a surveyor's mound.

Gaines: What was its appearance in regard to age.

Friend: Showed to be very old.

Gaines: Did you run a connection from that corner--the Grand Dote--to your established northeast corner of Blk. 19.

Friend: Yes, sir, we have described the connection to that.

Gaines: How does that work out in course and distance in reference to Thomson's work.

Friend: From this corner up there you have got to run four miles south with an excess of 94 varas to the mile and one mile of 2368 varas west to strike this Grand Dote. Now, from this Grand Dote, we have indicated a connection south and east, and this dotted line is for that, and I see that it would come within a very few varas of Durrell's connection which he calls for connecting to the University through his field notes of 180½.

Gaines: You mean Thomson's instead of Durrell's call.

counter 48118

Friend: I mean Durrell's.

Gaines: You use Durrell's work, when Thomson set in Block 19.

Friend: No, sir, but Durrell put in this work down here and he tied his stuff to the University stuff. If you set to that Grand Dote, they fit fairly close, he located this work down here but he tied his stuff to the University and attempted to relocate some of the University corners.

Gaines: That is Thomson's work that Durrell's system tied to and he had to determine the University location for his system. And you use those to show his location of ground marks for the University Block 19.

Friend: That is right.

Gaines: You mean by course and distance.

Friend: Yes, sir, by course and distance.

Gaines: The mounds and monuments of Durrell's system as located by you satisfy then the marks established by you as University marks.

Friend: Yes, sir.

Gaines: That is demonstrated and shown on the map.

Friend: Yes, sir, they are shown on the map by these dotted lines--these on the south and east.

Gaines: Just a minute ago, Mr. Friend, you were going to explain further about this monument that you designate as Grand Dote, and you started to say something about you didn't know if it was original--you at least accepted it as the corner.

Friend: I did for several reasons.

Gaines: If you did accept that corner, explain why you don't

think it is an original corner.

Friend: I went to San Antonio to see Mr. Durrell and he told me all about this stuff. One thing he told me was that he did not do the work but he was driving the wagon and he signed the field notes. Powell had bought the scrip in there and he was out doing his own locating work. He couldn't sign the field notes, so Durrell signed the field notes. He said he and Mr. Powell did a lot of work joining these blocks onto University Block 19. He told me they had a hard time finding the Univeristy land at all. They spent a week serching on the ground trying to find markers on the University blocks. They finally found this and put more rocks on it in order to make it the biggest. But that is not the only reason I had for doing that.

Gaines: In accepting that monument you pull yourself southward from the West Escondido Spring and 31½ varas further east.

Friend: Yes, sir.

Gaines: How far east.

Friend: Without the reference of that, we would have gone 31 varas further west.

Gaines: But you accepted that corner.

Friend: Yes, sir, I accepted that for what it was worth.

Gaines: And constructed your block and sections accordingly.

Friend: Yes, sir.

Gaines: Together with other known points.

Friend: Yes, sir.

Gaines: You did your construction on the theory that the sections south from the monument were how long.

counter 78120

Friend: Of even miles.

Gaines: Even miles.

Friend: All would be just one mile, and all west just even miles, no excess east and west after you leave the Grand Dote.

Gaines: You establish the corner there with reference to the corner established by you for the northeast corner of Section 1, Block 19, having established that corner with the East Escondido Spring, according to calls in the field notes, and your course and distance to your Grand Dote, which is the southwest corner of 4, Block 19, or northwest corner of 5, or northeast cor- of 6 and southeast corner of 7, of Block 19, and fur- there identify that corner with connection with the West Escondito Spring to the northeast corner of Sec. 1, Block 21, University Land.

Friend: Yes, sir.

Gaines: And you further identify the Grand Dote corner with connections with the Durrell system.

Friend: That is right.

Gaines: That is with the Durrell system of monuments as located and identified by your on the ground.

Friend: That is right.

Gaines: And as shown by your map.

Friend: That is right.

Gaines: Mr. Friend, that J. V. Massey survey, the individual survey No. 549 and the alternate State Section 550, I note on your map those are in red.

Friend: Yes, sir.

counter 48121

Gaines: I see in dotted lines outlines there are four sections underneath the red two sections, you have those numbered in parenthesis. What are the numbers of those four sections.

Friend: As was introduced in this hearing, there is a map by Maurice B. Moore which was explained as that furnished byhim showing the kind of work done by Holt and Thomson. That map shows that at one time these four sections in this yellow square were designated as University Sections and their numbers as called by him on that map would have been 19, 24, 20 and 23, making of this a block of 25 sections, but it seems that before these field notes got in, they changed that and left them out. They first put it on the ground and drew the map and Mr. Moore scratched them out--marked them out on the map and changed the numbers to make it a block of 21 sections and therefore the final result is a block of 21 sections instead of 25 sections.

Gaines: And you have illustrated them in there and they fit as illustrated by you on your map.

Friend: They fit in according to Moore's map. He showed them as a part of University Block 19.

Gaines: That map was prepared under your directions.

Friend: Yes, sir.

Gaines: Does that fairly and accurately issultrate the work done by you on the ground.

Friend: Yes, sir.

Gaines: In the southeast corner of Sec. 1, Blk. 19, there is a red outlined tract there--apparently representing a tract of land.

Friend: Yes, sir.

Gaines: What does that represent.

Friend: It is a tract of land, No. 551, evidently placed in by the same surveyor who put in these two Massey surveys, which is Nelson, District Surveyor of Pecos County, he also put in this little 320 acres survey covering that little Escondido Spring.

Gaines: That is the East Escondito Spring.

Friend: Yes, sir, that is the east Escondido Spring.

Gaines: That is senior to the University block.

Friend: Yes, sir.

Gaines: Did you use its notes in locating the ssring and in locating the northeast corner of of the University block.

Friend: I did.

Gaines: Do you remember the date of that survey.

Friend: I believe it was about three months senior to the University, that would be about May when the University was in October.

Gaines: Do you recall those calls with reference to the call for the spring.

Friend: It has no such call.

Gaines: It does not call for the spring.

Friend: I don't believe it does. It fives bearings on the stage stand.

Gaines: I believe that is all unless you have something more, Mr. Friend.

Small: Mr. Nutt, you may proceed.

Avera: Mr. Friend, you refer to the black dots as being Durrell's corners, are they supposed to be Thomson's

counter 48123

corners in the University Block.

Friend: The Grand Dote and thenortheast corner of the block are Thomson's positions.

Avera: Where does the name Grand Daddy come from Do you refer to the common corner of Sections 5, 6, 4, and 7. Where does that name come from there.

Friend: I believe I named it. Just listed it in the field book and called it Grand Dote. It is pertaining to size.

Avera: That name lends age to it.

Friend: It is just a matter of designating between it and others.

Avera: The name Grand Daddy designates age. You say without doubt it is a surveyors corner and very old. Why do you say that.

Friend: From the rock coloration. The way rocks change color when exposed to the sum will get very brownish blue on top, but if you look where the sun can't hit, it is yellow. And it is bound to have been built by hands. It is very hard rocky ground there, no way for them to sink in the ground.

Avera: Isn't it a fact that even in five years--that is might be 5 years old or 100 years old and look the same. It is on a rocky ledge--it is the most prominent point in a large area of flat or fairly flat land, but overlooks a broad draw. That is a very rocky point and numerous rocks are all around and all being like that, and you can build a monument and it might be 5 or 100 years old and have the same appearance.

Friend: Well, not in five years.

Avera: Well, say ten years then.

coenter 48124

Friend: That is more than 10 years old. I was there in 1934, and that is 6 years ago.

Avera: There isn't any grass growing around the monument is there.

Friend: I believe there is some cat claw bush or some black bush growing right in there.

Avera: You spoke of what you call Grand Daddy corner there as being we might sayalmost the exact distance from the northeast corner of Survey 1, Block 21, course and distance as given in the field notes of Sec. 1, Blk. 21, isn't it true in that as is shown in other parts of University Blocks that it is excessive and isn'te the fact that it fits so well is rather unsual.

Friend: That may be a little unusual, but now we know that Thomson had two crews in the field and had two different compasses and two crews. We got that from Thomson himself and his statement is here in the Land Office. Of course, this couldn't get in court, but I think it is possible that one of the crews started from this spring this way and the other from over here at this corner, and they failed to close by that much. As far as the Grand Dote, the rock mound there, it is almost where we would place it coming from this way.

Avera: Would it be good law or good surveying to clocate a senior block from a junior block and establish it that way.

Friend: No, I have made no attempt to locate by junior blocks, but I put it here to show that Durrell knew where that stuff was which is as we have placed it.

counter 48125

Avera: You spoke of two crews, is there anything of record to show that one crew put in the northwest corner of 1, block 19, and anorher started at the northwest corner of Sec. 19, Block. 19.

Friend: I never did examine the field notes to see if the chain carriers were different or not.

Avera: That is supposition, isn't it.

Friend: I told you it was.

Avera: Also that mound--that rock mound you had at the northwest corner of 5, there isn't anything in Durrell's notes to show that was in 5, or is that supposition.

Friend: Not that I have ever seen.

Avera: At the northeast corner of Surveyl, Block 21, you speak of two corners, neither of which exactly fit.

Friend: Didn't quite fit. The call for the corner didn't f describe either one.

Avera: Do you believe it should be located exactly from the spring bearing.

Friend: Yes, sir.

Avera: And then that course and distance you use across to Block 19.

Friend: You see we have all these sections 24, 25 and 26 all lying out in this country out here and we had course and distance and every rock mound called for but we couldn't find any one that would line up and be in conformity with the lines around it, and that is why we didn't accept those rock mounds.

Avera: Is it true you base your location of the Northwest corner of Sec. 5, in Blk. 19, University, the so-called

Grand Daddy, you base your location on its relative position to Durrell's corners as pointed out by you and to its relative position of the northeast corner of Survey 1, Block 21, aUniversity, as located from the Spring bearing--it is based on that.

Friend: On these calls, that is right.

Avera: And not on any interior call of Block 19, or its sister blocks themselves.

Friend: This corner is a common corner of this stuff lying around immediately north to this one, but it does go over to the east as far as Block 19 is concerned is based absolutely on that and this.

Avera: But you don't place the northwest corner of 5, Block 19 from any construction from within Blocks, 19, 18 or 20.

Friend: No, I don't

Avera: I might say that Mr. Nutt and I have discussed this for a year or so, and Mr. Nutt did a lot of work. He is nearly a surveyor himself. He may like to ask some questions.

Small: What we want is anything we can get on the location of these lands. We feel we are able to eliminate what is not admissable and what is.

Nutt: What I would like to know is why he ignores the two corners so close there in Sec. 1, Block 21, and accepts this one with so much variation in Block 19.

Friend: Do you mean coming from here.

Avera: He is asking why do you accept this location of the

counter 48127

Grand Daddy with variation from within the block when you don't accept either of the two corners from the northeast Sec. 1, Blk. 21--why do you accept one and disregard the other.

Friend: I don't know how to tell that story. In the first place it calls for stone on mountain. We had conflicting evidence on the ground should we have considered either of those two corners which are considerable distance apart. We discussed that proposition at length, you must understand, and another thing you must remember that the law passed and approved in 1929 made it requisite that the Commissioner of the General Land Office must pass upon these field notes. As there was conflicting evidence on the ground with one corner in one place and another pile of rock in another, neither of which satisfied the call, it was decided then with the General Land Office that the best thing to do would be to place it according to the call.

Nutt: I believe you stated that you found two mounds there in a somewhat close proximity to your course and distance run to your west--West Escondido.

Friend: That is right.

Nutt: The one that was in 20 varas of your point established from your course and distance from the spring was it new or was it old--the one within about 70 varas of where you were on your course and distance run--and the other was 400 varas off. That was decidedly too far off from West Escondido in reference to where you found those corners.

Friend: That is a fact about the one being young. I have been

counter 48128

on the ground and inspected both mounds. I don't want to say which one is new. I can't remember it now, and I don't know whether it is old or not. I can refer to my notebook and answer that question.

Nutt: You refer to a corner--I guess that reference is made to the northeast corner of Block 21, Sec. 1, in establishing your connection with the Grand Daddy corner as a matter of fact you were running off your well know object, the West Escondido Spring, and made your ties to that object in establishing your monument.

Friend: Yes, sir, we have used both of them in establishing this corner.

Small: Do you think the University calls for the middle Escondido Spring.

Friend: I don't believe the University calls for that spring but Maurice Moore puts it on the map and his map shows it almost exactly in this position just as Maurice Moore shows it here.

Small: It looks like here that west line of 19 would run right through the spring.

Friend: The actual position is so near you can't scale in on our map the way we put it.

Nutt: That West Escondido Spring, your course and distance west and north--that corner there--the monument that you found which was 400 varas off your course and distance--which was was it from that point, the northwest corner--which way would it lay from that accepted course and distance.

Friend: Northeast--maybe north northeast, but north of east.

counter 48129

Nutt: More east than it was north.

Friend: I can get the field book and locate both of them and I am sure it gives bearings on both those monuments, and perhaps describes the mounds as to age, but the book is not here right at the time.

Nutt: What section is that on the middle spring--section 24, Block 19.

Friend: Yes, sir, that is 24, the one scratched but by Maurice Moore.

Walker: We would like to call your attention to the fact that Mr. Moore in filing his report as to the type of soil and land says it is good pasture land and no miles to water showing he must have been close to water here.

Avera: Did I understand you to say the northeast corner of Sec. 1, Block 21, is tied to the Middle Escondido.

Friend: I don't believe so.

Avera: I have the field notes before me, and I don't believe it is at all. In other words, the location of the Northeast corner of Sec. 1, is based on course and distance from the West Escondido Spring.

Friend: That is right.

Avera: The northeast corner of Sec. 1, Blk. 19, University, don't you find that stone mound as found by you and accepted as the northeast corner is not exactly course distance from the spring.

Friend: No, I didn't say it fit. I said it fit reasonably. We don't know how many times that stone has been moved, but it is the only thing we can take. It almost fits. There is a

discrepancy of 30 varas. I will go a little further, in 1926, I ran from the spring. He calls for stone mound here and I found a real old stone mound not very large but it was staked as a surveyor would stack them. It had never been molested and was blue on the outside and turned yellow under the rocks. I tested each of these others there on the same date. They all seemed to be in a fence line, an old fence line which is torn down at the present time. I could tell by the steeples lying on the ground that it was old fence line and by the little tie wires, and I tested all other mounds within 200 varas of this old mound that I found, but this old mound had no steeples, no wire or no evidence whatever that it was in a fence line. I first tied to that corner. I used that corner.

Avera: How about the mound which you did use for the southeast corner of Sec. 1 or the small survey.

Friend: Yes, sir, for the southeast corner of it, it fits closer than this one did up here. It is more than 1990 varas from this one down to the one I found here. This one was only 1½ varas one way--east and west--and about 21 varas north and south of fitting exactly the calls for the Spring. You see it is closer than this one up here.

Avera: There is some doubt about the northeast corner of Sec. 1 being original.

Friend: The rock was there in 1926 and has been there every since.

Avera: Why accept that then, when you don't accept either one in Block 21--it seems inconsistent.

Friend: There are a very short distance from a very definite

object--a natural bearing, and I couldn't turn those down.

Small: It looks to me like Mr. Friend has, Mr. Avera, put the University on the ground and that it is now up to you gentlemen to put the University in another place, if you can. Just explain how you located it.

Avera: I might just make a summary or brief statement of our construction. To begin with, let me say we do not differ with Mr.--the university survey materially other than the authority or the fact as to whether or not the northwest corner of Sec. 5, in Block 19, University, is the original or not. That is the basis of our doubt or controversy, and as I say we agree in general with the University survey accepting the northeast corner of Block 19, I aceept that and the mound as pointed out by Mr. Friend. I think the most important question of difference is the location of the northwest corner of Sec. 5--his so-called Grand Daddy corner. We did not survey University Block 21. We did make a limited survey in the J. V. Massey and the other. And Mr. Nutt is vitally interested as a land owner adjoining the University Block 19 on the west side, his east boundary is the question involved, and he is holding land immediately west of Block 19, all of that land in there with the exception of one or two surveys there as I have shown it here on the map. We use the northeast corner of Block 19, University lands, accepting the same monument Mr. Friend did and give course and distance throughout the Block 19, using the same variation Mr. Friend used there, and which of course draws the south line of Block 19 north about 300 varas, and the west end of block 19 is pulled east of Mr. Friend's construction about 400 and some odd varas because of the Univeriity

acceptance of a large rock pile as the northwest corner of Sec. 5, as being the original, they create a distance along the north line of Sec. 5, Block 19, of 2368 varas, I believe. And too, I might say, we have naturally looked into the reasonableness of this, trying to work out whether it is right or isn't right. And I might say here I have never actually tied to the northeast corner of Block 21, or Survey 1, Block 21, because Block 31 is a junior survey to Block 19, University. I do not have Mr. Friend's reason to use another man there and in also trying to bear out the rock mound at the northwest corner of Sec. 5 by using another man's work in later years. I have tried that and we have tied them in with that in view and he is working backwards and mostly from another man's work. Of course, I am glad Mr. Friend spoke a little bit on this. There are some things out there that I didn't find. I think you more or less have to take a history and background of the survey and especially to try to arrive at a reasonable construction is the best any man can do. I am not criticizing his part in that. It is hard to find any marks in west Texas, and when they are found they have to be studied carefully to construct the work reasonably. This rock mound at the north west corner of Sec. 5, Block. 19, is unusually large rock pile on a prominent point overlooking a broad valley. It could have easily been used to guide someone. I don't know that that is it. That is just a reason though as some one gave in later years, came and piled rocks on it there. And in surveying this block 19 and adjoining area, our accepted monuments and points in distance check unusually well, infact. Well, we have northeast of the large mound pointed out by Mr. Friend as the northwest corner of

Section 5, northeast of this mound, we find another rock mound which is undoubtedly a rock mound placed there by man. It is old. I don't know how old. It is four or five hundred varas northeast of the large mound pointed out by Mr. Friend and fits reasonably well, much more reasonably well then the large rock mound called Grand Daddy by Mr. Friend. Understand I don't call the mound we found the original because it fits too well. There is not enough excess and in my mind there is more excess in there. But the large rock mound puts in too much excess, and the name Grand Daddy lends too much age to the mound. We have coming west two miles from the large rock mound at the northwest corner of Sec. 5, we have a small almost buried rock mound there that apparently is a mound made by man. I will say here that there are many rocks in this part and home have broken open and fallen down. I will acknowledge it could be one of those. Coming on west to the southwest corner of Sec. 19, in Block 19, I beg your pardon--that is the southwest corner of Sec. 19, and actually northeast of the rock mound pointed out by Mr. Friend. There is a very old rock mound there that is almost buried and it is of rock carried from a near by hill, in fact they are red rocks, I believe. There is an old rock mound called for there. What I am pointing out is there are numerous rock mounds, or monuments in that area. In the original field notes of Survey 19, Block 19, University Land. We have gone into a very thorough check of the records here and elsewhere and have photostatic copies of important ones--those throwing light and having bearing on this work and this can be verified from your records. The northeast corner of Survey 1, Block 19, calls for a monument there andat the southwest corner of Survey 1, it

calls for a rock mound. I believe it calls for a stake, but I have said the adjoining corner calls for monument at the northwest corner of Sec. 5, southwest corner of Sec. 4, and southeast corner of Sec. 7 and northeast corner of Sec. 6, there is a stone mound called for. That is the main point of contention here. At the southeast corner of Sec. 5, which is the most easterly southeast corner of Block 19, there is a stone monument called for. In other words, Thomson, or whoever made those field notes, made a designation between stone mounds and stone monuments there. At two miles west of the northwest corner of Sec. 5, at the southeast corner of 14, in Blk. 19, they call for a stone mound and at the northwest corner of 21, Block 19, that call is for a stone monument. At the northeast corner of Sec. 20, Block 19, they call for a stone monument. I am trying to point out that they designated between the two. We have serched carefully at each ones position and didn't find any thing that seemed in reason to be original stone mounds, but the so called Grand Daddy monument at the northwest corner of Sec. 5 is undoubtedly six feet in diameter and 2 or 3 fee t hight. It is what we would call a stone monument. In my mind it is a monument. It has a large number of rocks which have fallen down. It is east to see it was formerly a stone monument. In otherwords it is a monument built in a prominent place and has been four or five feet high and two or three feet in diameter and out of rocks which are common to that area. I will say that disregarding the large rock mound or whatever it may be at the northwest corner of Sec. 5 and using course and distance as I have here on this map, it creates an excess in this Block 180½, T. C. Ry., which lies immediately west of Block

19, University Land, but the fact that that has been created or left there by Durrell by mistake or on purpose in my mind has no bearing, or no direct bearing in locating the northwest corner of Sec. 5 as the original corner and the fact that the distance along the north lineof Sec. 5, 2368 varas has related to better accepted corners of Block 19 is just too much to be reasonable and the run is too close there even assuming there were two crews. This is comparative easy conntry to work and I believe undoubtedly they would have been much closer unless the indians got them as soon as they made the corner there and I just give that as reasoning and not necessarily just because it is in our favor, but I do say from our work in that area and over west Texas that there is usually excess.

Nutt: Isn't it a fact that we have corners quite a bit closer than any of those would have worked out.

Avera: The corners I pointed out the northwest corner of Sec. 5, the northwest corner of Sec. 15 and southwest corner of Sec. 19, fit almost exactly with the northeast corner of Sec. 1, for that reason in my opinion they fit too closely. I know there is excess in that area, in my opinion they are not original but they are much closer and more reasonable than the large mound at the northwest corner of Sec. 5. The southwest corner of Sec. 19 is almost parallel with these others, it is just a few rocks and I know it is a man made mound. It is old. And the northwest corner of Sec. 5 may be very old and could have been there 10 years or 100 years, because it is where water keeps the soil washed away and when I was there there were no bushes growing it it. There may have been at an earlier date. I am not very good at talking

I have just tried to give our construction and my belief on this thing.

Nutt: That original corner that Mr. Friend mentioned up there and the lower corner he called for one mile south of there, how do they correspond with your work.

Avera: We have a man made corner at the southeast corner which I have shown. It is near an old road and it is an old corner and it is reasonably well located and--but in my mind there is no need of contention about that. It is reasonably well located with respect to the Spring. We found numerous mounds like Mr. Friend mentioned, but they seemed to have been an old fence line near the south line of Sec. 1, and I believe one of them was found east of the line, but there is some doubt about the northeast cornerof Sec. 1. The reason, I asked Mr. Friend about the accepted northeast corner was because there was some doubt about it when he didn't fit exactly with the spring and why disregard the mounds at the northeast corner of Sec. 1, Block 21, which were off bearing and distance and then accept these over here. Of course, we might have done the same thing.

Small: What land does Mr. Nutt own.

Avera: He owns the south 80 acres of Survey 2, and I might say this Block 18-½ which is the fill-in survey between the University and blocks west there. I believe you own all of 180' from the south 80 acres of Sec. 2 with the exception of Survey 4. Do you or not own No. 1.

Nutt: No. 1 and 3.

Avera: With the exception of Survey 4 and 2, he owns every survey west of Block 19, University, the exception of 2 and 4.

Gaines: Do you know, Mr. Avera, who owns Sec. 4.

Avera: Yes, sir, Mr. Williams, at Ft. Stockton.

Walker: Mr. O. W. Williams.

Avera: I am not sure about his initials.

Gaines: Mr. O. W. Williams is a surveyor.

Avera: One of them is a surveyor, but the son made the survey and had it patented for his father based on Friend's field work.

Small: Block 180½ was originally surveyed by Durrell, is that right.

Avera: Block 180½ was originally surveyed by L. W. Durrell in 1883.

Small: When you attempt to locate that on the ground, do you have to go to the University or can you locate it from some marks put on the ground by Durrell himself.

Avera: In locating 180½ we did as the original surveyor intended to do. We tried to locate the west line of Block 19 and east line of T. & St. L. Ry., No. 144, and the west line of Sections 101 and 102, J. Poitevent and T. & St. L. Ry. Company Block 125. There are a few mountain bearings called for at the corners of the Surveys in 180', but we found none that we could identify as called for.

Small: But you could find some of Durrell's corners in Blk. 125.

Avera: In 125, yes, sir, the corners as pointed out by Mr. Friend there. We used the same ones, used about the same construction from there east toward the east end of 125. The only original corners in 125 are the corners shown on the map.

Small: If you laid in Block 180' course and distance from whatever monuments Durrell put in that block, or adjoin-

ing blocks, you still have the same construction.

Avera: I didn't follow you.

Small: Don't you have a monument you take to be Durrell's at the northwest corner of Sec. 7, in Block 125.

Avera: Yes, sir.

Small: And at the southwest corner of the same section.

Avera: Yes, sir.

Small: And at the southwest corner of Sec. 15.

Avera: Yes, sir.

Small: And at the southwest corner of Sec. 14.

Avera: Yes, sir.

Small And at the southwest corner of Sec. 11.

Avera: Yes, sir.

Small: What would be the result if you used those corners to place in Block 180½.

Avera: If we used those corners to place in 180½. Well, frankly there would be a strip between the University Block 19 and the east side of 180½, but the field notes of every survey of Block 180½ ties specifically to University Block 19, and T & St L. Ry 125.

Small: That is true, but where was that line--where did Mr. durrell think it was.

Avera: Well, Mr. Durrell thought he was on the University line and he may have used the rock mound at the northwest corner of Sec. 5, I don't know.

Small: Whether he used that or not, he was basing his ties from monuments he had set on the ground.

Avera: That is true.

Small: The best way to locate his work is to go to the monuments

left on the ground and measure east the distance he calls.

Avera: From one angle, yes, sir.

Small: That seems to be your point, you have got to put your land on the ground and show that the University does not fall where they claim it to be because it is a senior survey.

Avera: That is true working solely fromthe west the Durrell system would fall short of the University, but it calls for ties to the University.

Small: That is what you have got to do. You have either got to show the University back here, or--

Avera: Let me ask one question. Couldn't he have been mistaken as to distance and still have carried to the University.

Small: That is what you set out to show, that he was mistaken in distance.

Avera: Yes, sir, that is what I was trying to do.

Small: Turn that around, you admit and I think it is true that there is more or less excess in there but you cut the University back to course and distance and put all the excess in your block.

Avera: Block 180½ was a special fill-in survey to go from railroad block to another older block and the fact that maybe he was wrong about the location of the University block wouldn't stop his surveys short. That has happened quite often.

Small: It looks to me like the present location of the University lands might be entirely different from where Durrell thought it was when he called for it.

Avera: If he thought that was the line and accepted that as

the University and based his work on that and I say I grant that he was mistaken, he tied to that, and I think that would hold. Mr. Friend went to see Mr. Durrell or someone connected with Durrell and he said they had difficulty in locating the University.

Small: Of course, he doesn't call for the Grand Dote, but don't all his monuments he left on the ground fit pretty close to that.

Avera: They fit remarkedly well. Yes, sir, they do, but Mr. Durrell is not getting the west line of the University established there but his own east line and the fact that he could have been mistaken, would that necessarily pull Block 19 to 180½

Small: Well, there might be a vacancy between 180½ and the University.

Avera: But there again, I suppose Mr. Nutt would have the preference on that to purchase it. Our idea is to locate block 19 and then locate 180½ from that.

Small: But if you go into court on this matter and tried to show this land within 180½ it would be incumbent upon you to show your location and prove that you actually own that land. It is up to you to actually locate the land you claim.

Nutt: That is what I am trying to do today.

Small: It looks to me like you should depend on where Mr. Durrell can be found on the ground.

Avera: Can you disregard tie dalls in view of the fact there are no monuments in 180½.

Small: There are none in 180½ but you find his monuments made at practically the same time to the west.

counter 48171

Avera: That is right to the west, but you cant' disregard his call to tie to the University, especially if this was office work.

Small: No one knows that.

Avera: If we located the west line of Block 19, I don't think that is it, but if we did locate the west line of Block 19.

Small: But you have to locate your line on your own calls.

Nutt: He testified it tied to Block 19.

Avera: The fact that my work agrees so closely in there is that I had nothing to pull me away from course and distance and I think that is the way to construct a survey without monuments Is that right or wrong.

Small: The University doesn't entirely depend for the excess north and south and east and west on the so-called Grand Dote at the northwest corner of Sec. 5. Mr. Friend said he could disregard 5 and put the excess in 19.

Avera: By doing that first that he can come from Durrell's work and representing the position that was located by Thomson from another block and another man.

Small: No, he called to go to Sec. 1, in Block 21.

Avera: Would that be right to go to the University from a junior survey to establish an interior corner.

Small: The University land waslaid out in blocks and the interior lines are not so important. It was a system of blocks that was laid out. There is quite a bit of authority that any one monument in that system of blocks has the same weight as any other monument.

Avera: You say that interior lines or corners are not so important, but their position of the northwest corner of Sec. 5 as

evidenced by the so-called Grand Daddy will be an interior corner and it means under authority of block surveys the northeast corner of block 19 and northeast corner of Block 21 don't agree by over a quarter of a mile, I will ask if that is reasonable excess.

Walker: What about the two springs--East Escondido and Middle Escondido.

Avera: How could they Mr. Walker. How does it show it running through the line there. There is no distance shown. There is no distance shown. It looks like a spring placed in lightly. That may have been his original survey. I haven't studied that sketch I have never seen it before. He shows no distance and on that small map you can't scale it.

Walker: Well, that west line runs down through it.

Avera: According to the way they locate it but you can not scale it on that small a sketch.

Small: Could you indicate in the J. V. Massey about where that spring would be, the middle Escondido.

Avera: It is in the Massey approximately as shown here about 700 some odd varas about east of the northwest corner of the J. V. Massey there. That is a very appropriate location--it can easily have been further west. I don't believe it is any further north. I might say here I will grant that without doubt if this were all laid on the ground and I have reason to believe it was there would be excess and the east line of 19 and west line would be further than I have shown it there, but we haven't found anything to show it there. In fact if all Block 19 shows a 40 vara excess per mile and allowing that excess would pull this thing 200 varas west and south of where we have shown it. I have got it purely course and

distance because we found nothing on the ground to change the calls.

Small: Does Mr. Friend's survey encroach in anyway on any of the land claimed by Mr. Nutt.

Avera: Yes, sir, to my knowledge it does.

Small: How much do they conflict.

Avera: It is hard to say. In otherwords, he has part of the University land under his fence and part of his land outside of the fence. The fence is made straight across.

Nutt: I don't think you got his question. What he wants is the difference in the field notes as originally surveyed of 180½ and what is the distance in Mr. Friend's map, whay would be the shortage in my land.

Avera: You mean between the original notes of 180½ and Mr. Friend's survey.

Small: How much will he be hurt by Mr. Friend's survey.

Avera: As far as just holding it down to actual acrea and course and distance in 180½, I doubt if it would conflict but very little.

Gaines: According to your construction, you didn't give them any excess.

Avera: That is true.

Gaines: In other words, you have the senior University block giving away to a junior block.

Avera: Yes, sir, I have shown it that way.

Nutt: As they have found it both of them, they cut the construction down to the University not only taking areasonable excess, but to practically accumulating all the excess in the whole country.

Gaines: The only thing you found which you accept as original

counter 48/44

is the corner by the East Escondido Spring which is the northeast corner and you take that as the beginning point to start from for your survey and run it out course and distance and hold it to that although you find according to your testimony a number of monuments of one kind and another, you don't accept them.

Avera: No, sir, not as original.

Gaines: The field notes call for mounds.

Avera: Yes, sir.

Gaines: You testified in the beginning you ignored the map of Block 21 because it was a junior survey to Block 19.

Avera: Yes, sir, in so far as locating the interior corner or northwest corner of Sec. 5.

Gaines: In other words, in so far as locating Block 19, you ignore it.

Avera: No, sir.

Gaines: In what respect do you ignore it, I understood you to say you ignored Block 21.

Avera: I didn't ignore Block 21 or anything else that will give bearings on the location of Block 19. I might have said I ignored it but in so far as using the northeast corner of Blk. 21 as a specific means of locating the northwest corner of Sec. 5, in Block 19, we have ignored that.

Gaines: On what theory did you ignore it.

Avera: He gave me an idea that the exterior lines are block corners were relatively more important and they could be used to go a long distance into another block and come back, but not in so far as to locating an interior corner of another block.

counter 48/45

Gaines: I understood you in the beginning that you ignored Blk. 21 on the ground that is was junior to 19. If you did ignore it for that reason why do you think it is junior to 19.

Avera: By the date of the surveys.

Gaines: The dates of the notes are the same or approximately the same date.

Avera: The dates on the notes of 21 are later than 19.

Gaines: You arrive at that construction by their numbers.

Avera: No, sir.

Gaines: By reason of the date of the field notes.

Avera: Survey 1, Block 21, according to photostatic copy--certified copy of the field notes was in December 16, 1879.

Gaines: That is all right, Mr. Avera.

Nutt: I believe I would give the date and answer it for them.

Avera: Here is Survey 1, 19, December 8, 1879, Survey 6, Blk. 19 shows December 8, 1879, Using the point that was brought out by you that westline of 19 would pass either through or near the Middle Escondido Spring, I willsay this, if they gain a nominal excess in Block 19 from the accepted northeast corner of 19, it will pass either through or near the spring.

Gaines: Or approximately 400 and some odd varas west of the west line of 19 as you have established it.

Avera: No, sir, I believe granted a nominal excess in 19 using the northeast corner of block 19 as accepted that west line will pass through or near the spring, I haven't checked that as to distance.

Gaines: Would that be very near the line of the map prepared

by Mr. Friend.

Avera: I don't quite get his location of the spring.

Gaines: You have marked the spring.

Avera: It is about 700 varas, if they have in mind that same corner, it is about 700 varas from the Massey corner. It was 700 something varas and westerly course.

Gaines: That is from the Massey corner.

Avera: Yes, sir, the northwest corner of the Massey.

Gaines: Right here, as you testified, you found another mound in reference to the mound found by Friend as the Grand Dote, you found another mound.

Avera: Yes, sir.

Gaines: As you went west approximately west of the Grand Dote did you find another mound.

Avera: No, sir, other than at the extreme southeast--southwest corner of survey19.

Gaines: You didn't find any other mound west of Grand Dote at all or close at all.

Avera: No, sir, we found no other than one at the northeast of the so-called Grand Daddy.

Gaines: Those other lmounds that you did find out there, how did they fit with reference to your work and Mr. Friend's work.

Avera: The mounds we found west of the northwest corner of Sec. 5 were decidely north and east of Mr. Friend's corner there.

Gaines: When was it that you found that mound.

Avera: We worked there in October, 1939, and In August and September, 1940, and the mounds were found in 1940.

Gaines: 1940 was when you found the mounds.

I

Avera: Yes, sir, they are very old mounds.

Gaines: Not as prominent as the Grand Dote.

Avera: No, sir, but more or less original. These pictures were taken by me to verfy their location. No. 1 is a picture we were south of the mound that is approximately 500 varas northeast of the so-called Grand Daddy corner. The picture is taken looking toward Grand Daddy corner which is on a decided rise or low point there and the mound shows in the picture agrees almost practically with the northeast corner of Sec. 1, Blk. 19, agrees too perfectly and makes the distance east and west using the same variation as the University too close. Picture No. 2 is of the so called Grand Dote corner which is a large pile of rock. There is a six foot range pole and you can see it is large. We were looking south in the picture and it is a prominent point with a monntain in the back ground there. Picture No. 3 shows a view looking toward the so-called Grand Daddy from a point about 1/4 mile north of it and the men in the picture are at the mound. Picture No. 4 shows how rocky that territory is and Grand Daddy is right by the instrument. This is looking southeast. Picture 5 again this is another picture northeast of the so-called Grand Daddy looking at the same mound looking from a smaller point toward the point giving profile of the place where Grand Daddy is located. Picture No. 6 is the so-called Grand Daddy when I said there were no grases there you can see I was right. That could be either 100 years old or it could be 10 years old. There is no way of determining the age of the monument. Picture No. 7 is another view of the so called Grand Daddy looking north across a broad valley showing how far you could see it. No. 8 is a view from 1/2 mile north toward Grand

Daddy looking south showing the rise and its prominence there. This is an old mound but personally I don't think it is original but it fits the position, this No. 1. Some of those rocks have buried themselves in the ground a little bit, but it is pretty hard territory. It is hard to tell the age of any of those mounds they might be five years and theymight be a thousand.

Nutt: In connection with this corner, hos much is it out of line with the corner you accept.

Avera: You mean with the northeast corner of Sec. 1.

Nutt: Yes, sir, how much would it like tying in with this little corner if that corner was ignored as to actual measurement, how much would this corner be out of measure.

Avera: What is the relation with the recognized corner with the small corner at the northwest corner of Sec. 5. I think I have that Mr. Nutt. This smaller corner at the northwest corner of Sec. 5, it will be short about 25 varas north and south and will be short about 78 varas east and west if we stay with the aceepted corners of the northwest corner of 19. Of course that depends on variation and whether you make the shortage more or less.

Nutt: They seemed to be both ignored in a way. How far east is it of the line you ran north and south there.

Avera: It is I believe about 40 or 60 varas. In other words the old rock mound near the southeast corner of Survey 1, Blk. 19, is about 50 or 60 varas east of the east line of the University survey and as shown byus.

Nutt: That is the same corner that Mr. Friend says is closer than the one we are trying to accept.

counter 7849

Small: If you didn't have any information about University Blk. 19, couldn't you lay down 180½ on the ground.

Avera: Not without extreme difficulty because 125 as laid out by Durrell, there is a very decided change in variation in 19, east 5 degrees 25 minutes swing in it there. You could lay it out.

Small: Would you give more weight to Mr. Durrell's work where you could find it when you went to put 180½ on the ground.

Avera: Was Mr. Durrell ever on 180½

Small: You found him on 125.

Avera: But we didn't find any of Durrells monuments in 180½

Small: But if you were going to place a man's work on the ground you go to something he left on the ground to start rather than something he admitted he didn't know the location of.

Avera: We did locate the west line of 180½. We used the distance of the adjoining blocks.

Small: When you survey 180½ and give it all the called distance how much conflict does it have with Mr. Friend's survey.

Avera: Varies to some extent, and from here down it is very little.

Small: This seems to me that this is not wholly a question of boundaries but a question of title and when you assert title to a piece of land, you have got to be able to locate it deffnitely on the ground by its own calls and you recover on the strength of your own title rather than by the weakness of the title of another, and you have got to show us another location of Block 19 clearly or else depend on Durrell's location of 180½. You can't just say there is plenty of room for differente in the

counter 48150

location of Block 19, we put it one way and the University puts it another place.

Avera: The University--I can agree that it probably comes westward and southward under a correct construction of Block 19, but I can't agree with them about the monument at the northwest corner of Sec. 5. We merely go to block corners as being more important and better evidence than interior corners in a block.

Small: But you don't necessarily need the University to lay your land in.

Avera: Block 180½ calls for University Block 19.

Small: It calls for it where Durrell thought it was.

Avera: Don't you think this is Durrell's call.

Small: What I am getting at is you can place your land on the ground ignoring the University block.

Avera: And you mean ignore calls for the west line of the University land.

Gaines: You have already testified that you did this survey from Thomson and Holt notes and there are numerous calls for rock or stone mounds or monuments that is fixing south and west position of the University block.

Avera: Yes, sir.

Gaines: You have already testified you found plenty of monuments.

Avera: Yes, sir.

Gaines: You testified you found anumber of those out in those blocks.

Avera: Yes, sir.

Gaines: However, when you go to construct that--the universityy according to the notes is fixed on the ground by marked

corners.

Avera: Yes, sir.

Gaines: You ignore all of those.

Avera: Yes, sir.

Gaines: Isn't it true that calls for stone mounds and monuments have preference over course and distance.

Avera: Undoubtedly.

Gaines: But you ignore those in so far as fixing the south and west lines of the University are concerned.

Avera: Well, I ignore them in that they don't agree entirely within themselves. In my mind they are not original.

Gaines: Do you believe it is your duty as a surveyor to establish the University block according to its field notes.

Avera: That is what I was attempting to do.

Gaines: Wouldn't it have been your duty as a surveyor to first locate those monuments or approximate location of them and if they are not found at that point to establish approximately the location of them.

Avera: Yes, sir, but there is nothing that I can see that will allow me to give it the usual excess.

Gaines: Taking the Grand Daddy as an original corner or monument as Mr. Friend has done wouldn't that be according to the field notes more feasible and practical according to them than to run course and distance.

Avera: No, sir, the excess is included within a small area and that is a reasonably easy country to survey.

Small: Is it excessive over the whole block.

Avera: No, sir.

Small: It wouldn't be much change if they take the entire east and west excess in the whole block and distribute it through the whole block.

Avera: They have thrownit all in one mile.

Small: That is just an interior corner.

Avera: It may be so, but it is reasonably full and coming back to the interior corner the University is basing its block on.

Small: You have still got to establish your survey.

Avera: Well I think it best in view of the fact it is closer to undisputed corners.

Small: I can't see that. It all boils down to whether the University gets the excess or whether you get it.

Avera: And all the blocks west of it there.

Small: That is right there is a great deal of excess in there.

Avera: And it calls to tie to the University 180½ does. I think my construction better than to base it on an interior corner with not even reasonable connections to its stronger block corner.

Small: That puts you in the position of claiming on somebody else's weakness.

Avera: No, sir, we are trying to locate on the west line of Blk. 19 so we can put our fill in survey on that line of the block.

Small: Is that your position when you go to locate 180½.

Avera: No, I find Mr. Durrell was mistaken and disn't know the location of the University, but is that a reason why 180½ should be held to course and distance. He called for ties. In my mind that is as strong as course and distance.

Small: His call was for a line which in all probability he didn't know the location of is stronger than monuments in

I

another block that he put on the ground himself.

Avera: Let's go at it this way. I believe, he was mistaken. I can check that, but why pull loose between 180½ and Blk. 19 University rather than pull lose from the block to the west if there is any pulling loose to be done.

Small: Well tell me this, if Mr. Durrell made a mistake in there and apparently he did if his line of 180½ is longer than called for.

Avera: Well, if Mr. Durrell was mistaken, he was mistaken in the location of the University block, but if that is an office survey and he calls for the block, his survey would go to it.

Small: Can you call it an office survey when you have monuments within two miles.

Avera: I think the survey of 180½ was an office survey as he never established any corners over there.

Gaines: Do you think Mr. Avera it would be more reasonable for 180½ to have gone back and been placed on the corners that he established himself in T & St. L. Ry 125 and establish his 180½ T. C. Ry on the ground or would he have gone to some other survey to have put in that block.

Avera: The smart thing would have been to work off his own work.

Nutt: In connection with survey 180½ there isn't any way of locating it except through adjoinder blocks.

Avera: It can be located from the west from Durrell's work and disregard the University. I don't know, maybe that is right, that is more or less a legal question as to what is right, but there is a different call for practically every university survey to which Block 180½ ties to.

counter 48154

Small: But you will go right ahead and admit these lines are known to be excessive and were probably not in the position you place them in today.

Avera: What I would do and what Mr. Durrell would do by mistake, I don't think that a parallel problem. If you find no monuments or marks whatever established by the original surveyor on the tract but calls for adjoining surveys, you make that connection or tie.

Gaines: Forgetting Grand Dote for the moment, but going over to the Middle Escondido Spring. You said you were not acquainted with this map of Mr. Moore's and didn't know of its indication there of the spring, take what you know of it now, and what you know of the connection called for in Blk. 21 for Blk 19, which was laid in at approximately the same time, taking that call for connection with Blk. 19, and with well known objects, Middle Escondido and West Escondido, would you still ignore them and the others in Blk. 180½ and Blk. 19, or would you construct it from the northeast corner course and distance, or would youallow the usual excess if you couldn't find monuments to go by or the approximate location of that mound or monument, and also in view of fact that there are the calls that you might locate under and allow you that excess from one known point that you accept.

Avera: I think that involves the legal end more than the surveying.

Gaines: Of course, if you do construct that with those questions,

you have got to take those things in consideration.

Avera: Yes, sir, I know of no law to allow the usual excess, it is just an opinion. In other words, my opinion of what is usual excess and yours would vary.

Gaines: You would have to take all things in consideration.

Avera: Yes, sir.

Gaines: You couldn't give precedence to one monument, you would have to consider all things.

Avera: Yes, sir.

Gaines: You ignore both of those springs--I am talking about the Middle and West Escondido Springs.

Avera: There is no connection to the Middle Escondido.

Gaines: There is no distance given, but that was put on the original map.

Avera: There is no distance or connection given.

Gaines: Would you ignore this map entirely.

Avera: No, I believe in looking at all the facts. You take that circle as shown there it will cover 150 varas and that spring is no where near that size. This shows no distance and actual connection. I may be wrong, but I think that it was filed here just for reference and not as absolute control. I will grant Moore might have thought the spring was in there.

Gaines: But that being so close to a corner, you wouldn't accept that.

Avera: Wasn't this by a man who was not the surveyor for the University. He might have been a surveyor, but was not doing the locating. It is set about ¼ mile directly east of where to locate the corner.

counter 78156

Gaines: He was a surveyor, I think. The northwest corner of Sec. 19 is connected to the West Escondido.

Avera: Isn't Mr. Thomson here you land man. I wouldn't take a map furnished me by an office surveyor, I don't think.

Gaines: I know but this is the only map for the work that Thomson was doing down there. Would you accept this as Thomson's and use it in locating your work.

Avera: I believe in considering everything and especially if there is any reason for it, but you can't locate that spring by that circle within 200 varas of where it is.

Gaines: I would like to recall Mr. Friend. Mr. Friend, you have found a rock mound northeast of the Grand Dote mound, are you familiar with any such mound, is that in there.

Friend: Yes, sir.

Gaines: When did you find it.

Friend: in 1936, in December.

Gaines: December, 1936, what was its appearance.

Friend: It is just one large rock.

Gaines: That was in 1926 that you found that first.

Friend: Yes, sir, in 1926, it was just like the picture shows it. It had one large blue rock. I checked it. It was blue on top but had not colored as it would have had it been there for some time. It couldn't have been more than two or three years old at that time.

Gaines: Did you find it again when you were back there for the university.

Friend: I found it, and it had about the same appearance.

counter 48157

Gaines: Mr. Friend, west of the Grand Dote mound and that approximate vicinity, did you find other mounds when you worked through there.

Friend: Yes, sir, here is the Grand Dote, right here, using that as a corner we ran west to see if we could find any other mounds and right there at the southeast corner of Sec. 19, southeast and southwest corners of 19, we carry on out, and by putting 50 varas excess in each mile we strike an old stone mound right there.

Gaines: Which would be the southeast corner of Sec. 19.

Friend: Yes, sir, by taking 1900 varas and 11 varas to the mile we find a very old stone mound right in line with the Grand Dote taking 1900 varas plus 18 varas for the width we found a mound here, but we didn't go to those rock mounds.

Gaines: Did you find any other mounds in reference to whether it is north or south of it.

Friend: No, sir.

Gaines: The appearance of the rock mounds are called for in the field notes.

Friend: Those stone mounds are called for in the field notes.

Gaines: You didn't accept those on out here because you were instructed by the University officials to come back east.

Friend: I was instructed to back up 168 varas just to relieve almost all the conflict with Block 180½.

Gaines: I think that is all.

counter 48 158

Pecos R-o Sh No 114

UNIVERSITY OF TEXAS, APPLICANT

vs.

J. L. NUTT, CONTESTANT

Hearing before Hon. Bascom Giles, Land Commissioner
December 18, 1940

STATEMENT

The University has applied for the approval of Frank F. Friend's location of the outer boundaries of University Block 19, Pecos County, as delineated by J. A. Conklin on the sketch thereof filed at said hearing and explained by Mr. F. F. Friend's testimony taken at the same time. The University claims that the Friend location of the south and west boundaries of Block 19 as sketched by Conklin is identical with the location of these boundaries by R. M. Thomson, the locating surveyor in 1879, and retraced in 1882 by L. W. Durrell to find space for the location of Blocks 125, 126, and 180½, the back lines of which are well monumented.

The contestant, Mr. Nutt, seemingly owns all of Block 180½ which calls for adjoinder with University Block 19 on the south and west sides of the latter, including the inset around the Massey surveys, and claims that said Block 19 should take its position on the ground by course and distance from the southwest corner of Section 18, University Block 18, in the position this corner is recognized by Mr. Friend, and Mr. Nutt asserts ownership of the land contiguous to the outer boundaries of Block 19 so established.

counter 78159 5'

The area involved is approximately 1000 acres.

Surveying is said to have been developed by the Egyptians because of the obliteration of their boundaries by the inundations of the Nile. In respect to the original boundaries as marked on the ground by Thomson in the East Escondido system, the University finds itself in practically the same situation as the Egyptians found themselves after an overflow of the Nile--dependent on geometric aids. Not one Thomson mound or monument in the East Escondido system can now be identified with absolute certainty. Three corners, however, can be located from the fieldnotes calls for natural objects. These corners are the northeast corner of Block 16, which is connected directly to three mountain points; the southwest corner of Block 19, which is connected indirectly to the West Escondido Spring; and the northeast corner of Block 19, which is directly connected to the East Escondido Spring.

A surveyor without full knowledge of the subject as shown by the records of the Land Office and the history of the times would enter upon a most difficult, if not impossible, task of relocating the East Escondido system of University land. Our inquiry now is limited to Block 19, but it is necessary to understand something of the whole system of which it forms a part. Tunis Swale in which the East Escondido system lies is a part of the University General Reserve created by the law of 1879 for the location of the endowment of one million acres set apart to the University by the Constitution of 1876. The Tunis

counter 78160

J2

Swale, like the Commanche and the Leon Swales, at an early date was covered by a heavy growth of tule as were the flats of Rio Pecos (Mendoza, 1684). The tules of Tunis concealed three springs known now as the Escondidos, meaning hidden. The reed now known elsewhere as the tule does not seem to be the tule of the Pecos (Williams). The Appaches in 1684 built of tules three jacales (huts) for Mendoza at Horsehead Crossing. The three Escondidos are on the old line of travel from three crossings on Rio Pecos to Commanche Springs where the villa de San Juan del Rio was situated. A few days prior to the creation of the Tom Green Crockett, and Pecos Reserves for the University endowment in 1879, the three Escondidos were covered by land certificates as had been done in the case of Commancheand other springs west of the Rio Pecos. Thomson seems to have known of the locations over Commanche and West Escondido Springs before making his surveys, but he does not seem to have known about the Massey over Middle Escondido and the Garza Irrigation Company survey over East Escondido. He included these springs in his survey of Block 19. However, he learned about Middle Escondido before writing the field notes of Block 19. In cutting out four sections, one of which included Middle Escondido Spring, Thomson neglected to transfer the calls for it to Section 19. The sketch, however, shows it.

As far back as 1854 the Federal Government determined the latitude and longitude of Eagle, Commanche, and other springs

counter 78161

J3

west of the Pecos as well as the distances between them and likewise the distance from Commanche Springs to Pontoon on Rio Pecos. The distances between the surveys over the springs in the Tunis Swale are so accurate as to attract the attention of surveyors. Mr. Avera at the hearing challenged the Friend run from West Escondido to the southwest corner of Block 19 as too accurate for Thomson to have measured it. It is apparent that Thomson adopted or, better expressed, adjusted his measurement to that previously made for Major George B. Zimpleman between the Massey and the Shofner surveys over West Escondido. Mr. Friend testified at the hearing that the Thomson surveys in his judgment were made from Fort Stockton east and not from the northeast corner of Block 16 west as the dates of the field notes would imply. Mr. Friend's conclusions are correct. This fact has a material bearing on the case in that Thomson's lines are parallel and perpendicular to the meridian through Fort Stockton. Thomson's lines run in conformity with this meridian as his north and south conform exactly to the natural objects for which he calls.

It is well know that Thomson abandoned temporarily his work east of the Pecos because of scarcity of water and crossed that river at Pontoon and entered Pecos County. After clearing the river surveys, the surveying party proceeded through Tunis Swale to Fort Stockton, making an inspection ofthe lands on the way, and from Fort Stockton to the 100th meridian which was the

counter 78162

J4

east line of the T. & P. Reserve and believed by Thomson to be the east line of Block 3 surveyed for the T. & P. in 1873 by Dennis Corwin. At Fort Stockton Thomson put in Blocks 27 and 28, largely in conflict with Block 3 T. & P. After that work was done, wouldn't it be unreasonable to suppose that he moved his outfit to the northeast corner of Block 16, a two days' drive with his mules, and proceeded to survey westward for the pleasure of a two days' drive back toward Pontoon when his work was completed?

There is no evidence whatever that Thomson attempted to "shoot Polarrais" in the Pecos Field. He accepted the meridian established by the United States Government at Fort Stockton as correct and angulated all his work in Pecos County with it. The effect was to make his sections square as required of him by the Land Commissioner in his instructions of May 14, 1879. It follows, of course, that Thomson's lines east of Fort Stockton are not on a true course, the difference being the convergence of the local meridian with the Fort Stockton meridian. Thus, the Thomson courses at the northeast corner of Block 16 are 28' off of true course. The angular convergence between the meridian of the northeast corner of 16 and that through Fort Stockton is 28'.

In 1882 L. W. Durrell identified on the ground Thomson's south and west boundaries of Block 19 surveyed in December, 1879, and he fitted thereto his Blocks 125, 126, and 180½. According to Mr. Friend's testimony at the hearing, Mr. Durrell at first

had a great deal of trouble in satisfying his own mind as to the true location of Thomson's lines and corners of University Block 19. The writer's information is that Mr. Durrell's trouble was not in a failure to find earth and rock mounds but to identify any of those he found as having been placed on the ground by Thomson. There is only one way in which he could have established Thomson's lines with certainty at that time. Without external evidence there was not a mound in the whole Tunis Swale with which he could have connected with any degree of certainty as being one of Thomson's mounds. All Durrell had to do, however, and the writer is sure he did do, and the record indicates he did, wa s to go to West Escondido Spring and run a trial line S 3870 varas and E 5730 varas. Regardless of whether he was on Thomson's exact course, the run would have brought him into the immediate vicinity of the southwest corner of Section 19 and would have enabled him to find it. So Durrell proceeded to lay his lines and to correct his courses to correspond to Thomson's, which is evident from the close co-ordination of his own monuments to Thomson's work.

That lovable and renowned Knight Errant, Don Quixote de la Mancha, tells us the distance from Toboso to Argamasilla e Alba is the same as that from Argamasilla de Alba to Toboso, and his squire, Sancho Panzo, adds the quaint philosophical thought that his master's statement is true regardless of whether he rides from one town to the other on his own mule and back to

the starting point on Rocinanate, his master's steed. L. W. Durrell adopted this doctrine and Frank Friend, Special University Surveyor, seems to acquiesce in it.

"But," says Mr. Avera, "A senior survey cannot be located from a junior. The distance you are using is found in the connection of the northeast corner of Block 21 to the southwest corner of Section 19, Block 19. Block 21 is junior to Block 19. There is nothing in the field notes of Block 19 to connect it to Block 21." Very well, Mr. Avera. If Thomson set out from the southwest corner of Section 19, Block 19, to survey Block 21 and on his way ran 5730 varas west and 3870 varas north to West Escondido, would not the distance back to the southwest corner of Block 19 be 3870 varas south and 5730 varas east? Cannot his foot prints be followed backward as well as forward? True, this call is not in the field notes of Section 19, Block 19, but it is in the field notes of Section 1, Block 21, to the location of which it contributes nothing. Section 1, Block 21, is located from West Escondido just as Block 19 is located from the same spring. The locative lines joined together constitute the connection between the East and the West Escondido systems.

The University contends that the distance between the southwest dorner of Block 19 and West Escondido is of public record in the Land Office and in the University field notes, and for that reason is an element of description and just as effective as if included in the field notes of Section 19, Block 19.

counter 48165

J7

Mr. Avera offers an argument that Mr. Friend's testimony regarding the northeast corner of Section 1, Block 21, is irrelevant because a senior survey cannot be located from a junior, and, if relevant, Mr. Friend's inability to identify any of the mounds found on the maountain as the Thomson corner renders his work uncertain and of no value. Mr. Friend's testimony, in the form given, may be a little confusing, but it is material in that it was offered to show a complete circuit or closure with the run S 3870 varas and E. 5730 varas from West Escondido, and that he was following Thomson's angulation. Running west, north, east and south on Thomson's calls from West Escondido, one would strike the northwest corner of Section 19, Block 19. This is 1900 varas (Thomson's) north of the southwest corner of Section 19 and in a line ruhning west of Middle Escondido.

If a senior survey cannot be located from a junior, there are at least 50,000 surveys in Texas lost to their surroundings. Mr. Avera states the rule correctly, but the exception to it are numerous. Every boundary must rest on its own peculiar facts. As a matter of record Block 21 is junior to Block 19, but as a matter of fact it is senior, if the question is determined by the date of t e actual survey. However, the University is making no effort to locate Block 19 from Block 21. It is anchoring its lines to West Escondido as did Thomson and using Block 21 only as an eye-witness, ojo de agua--to Friend's boots being on Thomson's shoe tracks.

counter 48166

Durrell entered the field only a little more than two years after Thomson's survey. It was absolutely necessary for him to find Thomson's lines. Durrell's monuments marking his lines of 1882 are so co-ordinated with Thomson's lines of 1879 run from Escondido as to eliminate any doubt whatever that Durrell found and identified Thomson's earth and rock mounds. Friend is not locating Block 19 from Durrell's monuments but admittedly the latter are very friendly and cooperative witnesses.

7 The plats of the University surveys, as required by law and the consequent instructions, were drawn and filed by M. B. Moore. Mr. Moore was in the field all the time with the surveyors and actually directed the work; Mr. Thomson most of the time was in Austin. The sketches filed with field notes are surveyor's sketches and simply pictures of the survey. The function of a sketch may be compared to that of a house which one is attempting to describe by words and phrases. The importance of the sketch seemingly is growing more and more into the minds of the courts. In Burkett vs. Chestnutt, 212 S. W. 271, the Court of Civil Appeals said:

> "The plat filed, copied above, as a part of the description of the survey by the original surveyor, showingthe river to be the boundary, is the best evidence that it is in fact the south boundary thereof. Boon v. Hunter, 62 Tex. 589."

The Mooresketch may not be accurately scaled, but it gives a picture of the relationship of the surveys and shows Middle Escondido to be within Block 19 as surveyed on the ground. The

University is not offering the sketch in evidence to show the exact distance of the spring east of the west line of Block 19. It is offered to show the spring within Block 19 as surveyed. The connection of Sections 19, 20, 23 and 24 as numbered by Moore could not and would not affect the west boundary of the block and of Sections 19 and 21 as now numbered. For the exact distance applicant is dependent on the connection between the southwest corner of 19 and West Escondido Spring.

Respectfully submitted,

J. H. Walker

January 7,, 1941

counter 18168

Pecos RLD Sec. 114

1196

RECEIVED
JAN 8 - 1941
REFERRED TO LAW

UNIVERSITY OF TEXAS, APPLICANT

vs.

J. L. NUTT, CONTESTANT

CS.

Hearing before Hon. Bascom Giles, Land Commissioner
December 18, 1940

STATEMENT

The University has applied for the approval of Frank F. Friend 's location of the outer boundaries of University Block 19, Pecos County, as delineated by J. A. Conklin on the sketch thereof filed at said hearing and explained by Mr. F. F. Friend's testimony taken at the same time. The University claims that the Friend location of the south and west boundaries of Block 19 as sketched by Conklin is identical with the location of these boundaries by R. M. Thomson, the locating surveyor in 1879, and retraced in 1882 by L. W. Durrell to find space for the location of Blocks 125, 126, and 180½, the back lines of which are well monumented.

The contestant, Mr. Nutt, seemingly owns all of Block 180½ which calls for adjoinder with University Block 19 on the south and west sides of the latter, including the inset around the Massey surveys, and claims that said Block 19 should take its position on the ground by course and distance from the southwest corner of Section 18, University Block 18, in the position this corner is recognized by Mr. Friend, and Mr. Nutt asserts ownership of the land contiguous to the outer boundaries of Block 19 so established.

a

counter 98169

The area involved is approximately 1000 acres.

Surveying is said to have been developed by the Egyptians because of the obliteration of their boundaries by the inundations of the Nile. In respect to the original boundaries as marked on the ground by Thomson in the East Escondido system, the University finds itself in practically the same situation as the Egyptians found themselves after an overflow of the Nile--dependent on geometric aids. Not one Thomson mound or monument in the East Escondido system can now be identified with absolute certainty. Three corners, however, can be <u>located</u> from the field-note calls for natural objects. These corners are the northeast corner of Block 16, which is connected directly to three mountain points; the southwest corner of Block 19, which is connected indirectly to the West Escondido Spring; and the northeast corner of Block 19, which is directly connected to the East Escondido Spring.

A surveyor without full knowledge of the subject as shown by the records of the Land Office and the history of the times would enter upon a most difficult, if not impossible, task of relocating the East Escondido system of University land. Our inquiry now is limited to Block 19, but it is necessary to understand something of the whole system of which it forms a part. Tunis Swale in which the East Escondido system lies is a part of the University General Reserve created by the law of 1879 for the location of the endowment of one million acres set apart to the University by the Constitution of 1876. The Tunis

counter 78170

Swale, like the Commanche and the Leon Swales, at an early date was covered by a heavy growth of tule as were the flats of Rio Pecos (Mendoza, 1684). The tules of Tunis concealed three springs known now as the Escondidos, meaning hidden. The reed now known elsewhere as the tule does not seem to be the tule of the Pecos (Williams). The Appaches in 1684 built of tules three jacales (huts) for Mendoza at Horsehead Crossing. The three Escondidos are on the old line of travel from three crossings on Rio Pecos to Commanche Springs where the villa de San Juan del Rio was situated. A few days prior to the creation of the Tom Green, Crockett, and Pecos Reserves for the University endowment in 1879, the three Escondidos were covered by land certificates as had been done in the case of Commanche and other springs west of the Rio Pecos. Thomson seems to have known of the locations over Commanche and West Escondido Springs before making his surveys, but he does not seem to have known about the Massey over Middle Escondido and the Garza Irrigation Company survey over East Escondido. He included these springs in his survey of Block 19. However, he learned about Middle Escondido before writing the field notes of Block 19. In cutting out four sections, one of which included Middle Escondido Spring, Thomson neglected to transfer the calls for it to Section 19. The sketch, however, shows it.

As far back as 1854 the Federal Government determined the latitude and longitude of Eagle, Commanche, and other springs

counter 48171

a²

west of the Pecos as well as the distances between them and likewise the distance from Commanche Springs to Pontoon on Rio Pecos. The distances between the surveys over the springs in the Tunis Swale are so accurate as to attract the attention of surveyors. Mr. Avera at the hearing challenged the Friend run from West Escondido to the southwest corner of Block 19 as too accurate for Thomson to have measured it. It is apparent that Thomson adopted or, better expressed, adjusted his measurement to that previously made for Major George B. Zimpleman between the Massey and the Shofner surveys over West Escondido.

Mr. Friend testified at the hearing that the Thomson surveys in his judgment were made from Fort Stockton east and not from the northeast corner of Block 16 west as the dates of the field notes would imply. Mr. Friend's conclusions are correct. This fact has a material bearing on the case in that Thomson's lines are parallel and perpendicular to the meridian through Fort Stockton. Thomson's lines run in conformity with this meridian as his north and south conform exactly to the natural objects for which he calls.

It is well known that Thomson abandoned temporarily his work east of the Pecos because of scarcity of water and crossed that river at Pontoon and entered Pecos County. After clearing the river surveys, the surveying party proceeded through Tunis Swale to Fort Stockton, making an inspection of the lands on the way, and from Fort Stockton to the 100th meridian which was the

east line of the T. & P. Reserve and believed by Thomson to be the east line of Block 3 surveyed for the T. & P. in 1873 by Dennis Corwin. At Fort Stockton Thomson put in Blocks 27 and 28, largely in conflict with Block 3 T. & P. After that work was done, wouldn't it be unreasonable to suppose that he moved his outfit to the northeast corner of Block 16, a two days' drive with his mules, and proceeded to survey westward for the pleasure of a two days' drive back toward Pontoon when his work was completed?

There is no evidence whatever that Thomson attempted to "shoot Polrais" in the Pecos field. He accepted the meridian established by the United States Government at Fort Stockton as correct and angulated all his work in Pecos County with it. The effect was to make his sections square as required of him by the Land Commissioner in his instructions of May 14, 1879. It follows, of course, that Thomson's lines east of Fort Stockton are not on a true course, the difference being the convergence of the local meridian with the Fort Stockton meridian. Thus, the Thomson courses at the northeast corner of Block 16 are 28' off of true course. The angular convergence between the meridian of the northeast corner of 16 and that through Fort Stockton is 28'.

In 1882 L. W. Durrell identified on the ground Thomson's south and west boundaries of Block 19 surveyed in December, 1879, and he fitted thereto his Blocks 125, 126, and 180½. According to Mr. Friend's testimony at the hearing, Mr. Durrell at first

a4

counter 98173

had a great deal of trouble in satisfying his own mind as to the true location of Thomson's lines and corners of University Block 19. The writer's information is that Mr. Durrell's trouble was not in a failure to find earth and rock mounds but to identify any of those he found as having been placed on the ground by Thomson. There is only one way in which he could have established Thomson's lines with certainty at that time. Without external evidence there was not a mound in the whole Tunis Swale with which he could have connected with any degree of certainty as being one of Thomson's mounds. All Durrell had to do, however, and the writer is sure he did do, and the record indicates he did, was to go to West Escondido Spring and run a trial line S 3870 varas and E 5730 varas. Regardless of whether he was on Thomson's exact course, the run would have brought him into the immediate vicinity of the southwest corner of Section 19 and would have enabled him to find it. So Durrell proceeded to lay his lines and to correct his courses to correspond to Thomson's, which is evident from the close co-ordination of his own monuments to Thomson's work.

That lovable and renowned Knight Errant, Don Quixote de la Mancha, tells us the distance from Toboso to Argamasilla de Alba is the same as that from Argamasilla de Alba to Toboso, and his squire, Sancho Panzo, adds the quaint philosophical thought that his master's statement is true regardless of whether he rides from one town to the other on his own mule and back to

counter 78174

Q5

the starting point on Rocinante, his master's steed. L. W. Durrell adopted this doctrine and Frank Friend, Special University Surveyor, seems to acquiesce in it.

"But," says Mr. Avera, "A senior survey cannot be located from a junior. The distance you are using is found in the connection of the northeast corner of Block 21 to the southwest corner of Section 19, Block 19. Block 21 is junior to Block 19. There is nothing in the field notes of Block 19 to connect it to Block 21." Very well, Mr. Avera. If Thomson set out from the southwest corner of Section 19, Block 19, to survey Block 21 and on his way ran 5730 varas west and 3870 varas north to West Escondido, would not the distance back to the southwest corner of Block 19 be 3870 varas south and 5730 varas east? Cannot his foot prints be followed backward as well as forward? True, this call is not in the field notes of Section 19, Block 19, but it is in the field notes of Section 1, Block 21, to the location of which it contributes nothing. Section 1, Block 21, is located from West Escondido just as Block 19 is located from the same spring. The locative lines joined together constitute the connection between the East and the West Escondido systems.

The University contends that the distance between the southwest corner of Block 19 and West Escondido is of public record in the Land Office and in the University field notes, and for that reason is an element of description and just as effective as if included in the field notes of Section 19, Block 19.

counter 48175

a6

Mr. Avera offers an argument that Mr. Friend's testimony regarding the northeast corner of Section 1, Block 21, is irrelevant because a senior survey cannot be located from a junior, and, if relevant, Mr. Friend's inability to identify any of the mounds found on the mountain as the Thomson corner renders his work uncertain and of no value. Mr. Friend's testimony, in the form given, may be a little confusing, but it is material in that it was offered to show a complete circuit or closure with the run S 3870 varas and E 5730 varas from West Escondido, and that he was following Thomson's angulation. Running west, north, east, and south on Thomson's calls from West Escondido, one would strike the northeast corner of Section 19, Block 19. This is 1900 varas (Thomson's) north of the southwest corner of Section 19 and in a line running west of Middle Escondido.

If a senior survey cannot be located from a junior, there are at least 50,000 surveys in Texas lost to their surroundings. Mr. Avera states the rule correctly, but the exceptions to it are numerous. Every boundary must rest on its own peculiar facts. As a matter of record Block 21 is junior to Block 19, but as a matter of fact it is senior, if the question is determined by the date of the actual survey. However, the University is making no effort to locate Block 19 from Block 21. It is anchoring its lines to West Escondido as did Thomson and using Block 21 only as an eye-witness, ojo de agua--to Friend's boots being on Thomson's shoe tracks.

counter 48176

Q7

Durrell entered the field only a little more than two years after Thomson's survey. It was absolutely necessary for him to find Thomson's lines. Durrell's monuments marking his lines of 1882 are so co-ordinated with Thomson's lines of 1879 run from Escondido as to eliminate any doubt whatever that Durrell found and identified Thomson's earth and rock mounds. Friend is not locating Block 19 from Durrell's monuments but admittedly the latter are very friendly and cooperative witnesses.

The plats of the University surveys, as required by law and the consequent instructions, were drawn and filed by M. B. Moore. Mr. Moore was in the field all the time with the surveyors and actually directed the work; Mr. Thomson most of the time was in Austin. The sketches filed with field notes are surveyor's sketches and simply pictures of the survey. The function of a sketch may be compared to that of a house which one is attempting to describe by words and phrases. The importance of the sketch seemingly is growing more and more into the minds of the courts. In Burkett vs. Chestnutt, 212 S. W. 271, the Court of Civil Appeals said:

> "The plat filed, copied above, as a part of the description of the survey by the original surveyor, showing the river to be the boundary, is the best evidence that it is in fact the south boundary thereof. Boon v. Hunter, 62 Tex. 589."

The Moore sketch may not be accurately scaled, but it gives a picture of the relationship of the surveys and shows Middle Escondido to be within Block 19 as surveyed on the ground. The

counter 48177

University is not offering the sketch in evidence to show the exact distance of the spring east of the west line of Block 19. It is offered to show the spring within Block 19 as surveyed. The connection of Sections 19, 20, 23, and 24 as numbered by Moore could not and would not affect the west boundary of the block and of Sections 19 and 21 as now numbered. For the exact distance applicant is dependent on the connection between the southwest corner of 19 and West Escondido Spring.

Respectfully submitted,

J. H. Walker

January 7, 1941

counter 48178

a9

Pecos Rio Sur. No 114

924

OFFICE PHONE 4920-1

RESIDENCE PHONE 5737-4

JAMES K. AVERA
STATE LICENSED
ENGINEER AND SURVEYOR
HOLCOMBE-BLANTON BUILDING
SAN ANGELO, TEXAS

RECEIVED
JAN 31 1941
REFERRED TO LAW

January 30, 1941

Mr. Bascom Giles
Commissioner
General Land Office
Austin, Texas

Dear Sir:

Mr. J. L. Nutt has asked that I write you to learn when the transcription of discussion concerning location of University Blk. 19 and T. C. Ry. Co. Blk. 180-1/2, Pecos County, Texas, will be ready; this was the hearing held in your office December 18, 1940.

Since we were unprepared for such a formal hearing and did not have the advantage of having an attorney present, Mr. Nutt wishes to submit a copy of the transcription to his attorney for examination from the legal angle. It was agreed by your representives that we be given this opportunity before any final decisions are made.

In substituting for an attorney and acting as surveyor, I failed to bring out several important points because of being worried over the extra and unexpected responsibilities. One point is that Mr. Friend stated that the NE cor. Sur. 1, Blk. 21, U. T., is almost exactly course and distance from the NW cor. of Sur. 19, Blk. 19, U. T., as called for in notes for said Sur. 21 (and according to his construction of sd. Blk. 19, based on so-called "grandaddy" cor.); this is not reasonable, as far as supporting the position of "grandaddy", because it is generally conceded and known that there is a common excess in this area that will amount to considerable distance over this many miles.

I sincerely believe that U. T. Blk. 19 has excess in it as originally surveyed, even though we could find nothing to prove this on the ground other than the few mounds we mentioned; even though there is doubt about the origin of the mounds we found, they are much more reasonably located than "grandaddy" and their appear-

counter 48179 A'

ances are much older.

The location of the West line of Blk. 19, U. T., has been based entirely on "grandaddy", according to Mr. Friend's construction, as is the location of the South line of said Blk. 19. There is no question that "grandaddy" is unreasonably out of keeping with the rest of Blk. 19 and that there is much doubt that it is the original in view of this fact; since it has no bearings and is so much out of line with the rest of its own Block, it hardly seems reasonable to accept it as the original when so much depends on it and it has so little to back it up.

I believe that when asked about any shortage in Blk. 180-1/2, that I stated (from memory) that I believed very little shortage exists under Mr. Friends construction; after checking roughly, I believe that his " will create quite a shortage in most of the Surveys in this Blk. As soon as we receive a copy of the transcription, we will check everything carefully and I can be more accurate with details.

Since Mr. Friend's construction would conflict with the East part of Blk. 180-1/2, it is causing Mr. Nutt much anxiety and he will appreciate hearing from you at the earliest moment.

When you return our photographs and map, please include copies of the maps and sketches presented by the University.

Very truly yours,

James K. Avera

jka:x

counter 48180 A2

February 4, 1941

Mr. James K. Avera
Holcombe-Blanton Bldg.
San Angelo, Texas

Dear Mr. Avera:

The transcript of the discussion concerning University Block 19 is almost completed, and it will be furnished you in a few days.

When you have had time to examine and check all of the details we will be glad to hear your side further.

Sincerely yours,

BASCOM GILES
Small:rlw COMMISSIONER OF GENERAL LAND OFFICE

counter 48181

A3

Pecos Co. R-O Sd No 114

501

THE UNIVERSITY OF TEXAS
AUSTIN

SCOTT GAINES
LAND ATTORNEY

J. H. WALKER
UNIVERSITY LANDS OFFICER

May 20, 1941

RECEIVED
MAY 24 1941

Hon. Bascom Giles, Commissioner
General Land Office
Austin, Texas

REFERRED TO SAW

Subject: J. L. Nutt Application to purchase as unsurveyed land a part of Block 19 U. T., Pecos County

CS

Dear Bascom:

In line with the plan indicated to Mr. Small some days ago I spent last week in the Escondido area of Pecos County in an effort to locate the true west boundary of said block. With me in the field were Frank F. Friend, University Special Surveyor; J. A. Conklin and Norris Creath, each a licensed land surveyor of many years experience in that territory.

In reporting to you our findings on the ground let me call your attention to some pertinent facts disclosed by the archives in the Land Office which may be of some service in the basic preparation for a survey under Mr. Nutt's application. Particular reference is made to the sketch filed by Maurice B. Moore with the field notes signed by R. M. Thomson and to the field notes of what are now sections 20 and 21 in said Block 19. You will recall that at the hearing on Mr. Nutt's application for the extension of his survey lines Mr. Avera questioned the position of the East Escondido Spring as not being shown on the Moore sketch. I have discovered that photostatic copies of this sketch in all cases do not show the word spring thereon as indicating the position of the Escondido Spring, and do not give the distance from the northwest corner of the block to that spring. If you will examine the original sketch, you will find the spring thereon indicated by that word (dim) and the distance to it from the northwest corner of the block disclosed in figures. If you will draw the field notes in University F. N. Files 677 and 678, you will find the original field notes of sections 20 and 23 as shown on the Moore sketch, and that these field notes were changed to fit the present sections 20 and 21.

At the outset let me say that Mr. Friend in his presentation at the Nutt hearing was in error as to the original and, of course, the true location of the west boundary of Block 19. On this point Friend, Conklin, Creath, and I are in complete agreement. Therefore, the University may withdraw request for the approval of the Friend survey of Block 19 as presented at

B

counter 78182

the hearing, for the reason his lines are based on the control of the block extensions by two corners--one known as the Spring and the other as El Grandote--and none on the west. In respect to the west boundary of said block the University will stand on the Friend-Twichell survey of 1928 which was approved by Judge Batts. The field notes and the sketch filed therewith by Mr. Friend were withdrawn and another location presented at the hearing.

Mr. Nutt now applies to purchase the area claimed by him then as a part of his surveys as unsurveyed school land. His theory is that Block 19 builds course and distance from the Spring corner, the least certain of the ten rock mounds called for in the original field notes of that block. I have assisted in finding five of the six mounds on the west side of the block for which we searched last week, and I believe all of the ten, with the possible exception of the Spring corner mound, can be definitely located. Helpful always in finding land marks is a knowledge of the scheme or plan of survey and the instructions under which the locating surveyor moved, but here let me ask

A QUESTION

Is it reasonable to suppose that a man trusted and charged with the duty of selecting the best lands to be found in the reserve for the University and fully authorized by his instructions to accept some poor land to secure water would exclude a spring like the Middle Escondido in a country where water contributes more than any other element to the value of the land? At the time of the survey neither Moore nor Thomson had any knowledge whatever of the existence of the Massey location over Middle Escondido. If you will examine Moore's classification of this block, you will note that he ties every section in it to the Middle Escondido Spring.

ANOTHER QUESTION

The East Escondido lies within the limits of Section No. 1, Block 19. The classification of his section by M. B. Moore reads: "Fine valley land, gramma salt and sedge grass, some mesquite timber, good farming land, 4½ miles to water." Moore does not mention the East Escondido Spring. The only explanation occurring to me is that before filing his report April 26, 1880, Mr. Moore learned that the Garza survey covered the East Escondido, and being privately owned, the spring was not accessible to University lessees. In describing Section 1, Block 18, Mr. Moore says the nearest water is Middle Escondido Spring and the Rio Pecos. The East Escondido lies 740 varas west of the west line of 18 and is five miles nearer No. 1, Block 18, than is Middle Escondido, however, Mr. Moore ignores it.

counter 18193

B'

The system devised for the survey of the million acres set apart to the University by the Constitution of 1876 was to make the surveys isometric, all angles to be right angles and all abounding lines to be one mile long. The half section required to make an even million acres is the exception but only as to the length of the lines. Holt and Thomson, the contracting surveyors, undertook to carry out this plan, and in doing so laid the courses uniformly west, east, north, and south. Due to terrestrial magnetism and the use of compasses their courses and distances are rarely exactly true to call but sufficiently accurate and so marked as to lead a subsequent surveyor to their footprints. These surveyors appear to have angulated all their surveys in Pecos County with the meridian of Fort Stockton which, according to my information, was established in 1855 under the direction of Colonel Joseph E. Johnston. Thus the north, south, east, and west calls mean those cardinal courses at Fort Stockton.

It should also be kept in mind that M. B. Moore was the Commissioner and Inspector for the State and selected the land to be surveyed by Holt and Thomson; that he was in the field with these surveyors, and that he drew and filed the sketches of the surveys with the Holt and Thomson field notes thereof.

From October 23, 1928, to January 24, 1929, Mr. Frank F. Friend, representing private interests, and W. D. Twichell, representing the University, made a joint survey of Block 19. These surveyors accepted an old rock mound among the boulders at the foot of a hill as the southwest corner of Block 19 and another rock mound 1918.1 varas east as the southeast corner of section 19 in said block; also they accepted the monument known as Grandote as the common corner of sections 4, 5, 6, and 7 in said block and an old rock mound 1241 varas north and 727 varas east of the East Escondido Spring as the original northeast corner of said Block 19. The north and east extensions of the block are fixed by them from the latter mound, the south and west extensions from the corner known as the Boulder mound. It appears that after his appointment as University surveyor Mr. Friend tendered and later withdrew field notes made in accordance with the Friend-Twichell survey. The position taken by the Land Office led to such action on his part. There is no doubt whatever in my mind about the authenticity or the correctness of the Boulder mound as being the original southwest corner of Block 19. Now for coordinates to support the Boulder mound:

counter 18184

B2

Los Ocotillos

Three miles north of the Boulder corner and 1750 varas from a point in the west line opposite the spring is a twenty-stone monument, undisturbed since its building, situated on a ridge falling eastward from the mountains and overlooking Block 19 in its entirety. Surrounded by beautiful ocotillos (little torches), it rests modestly in a platillo on a steppe or bench of the promontory seemingly unobserved by latter-day surveyors. This bench is covered by platillos or salceras, flat saucer-like rocks on the order of bird troughs, peculiar natural formations running from two to three feet in diameter with three-quarter inch rims. In the crevices between these flat rocks there are many ocotillos and other vegetation. The monument is about eight inches high with a diameter of thirty inches and rimmed with large stones. The interior is composed of small stones, all apparently in the identical positions the surveyor placed them in 1879. Standing over it a view of Block 19 in all its parts can be had. From this viewpoint my belief is that Moore selected his 25 section block.

It is true the ocotillos monument is not called for in Thomson's field notes, but it is called for in the original field notes of Section 23, which field notes were changed and moved northward to cover Section 21. Thus Section 21 is made to call for a rock mound at its northeast corner, which is not there, but the monument called for at the northwest corner, the original of 22 and 1925 varas north of Ocotillos, is to be found. It is a pebble mound in the chaparral. These small rocks are scattered around over an area of fifteen or twenty feet, but some of them are in place. Originally a considerable but not substantial mound existed there. Barton's "middle man" transported at least a half mile, weighing 40 pounds, is there. Barton was Thomson's instrument man. Our search resulted in the identification of four mounds and probably five showing the original west line of Block 19 to run a few varas west of the Middle Escondido Spring. The discovered monuments are being tied in to enable any one to find them. This information, if desired, will be furnished by our San Angelo office.

As stated, my personal investigations on the ground were limited to the location of the west boundary. I am mailing a copy of this letter to Hon. George T. Wilson, San Angelo, attorney for Mr. Nutt. I would like to say here, we looked for monuments to support Mr. Nutt's theory and found--none.

counter #8185

B3

In 1883 the Regents employed Dennis Corwin to connect the Thomson blocks and compile topographic maps of the University lands. His map of the Pecos areas has been misplaced. However, there is in your office an old sketch of the Pecos areas by Corwin. It is evident he went to the Ocotillos monument and connected to the mound on the mountain the northeast corner of Block 21. And if Section 16 is run out from Ocotillos, it will fit the classification by Moore, one-fourth table land and three-fourths valley.

Sincerely yours,

J. H. Walker

JHW:G
Encl.

cc to Judge Geo. T. Wilson
San Angelo, Texas

counter 48186

B4

SKETCH

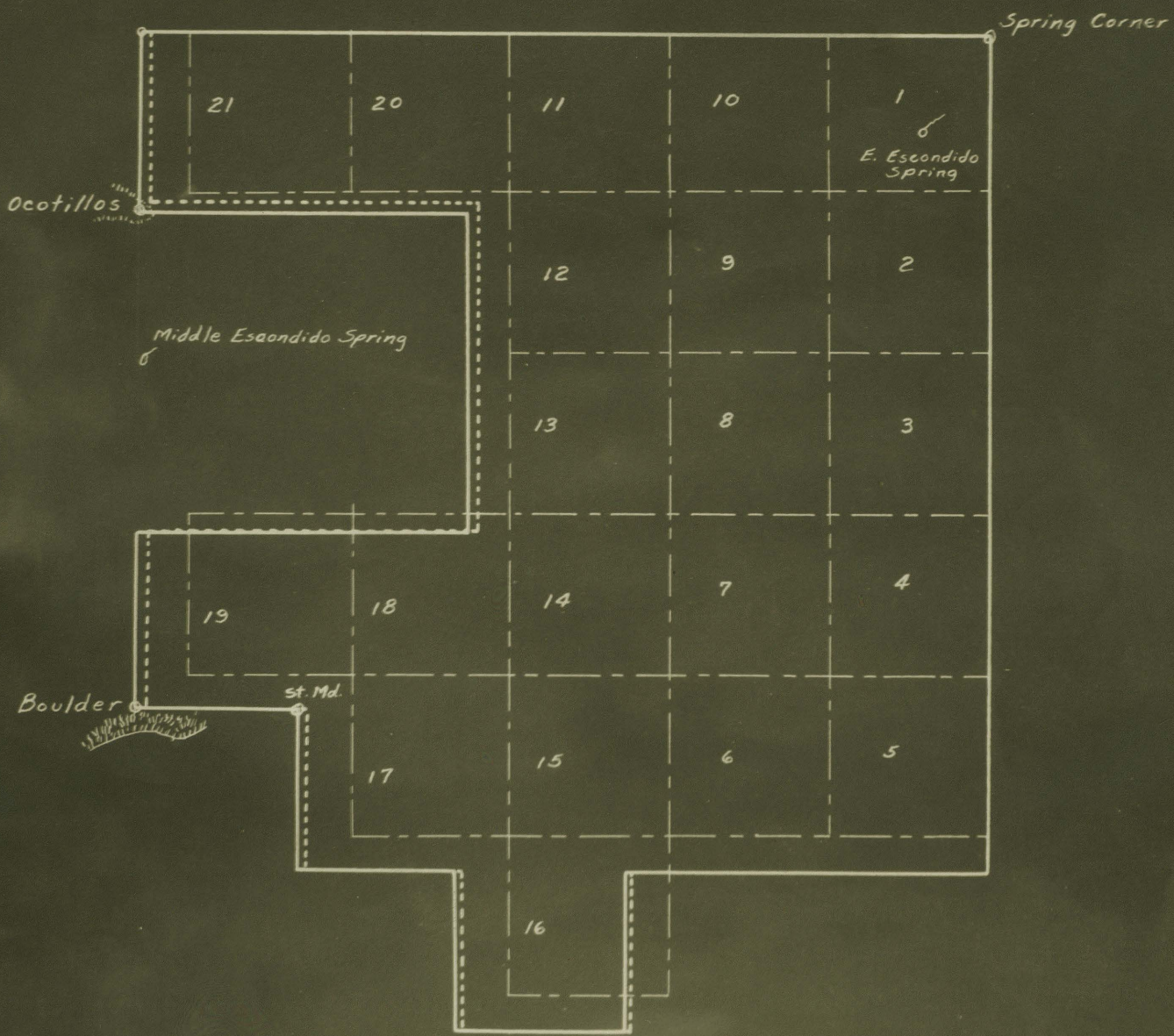
of

Block 19 University Land, Pecos County

Solid lines show the block as constructed between the Spring, the Ocotillos and the Boulder corners.

Dotted lines show Friend's west boundaries as presented at the Nutt hearing.

Broken lines show Nutt's theory of the location of the block.



counter 1837

SKETCH

Showing Block 19 U. T., Pecos County, in its relation to Middle Escondido Spring as selected and located by M. B. Moore and surveyed by R. M. Thomson in 1879.

Corners in circles found on the ground May 14-16, 1941.

Distance from NW corner, Sec. 22, to the Spring is given on Moore's sketch as 3650 varas.

On the margin of the Moore sketch 1900 is subtracted from 3650, leaving 1750, which means the distance from Ocotillos to the Spring.



counter 13188

Pecos Co Rld Sk No 114

THE UNIVERSITY OF TEXAS
AUSTIN

SCOTT GAINES
LAND ATTORNEY

J. H. WALKER
UNIVERSITY LANDS OFFICER

May 11, 1942

Hon. Bascom Giles, Commissioner
General Land Office
Austin, Texas

Dear Bascom:

The original survey of the East Escondido system was made by R. M. Thomson, as disclosed by the field notes in December 1879, and was approved by Captain Walsh, Commissioner, in 1880. (University field notes, Moore's sketch, map of Pecos County and certified map in Pecos County surveyor's office.)

A survey contiguous to this system was made in 1881-83 by Durrell. Since that survey, for 59 years, the system as recognized by Durrell has been occupied as University land. (Leases in Land Office, sketches and correspondence.)

In 1926 F. F. Friend made an unauthorized survey of the system for the Dixie Oil Company which was followed by vacancy applications covering the excluded territory. These were rejected.

In 1928 W. D. Twichell for the University and F. F. Friend for Tom Baker made a survey of Block 19 in which El Grandote and "Boulder Monument" were discovered and accepted as controlling markers. Mr. Twichell not being a licensed land surveyor, Mr. Friend signed and tendered the field notes. Mr. Robison declined to act until he could make a ground inspection. The field notes were withdrawn. (Attorney General's letter and Twichell's report.)

Mr. Friend was appointed Special Surveyor of University Lands under the Act of March 29, 1929, and later tendered field notes for the system, cutting back 168 varas east of the "Boulder Monument" and making El Grandote control the location of Block 19. I could not see my way clear, as Commissioner, to approve his survey. Thereupon, the Regents through Mr. Friend requested the Attorney General to bring suit to establish his lines. This the Attorney General declined to do without making a personal inspection. (University files) This he never made.

In 1941 the Friend survey of Blocks 18 and 19 was presented at a hearing in your office. Mr. Clint Small presided. A

counter 98/89

ruling was had on the south line of 18, but Block 19 went over. The case is still pending.

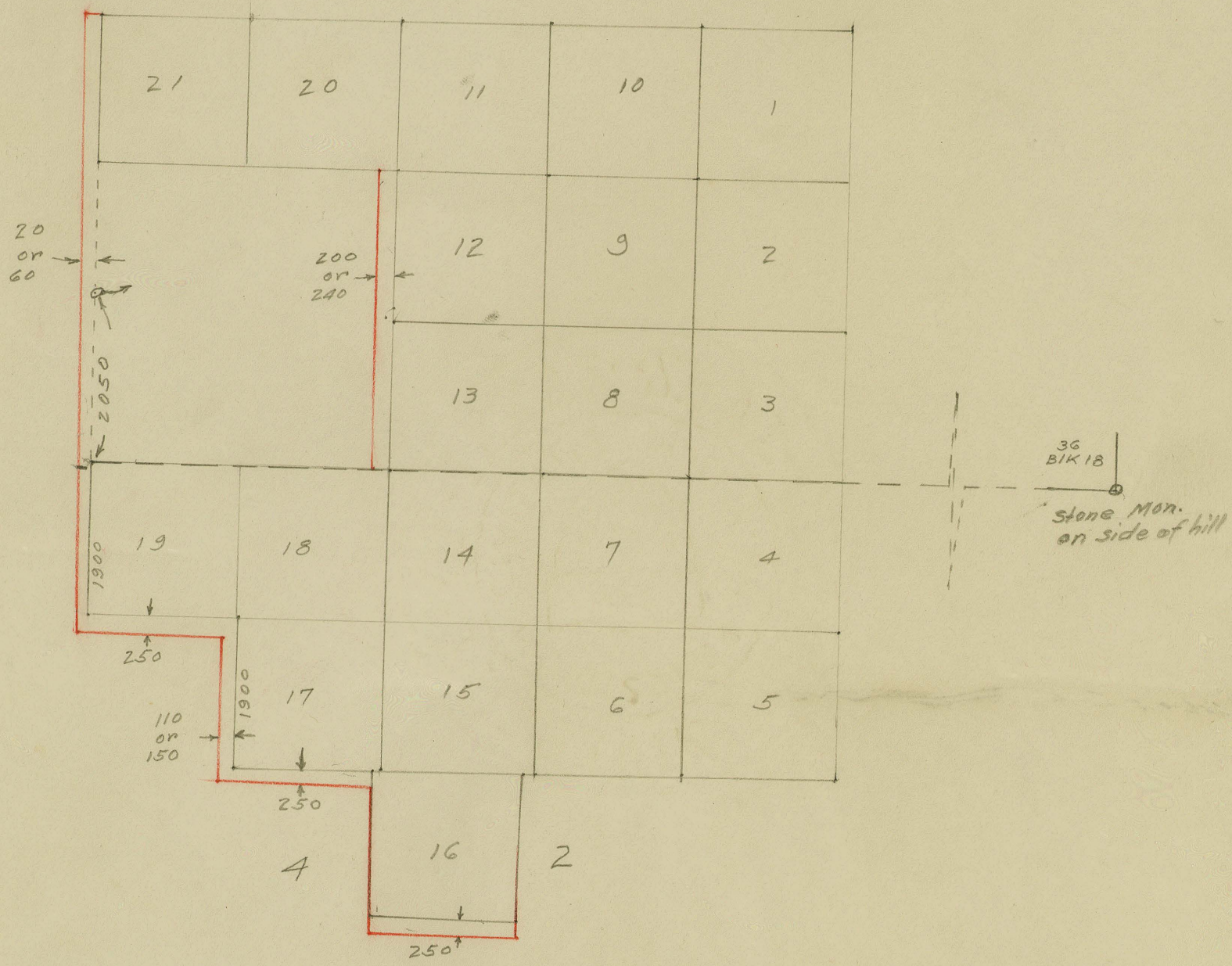
Inasmuch as the last administrative act lies with the Commissioner of the Land Office under the Act of March 29, 1929, and until such action is taken no further proceedings can be had, the University respectfully requests you to give us the controlling points for the location of the East Escondido System, and upon receipt of your advice the University will proceed in response.

Sincerely yours,

J. H. Walker

JHW:G

counter 18190



BLOCK 19
EAST ESCONDIDO SYSTEM
PECOS CO.

coenter 48191

C 3

Pecos Co Rls Sk No 114

508

GEO. T. WILSON
ATTORNEY
1001 McBURNETT BUILDING
P. O. BOX 685
SAN ANGELO, TEXAS

August 21, 1942

RECEIVED
AUG 24 1942
REFERRED TO LAW.
J.S.

Hon. Bascom Giles,
Land Commissioner,
Austin, Texas

Dear Sir:

I am sending you herewith a brief of Mr. Nutt's position in connection with his application to purchase land lying between University Block 19 and Block 180½ in Pecos County. I am sending Mr. Scott Gaines, attorney for the University, a copy of this brief.

Yours truly,
Geo. T. Wilson
Geo. T. Wilson

GTW:LM
Enc.

counter 48192

D 1

508

GEO. T. WILSON
ATTORNEY
1001 McBURNETT BUILDING
P. O. BOX 685
SAN ANGELO, TEXAS

RECEIVED
AUG 24 1942

August 21, 1942

Hon. Bascom Giles, Commissioner,
General Land Office,
Austin, Texas

REFERRED TO LAW
J.S.

Dear Sir:

In response to your request that the interested parties file briefs setting out their contentions for the construction of Block 19, University land in Pecos County, I submit the following brief on behalf of J. L. Nutt who has applied to purchase an area of unappropriated land lying between University Block 19 and Block 180½, in Pecos County.

We are at a loss to know how to state the facts because of the number of different positions taken by the representatives of the University in connection with this survey. Our understanding is that when Mr. Frank F. Friend first surveyed Block 19, he constructed it course and distance from the spring corner at the northeast of the block, just as did J. A. Simpson and James K. Avera. I have read the evidence introduced in a hearing held in the Land Office on December 18, 1940, upon the University's application to have the surveying work of Frank F. Friend accepted. As we understand Mr. Friend's position at that time, he started the survey of Block 19 at its northeast corner at the same point used by Avera and Simpson and tied to no other point as an original corner except a large rock mound which he called the northwest corner of Survey 5 and the northeast corner of Survey 6 in Block 19. My understanding of his construction is that the block was laid in course and distance west of Section 5 and that all of the excess was put into the eastern tier of sections. I have before me a report submitted by Honorable J. H. Walker to Mr. C. D. Simmons, Comptroller of the University of Texas, dated June 19, 1941, in which he says that he does not believe that the point accepted by Mr. Friend and others for the northeast corner of Block 19 is the point used by Mr. Thomson as the original corner. My understanding of Mr. Walker's position is that he would accept what he refers to as Ocotillo mound and Boulder mound as marking respectively the southwest corner of Section 21 and the southwest corner of Section 19 in Block 19. I supposed when our recent hearing was called that the University would rely upon this last mentioned construction of the block.

Upon the hearing held Monday, August 17th, the representatives of the University, both attorneys and surveyors, stated that the spring

counter 78193

D2

corner used by the various surveyors for the northeast corner of the block is admitted to be correct. The construction presented in this hearing by the University is entirely different from any of the other constructions that we have ever heard of and undertakes to fix the west line of Block 19 entirely by the map position on the Moore sketch and from other early maps. We submit that this construction could not under any circumstances be maintained as a legal construction, for several reasons hereinafter pointed out.

The survey made by Mr. F. W. Estill for the State, begins at the same point for the northeast corner of the block as was used by all other surveyors in this last hearing. Mr. Estill undertakes to fix the west line through an old mound found by him near what he terms Middle Escondido Spring and which is near the correct location for a corner of the abandoned surveys that were probably originally laid in by Thomson and abandoned because of the conflict with the Massey Pre-emptions. Mr. Estill's work seems logical and very interesting but we do not believe that the west line of the block can be established by running through a mound that is not called for in any of the field notes of the block as it was finally completed.

James K. Avera and J. A. Simpson, licensed land surveyors who have done a great deal of work in that area, both construct Block 19 course and distance from its now recognized northeast corner. This is the same construction that Mr. Friend originally made of this block.

It is so well established as to require no citation of authorities that where the beginning point of a block can be found and no other natural or artificial objects in the block called for by the original surveyor can be found, the block must be laid in course and distance from its beginning point.

We submit that in the absence of any evidence of an original monument called for in the field notes, the Moore sketch and other maps not made by the original surveyor cannot be considered in locating Block 19. The authorities in Texas uniformly hold that a survey must be located by calls in its field notes and that work subsequently done by other surveyors cannot be considered in constructing a block except as such work helps to discover the corners actually placed by the original surveyor. This is held in the case of State v Talkington, 274 SW 314; Texas Co. v VanDeventer, 290 SW 560; Pandem Oil Corporation v Goodrich, 29 SW (2d) 877 and 48 SW (2d) 606.

Under the authorities cited, and many other authorities in Texas, we feel sure that the courts would not consider the Middle Escondido Spring in establishing the west line of Block 19 for the simple reason that it is not called for in the field notes returned by Mr. Thomson. If we correctly understand that the University has abandoned

its claim that what Mr. Walker called Ocotillo mound and Boulder mound are original monuments and placed by Mr. Thomson, then nothing is left that could legally tie the western line of Block 19, and the only legal construction left is course and distance from its recognized northeast corner. If the University intends to still insist upon Ocotillo mound and Boulder mound, we respectfully submit that they are so far out of position both north and south as to be entirely unreasonable and impossible as original surveyor's corners for Block 19. The same can very well be said about the large stone mound which at one time was claimed by Mr. Friend to mark the northwest corner of Section 5 and the northeast corner of Section 6 in this block. The University surveyors seem to have made a considerable effort to make the western line of Block 19 fit the eastern boundary of Block 180½. The authorities uniformly hold that you cannot use a junior survey for the purpose of constructing a senior survey. This rule is announced in the case of Garcia, et al vs State, et al, 274 SW 319 and the authorities there cited.

The University surveyors seem to be interested in the matter of whether or not Mr. Nutt should purchase the land that he is claiming as excess in his old surveys or as vacant unappropriated land. We respectfully submit that the proper construction of Block 19 is by course and distance from its northeast corner and that therefore the University could not be interested in whether the land in question is treated as excess or vacant land. It seems more logical to us to construct Block 180½ course and distance from its western ties and treat the land lying between this block and Block 19 as unappropriated State land, than to undertake to pull Block 180½ so far out of its course and distance position as to tie it at all points to the west side of Block 19. The rule is announced in Hamilton vs State, 152 SW 1117, and in many other cases, that a call for a line or corner of another survey, made under a misapprehension as to the true location of such survey, will not control the construction of the junior survey, but must give way to course and distance. It has also been repeatedly held that where the excess distance is unreasonably large and where it is necessary to change the course of the lines in a junior survey to reach corners of a senior survey, the calls for such corners will be considered to have been made by mistake.

We respectfully submit that there was no evidence introduced in the hearing held on August 17th that could legally form the basis of any construction of University Block 19 except the course and distance construction from the recognized northeast corner of the block. We therefore ask that Mr. Nutt's application be granted and that we be permitted to file corrected field notes showing the entire area involved in this application when both Block 19 and Block 180½ are laid in course and distance from their respective recognized corners.

Respectfully submitted,

Geo. T. Wilson

Geo. T. Wilson, Attorney for
J. L. Nutt

GTW:LM

counter #8195 D 4

(7)

Pecos Co. R.D. Sec. No 114

SF-14312

IN THE MATTER OF THE

APPLICATION OF J. L. NUTT

TO PURCHASE A VACANCY

counter 78196

IN THE MATTER OF THE)
)
APPLICATION OF J. L. NUTT) SF-14312
)
TO PURCHASE A VACANCY)

RECEIVED
AUG 29 1942

TO THE HONORABLE BASCOM GILES, COMMISSIONER
OF THE GENERAL LAND OFFICE OF TEXAS:

REFERRED TO LAW
J S.

If Mr. J. L. Nutt's application prevails, the people of Texas will be losers in the transaction to the extent of one-half the value of the minerals that may be in the land in controversy. It is admitted that the tract belongs to the State of Texas, and has belonged to it since March 2, 1836, and is under the control of the Regents of the State University for the benefit of that institution and A. & M. College. The University is the head of the educational system of Texas, the capstone of that system, as Governor Campbell expresses the thought, and the land in controversy is a part of the 45,000,000 acres set apart by the State as an endowment of its educational institutions, including the University, A. & M. College, allied institutions and the Public Free School Fund. The State has not parted with its title to the land in controversy, and Mr. Nutt is seeking to change its status to that under which a purchaser obtains all the minerals except one-sixteenth. In other words, he is asking the State to change the classification as University lands to that of

counter 48197

public free school lands. This change, if he purchases the land, would enable him to participate in the revenues from the minerals. If the Regents are permitted to retain control of the land, the State will receive, under the law, the entire royalties.

I respectfully submit that Mr. Nutt's application and the survey under it are void and of no force and effect whatsoever for the following reasons:

1. The land in question has been in peaceful, open and adverse possession of the State within the boundaries claimed by the University for a period of sixty years. It follows that Mr. Nutt in no way developed the State's ownership thereof and acquired a right to survey it.

2. It is not unsurveyed land within the meaning of House Bill No. 9 and the Act approved May 29, 1931 (sec. 3, chap. 271), which defines unsurveyed land, the definition reading: "Unsurveyed land is defined to be all areas not included in surveys on file in the General Land Office or surveys delineated on the maps thereof." The purpose of so defining unsurveyed land was to protect the purchasers of a million acres of school land for which when dedicated no field notes were filed in the Land Office, a million acres of University land dependent for location on a map, a considerable quantity of land in Dallas, Denton and Collins Counties, likewise dependent on maps for location, and at least half a million acres in

counter 18198

Bexar and other South Texas counties for which there are no field notes in the Land Office.

3. The area which Mr. Nutt seeks to buy is included in the original dedication of Block 19 by Land Commissioner Walsh.

4. The State has the exclusive power to adjust disputes and controversies over public funds, which include lands as well as money, and in a simple matter of debits and credits, not involving ownership, an outsider cannot be heard.

House Bill No. 9, as disclosed by its emergency clause and the history of its passage in the Legislature, is a bill designed to protect landowners in their lawful rights and at the same time not to abridge the right of the State to sell its surveyed and unsurveyed school lands. The surveyed land under the provisions of law must be advertised and sold to the highest bidder, but the unsurveyed lands may be sold to the discoverer of the State's ownership, on compliance with the fixed regulations. Mr. Nutt did not develop the fact this land is State land. It is known he has been grazing it many years as University land under an offset contract with Mrs. Mary Lea McKenzie, who has it leased and, in turn, is grazing a like quantity of land belonging to Mr. Nutt. Mr. Nutt's fences are permissible only by reason of Mrs. McKenzie's lease, and cannot in any way place him in the attitude of a good-faith claimant.

counter 78199

Simpson's Location of Block 19

Before me is a map of Mr. Nutt's land made for him by Mr. J. A. Simpson, a licensed land surveyor, who testified at the hearing on the 17th of this month and whom I recognize as a capable and experienced surveyor. A copy of this map is attached for your information. You will note that he makes Section 19, Block 19, 2134 varas wide. Its west line extended north to connect with the southwest corner of Section 21 would run through Middle Escondido Spring, and south he would apparently land on Boulder. Note that he finds a stone mound at the southeast corner of Section 19 and the southwest corner of Section 18 and from that mound extends a line east fixing Sections 15, 16 and 17 by course and distance as does the University. And also note that his north and south lines are on a course of 1° 30' east which corresponds to the Lea-Bucey-Collard east line of Block 16, and I am persuaded applies to all of the north-south extensions in the East Escondido system.

Under date of July 22, 1927, Mr. Simpson wrote the Land Office that he was going to make a resurvey of Blocks 16, 17, 18 and 20, University Lands, Pecos County, for Mr. Baker, and asked for a working sketch, which the Land Office could not furnish. Under date of August 3, 1927, Mr. Simpson wrote the Land Office that he would go to Fort Stockton and "get the original field notes on University lands in Blocks 16, 17,

counter 78200

18, 19 and 20." Under date of September 17 Mr. Simpson wrote the Land Office as follows: "I am enclosing corrected field notes covering seven sections of land out of Blk. 20 University Land in Pecos County. I am also enclosing a blue print showing connecting lines, run by me, original corners found and new corners made by me." In Letter Book No. 1649, p. 40, the Land Office answered in a letter dictated by Mr. Hutchins and signed by me as Acting Commissioner, which letter concludes as follows: "I am therefore returning these field notes with the suggestion that you take the matter up with the University Regents." Copies of these letters and the answers and copies of his corrected field notes of Sections 8, 9 and 12, Block 20, are attached. You do not have these notes in your files, and I enclose them to show that Mr. Simpson makes the width of the east three tiers of sections through 19 and 20 1982 varas. His width of the west two tiers of Block 19 apparently would take him to Boulder. Apparently the connection of the northeast corner of Section No. 1, Block 21, to the northwest corner of Section 19, Block 19, if extended to the southwest corner of the latter on Simpson's courses would strike Boulder full in the face. It may not be amiss to call your attention to the showing of the location of the south line of Block 20. That line is set by Mr. Simpson, as his field notes unmistakeably read, as four miles north of a line extended through Grandote.

counter 18201

Judge Wilson in his brief filed with you, a copy of which he very kindly mailed this office, refers to a report to Mr. C. D. Simmons, Comptroller of the University, made by me some months ago. In that report I found the Boulder to be the southwest corner of Block 19. In this finding I was following in the footsteps of F. F. Friend and W. D. Twichell and apparently in those made by Mr. Simpson in 1927. At the time the fact that the Regents had instructed Mr. Friend to abandon the Boulder because of the conflicts with patented surveys that would be brought about and the consequent disturbances of good-faith occupants was unknown to me. Nor was the fact that the original Walsh map furnished the county surveyor of Pecos County May 14, 1880, known to me to be in existence. Mr. Friend had reported that the map furnished Tom Green County could not be found, and Judge Gaines and I made a diligent search of the records of San Antonio for the map furnished by Walsh to the district surveyor of that county. I am firmly of the opinion that the west line of Block 19 runs through Middle Escondido Spring, and that Mr. Simpson is correct in his width of the sections if built east from that spring to East Escondido Spring or from the latter to Middle Escondido Spring. If Mr. Simpson testifies that he would now locate Block 19 by course and distance from the Friend concrete monument at the northeast corner of Section 1, he must mean by course found by him to

counter 78202

be correct in 1927 and the distances determined by the two springs. Mr. Simpson and Mr. Friend are just two varas apart in their measurements east and west across Block 19.

Judge Wilson presented Mr. Simpson at the hearing as an expert witness, and it is permissible for me to add that he is competent. In 1939 he met Tom McKenzie, whom he was representing, Judge Gaines and the writer in Fort Stockton. At the time the location of Block 19 was not discussed, but Mr. Simpson's views and findings of fact regarding Block 18 were accepted. It is recalled distinctly that Mr. Simpson considered the "monument on the side of a hill" as the southeast corner of Block 18. That being true, the south line of Block 18 to correspond to Mr. Simpson's north line of that block, as I understand him, would invade Mr. Friend's position of Block 19 141 varas, that is to say, the point would be South 1° 30' West of Mr. Friend's concrete monument for the northeast corner of that block (the course of Simpson's west line of the block). This construction of Block 19 would fit fairly well the line of rock monuments running east from the Boulder, in view of your former ruling that the south line of Block 18 is an extension west from the "monument on the side of a hill" and that Block 19 is in no way controlled by any corner in Block 18, except the southwest corner of Section 18 in that block. This means then, as I understand your ruling, that the southern extension of Block 19 is not affected in any way by the southern extension of Block 18. In this you may be correct.

courtesy 78203

Regents' Location of Block 19

Doubtless the question has arisen in your mind as to the location the University gives Block 19. Permit me to answer that the University claims the land it has been using for the last sixty years as bounded on the west by a line through Middle Escondido Spring, on the south by a boundary controlled by the Boulder monument, on the east by Block 18 and on the north by Block 20. You understand the University for the reason heretofore stated is not extending its line to the Boulder, but is following the west line of Block 180½ to a point in a line running east from the Boulder. It is true the excess within these boundaries is greater than the acreage of 21 sections each one mile square, but the excess in Block 19 does not by any means equal the loss to the University in Block 20 by conflicts with older and superior surveys. In this connection some months ago the plan of surveying the East Escondido system was submitted to your department, and after a patient hearing on the part of your Mr. Small, an agreement was reached as to how the boundaries of Blocks 16, 17 and 18 should be run, but the location of Block 19 was postponed for further consideration by you. To my mind, the conclusion that the Regents will retain control of all the area found to be within the bounds of Block 19 as determined by the University Surveyor under the Act of 1929, if and when

counter 48209

approved by you, is inescapable. Field notes have not been prepared and offered for your approval because of the expense incident to their preparation, and this will not be done until we have notice from you as to the boundaries which you will approve. You understand that the University is in no way complaining of you, and is awaiting your pleasure in the matter.

Walsh's Location of Block 19

As you well understand, Chapter 1, Title LXXXI, which is applicable only to University and asylum lands, confers upon the Land Commissioner exclusive authority to select the lands to be dedicated to those institutions. Captain W. C. Walsh was Commissioner in 1879, and in compliance with that statute contracted with Holt and Thomson to do the surveying on the ground, but placed the authority of selection in Maurice B. Moore, Inspector and Commissioner for the State. With the possible exception of Mr. Moore who had been a ranger, none of the party, according to information given me by one of them, had ever been west of the Pecos until they crossed it on Pontoon bridge in December, 1879. The surveying party was compelled to abandon work in Tom Green County because of the scarcity of water. For the reason that it was necessary to inspect all the land in Pecos County open

counter 18205

for location, no surveying could have been done until the inspection was made. Again, it was necessary for the party to examine the records of the surveyor's office in Fort Stockton to determine just what lands were open to survey. The law authorizing this survey for the University went into effect September 1, 1879. Those filing certificates for the survey of the land therefore had eight months within which to complete their surveys and file field notes in the Land Office. This places the party in Fort Stockton before a single step in the way of locating lands was made. It follows that the work was done from west to east instead of from east to west as the field notes indicate, but under the decisions of our courts this is immaterial, for the reason the surveys were all made at the same time or continuously from day to day and by the same man.

Corwin's Location of Block 19

At this point let me call your attention to the fact that in 1883 Dennis Corwin under a contract with the State Land Board and the Board of Regents resurveyed in the fall of that year the lands involved in this case. A survivor of his party in describing the survey says it was "stick and done stuck" all the way. We have two of Corwin's maps, but two have been misplaced, and one of the latter covers

counter 48206

the land in Pecos County. However, there is a sketch in your office which appears to be in Corwin's writing giving practically the same distances between the blocks that Thomson gives and all the other connections. The point is that Corwin in order to measure the distances between the blocks was compelled to identify them on the ground, and this he appears to have done in the position the University is now claiming them.

Locative Force of Maps

The effective power of a map as locative of lands is exemplified in the locations of millions of acres in Texas as well as in other states of the American Union, some of which use only maps and sketches for such purpose. The statute of 1879 provides for the return of maps or sketches and the filing of certified copies of such maps with the county in which the land surveyed may be situated. It seems that the Special Commissioner and Inspector, Maurice Moore, was the locating agent of the Land Commissioner, and for that reason he alone filed sketches. The affirmative evidence of the Land Commissioner's selection and dedication of the lands surveyed by Holt and Thomson is the maps thereof and the certified copies filed in the counties in which the lands were situated.

counter 18207

It is contended that there are no calls in any field notes in the Land Office for Middle Escondido Spring, and for that reason it cannot be considered as locative of the west line of Block 19. There is no record of the calls in the discarded field notes of the four University sections at that point, but it is reasonably certain there was a call for Middle Escondido Spring, otherwise how would Walsh have known of the conflict of these surveys with the Masseys? It must be borne in mind that the final legal act in the selection and location of these lands was in the Land Commissioner and not in the surveyor. That Walsh placed the line through Middle Escondido is certain, and there is no escape from the conclusion that he did so from the information derived from both sets of notes, the Massey and the University. That map is the best evidence of the location of the line that can be found.

The sickly attempt at the hearing to cast doubt on the location of the particular spring through which the west line runs is an admission on the part of the applicant for a vacancy that the line actually runs through some spring. For the reasons stated Walsh rejected the field notes of the four University surveys at the spring, which is identified by the two Massey script surveys (Bex. S-27937). The northwest corner of Survey 549 is a mound N 47° W 720 varas from Middle Escondido Spring and N 83¼° E 5464 varas from

counter 48208

the northwest corner of Survey No. 310 covering West Escondido Spring. This clearly indicates the spring through which Captain Walsh directed the line to be run. There can be no doubt about it. I am expecting to hear someone say that is only a passing, not a locative call, but nevertheless it shows the line passing through the spring.

I have read many boundary decisions in which reference to springs is made, and have never found one that disregarded a spring as serving a locative purpose even on a passing call. A passing call for a spring puts the line at the intersecting point, although it may not control its length. The course of the line under ordinary circumstances in the absence of ground marks would be controlled by the courses of other lines in the surveys if known. A call for a spring is different from a call for a creek crossing in that a spring covers a comparatively small area, and is in a determinate position, while creeks are long and sinuous. The oft cited case of Cockrell v. Work, 17 S. W. (2d) 174, does not apply to springs for the reasons just indicated. Cedar Bayou, which plays a part in this decision, is a sinuous stream and the crossing on it could have no bearing on a line unless the point was definitely marked and recognized. On the locative force of a call for a spring your attention is invited to the Gilbert League in this city.

counter 18209

Captain Walsh could have known of the existence of the spring through which the west line of Block 19 is shown to pass on the map of his office and that furnished the county surveyor of Pecos County only from the discarded notes of the four rejected surveys of University land or from the descriptive call in the Massey survey for it--probably from both sources. The peculiar identification of the spring, in my judgment, makes the call locative in its nature.

Maps are admissible in evidence to show the boundaries of land delineated thereon. Practically all the Mexican colonial titles recite that a map should be attached "to this title for the security of the party interested." The Legislature is not given to idle enactments. The law providing for the survey of University lands requires a map to be furnished the county surveyor; most assuredly the map was not intended for an ornament.

In Surgett v. Little, 5 S. & M. 319, which was a case of disputed boundary, it was held that copies of the official maps of surveys of land deposited in the Surveyor General's office were the best evidence of the extended connection and boundaries of such surveys. That is a decision of the Supreme Court of the United States which is generally respected for its knowledge of the law. In this case the map evidently was the surveyor's or the locator's map.

counter 78210

In the case before us the map is the work of the real locator, Captain Walsh, Commissioner of the General Land Office. Holt and Thomson were only surveyors to mark the sections out on the ground under the direction of Inspector Moore, but their work was of no value unless approved by Captain Walsh. Your records show the existence of the field notes of 70 surveys in Blocks 27 and 28, State University Lands, Pecos County, but you will find that 27 of these are not delineated on the map furnished the county surveyor of Pecos County. This means that these 27 surveys were not approved by the statutory locator, Captain Walsh. The map in the hands of the county surveyor of Pecos County was intended to serve all the purposes and functions of a surveyor's sketch, and it does so serve.

In Lilly v. Blum, 70 Tex. 704, calls in a patent for land were corrected by the official map of the county showing the position of the surrounding surveys. In the four or five suits tried in recent years, which involved the location of University lands, the map positions of the blocks and sections have controlled their position.

In Randall v. Gill, 77 Tex. 351, it was held that the opinions of surveyors as to whether any of the lines of the survey were actually run on the ground are not admissible in evidence. The conclusions from the facts as entered by such surveyors must be drawn by the jury and not by the

counter 78211

surveyor. Your attention is called to this decision, for the reason that Mr. Avera, whose age in point of years is not quite equal to that of the surveys, expressed the opinion that Mr. Thomson was not on the ground, meaning, I presume, that the lines of the surveys were not run out on the ground. The presumption that the surveyor was on the ground when he calls for natural and artificial objects or sets up such fact in his certificate must be indulged. A charge that the recitations in a surveyor's papers are false cannot be sustained by the opinion of one who was not in existence at the time and who was not acquainted with the facts.

It appears that in 1881 E. W. Bates became county surveyor of Pecos County and appointed L. W. Durrell as deputy. Durrell located Block 125 and other blocks in that year and in 1883 surveyed Block 180½ calling for adjoinder with University lands. The Durrell field notes were examined and approved by Mr. Bates who thus became responsible for their correctness. Before Mr. Durrell or any other surveyor could have moved in the matter it was necessary to find the University lands on the ground, and this could be readily done at that time because the marks left by the surveyor were fresh and probably few of them disturbed.

The State in behalf of the University and A. & M. College has occupied the land in the position Mr. Durrell

counter 78212

and Mr. Bates found it since 1883. The direct agent of the State in the matter in 1883 and until 1887 was the State Land Board. The records show that this Board through E. W. Bates made two sales, section 12 in Block 19 to Felis Garza and Section 19 in Block 18 to Juan Torres. These men were required to settle and live on their lands, but for some reason held them only a few years and the sales were forfeited. The location of their habitations are fairly well marked and indicate clearly that Mr. Bates placed them on the land from its westward position. In the very nature of things each would have settled as closely as possible to the noted springs--Garza to the Middle Escondido and Torres to the East Escondido. The sites of these humble homes are mute evidence of the location of the two sections mentioned. Near that of Felis Garza is a grave which, in the language of Felis Flores, "Es sepultura del hombre matado por los Indios bravos," meaning "A man killed by savage Indians." "He was carrying pumpkins on a burro from Cesario Torres to José Torres," said Flores. The grave can be found and is called for in the long traverse which appears to be Corwin's, but, as stated, I am not sure it is his.

Judge Wilson in his brief says that senior surveys cannot be located from junior surveys. This is the general rule, but to state it flatly as being without exceptions is to give the rule greater force than the reasons for it. A

counter 98213

survey can be located from the best evidence available, and there are numerous cases in Texas where senior surveys are located from juniors. If this were not true, the owners of the Mexican colony surveys in Texas Texas, and they are numerous, would be in a hopeless condition. Many of them could not be found on the ground but for the calls of junior surveys for them, and more of them would be so dependent were it not for the longheld occupation lines.

In Longoria v. Shaffer, 77 Tex. 547, the location of a survey was established by the recognized lines and corners of adjoining surveys of <u>older and younger date</u>.

Field notes of a junior survey may be admissible to prove boundaries of senior surveys, but relevancy and materiality must be shown. Rose v. Curry, 262 S. W. 192.

The Estill and the Avera constructions of Block 19, if either prevails, would bring about a conflict between the University land and Sections 2 and 6 of Block 180½, T. C. Ry. Co. These are school sections and junior to the University surveys. Each has been sold. Nutt owns No. 6 and Mrs. McKenzie owns No. 2. To the extent of the conflicting acreage, the sale to Nutt would be an exchange of surveyed for unsurveyed land. Nutt would profit greatly by the transaction, but Mrs. McKenzie would be an unfortunate loser. She bought the land from the State in good faith, and for the State to take any part of it away from her would be a

counter 48214

ruthless and unjust proceeding, a type of action the State would not tolerate between its citizens. Should the State, being the people as a whole, establish a code of morals for itself different from that the people must observe between themselves? I think not.

My hope is you will find your way clear to reject Nutt's application.

Very truly yours,

J. H. Walker

J. H. Walker
Land Officer
The University of Texas

August 27, 1942

counter 18215

Plat of Survey No. .....

The State of Texas

Pecos County

SURVEY No 8 BLK 20

CORRECTED:

FIELD NOTES of a survey of 600 acres of land made for State University

Said survey is No 8 Block 20 in name of State University

Variation 9° 50' East

situated in Pecos County, about 26 miles East from county site, beginning at the S.E. cor. Sur. 66 H. & G.N.R.R. Co. Blk. 11, an Iron Pipe mkd. 66 in md. stone.

Thence N9°E 1240 vrs. an Iron Pipe in md. stone in the East line Sur. 66.

Thence East 1300 vrs. a stake in md. stone, from which a Conical Peak brs. S67°7'E and East edge Rim Rk. brs. N68°10'E.

Thence South 2060 vrs. a stake the N.E. cor. Sur. 5 Blk. 20 University Land.

Thence West 1982 vrs. a stake the N.W. cor. Sur. 5.

Thence North 912 8/10 vrs. a stake in the South line Sur. 66.

Thence S81°E 494 vrs

RECEIVED
AUG 29 1942
REFERRED TO LAW

to the place of beginning.

Bearings marked .....

Surveyed Aug. 17, 1927

Chain Carriers: Wm Couch, O.M. Simpson

I, J. A. SIMPSON, a Licensed Land Surveyor of San Angelo, Texas, do hereby certify that the foregoing survey was made by me on the ground, and according to law; that the limits, boundaries and corners, with the marks, natural and artificial, are truly described in the foregoing Plat and Field Notes, just as I found them on the ground; and they are recorded in my office in Book ..... Page .....

This, 29th day of August, 1927

J A Simpson

Licensed Land Surveyor of San Angelo, Texas.

counter 78216

I ....., County Clerk of .....County, Texas,

hereby certify that the foregoing Field Notes are recorded in the Surveyor's Records of.....

.....County, Texas, in Vol. ....., Page.....

Given under my hand and seal of office, this, the.....day of .....192.....

County Clerk ..... County, Texas.

I A N Lea County Surveyor of Pecos County Texas do hereby Certify that they are Recorded in my Office in Book O Page 706

A N Lea Co Sur. Pecos, Co.

LAND OFFICE

S. F. NO.

FIELD NOTES

Filed .....192.....

Commissioner.

Clerk.

Approved .....192.....

Commissioner.

BRANDT PRINTING CO SAN ANGELO

F 486

counter 78217

Pecos Co Rld SK 114

Plat of Survey No. .....

The State of Texas

Pecos County

SURVEY No 9 BLK 20

CORRECTED:

FIELD NOTES of a survey of 459 1/2 acres of land made for State University

Said survey is No. 9 Block 20

in name of State University

Variation 9° 50' East

situated in Pecos County, about 25 miles E. from county site, beginning at a stake the S. W. cor. Sur. 4 Blk. 20 University Land.

Thence North 2060 vrs. a stake

Thence East 757 7/10 vrs. a stake in the West line Sur. 66 H. & G. N. R. R. Co Blk. 11

Thence S 9° W 942 vrs. a stake the S. W. cor. Sur. 66.

Thence S 81° E 1389 vrs. a stake in the South line Sur. 66, and a N. W. cor. Sur. 2 Blk. 20 University Land.

Thence South 912 8/10 vrs. a stake the S. W. cor. Sur. 8 & N. E. cor. Sur. 4.

Thence West 1782 vrs.

to the place of beginning.

Bearings marked .....

Surveyed Aug. 18, 1927

Chain Carriers: Wm Couch, R. M. Simpson

I, J. A. SIMPSON, a Licensed Land Surveyor of San Angelo, Texas, do hereby certify that the foregoing survey was made by me on the ground, and according to law; that the limits, boundaries and corners, with the marks, natural and artificial, are truly described in the foregoing Plat and Field Notes, just as I found them on the ground; and they are recorded in my office in Book ..... Page .....

This, 29th day of August, 1927

J. A. Simpson

Licensed Land Surveyor of San Angelo, Texas.

SURVEYOR LICENSED STATE OF TEXAS

counter 48218

I ....., County Clerk of ....County, Texas,

hereby certify that the foregoing Field Notes are recorded in the Surveyor's Records of.....

.....County, Texas, in Vol. ....., Page..... .....

Given under my hand and seal of office, this, the.....day of ....192.....

County Clerk ..... County, Texas.

I A. N. Lea. C. Dur Pecos County Texas
do hereby Certify that they are recorded in my Office
in Book O. Page 707
A N Lea County Surveyor Pecos Co

LAND OFFICE

S. F. NO.

FIELD NOTES

Filed ..... 192.....

Commissioner.

Clerk.

Approved ..... 192.....

Commissioner.

PROBANDT PRINTING CO SAN ANGELO

#9 F 687

counter 48219 Pecos Co Rld Sk 114

Plat of Survey No. .....

The State of Texas

Pecos County

SURVEY No 12 BLK 20

CORRECTED:

FIELD NOTES of a survey of 365 acres of land made for State University

Said survey is No. 12 Block 20 in name of State University

Variation 9° 50' East

situated in Pecos County, about 27 miles East from county site, beginning at the S.E. cor. Sur. 11 Blk. 20 University Land, a stake in md. stone, from which a Conical Peak brs. S 67° 7' E + East edge Rim Pk. brs. N 68° 10' E

Thence North 1196 7/10 vrs. an Iron Pipe mkd 11 + 12 in md. stone in the South line Sur. 56, from which a Conical Peak brs. S 62° 22' E + East edge Rim Pk. brs. S 21° 26' W.

Thence S 81° E at 778 vrs. pass an Iron Pipe mkd 56 + 47 in pk. md., the original S.E. cor. Sur. 56 + S.W. cor. Sur. 47, in all 2007 vrs. an Iron Pipe mkd. 12 + 13 in the South line Sur. 47.

Thence South 882 6/10 vrs. a Mesq. stake in md. stone, from which a Conical Peak brs. S 63° 7' E + East edge Rim Pk. brs. N 60° 41' E

Thence West 1982 vrs.

to the place of beginning.

Bearings marked .....

Surveyed Aug. 15, 1927

Chain Carriers: Wm Couch, R. M. Simpson

I, J. A. SIMPSON, a Licensed Land Surveyor of San Angelo, Texas, do hereby certify that the foregoing survey was made by me on the ground, and according to law; that the limits, boundaries and corners, with the marks, natural and artificial, are truly described in the foregoing Plat and Field Notes, just as I found them on the ground; and they are recorded in my office in Book ..... Page .....

This, 29th day of August, 1927

J A Simpson

Licensed Land Surveyor of San Angelo, Texas.

STATE LICENSED SURVEYOR

counter 48220

I ....., County Clerk of ....County, Texas,

hereby certify that the foregoing Field Notes are recorded in the Surveyor's Records of.....

.....County, Texas, in Vol. ....., Page..... .....

Given under my hand and seal of office, this, the.....day of ....192.....

County Clerk .... County, Texas.

I. A. N. Lea Co Surv Pecos Co Texas
do hereby Certify that they are of Record in my Abbies
in Book O. Page 710
A. N. Lea Co Surv Pecos Co

LAND OFFICE

S. F. NO.

FIELD NOTES

Filed 192

Commissioner.

Clerk.

Approved 192

Commissioner.

PROBANDT PRINTING CO SAN ANGELO

#12 690

corenter 7821

Pecos Co Rld SK 114

Pecos Co Rld SK 114

MAP OF
J. L. NUTT RANCH
PECOS COUNTY, TEXAS.

Scale: 1000 vrs. = inch

J. A. Simpson
LICENSED LAND SURVEYOR.
SAN ANGELO, TEXAS.

N

John H. Hess
Blk. 180½

T. & St. L. RY. CO.

BLK. 144

10
T. C. Ry. Co.

7
T. C. Ry. Co.

8

549

550

6
361⅓ Ac

310
J. N. Shaffner
277⅓ Ac.

N. Lewis

J. Pointevant

Wm D. C. Henley
661 Ac.

J. Pointevant
640 Ac.

982.5

LANDS

UNIVERSITY

BLK. 21

172⅞ Ac.

637⅛ Ac.

631 Ac.

788½ Ac.

BLK. 125

MARY JANE McCOLLUM

642⅔ Ac.

coentes 48222

585

(8)

Pecos Co. R.E. Sr. 114

SF-14312

IN THE MATTER OF THE

APPLICATION OF J. L. NUTT

TO PURCHASE A VACANCY

Counter 18223

IN THE MATTER OF THE)
)
APPLICATION OF J. L. NUTT) SF-14312
)
TO PURCHASE A VACANCY)

MEMORANDUM BRIEF AND ARGUMENT

FOR UNIVERSITY

OPPOSING SAID APPLICATION

RECEIVED
AUG 29 1942
REFERRED TO LAW
J. S.

counter 78229

IN THE MATTER OF THE)
)
APPLICATION OF J. L. NUTT) SF-14312
)
TO PURCHASE A VACANCY)

MEMORANDUM

BRIEF AND ARGUMENT FOR UNIVERSITY

OPPOSING SAID APPLICATION

TO THE HONORABLE BASCOM GILES, COMMISSIONER

OF THE GENERAL LAND OFFICE OF TEXAS:

This proceedings is based upon an application filed in the General Land Office by Mr. J. L. Nutt under the provisions of Chapter 282 (H. B. No. 9), Acts Regular Session, 41st Legislature (1929), p. 465, Compiled Laws of said session, to purchase an area of alleged vacant land in Pecos County. Said area of land is described therein as being bounded as follows:

On the East by Surveys No. 19, 17 & 16, Blk. 19, Univ. Lands, and by Sur. No. 2, Blk. 180½, TCRR Co.;
On the South by Surveys No. 3, 4 & 5, Blk. 180½, TCRR Co.;
On the West by Surveys No. 4, 5 & 6, Blk. 180½, TCRR Co.;
On the North by Surveys No. 19, 17 & 16, Blk. 19, Univ. Lands, and by Sur. No. 6, TCRR Co.

counter 18225

Mr. F. W. Estill, a licensed land surveyor, was duly appointed by the Commissioner of the General Land Office to make a survey of said area, and has returned field notes, a sketch and a report to the Commissioner which show an alleged area or strip of land lying between Block 180½, T. C. Ry. Co. survey, and Block 19, University Lands, as a vacancy. A public hearing was held in the General Land Office at Austin, Texas, on said application for the purpose of determining whether a vacancy so existed on December 10, 1941, and another supplemental hearing was held on the question of vacancy on August 17, 1942. The Commissioner of the General Land Office has taken said matter under advisement, and has requested the interested parties to file briefs in support of their respective contentions. This brief is filed in behalf of The University of Texas, one of the opponents to said application.

The application upon its face discloses that the alleged vacancy lies between the University Block 19 on the east and north and Block 180½, T. C. Ry. Co. survey, on the west and south. In order to determine whether the alleged vacancy in fact exists, it is necessary to locate the true boundary lines of the surrounding lands, and it appears from the evidence adduced upon the hearing that the real boundary issue is as to the true location of the west line of the University block and the south lines of Sections 16, 17 and 19 therein. The location of the west and south lines of

counter 18226

Block 180½ are not in dispute in this case, for said lines are fixed by reason of their tie and connection with the east line of Block 125, T. & St. L. Co. survey.

The University Block 19 was originally surveyed by R. M. Thomson in December, 1879. Block 180½, T. C. Ry. Co. survey, was originally surveyed by L. W. Durrell in May, 1883. Corrected field notes were made for Section 4 of said block by Waldo Williams in 1938 and filed in and approved by the General Land Office and patent issued thereon. Corrected field notes of a resurvey of Section 6, Block 180½, were made by Mr. Frank F. Friend in 1926, and subsequently certain corrections were made in said notes and the field notes filed in and approved by the General Land Office in 1929. Also, Mr. Frank F. Friend made a resurvey of Section 5 of Block 180½ in 1926, and corrected field notes were prepared, filed and approved by the General Land Office and patent issued thereon to Mr. J. L. Nutt.

Block 180½, T. C. Ry. Co. survey, is bounded on the west and south by certain sections in Block 125, T. & St. L. Ry. Co. survey, which was originally surveyed by L. W. Durrell in 1881. It will be noted that the same surveyor (L. W. Durrell) who originally surveyed Block 125 also later surveyed Block 180½.

Block 180½ is plainly a fill-in between Block 125, T. & St. L. Ry. Co., and the University block. The field

notes for the sections in Block 180½ call for an adjoinder of their east and north lines with the west and south lines of the University block.

Mr. J. L. Nutt is the owner of Sections 3, 5 and 6 and a part of Section 2, Block 180½, T. C. Ry. Co. survey. The issue in this case, as has been heretofore stated, is that of vacancy, and Mr. Nutt's rights under his application are dependent upon his establishing the vacancy asserted by him, either in the capacity of a good-faith claimant or that of an applicant. He has made no contention in this case for the existence of excess acreage, nor has he applied to purchase any excess acreage.

This is not an attempt to recover an excess in surveys, but is an effort to tear apart surveys shown by their field-note calls and the official plats and maps of the Land Office to adjoin each other and to establish a vacancy between them. Therefore, the controlling question and issue in the case is whether or not there is a vacant strip of unappropriated and unsurveyed school land lying between said surveys.

The burden of proof rests on him who asserts the vacancy to prove the existence of such vacancy by material, positive and direct proof, and this is particularly true where the claimed vacancy is alleged to exist between surveys calling for each other.

counter 48228

It was declared by our Supreme Court in the case of Moore v. Stewart, 7 S. W. 771, that:

> "The burden was upon the party claiming the vacancy between the surveys calling for each other to show it."

It was stated by Judge Stayton in the case of Freeman v. Mahoney, 57 Tex. 621, that:

> "He who at this late day when lands have become valuable, and those who originally surveyed them have passed away, makes a location between grants which surveyors who originally surveyed them, more than thirty years ago, under their official oaths, declared to be contiguous, should come prepared with evidence which will clearly show that such declarations were made in mistake, and such testimony must consist of something more than that one or both of the grants will be slightly in excess of the area called for, to make such declarations good."

That where a party's right to recover a vacancy rests on his ability to establish a disputed line, he cannot hope to recover or complain that the opponent's evidence fails to definitely locate said line, since the burden of proof rests upon the party claiming the vacancy. Higginbotham v. Weaver (Civ. App.), 177 S. W. 532.

The presumption is in favor of surveys that were made as called for by their field notes, and the burden is on the party attacking to show they were not so made. Schnackenberg v. State (Civ. App.), 229 S. W. 934.

counter 48229

It is the University's contention that a vacancy does not and in fact, as a matter of law, cannot exist between Block 19, University Lands, and Block 180½, because those blocks were definitely tied together by the original surveyor in his field notes of Block 180½, and these blocks will not now be torn apart for the purpose of wedging in a vacant strip of the configuration contended for by the applicant.

As stated by the court in Gulf Oil Corporation v. Outlaw, 150 S. W. (2d) 777, 782, that:

> "It is not necessary to resort to rules of construction, as the field notes speak for themselves. It seems to us unquestionable that if any doubt whatever arises it is as to the location of this common line. The evidence might possibly raise an issue of fact in that regard, but we believe it immaterial even if it does."

Surveyors in recent years may differ as to the precise location upon the ground of the common dividing line between University Block 19 and Block 180½, and as stated in Gulf Oil Corporation v. Outlaw, supra, the evidence in this case may possibly raise an issue of fact in that regard, but we submit that that is not a matter of moment in this case, as the question is whether a vacancy exists between the blocks. The single issue involved, that is, the one of vacancy, was raised by Mr. Nutt himself, and he must now stand or fall on said issue. "He cannot have his cake and eat it too."

counter 48230

E

It is true that the pertinent provisions of House Bill No. 9 provide that "The application by a good-faith claimant shall not be considered, in any way, as an admission on his part that a vacancy exists." We submit that even where a good-faith claimant asserts that a vacancy does exist the burden is upon him to show the existence of the vacancy, although the application cannot later be used as an admission against his interest. In this case Mr. Nutt does not appear as a good-faith claimant, but rests his claim on that of a "discoverer."

The University of Texas has been issuing grazing leases to its lessees on the sections in University Block 19 based on the acreage as shown by Mr. Frank F. Friend's survey of said block. One of the University lessees is Mrs. Mary Lea McKenzie, and as such lessee, Mrs. McKenzie has a working arrangement or trade-out with Mr. Nutt in respect to the use and occupancy of at least 100 acres in Section 20, all of Section 21 and at least three-fourths of Section 19. Therefore, Mr. Nutt has been occupying and using said land in accordance with the Frank Friend survey, and to this extent it is an admission on his part that he is not a good-faith claimant of the land.

Furthermore, in the event the calls for adjoinder should prevail in this case, as a matter of law, Mr. Nutt does fix, by way of admission, the east line of his claim

counter 48231

and the west line of the University, notwithstanding the fact that even though he be a "good-faith claimant," nevertheless he does thereby admit the location of the common division line between his ownership in the sections in Block 180½ and the University Block 19.

The University contends that the land in controversy is located within the bounds of Block 19, University Lands, Pecos County, Texas. Block 19 is a part of a "system" of surveys composed of Blocks 16 to 20, inclusive, said blocks were surveyed by the same surveyor at the same time, and therefore, are a system of surveys. These blocks form a part of the one million acres of land which were set apart to The University of Texas as an endowment under the Constitution of 1876 (sec. 15, Art. 7, Const. of Texas). The constitutional endowment of one million acres of land for the University was surveyed and selected by the Commissioner of the General Land Office under the special provisions of law then existing applicable to the surveying and selection of said lands. (Chap. 1, Title LXXXI, Arts. 4022-4030, inclusive, Code of 1879.)

Article 4025 confers upon the Commissioner of the General Land Office authority to appoint one or more competent surveyors to survey such lands out of any vacant and unappropriated public lands.

Article 4026 reads in part as follows:

counter 48232

"Such surveys shall be made in sections of six hundred forty acres each, so far as the same may be practicable; and the surveyor shall locate and survey said lands under the direction of the commissioner of the general land office and return the field-notes and maps thereof to the general land office within such time as may be prescribed by the commissioner, etc."

Article 4027 provides for the creation of a reservation by the Commissioner within which such lands were to be surveyed further says "thereafter no locations shall be permitted within such limits until after receipt by the district surveyor of a certified copy of the maps and field-notes as provided in the succeeding article."

Article 4028 reads as follows:

"After the return of the field-notes and maps to the general land office by the surveyor appointed to make any such locations, the commissioner of the general land office shall cause certified copies thereof to be forwarded to the district or county surveyor of any district or county in which any such lands are situated, who shall record the same in their respective offices as in other cases."

The general law required locations to be made in the form of an application to the district or county surveyor, and after a survey of the location was made the field notes were to be approved and recorded by the district surveyor and then filed in the General Land Office with the certificate or other authority for making the survey. In the case of University lands (constitutional endowment) the district and county surveyors had nothing whatever to do with the survey of such lands further than the recording of the

counter 48233

certified copies of the field notes and maps after the surveys were made by the contracting surveyors. As a matter of fact, the recording was done in the Land Office and the bound books of record were furnished the district surveyors.

The Commissioner of the General Land Office, acting under the authority of the above statutes, appointed the firm of Holt and Thomson, composed of C. W. Holt and R. M. Thomson, as the special surveyors for the purpose of surveying the constitutional one million acres of land for the University. (Letter Bk. 100, p. 239, G.L.O.) In this connection he also appointed Maurice B. Moore as commissioner or inspector in the matter of the selection and the surveying of said endowment (Letter Bk. 100, p. 241, G.L.O.), but the land was to be surveyed under the guiding hand of the Commissioner, and the land was to be finally accepted and approved by him. In addition to the statutes themselves, we must look to the Land Commissioner's instructions given both to the surveyors and to Mr. Moore with reference to their duties and responsibilities. Mr. Moore was employed to accompany the surveyors in the field, and the record shows he did so. His duties are set out and defined in his letter of instructions. The second paragraph of these instructions reads as follows:

> "Your duty will be to see that the surveyors select and survey the best land to be procured, rejecting such as is unfit for either agriculture or pasture, except where it may be necessary to include a small portion

counter 48234

E

> of such inferior land in order to secure living water. You will also see that at least two corners of each survey are marked with stone or earth mounds, and that the corners of the blocks, not to exceed six miles square, are marked with earth or stone mounds at least three feet high and six feet in diameter at the base."

The official field notes returned by Mr. Thomson covering his survey of Blocks 16 to 20, inclusive, show numerous calls for natural and artificial objects either found or placed by him on the ground in this system of surveys, including springs, roads, rock mounds, earth mounds, earth monuments and stakes. We respectfully submit that the location of his surveys depends and rests upon these calls for natural and artificial objects.

Mr. R. M. Thomson's field notes of Block 19 call for no less than ten rock mounds, one earth monument, thirteen earth mounds and a connection from his northeast corner to the East Escondido Spring, a natural object and nine stakes. In any attempt at a resurvey or reconstruction of his blocks constituting this system of surveys these natural and artificial objects cannot be disregarded.

Where objects, natural or artificial, are called for in the field notes of official surveyors (such as are found in the field notes of Mr. Thomson), the presumption arises that such objects actually existed on the ground and were so found or placed by the surveyor, and that the

counter 48235

surveyor was actually upon the ground and made an actual survey of the land. Kuechler v. Wilson, 82 Tex. 638, 18 S. W. 317; Weston v. Meeker, 109 S. W. 461; Nanny v. Vaughn, 187 S. W. 499; Standefer v. Vaughan, 219 S. W. 484; Schnackenberg v. State, supra; Wolf v. Scott, 253 S. W. 905; State v. Sullivan, 87 S. W. (2d) 867, 92 S. W. (2d) 228, 127 Tex. 525.

In determining the location of boundaries, the footsteps of the surveyor are the determining factors, and when found and identified with reasonable certainty as called for in the field notes, they must control. Maddox v. Dayton Lumber Co. (Civ. App.), 188 S. W. 958.

The real object in attempting to apply the various calls is for the purpose of finding the footsteps of the surveyor, and, when found and identified with reasonable certainty, all classes of calls must yield to them. Taft v. Ward, 124 S. W. 437; Miller v. Myer, 190 S. W. 247.

It is only where natural and artificial objects called for in field notes cannot be found on the ground, nor their previous location accounted for, that a survey should be located by the calls for course and distance.

Calls for course and distance will yield to natural or artificial objects called for in field notes, even though such objects have ceased to exist, and even if the calls for course and distance be reckoned from an undisputed beginning point, where such natural or artificial objects can be found

counter 48236

or re-established with reasonable certainty. Lumber Co. v. Whiteman, 104 S. W. (2d) 635 (error dismissed).

Mr. Thomson was the surveyor of these lands and Mr. Maurice B. Moore was the locator thereof. Mr. Thomson filed no map or sketch with his field notes, but Mr. Moore did file on March 1, 1880, a sketch in the Land Office delineating these surveys thereon. This sketch was dated December 15, 1879. We submit that this map is the surveyor's sketch in connection with the notes, and is locative of the position of these lines when considered in the light of the field notes and in connection with all the other facts and circumstances of record concerning their location.

On May 14, 1880, the Commissioner of the General Land Office in a letter of transmittal to the county surveyor of Pecos County under authority of Article 4027, Revised Civil Statutes of 1879, sent an official map delineating these surveys together with the compilation of the field notes. This map shows a connection from the West Escondido Spring to the northwest corner of Section 19 of Block 19. It also shows a tie of said system of surveys with a spring located in the west line of said block in the J. V. Massey Survey No. 549. Practically the same ties and connection are shown upon the official county map of Pecos County on file in the General Land Office, being the county map of 1873, except the additional information of the

counter 48237

distance from said natural object (spring) to the northwest corner of Section 21 of Block 19, said distance being 3650 varas.

The Maurice B. Moore sketch shows Block 19 to be composed of 25 sections and was evidently prepared without knowledge of the previous location of the J. V. Massey surveys which covered his Sections 19, 20, 23 and 24, as these sections were deleted by the official action of the Land Commissioner in his preparation of his official maps, and the Maurice B. Moore sections were renumbered accordingly by the Land Commissioner or under his direction in the compilation of his official maps of said block. We submit that these official maps of the Land Office are locative of the position of Block 19, and that the natural objects called for thereon form a part of the description of the land and can be used for the purpose of now determining the position of said block upon the ground.

In a suit involving a boundary question after time has destroyed in large measure the evidence left by the original locator, it is permissible and of necessity required that resort be had to any evidence tending to establish the place of the original footsteps which meets the requirement that it is the best evidence of which the case is susceptible. Turnbow v. Bland, 149 S. W. (2d) 604 (writ of error dismissed); Taylor v. Oil & Fuel Co., 2 S. W. (2d) 288, 300.

counter 48238

The official maps in the Land Office should be used in connection with other testimony for the purpose of proving the location of a disputed boundary. Gulf v. Outlaw, supra; Finberg v. Gilbert, 104 Tex. 539; Vol. 7, Tex. Jur. sec. 75-76; McCombs v. Sheldon, 26 S. W. 1114; Kirby Lumber Co. v. Adams; 291 S. W. 279, 280; Boon v. Hunter, 62 Tex. 582; Short v. Carter & Bro., 126 S. W. (2d) 953; Thomas v. Wolfe, 40 S. W. 182, 183.

"A map is a picture of a survey; field notes a description thereof." Gulf v. Outlaw, supra.

In Wilkins v. Clawson, 83 S. W. 732, 734, the court said:

> "But we must not look alone to these field notes in determining the sufficiency of the description. The original English field notes and the plat or map prepared by the surveyor who located the survey are a part of the original title, and must be considered together with the field notes embodied in the grant for the purpose of identifying and fixing the location of the survey. Welder v. Carroll, 29 Tex. 331; Cook v. Dennis, 61 Tex. 248; Irvin v. Bevil, 80 Tex. 338, 16 S. W. 21."

In Burkett v. Chestnutt, 212 S. W. 271 (Civ. App.), the court said:

> "The plat filed, copied above, as part of the description of the survey by the original surveyor, showing the river to be the boundary, is the best evidence that it is in fact the south boundary thereof. Boon v. Hunter, 62 Tex. 589."

counter 48239

"The best evidence is the surveyor's sketch." State v. Indio Cattle Co. (Civ. App.P, 154 S. W. (2d) 308.

It is a fundamental rule of boundary law that in determining boundaries, recourse should be had, first, to the natural objects called for, such as rivers, springs, mountains, etc.; second, to artificial objects, such as trees, boundary lines, mounds, stakes, etc.; and third, to courses and distances. Of these calls, course and distance is of the least dignity.

The courts of this state have many times announced the doctrine that the rules for the construction of surveys and for ascertaining their boundaries are all designed for the purpose of carrying out the intention of the surveyor. When this intention is once manifested all else must yield to and be governed by it. Woods v. Robinson, 58 Tex. 655; Swisher v. Grumbles, 18 Tex. 164; Robinson v. Doss, 58 Tex. 496; Boon v. Hunter, 62 Tex. 582; Ruth v. Carter-Kelly Lumber Co., 286 S. W. 322.

Mr. Justice Higgins in Smith v. Turner (Civ. App.), 13 S. W. (2d) 152, said:

> "While the boundary cases do not always upon their face show that the decisions rested primarily upon the rule of giving controlling effect to the intention of the parties, yet in the last analysis it will be found that the decision in all cases was based upon that fundamental principle."

counter 48240

The case of State v. Palacios (Civ. App.), 150 S. W. 229 (writ of error denied), held:

> "The rule in this, as in all cases where different calls lead to conflicting results, is that preference should be given to those calls which most probably indicate the intention of the grantor, as expressed in the face of the grant, read in the light of the surrounding circumstances."

The intention of the surveyor must be gathered from the record that he made of his work. Blackwell v. Coleman County, 94 Tex. 291; Finberg v. Gilbert, 104 Tex. 539.

The cases lay down the rule that in determining boundaries effect is always given to calls that will carry out the intention of the parties and inconsistent calls that will defeat the intentions of the parties will be rejected. Booth v. Upshur, 26 Tex. 641; State v. Coleman-Fulton Pasture Co., 230 S. W. 850; Security Land & Exploration Co. v. Burns, 193 U. S. 167; Ruth v. Carter-Kelly Lumber Co., supra.

There is another rule in regard to the establishment of boundaries, that when all the calls cannot be followed, as few should be disregarded as possible, and effect given to the one or more which will result in the least amount of conflict or confusion.

The evidence adduced in this case discloses that according to the records and maps of the General Land Office no vacancy exists, but that the west line of University Block

counter 48241

19 and the east line of Block 180½ are a common division line between said blocks, and that all of the claimed vacancy, or at least a large part thereof, is a part of said University block, so claimed to be by the Commissioner of the General Land Office and the Board of Regents of the University. It was on account of the facts so shown by the records and maps of the General Land Office that the Commissioner rejected the application of J. V. Schilling dated December 8, 1926, bearing files Nos. 2056 and 2057, which was answered by the Land Commissioner on December 22, 1926. The Commissioner held that the calls for adjoinder prevailed as a matter of law, and that no vacancy existed. This raises the presumption that there is no vacancy between these blocks. Montgomery County v. Angier, 74 S. W. 957, 958 (writ denied).

It is true that one who claims under a survey must show and establish the corners and lines thereof.

The testimony of the witness, Norris B. Creath, shows that the disputed boundary line was located according to the contentions of the University, that is to say, by the calls for the natural and artificial objects upon the ground. Therefore, controlling effect cannot properly be given to the calls for course and distance, even if such calls be reckoned from an undisputed beginning.

In Stafford v. King, 30 Tex. 257, 272, it was said: "A call for a natural object, as a river, a known stream,

counter 18242

a spring, or even a marked tree, shall control both course and distance. * * * "

"But," says the applicant, "suppose when a contest has arisen and the subject of dispute is submitted for decision and the artificial objects which once marked the footsteps of the surveyor have ceased to exist?"

The same question was asked in the case of Southern Pine Lumber Co. v. Whiteman, supra, and was answered by the court as follows:

> "But, suppose when a contest has arisen and the subject of dispute is submitted for decision, artificial objects which once marked the footsteps of the surveyor have ceased to exist but there are witnesses who can and do testify to their former location? Should course and distance, if in conflict, be made to yield to such evidence? We think the rule so requires."

In Thatcher v. Matthews, 101 Tex. 122, 105 S. W. 317, a survey line was called to run from a marked corner 13,400 varas, a certain course to a corner "on stake in Prairie." The stake had disappeared. It was held to be an artificial object, and, if the place where it was originally located could be established, the call for distance should yield; and it was held proper to extend the line an additional 1,200 varas to reach the point where the stake had been originally located. Chief Justice Gaines in writing the opinion of the Court held the stake was an artificial object; its mention could not be disregarded, and that if

counter 48243

the place where it was originally located could be reasonably established, it fixed the corner with the same certainty as if it had been marked by a permanent object and the variant distance call should yield to it. The court said:

> "The lines as actually run and the corners as actually established when consistent with other locative calls fix the true boundaries of the survey. The locations of such corners may be proved by any admissible evidence sufficient to lead to a belief of the fact. * * * Where a stake is once placed, it fixes the corner as conclusively as if marked by natural objects. Owing to the fact that it may be removed or obliterated, its location may be more difficult of proof; but, if proved, it fixes the corner with the same certainty as where it is marked by a permanent object. * * * If the place where it was originally located can be established, the call for distance should yield to it."

In Welder v. Carroll, 29 Tex. 317, 318, the court said:

> "If the boundary line between these surveys was run out and marked upon the ground, and it can be ascertained and established by a resurvey, following the calls in the title and map forming a part of it and the ancient landmarks made for its identity by the original surveyor; or, if its locality can be proved by witnesses who can, from their personal knowledge, or on information derived from general reputation, or from its having been pointed out to them by the surveyor by whom it was run, or others who were present at the time or cognizant of the fact (Stroud v. Springfield, Austin term, 1866, 28 Tex. 649) this will fix and mark its position, although there may be a discrepancy between its position thus ascertained and that given it by the calls or plat on the grant."

counter 48244

Mr. J. H. Walker defines a system of surveys as a combination of integrated blocks so related as to depend each upon the other for position. Block 19 is an integral part of the East Escondido system. Adjoining said system on the west is another system of Thomson surveys composed of Blocks Nos. 21 to 26, inclusive, University Lands, Pecos County, Texas.

The testimony of the surveyors show that many stone and rock mounds were found by them upon the ground in their survey of Block 19, but that few, if any, were accepted because of the difficulty of positively identifying said mounds as being original. There are, however, certain natural objects now found upon the ground that correspond with those called for either in the field notes or the maps of said surveys. These objects are natural objects that are well known and easily identifiable upon the ground. They exist today as they did at the time of the original survey. These objects consist of (a) three mountain bearing calls for the location of the northeast corner of Block 16 of this system; (b) the East Escondido Spring from which a connection is called for by Thomson in his field notes for Section 1 of Block 19 in the location of the northeast corner thereof; (c) the Middle Escondido Spring called for upon the official maps of the Land Office in connection with the location of the west line of said block; (d) the West Escondido Spring called for in a

counter 18245

connection by Thomson in his field notes for Section 1, Block 21, of his West Escondido system for the northwest corner of Section 19, Block 19; (e) the hillside on which Thomson calls for a stone monument on the side of a hill for the location of his southeast corner of Block 18 of his East Escondido system.

From these well-known and unmistakeable points the exterior boundaries of Block 19 can now be re-established, that is to say, by using these identifiable points the artificial objects such as stone mounds, rock mounds, earth monuments, earth mounds and stakes called for by Thomson in his original survey of said block can be found or, if any are lost, re-established.

The northeast corner of Block 19 calls to be 1200 varas north and 740 varas east of the Escondido Springs at stage stand. At a point 1241 varas north and 727 varas east of a spring there is found to be and identified by all the witnesses a small rock mound in which is set a concrete monument by Mr. F. F. Friend. Although this point is 41 varas farther north and 13 varas west of the course and distance called for by Thomson, nevertheless the point is accepted by all parties as marking the northeast corner of said section and block, and is undisputed.

For the location of the west line of Block 19 the official maps show a call for a "spring." It is to be

counter 48246

presumed that this call for a spring was made for the most prominent and important spring to be found in that locality. The point is further identified by the field-note calls of the J. V. Massey Survey No. 549 by a connection from that survey's northwest corner. The northwest corner of the J. V. Massey is a well-recognized and undisputed point, and when you go the called distance, S 47° E 720 varas, you strike the northwest edge of a large pool of water. This point is identified and called the Middle Escondido Spring. This is a "well-known and unmistakeable place."

Mr. Thomson in his field notes calls for his survey of Section 1, Block 21 (West Escondido system), to begin 1100 varas west and 2680 varas north from the head of Western Escondido Spring or 6830 varas west and 4650 varas north from the northwest corner of Sur. No. 19 Blk. No. 19 (East Escondido system). The West Escondido Spring is now found upon the ground and its position definitely fixed by the calls of the J. N. Shoffner field notes. The Shoffner notes call for a rock mound in the center of an old Mescal camp from which the head spring of the Escondido bears S 75° E 225 varas. The witness Creath testified that by a survey upon the ground he set his instrument up at a point near a spring gushing out of a rock ledge and set a course N 75° W, and on running a distance of 225 varas on this course he landed upon the edge of a well-defined rock pile or mound

counter 48247

of burnt rock. The witness further testified that by reason of his experience as a surveyor in the surveying of lands in West Texas he was familiar with rock mounds bearing the characteristics of the one found by him at this point, and further, that mounds of this type and character are generally called and identified as Mescal camps or Sotol pits, and that they were historically identified and known as being of Indian origin. Therefore, it would seem that there could be no question or doubt of the location of the so-called West Escondido Spring, but that such point is well known and easily identified as an unmistakeable place. We submit that it forms and constitutes a natural object recognized and accepted by R. M. Thomson in his original survey of both of his systems, the so-called West Escondido system and the so-called East Escondido system, and that he used such point in connecting up and establishing his two systems.

By using the abandoned sections as shown upon the Maurice B. Moore map, together with the other sections shown thereon, considered in connection with the Thomson field notes of Block 19 and in connection with the distances and locations shown by the official maps and beginning in the center of the Middle Escondido Spring and running the called distance by projection from that point, you thereby establish both the southwest corner and the northwest corner of Section 21, Block 19, and by a reverse call from said point

counter 78248

or points by projection, you can thereby establish or re-establish the northwest or the southwest corner of Section 19, Block 19, at which points either stone mounds or stakes were called for, and we submit by this method these corners are re-established with certainty. This establishes the west line of the University Block 19--6921 varas east of the northeast corner of Survey 1, Block 21, as located from the West Escondido Spring, and this is excessive over the Thomson call for 6830 varas by 91 varas east and west; in other words, the west line of Block 19 as fixed from the middle of the Middle Escondido Spring is 91 varas too far east to fit this call exactly, but we submit that this fact only tends to support the lines so established, because where Thomson's footsteps are found upon the ground, they always show an excess in distance. As thus established, the northwest corner of Section 19 of Block 19 is a distance of 21,305 varas west from the stone monument on the side of a hill called for in Section 36, Block 18, of said system, or 11 miles of 1936.8 varas each. This is on a course of N 89° 53' 10" E.

Thus, using the middle of Middle Escondido Spring, you fix from that point the northwest corner of Section 19, Block 19, 2050 varas south and the northwest corner of Section 21 3650 varas north which corresponds with the distances called for on the official maps.

counter 18249

However, Mr. Frank Friend's survey of this block shows that he accepts the rock mound at the northeast corner of Section 1, Block 19, and from this point in his survey of said block finds a large stone mound 4 miles of 1994.5 varas each south and 2368.3 varas west which he accepts as original and uses for the purpose of establishing a common corner between his Sections 4, 5 6 and 7 of said survey, which is identified and called "Grandote" or "Granddaddy." This mound is in a position north and south approximately with a projected line west through two other stone mounds which have all the appearances, from a surveyor's standpoint, of being surveyors' mounds and have that age and dignity which would correspond with the Thomson calls for such object. The first mound is identified as a "small old stone mound" which is 3 miles of 1950 varas each west of Grandote, and the extreme west mound on this line is identified and called "Boulder mound" and is 1918.1 varas west of the so-called "small old stone mound." If these two mounds are accepted, they fix the southwest corner of Section 19 and the southeast corner thereof, and conflict with Block 180½ by 168 varas. There is another old large mound of rock found at a point known and designated as "Ocotillo." This rock mound is located at a point west 10,096 varas and south 2120 varas from the recognized northeast corner of Block 19. Just opposite this mound to the east thereof is another old stone mound,

counter 48250

either of which mounds, if accepted, would fix the southwest corner of Section 21, Block 19. However, Thomson does not call for a stone mound at this point, but calls for a stake, and for this reason we do not believe that this mound could be accepted.

In the case of Lyon v. Waggoner, 83 S. W. 46 (writ of error denied), the court said:

> "This process of construction, if carried throughout the blocks, has the merit of regard for the original configuration of the surveys as shown by the map of the surveyor, and is the only method, to our minds, by which the symmetry of the surveys will be preserved. We think, for this reason, if no other, that this method of construction should be adopted, rather than that of observance for course and distance adopted by the court, resulting, as it did, in the destruction of the original configuration of the surveys. The blocks as restored by this process of construction will present an arrangement of surveys as nearly identical with that shown by the original map as is possible, and will, we believe, result in fewer conflicts, and will more nearly approximate the real intention of the surveyor than will any other method which has been suggested or occurred to us."

We respectfully submit that it is improper for a surveyor to begin from a given corner and then undertake to locate a survey by course and distance only, ignoring all calls for natural and artificial objects, and when he reaches a spring to fail to recognize it, but to regard only course and distance, ignoring the natural call for the spring.

Calls for natural objects, such as a river or spring, do not yield to calls for artificial stakes or movable

counter 48251

rocks or stones, in absence of evidence that there was no river or spring at the place called for, or that there was a mistake in the call for the river or spring. Schnackenberg v. State, supra; Stevens v. Crosby, 166 S. W. 62 (writ of error dismissed).

Location made by running course and distance cannot take precedence over corner identified by natural objects. Pandem Oil Corp. v. Goodrich, 29 S. W. (2d) 877, rev. 48 S. W. (2d) 606.

The surveyor, F. W. Estill, in his construction of Block 19 states that he found on the ground "many stone and rock mounds," but none could be identified by him as original except one mound. He constructs said block by his resurvey from the accepted northeast corner thereof purely course and distance north and south, but accepts one rock mound found by him in the establishment of the position of the west line of said block. Although he uses this rock mound for the purpose of establishing the east-west location of said block, he fails to use the same as locative of the position of said block north and south, thereby simply using the mound as a passing call instead of a locative one, and for this reason, same is erroneously accepted by him. This rock mound is not called for at the position fixed by the Estill survey. Its call is wholly a figment of his own imagination. Neither the Thomson field notes nor any record in the Land Office show this mound.

counter 48252

The rule of law is now well established in this State that a survey cannot be located by artificial objects not called for in the field notes or maps. Reast v. Donald, 84 Tex. 653, 19 S. W. 795; Hamilton v. Blackburn, 95 S. W. 1094; Ratliff v. Burleson, 25 S. W. 983; State v. Talkington, 274 S. W. 314, 316; Railway Co. v. Anderson, 81 S. W. 781, 784.

His survey ignores the calls for adjoinder of the sections in Block 180½ for the University's west and south lines.

The law is now well established in Texas that a call for adjoinder is like a call for a natural or artificial object, and any conflicting call for course and distance or acreage and the like must yield.

Judge Hickman in Stanolind Oil & Gas Co. v. State, 101 S. W. (2d) 801, 807, said:

> "The general rule is that a call for adjoinder is given controlling effect over a call for course and distance. If, however, the call for adjoinder is made through mistake, the general rule is not applicable. But, though a call for adjoinder be made through a mistaken belief as to its true location, it does not always follow that the course and distance call will control. The mistake does not reverse the rule, but rather sets the matter at large so that the court is left free to construct the survey in such manner as will best give effect to the intention to be determined from the entire description."

counter 18253

The field notes of a junior survey are admissible in evidence to show the location of a senior survey on the ground or to discover its true lines or the location of objects called for in the senior survey, even though the junior survey does not make reference to the senior survey. Cockrell v. Works (Civ. App.), 94 S. W. (2d) 784. This is particularly true where a vacancy is sought to be established between surveys calling to adjoin each other.

It is inconceivable that Mr. Durrell and the Land Commissioner intended to leave a vacant strip of land of the nature and configuration of that sought to be established in this case between Block 180½, T. C. Ry. Co. survey, and University Block 19. It is obvious from Mr. Durrell's field-note calls that he intended to and did tie the two blocks together, and they have been so recognized in the Land Office ever since they were originally surveyed for a period of over fifty years. The intention to tie these surveys together is shown by both their field notes and the Land Office maps.

In Gulf Production Company v. Camp, 32 S. W. (2d) 881, 882, it was held:

> "It is well settled in this state that in a proper case an unmarked line will be given the dignity of an 'artificial object' and a call for connection therewith will prevail over a variant distance call. The leading case to this effect is Maddox Bros. & Anderson v. Fenner, 79 Tex. 279, 15 S. W. 237. The field notes of the southern tier of sections in blocks 25 and 24 call for adjoinder with the north line of the University blocks."

counter 48254

"We think the record in this case manifests the evident intention of Surveyor Twichell, in accordance with the instruction of the Commissioner of the General Land Office, to embrace in blocks 25 and 24 all the unsurveyed land then lying west of block 43 and north of blocks 31 and 30. The mistake in the field notes was not in the call for adjoinder, but in the estimated distance necessary to effect such adjoinder. It is inconceivable that the officers representing the state had any idea of leaving between blocks 25 and 24 on the north, and the University blocks on the south, an unsurveyed strip 175.2 varas wide and 10 miles long. We are of the opinion that the call for adjoinder should prevail over the distance call and thus give effect to the intention of the officers representing the state."

The surveyors, Estill, Avera and Simpson, in their construction of Block 19 and Block 180½ ignore this call for adjoinder. These surveyors in their attempt to establish a vacancy put Sections 2 and 6 of Block 180½ in conflict with the University Block 19.

The surveyors, Avera and Simpson, in their resurvey and construction of Block 19, like the Surveyor Estill, accept Mr. Friend's location of the northeast corner of Block 19 and from this point they construct the survey simply course and distance, both north and south and east and west, ignoring all the calls for natural and artificial objects called for in the field notes of the original surveyor (Thomson); ignoring the calls for adjoinder with the west line of Block 180½; ignoring the fact that Block 19 is a part of a system of surveys.

counter 48255

We respectfully submit that in view of all the rules of boundary law in reference to the relocation of surveys their survey of said block is improper.

Mr. Avera in his testimony expressed it as his opinion that he did not believe Mr. R. M. Thomson made an actual survey of Block 19. This statement was made by him, notwithstanding the fact that he admitted he had made no survey or an attempted survey of any of the other blocks of said system, that is to say, Blocks 16 to 18, inclusive, and Block 20; and notwithstanding the presumption that a surveyor is supposed to tell the truth in his field notes; and notwithstanding the fact that Thomson calls for numerous objects, both natural and artificial, throughout his entire system; and notwithstanding the fact that he himself admits there are to be found today upon the ground numerous objects such as was called for in the Thomson field notes. He simply does not accept them, because he is unable or unwilling to accept or identify them as original.

On December 18, 1940, a hearing was held before the Commissioner of the General Land Office on the question of Mr. F. F. Friend's survey and location of the University blocks constituting the East Escondido system. On this occasion Mr. Avera appeared as a surveyor and witness for Mr. J. L. Nutt, who was a protestant against the acceptance of Mr. Friend's location. Mr. Avera took the position that the

counter 48256

University Block 19 should be located course and distance, and that the adjoinder calls for Block 180½ should be respected, and that any excess acreage should be placed in said Block 180½. Since that hearing he has evidently changed his mind, and now contends that this excess acreage should be considered as a vacancy.

It is passing strange that all of these surveyors that construct Block 19 so as to create a vacancy between said block and Block 180½ are willing to accept the rock mound at the northeast corner of Block 19 as found and established by Mr. Frank F. Friend, and accept said point as an original R. M. Thomson rock mound and artificial object called for in his field notes, yet are unwilling to identify, accept or recognize any other rock mound, rock monument, earth mound, earth monument or stake called for by Mr. Thomson at other points in his survey of this block.

This is particularly interesting when you consider the fact that they do not in any way attempt to identify their beginning point, except that it is used by the University surveyor in his location of the University block. They do not attempt to identify said point by any surveying of any of the other lines or corners called for in the Thomson field notes for the other blocks in his system. This could not have happened by mere coincidence.

counter 78257

In reference to the testimony of Mr. Avera wherein he gives it as his opinion that he does not believe Thomson actually made a survey of Block 19, we call attention to the case of Randall v. Gill, 77 Tex. 351, 14 S. W. 134, 135. In this case it was held that a surveyor could not give his opinion to the effect that when a certain survey was made "none but the western line was actually run" because it was not a fact to be proved by expert evidence. The court said: "The witnesses had surveyed the land, and had described the facts as they found them to exist on the ground. That was as much as it was proper for them to be permitted to do. It was the province of the jury to conclude from the facts proved whether or not the lines were actually run."

So, we think, it is within the province of the Land Commissioner to determine the true location of the boundary lines from the facts proved and not from the opinion of witnesses as to such location.

As heretofore stated, Mr. Thomson's work constitutes a "system" of surveys, hence the calls and field notes of each survey are to be taken into consideration in the construction of any block of said system.

In Brooks v. Slaughter (Cif. App.), 218 S. W. 632, it was held that:

> "All corners and field notes of a system of surveys may be looked to in locating any of the surveys in the system, and it is not

counter 48258

necessary to constitute a block of surveys a system that the surveying be done on the same date, but it is only necessary that the work be continuous from day to day and connected as part of the series of surveys."

"Surveys constituting a block are not to be treated as separate and individual surveys; nor can each tract be located independently of the rest, by its own individual lines or calls or courses and distances, but such surveys are to be located together as one block or one large tract." Duval County Ranch Co. v. Rogers, 150 S. W. (2d) 880; Standefer v. Vaughan, supra.

This rule or a corollary thereto, stated in terms particularly applicable to the situation before us, is that in constructing Block 19 which forms an integral part of the system of surveys composed of Blocks 16 to 20, inclusive, said block cannot properly be constructed independent of the other blocks in the system.

By Section 2 of Chapter 282, Acts Regular Session 41st Legislature (1929), the Board for Lease of University Lands was authorized and directed to cause to be done such surveying or resurveying of the blocks and subdivisions of University lands as might be necessary to properly locate the lines and corners of said blocks and sections. Said Board was authorized to employ surveyors for this purpose. The field notes of said surveys so made were required to be returned to the General Land Office, and if and when found

counter 48259

to be correct by the Commissioner, same were required to be filed by him in the General Land Office as an archive thereof.

The same authority was re-enacted with the exception that the duty of employing surveyors for this purpose was transferred from the Board for Lease to the Board of Regents in 1931. (Sec. 1 of Chap. 87, Acts Reg. Sess., 42nd Leg.)

Mr. Frank F. Friend was employed by the Board for Lease and re-employed by the Board of Regents as the surveyor for the purpose of resurveying and relocating the University blocks. He is still so employed. Field notes of a resurvey of the East Escondido system have not as yet been approved by the Land Commissioner, but a survey by Mr. Friend of said system under his employment by the Board of Regents has been submitted to the Land Commissioner where the matter is now pending. We submit that by reason of these statutes the jurisdiction for a resurvey of University blocks is placed under the exclusive jurisdiction and control of this surveyor subject to instructions and directions from the Land Commissioner. That until such a resurvey is made and field notes approved by this special surveyor of University lands, the lines and corners of the University blocks cannot otherwise be fixed. Therefore, a survey by a surveyor of a University block, such as is sought to be done in this case under the provisions of House Bill No. 9, is improper and illegal and consequently void.

counter 48260

The application of J. L. Nutt is based upon the provisions of Chapter 3 (H. B. No. 9), Acts Regular Session of the 46th Legislature. The only effect of his application is an attempt on his part to impress upon the land in controversy the status of unsurveyed land dedicated to the Public Free School Fund and subject to purchase by him rather than surveyed land located within the University block and dedicated to the Permanent Fund of the University. His application does not purport to restore to the State of Texas any land that it does not already own, and consequently, a recovery by him would not inure to the benefit of the State, because, according to his own admissions, the State already owns the land, whether it belongs to the Public Free School Fund or whether it belongs to the Permanent Fund of the University.

As stated by the court in York v. Alley, 25 S. W. (2d) 193 (writ of error denied), "Upon the present facts a recovery by appellant would not inure to the benefit of the State for the State already owns the land, and a recovery by appellant would adversely affect rather than benefit its ownership."

It was and is the purpose and intent of the Legislature in the enactment of the so-called vacancy statutes to reward a discoverer of or applicant for a vacancy for his diligence, expense and effort in recovering for the benefit

counter 18261

of the State land dedicated to the Public Free School Fund under the Act of 1900 when said land is adversely held or claimed by individuals to be embraced in prior grants from the State. We respectfully submit that House Bill No. 9 does not authorize nor support an application of the nature of Mr. J. L. Nutt as filed herein. The State owning the land in this proceedings places the State in the anomalous attitude of suing itself for something it already owns.

Blocks 16 to 20, inclusive, University Lands, Pecos County, Texas, as surveyed by Mr. R. M. Thomson, were selected, designated and approved by the official act of the Land Commissioner as a part of the constitutional endowment set aside as a permanent fund for the use of The University of Texas. Although the legal title to said land is vested in the State of Texas, nevertheless the fund to which said lands are appropriated becomes entitled to receive all the proceeds derived from the sale thereof. Theison v. Robison, 117 Tex. 489, 8 S. W. (2d) 646; Smisson v. State, 71 Tex. 222, 9 S. W. 112; Greene v. Robison, 109 Tex. 367, 210 S. W. 498.

The Legislature of the State of Texas is prohibited by Section 7 of Article 8 of the Constitution from in any manner diverting from its purpose any special fund that ought to come into the treasury.

counter 48262

Therefore, any land that has been accepted and approved as an endowment for the University cannot be diverted to any other use or to any other purpose.

In Saunders v. Hart, 57 Tex. 8, the Supreme Court said:

> "That the State has control of University Lands, in trust, for the original purposes of the donation, is evident by the express language of our several constitutional provisions and legislative enactments upon this subject; * * * ."

The case of Ellwood v. Stallcup, 122 S. W. 906, involved a conflict between a tract of land surveyed for the public school fund and one surveyed for a county as a part of its donated four leagues of land for county school purposes. The survey of the county land was junior and the contention was made that the prior survey for the benefit of the common school fund was not such appropriation of the surveyed land as to sever it from the unappropriated public domain. Overruling that contention Chief Justice Fisher, speaking for the Austin Court of Civil Appeals, said:

> "The reservation in favor of the common school fund was for the benefit of the state at large, in which all of the counties were entitled to participate--that in favor of the county was restricted and limited to its own inhabitants. One was a general trust fund, limited only by the boundaries of the state; the other was circumscribed by the limits of the county. And if it could be conceded that the latter could lay its grant upon the previous location of the state, the effect would be to divert the fund from the general use

counter 48263

intended for the benefit of the state at large. Such a concession would be repugnant to all of the laws upon this subject, because the public domain, set aside or located for common school purposes, cannot be diverted, and constitutes a trust fund for educational purposes for the entire state. When the location was made, the right was vested in the state in trust for a definite and defined purpose, and to permit a county to subsequently appropriate the land by patent or otherwise would defeat the trust and affect an interest already vested, which is prohibited by article 4269."

The University Blocks 16 to 20, inclusive, were located by the official acts of the Land Commissioner as a part of the one million acres of land set apart to the University and its branches, and by such action said blocks were as effectually severed from the mass of the public domain as if the location had been made for an individual.

The ministerial officers of the State have no authority to in any way change the lines and corners of such surveys as originally located so as to exclude any land that was included or intended to be included in said surveys by reason of their original locations or designations.

Respectfully submitted,

Scott Gaines

Scott Gaines
Land Attorney
The University of Texas

counter 48264

Pecos Co. R-O Sq No 114

65

THE UNIVERSITY OF TEXAS
AUSTIN

SCOTT GAINES
LAND ATTORNEY

September 8, 1942

J. H. WALKER
UNIVERSITY LANDS OFFICER

RECEIVED
SEP 9 - 1942

REFERRED TO LAW

Hon. Bascom Giles, Commissioner
General Land Office
Austin, Texas

The J. L. Nutt Application
SF-14312

Dear Bascom:

The contention of the applicants in this case is inconsistent in their position involving another block in the same system. It must be borne in mind that the million acres of land set apart by the Constitution were located in systems by Maurice B. Moore and each system divided into blocks and each block into sections by the surveyors Holt and Thomson. These blocks are integrated and inseparable, the location of one dependent upon the position of the others.

In a resurvey of a part of this system by Lea, Bucey and Collard in 1909 for the purpose of determining the boundary between the system and Block 194 the course of the lines of the original survey was arrived at by said surveyors by a comparison of the Thomson lines with Nelson's boundaries of the three surveys lying within the limits of Block 19. You will find that County Surveyor Nelson, of Pecos County, in 1879 laid out the two Massey surveys and the Garza survey on a variation of 11° 30'. Thomson's survey of Block 19 made a few months afterward was on a called variation of 10°. It appears that Lea, Bucey and Collard concluded from these variations that Thomson ran out Block 19 and other blocks in the system on a deflection of 1° 30' East from Nelson's courses. As the variation at that time (1909) was 11° due to a change in the magnetic declination, these surveyors decided that the variation of Thomson's course would then be 9° 30' East. Accordingly, these surveyors beginning at the northeast corner of Block 16 established the east line of said block solely on this theory and not from any ground marks found and identified by them. They identified no monuments.

The Land Office in 1911 approved the Lea, Bucey and Collard survey, as shown by the records, and the surveys in Block 194 were corrected back to the Lea line. The names of Bucey and Collard do not appear in the record, but they were under contract to make the survey, and Mr. Lea was employed to give it legal effect and to effectuate the returns to the Land Office. If the Land Office was correct

counter 78265

F'

in 1909, and we are disposed to agree to its action at that time provided, of course, the theory is applied to the remainder of the system.

There exist mounds and monuments sustaining this theory as to north and south courses but not as to east and west courses. At the southeast corner of Section 1, Block 19, is a mound 740 varas east and 710 varas south of the old stage stand and doubtless is the mound called for by Thomson as at that point; at the southeast corner of Block 18 is a rebuilt mound on an extremely old foundation that coordinates well with the site of the old stage stand at the main Escondido Spring; and 100 varas south of Lea's monument is a well-built mound coordinating with these two mounds, and a line extended west from it would pass about 1200 varas north of the stage stand at East Escondido Spring and strike a point about 3670 varas north of the center of Middle Escondido Spring. Your records contain reports on the three mounds mentioned.

The slant in the lines running north and south is not due to any difference between Nelson's and Thomson's declination of the needle. As shown by the records, Captain Holt knew nothing of Nelson's work. The explanation is that, after Horace Thomson was wounded at West Escondido, Captain Holt took charge of the party and he and H. C. Barton headed the surveying crews, one moving north and east from West Escondido Spring and the other moving south and east from the same spring to establish starting points. The crew running on the south side of the system, as indicated by the mounds, began further west and made more accurate measurements than the crew on the north, running less than 15 or 20 varas to the mile. No connection between the two lines was run. Thus came about the slant or deflection in the north-south lines.

The position of those representing the University is that before an application for a vacancy adjoining University lands can be considered by your department action must first be had under the Act of 1929 providing for a resurvey of University lands and the approval thereof by you. In other words, the system must first be put on the ground in accordance with the survey made under the law of 1879 and the Act of 1929.

Sincerely yours,

J. H. Walker

JHW:G

cc to Judge Geo. T. Wilson
Mr. Tom R. McKenzie
Mr. C. D. Simmons

counter 18266

F2

Pecos Co. Rld Sk. No 114

94

GEO. T. WILSON
ATTORNEY
1001 McBURNETT BUILDING
P. O. BOX 685
SAN ANGELO, TEXAS

RECEIVED
SEP 11 1942
REFERRED TO LAW.

8s.

September 9, 1942

IN THE MATTER OF THE APPLICATION OF J. L. NUTT TO PURCHASE A VACANCY | SF-14312

* * * * * *

TO THE HONORABLE BASCOM GILES, COMMISSIONER OF THE GENERAL LAND OFFICE OF TEXAS:

Following the procedure indicated by the Land Commissioner, J. L. Nutt of San Angelo, Texas, presents this answer to the brief and argument filed herein on behalf of the University by Honorable J. H. Walker, and also the brief and argument filed herein on behalf of the University by the Honorable Scott Gaines, attorney for the University.

Mr. Walker, in his argument, presents a map and certain field notes prepared in 1927 by J. A. Simpson. Mr. Simpson was a witness at the recent hearing on this application and no question was asked him about the survey which is now for the first time introduced in evidence in the argument. I feel that if the University is going to rely upon this old survey by Mr. Simpson it should have introduced the survey in evidence at the hearing so Mr. Simpson could have explained it. As I understand the facts, the map now presented was made by Mr. Simpson upon a survey that he made for J. L. Nutt of Surveys in Block 125 and in Block 180½ and that he simply accepted the University's position of Block 19 without undertaking to determine its correctness. The survey that Mr. Simpson made for White and Baker was for the purpose of determining the area upon which White and Baker would pay grass lease to the University. Mr. Simpson likewise in that survey accepted the position most favorable to the University without vouching for its correctness.

We do not understand that the University can plead limitation against the public school fund because the University has been collecting grass lease on an area that lies outside of the original survey of the University lands. The points presented by Mr. Walker on pages 2 and 3 of his argument, are entirely beside the question in this case for the reason that if Mr. Nutt is correct, the area

counter 18267

L'

in dispute is not within and never has been within University Block 19. As we understand the matter, the whole question now at issue is whether or not this land was originally surveyed within Block 19. If the original survey included this land, Mr. Nutt's application of course fails. If the original survey did not include this land the University certainly cannot now hold it because of the fact that at intervening times it has claimed it.

We understand Mr. Walker to say that the University has abandoned its claim that the Boulder mound should mark a corner in Block 19. It was very noticeable in the last hearing that the Universities surveyor did not claim either Boulder mound or Ocotillo mound as being original corners in Block 19.

As I understand the argument of Mr. Walker and of Mr. Gaines, they both now depend upon placing most, if not all, of the excess in Block 19 by taking the corner formerly adopted by Mr. Friend as a common corner of Sections 4, 5, 6 and 7. We still insist that it could not have been the intention of the original surveyor to put an excess of 468.3 varas westing in one tier of sections. We agree fully with the authorities cited by Mr. Gaines to the effect that the intention of the original surveyor controls in reconstructing his surveys. We are sure that it is the general opinion of surveyors who have examined this "Granddaddy" that it is not an original surveyor's mound. We believe that the explanation made by Mr. Estill that this large rock mound is probably a geologist's reference point, is much more reasonable than the University's contention that it was placed there by Mr. Thomson.

We respectfully call attention to the fact that since the University has abandoned its claim that Ocotillo and Boulder mounds are original corners, it has nothing left but course and distance by which to construct Block 19, unless it can establish the fact that the "granddaddy" mound was placed by the original surveyor. The evidence on the hearing indicated that the ground is comparatively smooth between the northeast corner of Block 19 and this big rock mound, so that it would seem entirely unreasonable to think that a surveyor would miss his measurements by several hundred varas in making that run.

Both Mr. Walker and Mr. Gaines mention Mr. Avera's statement that he did not believe that Mr. Thomson, the original surveyor, run out these lines on the ground. I do not suppose that anyone believes that Mr. Thomson ran to all of the corners that he calls for in this block. It seems much more probable that he ran a traverse down the old military road and calculated the block from that traverse. Such a survey would have been very much more in keeping with the general customs of that day, and would have enabled him to give the University all of the land that he undertook to give to it by that survey, except for some conflicts with senior surveys. The very fact of these conflicts proves that he did not run around each section as his calls would indicate.

counter 48268

42

If in this case we apply the wholesome doctrine announced by Mr. Walker in his closing paragraph, the construction contended for by the University certainly could not be applied to Block 19. Mr. Walker says in effect that it would not be right to make a survey now that would take land from Mrs. McKenzie. We respectfully ask the court to study the map and the field notes of both Mrs. McKenzie's and Mr. Nutt's sections of land that are owned in fee, for it will become evident from such a study that it is the construction urged by the University rather than the construction urged by Mr. Nutt that causes an unfortunate conflict. The University's construction would take a large amount of land from Mr. Nutt where he has purchased it in good faith.

We do not believe that the Moore map can legally be considered in establishing the west line of Block 19. Moore was not the original surveyor and the field notes returned by the original surveyor do not call for the spring that is shown in the Moore sketch. In addition to this, an examination of the original sketch shows clearly that the spring was drawn in in pencil by someone other than the draftsman who made the Moore map. At least the sketch looks that way to us, and we believe that the Land Commissioner will agree, upon an examination of the original sketch that the indication thereon of the spring was not made at the time the map was made.

We do not care to prolong this argument, but feel sure that as a matter of law the University cannot maintain its position that the spring used by it marks the west line of Block 19. We also feel sure that the "Granddaddy" corner is so far out of position that it cannot in either law or equity be said that the original surveyor intended to use that stone mound to mark an original section corner. If we are right in these two positions, then there is no alternative left but to construct University Block 19 by course and distance from its recognized northeast corner. When University Block 19 is considered course and distance, the land applied for by Mr. Nutt seems to be unsold State land subject to purchase by him. We respectfully ask that his application be approved.

Geo. T. Wilson

Geo. T. Wilson, Attorney
for J. L. Nutt

counter 48269

(11)

Pecos Co. R.R. Sk. 114

SF-14312

IN THE MATTER OF THE

APPLICATION OF J. L. NUTT

TO PURCHASE A VACANCY

files

counter 78270

IN THE MATTER OF THE
APPLICATION OF J. L. NUTT
TO PURCHASE A VACANCY
SF-14312

TO THE HONORABLE BASCOM GILES, COMMISSIONER
OF THE GENERAL LAND OFFICE:

Inasmuch as Judge Wilson, attorney for Mr. J. L. Nutt, in his rejoinder of the 9th instant appears to admit as correct all the conclusions of law advanced by Judge Gaines, and as the burden of his argument rests on the matters submitted by me, I am offering a reply. For our mutual convenience the paragraphs in Judge Wilson's brief have been numbered from 1 to 10 and reference to them will be so made.

It has been my impression all along that the Commissioner of the Land Office in passing on vacancies is not limited in any way to sources of information. The representatives of the University at the hearing on the 17th of August had no notice whatever that Mr. Simpson would be a witness for Mr. Nutt and were not prepared at the time to question him. Copies of the field notes and of Simpson's map made for Mr. Nutt were handed to Judge Wilson with copies of our briefs. In presenting Mr. Simpson's papers it was foreign to my thought to violate the amenities, but for my life I cannot see any just cause for complaint on the part of Judge Wilson. That his witness supports our cause is no fault of mine.

counter 18271 M'

In paragraph 2 Judge Wilson says: "As I understand the facts, the map now presented was made by Mr. Simpson upon a survey that he made for J. L. Nutt of surveys in Block 125 and in Block 180½ and that he simply accepted the University's position of Block 19 without undertaking to determine its correctness." This expression must mean that Mr. Simpson accepted the University's position as he found it on the ground, because he made the survey for Nutt in 1927 and the University's first survey of the land after its location by Thomson was made in 1929 by W. D. Twichell. A copy of Mr. Twichell's letter is attached. Mr. Simpson's letters on file in your office show that he went to Fort Stockton and studied the records there before he made the surveys for Nutt and White. His work bears the ear marks of those records.

That Mr. Simpson studied the records at Fort Stockton with his usual assiduity is evidenced by the indorsement on Section 19 of Block 19 of the map of his survey furnished Mr. Nutt. Note the inscription "Sto. Md. on Mt." Nowhere in this world can this inscription be found other than on the Walsh map furnished by the Land Office May 14, 1880, to the county surveyor of Pecos County. You have a copy of this map. That Mr. Simpson accepted and used the map as locative of the west line of Block 19 cannot be successfully denied.

Again quoting Judge Wilson, "The survey that Mr. Simpson made for White and Baker was for the purpose of determining

counter 18272

M²

the area upon which White and Baker would pay grass lease to the University. Mr. Simpson likewise in that survey accepted the position most favorable to the University without vouching for its correctness." The foregoing statement is passing strange because Mr. Simpson wrote field notes for each section surveyed by him, caused the field notes to be recorded in Pecos County and offered them for filing in the General Land Office as truly and correctly showing the position on the ground of the sections he surveyed. These field notes are over his certificate as a licensed land surveyor and were returned to him only for the reason the control of such lands lies with the Regents of the State University. Admittedly, Mr. Simpson cannot fix the boundaries of any survey, but being a capable and experienced surveyor and acquainted with the systems followed by the locators of land in the West, his ground work should be accepted as truly and honestly represented. What his opinions may be is a matter of no special interest to the University, but what he finds and certifies as being on the ground that institution has a right to present to you for your consideration. Twichell and Friend appear to be in fair accord with Simpson's findings of fact.

Referring to paragraph 3 of Judge Wilson's letter, permit me to say that the University is not pleading limitation against the Public School Fund, but it does object seriously to clipping off any of its lands in the name of that fund for

counter 48273

M³

the personal advantage of an individual as against the best interests of the State. If the land in controversy was set apart to the State University as believed by the writer, the State under the law will receive the full royalty on any minerals that may be developed in the land. If perchance the final decision should be that the Nutt claim was not set apart to the University and belongs to the Public Free School Fund, Mr. Nutt will receive half the royalties on any minerals that may be developed. Truly this is an avoirdupois argument, but certainly in the case of any doubt, the issue as to funds should be resolved in favor of the State, because the ownership of the land has never been questioned and Nutt has done nothing to establish the State's right to it.

Referring to paragraph 7, if you will turn to page 128 of S. W. (2d) 162, you will find a letter written by me quoted to the effect that all that was necessary for the locating surveyor of two certificates to do and all he did was to run a division line through the abandoned league on which he was placing the certificates and connect the division line with any one of the well-marked corners of the league. The court, however, says in effect, "No, the law of the case is that the surveyor did exactly what he says he did. There are the trees and stumps or the stump holes." Let me say in the case of Block 19 or rather the East Escondido system there are the mounds and there stood a man whose duty was to see that the

counter 78274

M4

surveyor complied with the instructions from the Land Commissioner to erect the mounds required. When Judge Wilson was Assistant Attorney General I was accustomed to lean on his strong right arm and learned to love him. To my regret he has fallen in the same channel of reasoning indicated in my letter which fortunately is blocked by judicial decision. The mounds and the monuments are in and around Block 19, and the law of the case blocks the traverse down the military road.

Quoting from paragraph 7: "The very fact of these conflicts proves that he did not run around each section as his calls will indicate." Here reference presumably is made to the conflicts between Block 20 and the H&GN surveys to the north. Mr. Twichell's letter, a copy of which is attached, gives a full explanation of this matter and shows that originally no conflicts existed. In 1890 E. A. Giraud made a resurvey of the blocks to the north of the University under the Adjustment Act of 1887. He pulled them out of their original moorings southward and eastward. If you will put your finger on Section 66, Block 11, Pecos County, which appears to be in conflict with Block 20 University, and run it northward a few miles in the same tier, you will find a section Giraud increased from 320 acres to 640 acres by extending the side lines of the tier southward into Block 20. Section 66 is almost wholly in conflict with Block 20, and

counter 1827 5

M5

in its Giraud position is inferior to Block 20. It has been sold as school land and fully paid for and patented on the Giraud field notes. In its present position it has been held 52 years, and what course the Regents will pursue in the matter is unknown to me further than they do not desire to disturb existing and respected boundaries in Pecos County. "Can the School Fund plead limitation against the University?"

Referring to paragraphs 4, 5 and 6, the University has not abandoned the Boulder mound as locative nor El Grandote for that matter. The Regents not desiring to disturb those who had held the lands immediately east of the Boulder for so many years on the Durrell survey instructed Mr. Friend to respect the Durrell line. The University still holds to the Boulder monument as controlling its south line of Block 19.

Mr. Estill testified that in surveying the Nutt claim he derived the course of his lines from the connection between West Escondido Spring and East Escondido Spring. There were two connections made in 1879, one by Nelson and the other by Thomson, but both are between West Escondido Spring and the stage stand at East Escondido Springs. (Note the plural.) The records of the Land Office show clearly that Thomson knew nothing of the Nelson connection when he located Block 19, otherwise he (Thomson) would not have included Nelson's Garza survey in University No. 1 in that block. Therefore, if Thomson's course is determinable from the West Escondido

counter 48276

Mb.

Spring connection, and it is, it must be found from the connection he himself ran. So we find Mr. Estill very correctly joining the University authorities in their contention that Block 19 is connected directly to West Escondido Spring and Block 21 University. The two spring systems of University land are bound together by a fixed tie and to some extent are dependent one upon the other for position. Mr. Simpson's returns for Mr. Nutt as evidenced by his map also show such fact.

Again referring to paragraph 5, Judge Wilson says: "We still insist that it could not have been the intention of the original surveyor to put an excess of 468.3 varas westing in one tier of sections." If the theory of construction advanced by Lea, Bucey, Collard and Simpson is correct, which we understand Judge Wilson accepts as to Block 16, the width of that tier will not be 468.3 varas nor anything like that figure.

"We believe," says Judge Wilson, "that the explanation made by Mr. Estill that this large rock mound is probably a geologist's reference point is much more reasonable than the University's contention that it was placed there by Mr. Thomson."

El Grandote gin we part,
You will always have my heart,
Tho Estill's frown
Is on your crown.
El Grandote, where is your ma?
Oh! Grandote, who's your pa?

counter 48277

M7

Like some of us oldsters, this monument is too old for parental or coeval proof of its birth and must get along without a certificate. It antedates any oil company that has ever operated in Texas, and was built before the advent of any geological exploration in Pecos County. Jules Marcuo, a geologist, passed along the military road in 1853 going to the mountains to look for water and for gold and silver. It does not appear that he cast an eye upon the rocks and streams of Pecos County. The operations in 1889, 1890 and 1891 under the Mineral Act of 1870 (Gam. 6 - 255) did not include Pecos County. Professor W. H. Streeruwitz, assisted by Ralph Wyschetzki and J. A. Taff, who worked the Trans-Pecos field in 1891 under the direction of E. T. Dumble, state geologist, did not move out of the mountains west of Fort Stockton where they searched exclusively for building stone, metals and water. If the old monument was erected by a geologist, he was a man with an eye to perpetuating locations, for the monument is too well coordinated with the natural and artificial objects marking the west line of University Block 19 to permit a doubt that its location was made with respect to these landmarks.

It is evident Mr. Simpson in locating Block 19, University Land, in 1927 used the Walsh map in the Pecos County Surveyor's office as well as the field notes of the surrounding surveys as a guide. It will be noted that his width east and west in Block 19 is practically the same as

counter 18278

M8

that of Twichell and Friend. The Simpson distance from north to south shows an excess of slightly over 400 varas, while the Friend-Twichell excess is 376 varas. Friend and Twichell worked together, the former for a University lessee and the latter for the University in 1929. As a matter of fact, they placed Block 19 68 varas in conflict with Block 20, and Mr. Simpson makes the conflict over 100 varas. If the law should be, which it is not, that the south line of Block 19 is course and exact distance from the northeast corner of that block, the proper position for the corner, which is 1200 varas north and 740 varas east of the stage stand at East Escondido Springs, must be taken. As stated in a former communication, the west line of Block 19 runs through the Middle Escondido Spring which is definitely the spring connected through one of the Massey surveys to the West Escondido Spring and to Fort Stockton.

On the question of the admissibility of the Maurice B. Moore sketch let me call your attention to the fact that it was admitted into your office by the Commissioner in 1880 and filed with the Thomson field notes and treated as a surveyor's sketch. The Moore sketches were filed with the field notes of each system and is the only sketch filed with them. Moore was commissioner to inspect and select the lands to be surveyed by R. M. Thomson and to see that the mounds called for in the instructions should be erected. These sketches are archives of your office, and not being a lawyer, I

counter 98279

M9

decline to venture the statement that they can find their way into the courthouses, but certainly the sketches are in your office and subject to your inspection for such information as they may furnish you.

The lines of University lands are today where they were in 1879, and the University thinks these lines are where E. M. Powell and L. W. Durrell found them in 1881 and in 1883 and where all other surveyors, except Avera and Estill, have found the west lines of the East Escondido system to be. Mr. Avera, so far as my information goes, has made no returns in this case to the Land Office in the form of field notes and maps. He and Mr. Estill "accept" a concrete monument erected by Mr. Friend for the northeast corner of Section 1, Block 19. They ignore the well-constructed mound, SE Cor 1, a much better landmark than the pile of pebbles at the northeast corner of Section 1. Neither Avera nor Estill checked with the old stage stand on which Nelson and Thomson each makes a bearing and neither submits a single probable fact certified as their own finding. I have not been able to find any record where a single surveyor prior to Mr. Friend's operation in that field places the northeast corner of No. 1 at the point he adopts, or places it anywhere for that matter. It is not the purpose of the University to disturb his divisional lines, as valuable rights have been acquired in accordance with them and for the further basic reason that the exterior boundaries

counter 78280

M 10

of a system cannot be determined from interior landmarks in cases where those boundaries are witnessed by their own natural and artificial objects.

In conclusion, a controlling factor in this case is called to your attention: namely, as shown by the records of your office and the testimony adduced at the hearing on August 17, the Regents of the University for the benefit of that institution and A. & M. College have been in control of the disputed area since the passage of the Act of 1895. Judge Wilson with a wave of the hand brushes aside this fact as an obstacle to Nutt's invasion of Block 19. Again and timorously I submit the proposition that because of the Act of 1895 giving the Regents control of all lands set apart to the University and the Act of 1929 providing for a resurvey of such lands Nutt's application is premature and void. Presenting this view, I am following that of three lamented and capable Land Office officials--J. T. Robison, S. C. Clark and Albert Hutchins. Not only did these three men hold the land in question as not vacant and subject to sale, but you will find them holding that a resurvey of the land lay wholly in the hands of the University Regents. The authority of the Land Commissioner under the Act of 1929, as I read the law, is to pass on the field notes of a survey made under that act when such field notes are presented. The Vacancy Sales Act

counter 48281

M''

of 1939 in no way contravenes the Act of 1929. It must follow that no land claimed by the University is subject to application under the Act of 1939, unless and until field notes, returned under that act, excluding it are approved by you.

We respectfully submit these matters for your thoughtful consideration.

J. H. Walker
Land Officer
The University of Texas

September 17, 1942

counter 18282

M 12

C O P Y

W. D. TWICHELL
Cadastral Engineer

Austin, Texas

March 4" 1929.

Judge R.L.Batts,
Austin,Texas.

Dear Sir:

Following your suggestion as developed in our conference relating to resurvey of University Blocks 16,17,18,19 and 20 in Pecos county,I have examined all of Mr.Friends corrected field notes and I find them correct except the area of survey 14 Block 20 should be increased 6.1 acres as is suggested by my balance sheet inclosed herewith. This balance sheet can be fastened with clips to the field notes for comparison and assistance of Mr Friend in considering this correction.

Survey 12 in Block 19,really begins at the south west corner of 11 same block instead of at the south east corner as is recited. I have suggested this correction on the face of Mr.Friends field notes with red pencil,which is easily erased if he wishes to make a correction in ink.

Survey number 8 in Block 20 is the first tract,numerically,which appears to conflict with H & G.N.R.R.Co,Block 11. Since it connects directly with state surveyor E.A.Girad's resurvey of this Block 11, and since the dimensions and areas and course of lines are all materially varied from what is required in the original survey as made by William Nelson in March 1873,I will suggest that this survey is adequate to show just how much the Texas University land is encroached upon by this resurvey by Mr.Giraud,and such information is necessary to determine the limit of prior rights as determined by the lines as now marked on the ground. However a call for this Giraud Block 11 without some suggestion on the face of the field notes that the lines called for are lines as established by E.A.Giraud and are not lines as originally marked by

counter 78283 M13

William Nelson,is in some measure a waiver of rights which may exist in the William Nelson location. Whether it is or is not a waiver in fact , any contention which may arise ,could,and would, undertake to claim such a waiver and therefore I suggest that field notes for this survey should specify ,as resurveyed by E.A. Giraud,after the call"Thence west 823.3 varas to a point in the east line of survey 66-making this full line read ; Thence west 823.3 varas to a point in the east line of survey number 66 Block 11 H & G.N. R.R.Co , as resurveyed by E.A.Giraud.

I recommend this same addition in field notes for survey 9 in the call east 1162.5 varas to a point in the west line of survey 66 Block 11 H.& G.N.RR Co.(as resurveyed by E.A.Giraud). The final words in this line ("for a corner of this survey") are wholly superfluous and serve no purpose so they can be omitted or not at pleasure,to give room for this correction.

Survey number 10 should mention E.A.Giraud in the first call that reaches survey 65,but the above addition is not essential,for E.A.Giraud is mentioned in the next call . However this Giraud call is not in the best form for the University interest involved.

In surveys 11,12,13,and 14 the call for the Giraud resurvey as written is sufficient on the face of the notes to put all interested parties on notice that Giraud made a resurvey in the position called for.

Hon.J.T.Robison,Land Commissioner,cannot say at this time when he will go with me to Pecos County,as you and he arranged,to examine the original R.M.Thomsen monuments which Mr.Robison has been disposed to reject. I have arranged with him that I will take him on the ground at any time, on short notice, as he may arrange. I sincerely hope that you may be able to make this trip with us . The trip will require about three days out of Austin.

The threatening law suits by Mr.Tom McKenzie and by Mr.J.A.McDonald,in my opinion, will be greatly modified and probably prevented if a little time is used to see these men and to explain the true situation. My experience has been that full explanations in advance induce a better understanding and usually adjust such differences without a law suit and all

counter 48284

and all the accompanying interruptions and annoyances. The rate in my experience is,about 1500 controversies are settled by agreement to where one suit is tried in court.

H.& G N.R.R.Co., BLOCK LOCATIONS:

Examining the field notes which precede the final resurvey that was made by E.A.Giraud, several possibilities are suggested which favor a careful investigation of the Giraud position. The series of blocks which located the H.&.G.N.RR Co.certificates are blocks 1 to block 13 , extending from a point on the Pecos river , in Reeves county,which is about 16 miles south of the New Mexico line to the Pontoon Bridge road crossing on the Pecos river in Pecos county, representing 122 miles of Pecos river front surveys. This river front was carefully meandered by William Nelson's surveying parties,beginning at the Pontoon Bridge and tracing from a fixed monument up the river,but making no permanent corners for surveys along the river. However some of the descriptions in this meander should definitely locate the original positions for H.& G.N.RR Co. land. The field notes were written to begin at the west end of this series of blocks. If Block 11 is located course and distance from this upper or west end of this series of blocks there is a strong presumption that Block 11 will be pulled up the Pecos river sufficient to relieve all conflict with the Texas University land.

This is a fair presumption, but this proposed construction is not all that should be considered in attempting to relieve this conflict. The actual meander began at Pontoon Bridge and traversed up the right bank of the Pecos river. However this construction from Pontoon Bridge, course and distance up the Pecos river is not adopted by E.A.Giraud and the facts before me do not explain why distances less than those called for in the William Nelson field notes are adopted by E.A.Giraud. There are two sets of field notes by E.A.Giraud dated respectively May 1884 and July 1890. I have not gone into the cause for two resurveys by E.A.Giraud. It is sufficient for this report that the field notes for Block 11 from the east line of survey 22 to the west line of survey 66 as resurveyed by E.A.Giraud in 1890 is 530.6 varas less in departure, or westings than the distances called for by William Nelson in his second set of original (?) field notes which were filed in the Land Office in December in 1873. If the river front surveys should be projected or pushed up the river 530.6 to fit the course and distance calls, the effect on survey 1 Block 11 will be to place its upper or begin -

counter 48285

Pecos Co Rld Sk 114

M 15

ning call for survey 1 about 1050 varas farther north than its present position by E.A.Giraud's second corrected field notes. A fuller investigation will reveal whether or not such relief is possible under all the surrounding facts and circumstances which determine the correct original location for the river front surveys.

This original survey was made by William Nelson in March 1873, and field notes were filed in the Land Office May 1873. Some of the river meanders when balanced in the Land Office made the river front surveys contain more than 640 acres and therefore the first field notes were not approved. This appears to have caused the second set of William Nelson field notes which were filed in December,but they were dated as made in March, the same as the first set of Nelson field notes. The corrections arbitrarily change the length of calls in the river meander thereby shrinking the larger surveys to the proper size without changing the meander calls along the river front boundary for the other surveys. The effect of such a correction is that the other surveys or the surveys which were not changed will remain on the meanders as first written and the shortened call will leave a scrap which remains as not appropriated by the second Nelson field notes. The changed or shortened calls by William Nelson affect survey 1 Block 11, which originally contained 764 acres, as computed in the Land Office Sept.2" 1873. New notes signed by William Nelson were filed in the Land Office Dec.9",1873 and calculated on Dec 30" 1873 as containing 640 acres shortening the river front for survey 1,-316 varas. The same process on same dates shortened the river front for survey 2,by William Nelson,221 varas. I have no record of further change by Nelson until survey 19 is reached, which lengthens the William Nelson river frontage 261 varas.

If the effect of this attempt to arbitrarily shrink surveys 1 and 2 a total distance of 537 varas should operate to push the beginning of survey 1 Block 11 up the Pecos river 537 varas and then all the surveys in Block 11 be constructed as patented by their course and distance calls from such a beginning, then the conflict with University Block 20 would be further diminished from what appears by the E.A.Giraud resurvey made in 1890. On this basis survey 66 in Block 11 would still conflict about one half mile with Texas University Block 20, and no further conflict would occur.

counter 7886

Pecos Co Rld Sk 11H

M16

If the H.& G.N.RR Co. blocks are correctly resurveyed from the blocks which are farther west,and thus surveyed,the position of Block 11 is fixed upon the ground, then the conflict with the Texas University Block 20 very probably will entirely disappear as was contemplated by R.M.Thomsen when he located this block. To make such a resurvey will not require the river to be retraced all the way from the beginning of the H & G.N.RRCo.Block 1 , for older land locations appear on the Pecos river front within H & G.N.RR Co. Block 7. These older locations definitely fix a beginning for survey number 7 Block 7. This is in Reeves county about eight and a half miles above the Pecos county line. See SKETCH N ., inclosed herewith. Such a beginning would require 35½ miles of river front surveys to be traced out to reach a beginning for section 1 Block 11. If such a connection is contemplated it will be much cheaper before the leaves come out along the river bank.

I am inclosing photostat copy of the Sketch N which I filed in the Land Office in 1902 to show my resurvey of the unsurveyed land in Reeves and other counties covering all the Public Domain , this survey designating it as Public School Land surveyed under a State appropriation. Blocks C 1 to Block C 27 designate this class of surveys in this vicinity . By referring to the map you will note that my Block C 3 and C4 are adjacent to Block 7, H & G.N. RR Co.; and Block 7 is interrupted by preemption surveys fronting on the Pecos river . These preemption surveys were there in 1873 and Block 7 recognizes that location .

I am also inclosing a photostat taken from the official Land Office map which was compiled in 1873 ; and on which was platted subsequent land locations including the R.M.Thomson original survey of University Land Blocks 16 to 20 . These maps will assist you by disclosing the original configuration of the surveys which are discussed in this letter as they first appeared on maps which were made from original field notes .

Yours truly,

(Signed) W. D. Twichell

et/WDT

counter 78287

Pecos Co Rld Sk 11A

M17

Pecos Co. Rld Sk. No 114

Hon. Bascom Giles, Commissioner
General Land Office
Austin, Texas

Subject: Location of the East Escondido System of U. T. Surveys

Dear Sir:

Since the hearing on the Nutt application, the Supreme Court has denied a writ of error in the case of Walsh v. the Regents wherein the Court of Civil Appeals at El Paso held that a suit against the Regents for the recovery of land claimed by the University is a suit against the State which cannot be maintained without legislative permission. Judge Gaines in a very able brief filed with you in the Nutt matter points out that the Sales Act of 1939 (Chap. 3, Acts of the 46th Leg., Reg. Sess.) does not apply to lands claimed by the University and other state institutions, for the reason the ownership of such lands is indisputably in the State, and a suit for the recovery of any part of such land would be a suit against the State and not a suit in behalf of the State. In York v. Alley, 25 S. W. (2d) 193, the Court sustains this proposition and adds:

> "But, as pointed out above, upon the present facts a recovery by appellant would not inure to the benefit of the state, for the state already owns the land, and a recovery by appellant would adversely affect rather than benefit its ownership."

There can be no doubt that the land involved in the Nutt application has been claimed by the University for more

b

counter 18288

Pecos Co Rld Sk 114

than sixty years and occupied and used continuously during that time by this institution for its own benefit and that of its branch, A. & M. College. The boundaries of the land held by the University are as well marked as are surveys for individuals in Pecos County. These boundaries have been universally recognized as having been set by the University surveyors in December, 1879. Mr. Nutt himself has so recognized these boundaries because he is grazing included land as University land.

The Sales Act of 1939, under which Mr. Nutt made his application for survey, like Article 5323, R. C. S., 1925 (construed in the Van Camp case, 61 S. W. (2d) 773), is based on the theory of recovery of land held adversely to the State or discovery of land not generally known or recognized as belonging to the State with a bottom right to sue in behalf of the State.

The decision in the Walsh case effectively disposes of the Nutt application in so far as it conflicts with University land, and Block 19 as held and claimed by the University embraces apparently every foot of land surveyed by Estill for Mr. Nutt. The University survey being superior in point of time to the Nutt survey, of course, will hold over the latter survey.

The Act of 1929 creating the Board for Lease of University Lands, of which you are a valuable member, provides for

counter 18289

b1

a resurvey of the lands set apart to the University, the creation of the office of University Surveyor and for his field notes to become effective on your approval. Basing the thought on the express and implied functions of your official position and the wording of the Statute of 1929, no outside surveyor can deal with the University's boundaries until you act through the University Surveyor in establishing or re-establishing these lines. The power implied in your statutory duties would permit you to give instructions to the University Surveyor if you are unable to accept and approve the field notes submitted by him. This step we request you to take at your convenience.

With Mr. Nutt out of the picture, as he seems to be, the testimony of his witnesses and of the witnesses offered by the University at the hearing in your office some weeks ago as well as the records of your office are still before you for such information as these papers may give in regard to the ground position of Block 19. It is true Mr. Friend makes Block 19, as resurveyed by him, excessive north and south 376 varas and excessive east and west 468 varas. Mr. J. A. Simpson, a witness for Applicant Nutt, gives the block 400 varas excess north and south and 480 varas excess east and west. See his sketch and copies of field notes filed with you August 27, 1942. The sketch is the record of his survey for Mr. Nutt made about the time the latter purchased

b2

corrected 48290

land in Block 180½. The width of the three tiers on the east side is taken from Mr. Simpson's survey in Block 20 made for Mr. Baker as shown in the field notes mentioned. Mr. Simpson gives an excess of 246 varas to this tier and 234 varas to Section 19, making 480 varas across Block 19 east and west.

Another surveyor testifying for Applicant Nutt is J. K. Avera. He does not think that R. M. Thomson made a ground survey, yet with an astonishing degree of avidity he accepts the Friend northeast corner of Section No. 1 in Block 19 as an original mound. He does not appear to have ever made any effort to determine the authenticity of this mound as a Thomson marker or to establish the location as the proper place for a monument had Thomson not been on the ground according to his opinion. It is well settled that the opinions of surveyors however expert they may be are not admissible in evidence. (Randall v. Gill, 14 S. W. 134.) The record is such that no question can be raised as to Thomson's being on the ground and setting up the monuments called for in his field notes.

Another surveyor, Mr. Estill, who made the survey under your appointment, does not seem to have made any effort to determine the authenticity of the Friend monument at the northeast corner of Section 1 in Block 19 or to find the footprints of the original surveyor at other places except by flight over the ground. His survey was by triangulation

counter 48291

b3

Tecos Co. Rld Sk 114

and not of the type that would lead a surveyor to old landmarks for which he should have made a diligent search.

Your attention is called to the evidence of L. W. Durrell, deputy surveyor of Pecos County, as disclosed by the field notes and sketches of surveys made by him in 1882 and 1883 of blocks adjoining the East Escondido system on the south and west under locations made by virtue of alternate certificates. The owners of these certificates as well as Mr. Durrell were seeking all the open land they could find in that region. At that time the public domain subject to location was very limited. The landmarks of Block 19 made in December 1879, consisting of rock mounds and earth mounds, were fresh and easy of identification in the years 1882 and 1883. It is reasonable to conclude that Block 180½ was placed as far north and east as the mounds marking Block 19 would permit Mr. Durrell to extend his lines. It was absolutely necessary for him to ascertain the location of these mounds before making his survey. In Taylor v. Higgins, 2 S. W. (2d) 288, the Court of Civil Appeals says:

> "Every rule of evidence laid down for guidance in boundary questions is for the purpose of ascertaining the true location of the line in dispute, by which is meant the place at which the original surveyor ran the line. After 90 years have elapsed and time has destroyed in large measure the evidence left by the original locater, it is then permissible, not only permissible, but of necessity is required, that we resort to any evidence tending to establish the place of the original footsteps which meets the requirement that it is the best evidence of which the case is susceptible."

counter 78292

b4

Pecos Co Rld Sk 11th

Block 19 was surveyed on the ground 63 years ago and the records of your office indicate that it was traced by L. W. Durrell 61 years ago. What better evidence of a boundary line can there be than that furnished by Mr. Durrell which is perpetuated in the records of your office? In Bass v. Davenport, 153 S. W. (2d) 471, the Court says:

> "The purpose of resurvey is to trace footsteps of original surveyor and when marks of his footsteps are found, they control, but when they cannot be found, old use and occupancy and old recognition must suffice."

If we follow the lines of "old use and occupancy and old recognition," we find them marked by rock mounds old enough to be the originals and well co-ordinated.

The attorney for Applicant Nutt directs an attack on the Middle Escondido Spring as marking the west line of Block 19 as originally surveyed. He undertakes to disparage the effectiveness of the line through the spring as a passing call. In Schunior v. Russell, 18 S. W. 484, the court charged the jury that "A well known tree standing alone on a prairie and marked and called for in an original survey is a natural object and when called for upon a line it is a locative call and should control calls for course and distance." The Supreme Court sustained the lower court citing Boon v. Hunter, 62 Tex. 582; William v. Winslow, 19 S. W. 513. Middle Escondido Spring is as stable as any line tree in Texas.

The applicant raises the question whether Middle Escondido is the spring outlined on Walsh's map furnished the county

counter 48293

b5

Tex Co Rld Sk 114

surveyor of Pecos County and his own map preserved in the Land Office. At the time of indicating this connection Captain Walsh had before him Maurice Moore's sketch of the East Escondido system showing Block 19 to contain 25 sections. (For the admissibility of a map not made by the surveyor, let me call your attention to Fulcher v. White, 59 S. W. 628.) Captain Walsh struck out four of the sections surveyed by Thomson and delineated on a sketch by Moore because of the conflict with the Massey surveys. Captain Walsh could have known of but one spring at the time, and that is Middle Escondido which is called for in the field notes of Massey No. 459 as being South 47° East 720 varas from the northwest corner of said survey. Evidently there was some call in the discarded field notes for the Middle Escondido Spring, otherwise how could the Commissioner have determined that the four sections stricken out were in conflict with the two Massey script surveys? Until the hearing before you there was no evidence whatever in the Land Office of any spring in that vicinity except the Middle Escondido.

In conclusion, your attention is called to the fact that within the limits of Block 19 lies a 320 acre patented survey, superior in point of location to the University, and that the loss by conflict in Block 20 is greater than the excess in Block 19.

Yours very truly,

J. H. Walker

November 11, 1942

b6

counter 48294

Pecos Co Rld Sk 11+

Pecos Co. Rld Sk No 114

THE EAST AND SOUTH BOUNDARIES OF THE EAST ESCONDIDO SYSTEM OF UNIVERSITY SURVEYS

To the writer's mind the southeast corner of Section 1, Block 19 under this system is identifiable with absolute certainty. Mr. Friend describes it on page 20 of the record of the special hearing held December 18, 1940, and Mr. Avera describes it on page 30 of the same report. This mound is called for in Thomson's field notes and should be 740 varas east and 700 varas south of "East Escondido Springs at the stage stand." To locate the south boundary of Block 18 and form a base line for Block 19, let's extend a line from the "stone mound on the side of a hill" described in the field notes of Section 36, Block 18, to a point 2050 varas due south from the center of the Middle Escondido Spring.

For the east line of Block 19 extend a line from the southeast corner of Section 1, Block 19, which is 1978 varas south of the Friend concrete monument for the northeast corner of that section, south intersecting the base line at a point for the southwest corner of Block 18. The excess in this line will be slight, if any.

Returning to the northwest corner of Section 19, thence South one mile;

Thence East one mile;
Thence South one mile;
Thence East one mile;
Thence South one mile;
Thence East one mile;
Thence North one mile;

counter 18295

C

Thence East to intersect a line extended south from the southwest corner of Block 18 at a point for the southeast corner of Block 19;

Thence North two miles to the southwest corner of Block 18.

The monument at the northeast corner of Section 1, Block 18, is an internal marker and its position does not necessarily affect the exterior lines of the system.

The best evidence obtainable places the Middle Escondido Spring on the west line of Block 19 as originally laid out, and the records of the Land Office show clearly that the Land Commissioner had no knowledge of any other spring in that vicinity, and that he could not have determined a conflict between the two Massey surveys and the University surveys without determining the location of the Middle Escondido Spring from the Massey field notes and the University field notes. You will find the distance from the spring to the northwest corner of Block 19 not only on the Moore sketch but on the map of 1873 in the Land Office on which the University surveys are delineated and from which the Pecos County copy was taken.

The University loses about 1400 acres by conflict in Block 20. If the fence line is taken as the east boundary of Block 16, there is an old mound in the fence line about 100 varas farther south than the Lea monument. This monument has all the earmarks of a Thomson mound and coordinates well with the landmarks hereinbefore mentioned. A line west from it would pass 1900 varas north of the old rock mound called

counter 48296

C

for in Thomson's field notes of Section 1, Block 19.

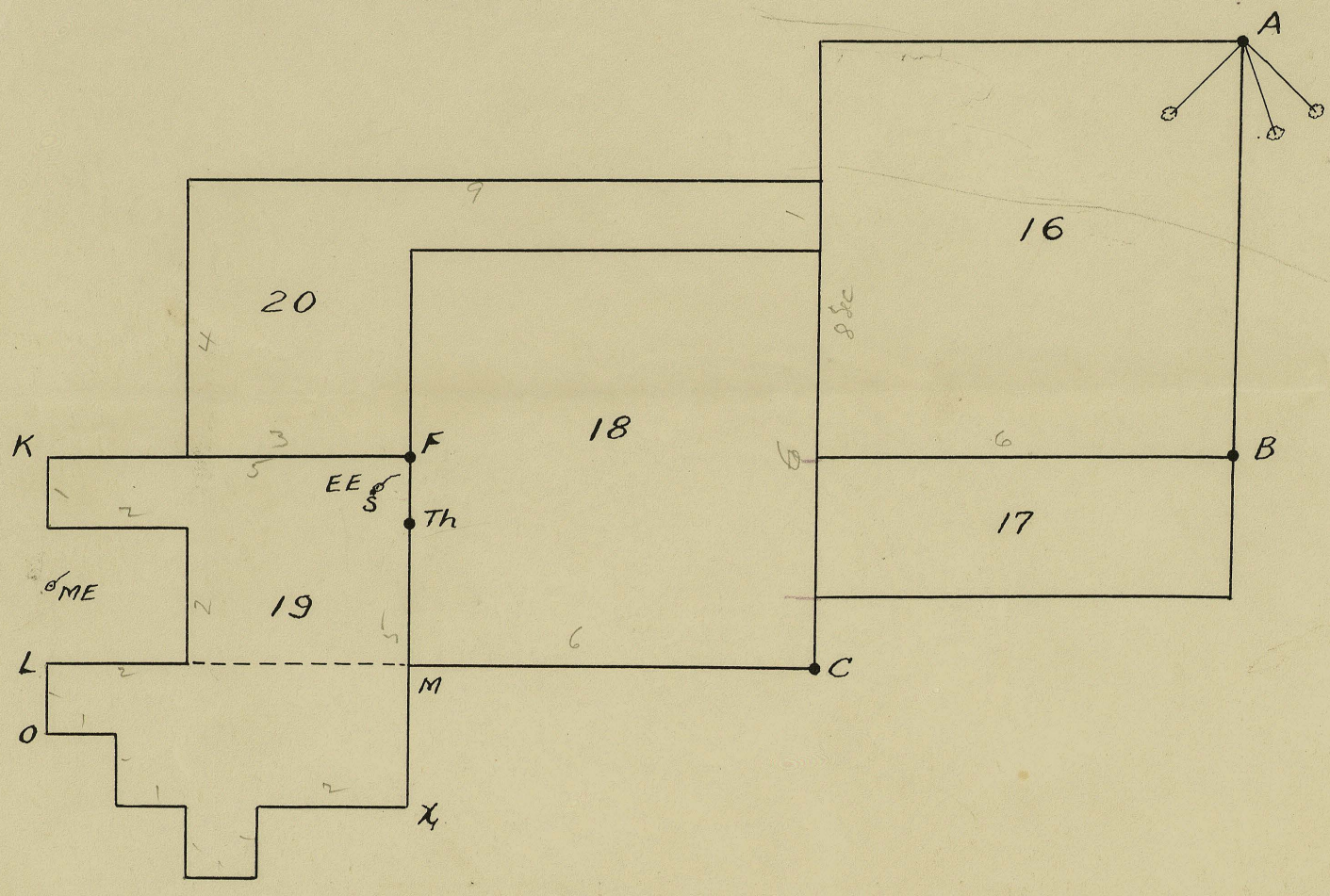
Block 17 would take its position two miles south of the south line of Block 16 established from the old corner mentioned as forming the southeast corner of Block 16.

This will give the University slightly over eight acres excess to the section for the entire system. This excess is less than the usual quantity found in the Holt-Thomson surveys.

November 16, 1942

C²

counter 78297



Th = Southeast corner Section 1, Block 19, old rock mound

C = Hillside Monument

B = Old rock mound believed to be original, SE cor. Blk. 16

F = Friend's concrete monument for NE 19

A = Three mountain corner

ME = Middle Escondido Spring

EE = East Escondido Spring

S = Stage stand

counter 48298

C3

Exhibits in J. L. Nutt
SF 14312

14

(14)

Pecos Co. Rlo SR No 114

counter 48299

NO.

NAME

REJECTION OF J. V. SCHILLING'S
APPLICATION FOR VACANCY
by the Land Commissioner,
letter dated Dec. 22, 1926

December 22, 1926.

Mr. J. V. Schilling,
1642 W. Magnolia Street,
San Antonio, Texas.

Dear Sir:

Your two Pecos County applications of inquiry made under date of the 8th instant have been reached for attention and you are advised as follows:

Tract 1. Situated about 32 miles S78E of Fort Stockton and bounded on the N by sections 6 and 5, block 19, University land and sections 1, 4 and 5, block 603, G. C. & S. F. Ry. Co. and sections 11, 12, 26, 25, 24, 23 and 22, block 604; on the East by sections 11 and 26, block 604 and section 60, block C-4, G. C. & S. F. Ry. Co.; on the South by section 2, block 180½, T. C. Ry. Co., sections 1, 2, 3, 4, 5, 6 and 7, block 206; on the West by sections 16, block 19, University land, sections 2 and 4, block 206.

No vacancy. Mr. F. K. Campbell of Dallas was similarly advised on the 24th ultimo in reply to his prior inquiry on this same area.

Tract 2. Situated about 23 miles S78E from Fort Stockton and bounded on the N. by section 6, T. C. Ry. Co., block 180½, by sections 19, 17 and 16, block 19, University land; on the E. by sections 19, 17 and 16, block 19, University land and by sec. 2, block 180½, T. C. Ry. Co; on the South by sections 5, 4 and 3, block 180½, T. C. Ry. Co., and on the West by sections 6, 5 and 4, block 180½, T. C. Ry. Co.

J. V. Schilling-------#2.

The field notes of adjacent surveys call to close on one another. Hence I must advise no vacancy for this inquiry.

Very truly yours,

Commissioner.

Blucher/h

(14)

Pecos Co. Rolled Sk. 114

GENERAL LAND OFFICE, AUSTIN, TEXAS, Aug - 15 — "41

I, Bascom Giles Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof and attached hereto is a true and correct copy of the ~~original~~ Letter on pages 287 and 288 of Letter book #1603 a record of this office.

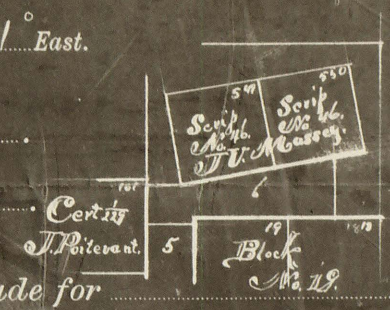
IN TESTIMONY WHEREOF, I, Hereunto set my hand and affix the seal of said office the day and date first above written.

Bascom Giles Commissioner of the General Land Office

27

counter 48302

Scale 4000 Varas to the Inch; Variation 11° East.



The State of Texas, Survey No. 6

COUNTY OF PECOS. Block No. 180 ½

FIELD NOTES of a Survey of 640 Acres of Land made for Central by virtue of Certificate No. 1429, issued to THE TEXAS & ~~ST. LOUIS~~ RAILWAY COMPANY, by the Commissioner of the General Land Office, on the ~~Eighteenth~~ 17th day of ~~December~~ August, A. D. 1880.

Said Survey is situated in Pecos County, on the waters of Pecos River, a tributary of the Rio Grande River, about miles from and is known as Survey No. 6, Block No. 180 ½.

Beginning at a stake and mound in the West line of survey 18 Block 19 University Lands for the South East Corner of this survey and N.E. corner No. 5 in Gen. block. Thence North 126 varas to stake and mound at North West Corner of said survey No 19 for a corner of this survey. Thence East 2830.5 varas to stake and mound in North line of survey No 18 Block No 19 University Lands for a corner of this survey Thence North 1270.5 varas to stake and post in South line of survey No 550 Scrip No 46 J.V. Massey for the North East Corner of this survey Thence South 80° West 3166 varas to stake and mound at South West Corner of survey No 549 Scrip No 46 J.V. Massey for a corner of this survey. Thence West 718 varas to stake and mound in East line of survey No 101 scrip 229 J. Poitevant for the North West Corner of this survey. Thence South 792 varas to stake and mound in East line of said survey No 101 for South West Corner of this survey, Thence East 995 varas to the place of beginning. ~~1900 varas to the place of beginning.~~

Bearing marked Surveyed May 9th A. D. 1883.

Joe Brown
Dolores Gauzales } C.C.

I, L. W. Dowell, Deputy Surveyor of Pecos County, do hereby certify that the foregoing survey was made according to law, in the field, and that the limits, boundaries and corners, with their marks, natural and artificial, are truly described in the foregoing plat and field notes.

L W Dowell
Deputy Surveyor Pecos County.

I, E. W. BATES, County Surveyor of Pecos County, do hereby certify that I have examined the foregoing plat and field notes and find them correct, and that they are recorded in my office in book B, page 387.

E. W. Bates
County Surveyor Pecos County.

counter 78303

3) Fin. 5 0 H 90

Bnk. Smith.

Fort Dom Ry. Co

T. Notes.

Lot 6. ~~in~~ Secs

Tiend. Sch. 7/83

D N Robinson

Surv. no. 6. Clay Co.

Don't close. ~~Lot 6 in~~

Co + S. R. that will close and declare same Conform to Conditions actually existing on the ground surveyed.

8/21/0 a Heiss & Co

Cancelled

South close - E ~~11~~ 5 - 5 -
" E 11
Comm - N 12 C - E 2830 - N 1270
S 80 W 316 C - N 718 - S 752 -
E 555 -

Sept 17 03
J W N

counter 48304

JNO. K. DONALD
Land and Gen'l Agt.
AUSTIN, TEXAS.

ORIGINAL & CORRECTED FIELD NOTES
Sec. 6, Blk. 180½, T. C. Ry. Co.
Pecos County, Texas. Corrected
to Mr. Friend's survey

counter 48305

6012

THE STATE OF TEXAS, County of ~~Crockett~~ PECOS

Survey No. 6

Block No. 180½

Cor. Field Notes of a survey of ~~637.5~~ ~~655.05~~ 650 acres of land, made for J. L. Nutt same being originally surveyed for the Common School Fund by virtue of Certificate No. 1429 issued to Texas Central Railroad Co. by the Commissioner of the General Land Office on the 17th day of Aug. 1881

Scale ..... varas per inch

Variation 12° East

Said land is Situated in Pecos County, on the waters of Escondido Creek a tributary of Pecos River, about 24 miles S 71° East from Ft. Stockton and known as Survey No. 6 in Block No. 180½

Beginning at a point on the W line of Sur #19 Blk. #19 University Land a NE corner of Sur #5 this Block and inner corner of this survey.

Thence North ~~100~~ 84.7 varas to the NW corner of said Survey #19, University Land.

Thence East ~~at 1900 varas pass the NE corner of said Survey #19~~ at 2830.5 varas a point in the N line of Survey #18 Blk. 19 for the SE corner of this Survey.

Thence North 1270.5 varas to a point in the S line of Survey #550 in name of J. V. Massey for the NE cor of this survey.

Thence ~~Thence~~ South 80° West 3166 varas to the SW corner of Survey # 549 same Grantee. 708.1

Thence West ~~718~~ varas to a point in the E line of Survey #102 in nameof J. Poitevent. 805.6

Thence South ~~756~~ varas to the NW corner of Survey #5 same Certificate and Block.

Thence East 995 varas

to the place of beginning.

Bearings marked

Ed. Deland
Jake Young
Chain Carriers.

Surveyed August 2 1926

Adopted this the 4th day of March for this Survey.

I, Frank F. Friend Licenced State Surveyor, Crockett County, do Hereby Certify, That the foregoing survey was made by me according to law, and that the limits, boundaries and corners, with marks, natural and artificial, are truly described in the foregoing plat and field notes,

Frank F. Friend

Licensed State Surveyor, Crockett County, Texas.

I, A. N. Lea County Surveyor, ~~Crockett~~ Pecos County, do Hereby Certify, That I have examined the foregoing plat and field notes, and find them correct, and that they are recorded in my office in Book O No. Page 781

Fort Stockton, Texas, March 21 1929

A. N. Lea

Surveyor, ~~Crockett~~ Pecos County, Texas.

The corrections as indicated in red ink on this note have also been made in the records of Pecos County.

A. N. Lea

County Surveyor of Pecos Co., Tex.

counter 18306

6

File No. 50490
Bex. Scrip
Pecos County
School Land
Cor Field Notes # 6

Filed March 23 1929
J. T. Robison Com'r.

H. F. McDonald
File Clerk

Correct on map for
650 acres
3/25/29
McDonald

Field Notes
Correct
Map
Cor
3/8/29

REFERRED TO MAP
MAP 8
1929

Counter 18307

GENERAL LAND OFFICE, AUSTIN, TEXAS, 1-12 1942

I, Bascom Giles Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof ~~and attached hereto~~ is a true and correct copy o the original of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I, hereunto set my hand and affix the seal of said office the day and Date first above written.

Bascom Giles Commissioner of the General Land Office

counter 48308

ORIGINAL & CORRECTED FIELD NOTES
Sec. 5, Blk. 180½, T. C. Ry. Co.
Pecos County, Texas. Patented
on corrected notes according
Mr. Friend's survey

counter 78309

BFS. 50490

6012

THE STATE OF TEXAS, Survey No. 5
Pecos
County of ~~Crockett~~ Block No. 180½

Cor. Field Notes of a survey of 437.5 ~~435.05~~ acres

of land, made for W. E. Spell same being

originally surveyed T. C. RR Co.

by virtue of Certificate No. 1429 issued

to Texas Central Railroad Company by

Scale ..... varas per inch the commissioner of the Gen Land Office

Variation 12° East on the 17th day of August 1881

Said land is Situated in Pecos County, on

the waters of Escondido Creek a tributary of Pecos River,

about 24 miles S 70° East from Ft. Stockton and known

as Survey No. 5 in Block No. 180½

Beginning at a sk. at the NW corner of Sur. #4 of this Blk. Thence E 347 varas to point in W line of Survey #17 Blk 19 University Land. Thence N 182 varas to the NW cor. of Sur #17 and the SE cor of sur. #19 Blk 19 Univ. Land. Thence W 1900 varas to SW cor. of said Sur. #19 Univ. Land. Thence N ~~1900~~ 1816.3 varas to a point in the W line of said Sur. No. 19 the NE cor. of this Survey and a corner of Sur #6 same Certificate and Block. Thence W ~~995~~ varas to a point in the E line of Sur. # 102 in name of J. Poitevent. Thence S ~~1062~~ 1077.3 varas to the SE cor. of said Sur. No. 102 being also a point in the N line of Sur. #16 Blk #125 T& S. L Ry Co. Thence E 648 varas to the NE cor. of said Sur. #16. Thence South 1900 varas to the NW corner of Sur #17 and the NE cor of Sur #15 Blk. 125 T & St. L. Ry Co. Thence E 1900 varas to the NE Cor of said Sur. #17 . Thence North 1980 varas,

to the place of beginning.

Bearings marked

Ed. Deland
Jake Young
Chain Carriers.

Surveyed August 2 1926

Adopted this the 4th day of March for this Survey.

I, Frank F. Friend Licensed State Surveyor, Crockett County, do Hereby Certify, That the foregoing survey was made by me according to law, and that the limits, boundaries and corners, with marks, natural and artificial, are truly described in the foregoing plat and field notes.

Frank F. Friend
Licensed State Surveyor, Crockett County, Texas.

I, A. N. Lea County Surveyor, ~~Crockett~~ Pecos County, do Hereby Certify, That I have examined the foregoing plat and field notes, and find them correct, and that they are recorded in my office in Book O No. Page 780

Fort Stockton, Texas, March 31 1929.

The corrections as indicated in red ink on this note have also been made in the records of Pecos County.

A. N. Lea
~~Crockett~~ Pecos County Surveyor, Crockett County, Texas.

A.N. Lea
County Surveyor of Pecos County, Tex.

counter 18310

5

File No. 50490
Bex. Scrip
Pecos County
T.C. Ry Co
Cr Field Notes #5

Filed March 23- 1929
J. T. Robison Com'r.
H. F. McDonald
File Clerk

Correct on map
for 637½ acres
3-25-29
McDonald

Approved
Apr 8. 1929
Sadler

F/N dont close
Error in Bk. 10000 Vs
fifth Course should
be 995 Vs instead of
1995 Vs. When this change
is made the survey will
close and contain 635 acres
Cor. reg.
3/8/29
Mc

5-50490

counter 48311

RECEIVED
MAR 8 1929
REFERRED TO MAP

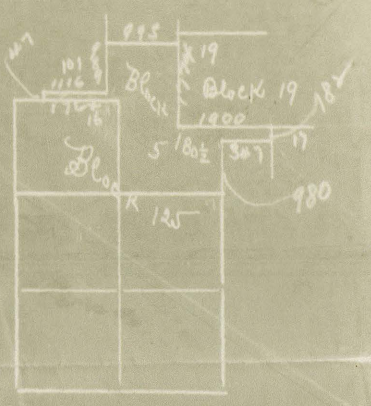
GENERAL LAND OFFICE, AUSTIN, TEXAS, 1-12 1942

I, Bascom Giles Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof ~~and attached hereto~~ is a true and correct copy of the original of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I, hereunto set my hand and affix the seal of said office the day and Date first above written.

Bascom Giles Commissioner of the General Land Office

counter #8312



Scale 4000 Varas to the Inch; Variation 11° East.

The State of Texas,
COUNTY OF PECOS.

Survey No. 5
Block No. 180½

FIELD NOTES of a Survey of 640 Acres of Land made for

by virtue of Certificate No. 1429, issued to The Texas Central Railway Company by the Commissioner of the General Land Office, on the Seventeenth day of August A. D. 1881.

Said Survey is situated in Pecos County, on the waters of the Pecos River, a tributary of the Rio Grande River, about miles from and is known as Survey No. 5 Block No. 180½.

Beginning at a stake and mound at the North West corner of Survey No. 4 in this block — Thence East 3247 varas to a stake and mound — Thence North 182 varas to a stake and mound at the North West corner of Survey No. 17 and S. E. corner of No. 19 both in Block No. 19 Unsurveyed Land — Thence West 1900 varas to a stake and mound S. W. corner said Survey No. 19 — Thence North 1774 varas to a stake and mound for the North East corner of this survey — Thence West 995 varas to a stake and mound in the East line of Survey No. ~~101~~ 102 made in name of J. Poitevant for the North West corner of this survey — Thence South 989 varas to corner said J. Poitevant Survey ~~101~~ 102. — Thence West 1116 varas to stake & mound — Thence South 1780 varas to stake and mound — Thence East 1764 varas to the North East corner of Survey No. 16 Block 125 Texas and Pacific Railway Company — Thence South 1900 varas to the N. W. corner of Survey No. 17 in said Block No. 125 — Thence East 1900 varas to the North East corner of said survey No. 17 Thence North 980 ~~1900~~ varas to the place of beginning.

Bearing marked Surveyed May 9th A. D. 1883.

Jno Brown
Dolores Gonzales } C. C.

I, L. W. DURRELL, Deputy Surveyor of Pecos County, do hereby certify that the foregoing survey was made according to law, in the field, and that the limits, boundaries and corners, with their marks, natural and artificial, are truly described in the foregoing plat and field notes.

L. W. Durrell
Deputy Surveyor Pecos County.

I, E. W. BATES, County Surveyor of Pecos County, do hereby certify that I have examined the foregoing plat and field notes and find them correct, and that they are recorded in my office in book C, page 386.

E. W. Bates
County Surveyor Pecos County.

counter 18313

2 Files 670490

Bal. Beaumont

Tex. Cent. Ry. Co.

T. Notes

640 Acres

Tried Sept. 7 1883

D. A Robinson

Sur #5 Chambers

Third Ct. Call to covers a strip of land 47 vrs wide by 1764 vrs. long between the S. boy line of Sec #102, C&M/Brg. J. Pait. survt. and the N. line of Sec 16 — in Blk 12 W. T & N. O. Ry. Co. -

The facts in the case are that the records in this office show that the the S. line of said #102. runs on the North line of #7 & 16. in Blk # 125, and of Direct in the case there this is in conflict with said #102, Cert. No. 22 Interfactory explanation required Sept 19 8/21/61 Issued 11/4/1913 Rejection

counter 78314

correction of this & also School Sec 6 -

JNO. K. DONALD
Land and Genl Agt.
AUSTIN, TEXAS.

Pecos Co Rld SK 114

GENERAL LAND OFFICE, AUSTIN, TEXAS, 1-12 1942

I, Bascom Giles Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof ~~and attached hereto~~ is a true and correct copy of the original of this instrument now on file in this office together with all endorsements thereon.

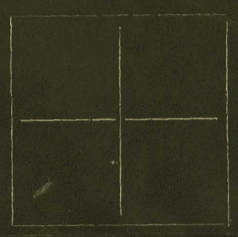
IN TESTIMONY WHEREOF, I, hereunto set my hand and affix the seal of said office the day and Date first above written.

Bascom Giles Commissioner of the General Land Office

counter 48315

R. M. THOMSON'S FIELD NOTES
Sec. 1, Blk. 19, Pecos County
dated Dec. 8, 1879 -- for purpose
of supporting location of NE
corner Blk. 19 -- Spring Corner

counter 48314



Scale vs. per inch.

Variation 10° East.

The State of Texas,

County of Pecos

Survey No. 1

Block No. 19

Field Notes of a Survey of 640 Acres of land made for the "UNIVERSITY OF TEXAS," by virtue of Article 4025, Revised Statutes.

Said Survey is situated in Pecos county, Texas, on the waters of Escondido creek, a tributary of Pecos river, about 26 miles E from Fort Stockton

Beginning at the S W cor of Sur No 18 Blk No 18 Stone Monument, Iron cor bears 740 vs East & 1200 vs North from Escondido Springs at Stage Stand

Thence South Crossing El Paso road at 1200 vs Stone Md°

Thence West Crossing Road at 1900 vs Mound

Thence North Crossing Escondido Creek at 1900 vs Stake

Thence East 1900 vs

to the place of beginning.

Surveyed Dec 8th 1879

Chas Emmes
Lu Worthington } Chain Carriers.

I R W Thomson do hereby certify that the foregoing survey was made on the ground according to law, and that the marks, both natural and artificial, are truly described in the foregoing field notes.

R W Thomson

Surveyor University Lands.

county 98317

File 658

Pecos County

University Lands

Field notes

640 acres

Sur. No 1 - Block 19

Filed Feby 12th 80

Rhoads & Fisher

Atty's

Correct on map

Nov. 26/80. V Schmidt

Book 19

Pg 658 to 678

Feby 12th 80

C. Feby 25

1884

County 48.318

Pecos Co Rld Sk 114

GENERAL LAND OFFICE, AUSTIN, TEXAS 4-4 1938

I, Wm H. McDonald Commissioner of the General Land Office of the State of Texas do hereby certify that on the reverse hereof and attached hereto is a true and correct copy of the original of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said office the day and Date first above written.

Wm H. McDonald Commissioner of the General Land Office

counter 78319

P-140

LETTER OF INQUIRY
Addressed to the Commissioner of the General Land Office by J. V. Schilling, dated Dec. 8, 1926, covering an alleged vacant strip between Univ. Blk. 19 and Blk. 180½, T. C. Ry. Co. survey, Pecos County

San Antonio, Texas.
December 8, 1926

Commissioner,
General Land Office of Texas,
Austin, Texas.

Dear Sir: No vacancy accd to F/N adjacent surveys (Inspection of map)

(93) I am a bonafide inhabitant of the State of Texas and a citizen of the United States and desire to purchase from the State of Texas the following designated unsurveyed land in Pecos County, Texas, which is believed to belong to the Public Free School Fund of this State, if it is for sale, said land being described as follows:

In Pecos County, about 23 miles South 78 degrees East from Fort Stockton, Texas, and bounded on the North by Section 6, T.C.Ry.Co., Block 180½, by Sections 19, 17 and 16, Block 19, University Land. On the East by Sections 19, 17 and 16, Block 19, University Land and by Section 2, Block 180½, T.C. Ry.Co. On the South by Sections 5, 4 and 3, Block 180½, T.C. Ry.Co., and on the West by Sections 6, 5 and 4, Block 180½, T.C. Ry.Co., and hereby file this application and inquiry in compliance with the statutes of the State of Texas in reference to the purchase of unsurveyed School Land.

My post-office address is 1642 West Magnolia Street, San Antonio, Texas.

Yours truly,

J. V. Schilling

Permanent Address:
1642 W. Magnolia St.,
San Antonio, Texas.

RECEIVED
DEC 9 1926 8:45 A.M.
RETURNED TO MAP

counter 48320

Pecos Co Rld Sk 114

GENERAL LAND OFFICE, AUSTIN, TEXAS, August 12, 1941

I, Bascom Giles Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof ~~and attached hereto~~ is a true and correct copy of the original of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I, hereunto set my hand and affix the seal of said office the day and Date first above written.

Bascom Giles
Commissioner of the General Land Office

cocenter 18321

FIELD NOTES J. V. MASSEY
SURVEY No. 549 (640 acres)
Middle Escondido Spring
by Thos. C. Nelson, County
Surveyor, Pecos County

counter 18322

Scale 4000 vrs per Inch Variation 11° 30' E.

State of Texas } Survey No. 549
County of Pecos } 640 Acres

Field Notes of a survey of 640 acres of land made for Geo. B. Zimpleman (Assignee) ~~Houston & Great Northern Railroad Company~~ J. V. Massey by virtue of Land Scrip No. 46 issued to ~~the Houston & Great Northern Railroad company~~ J. V. Massey Jan. 25th 1875 by J. J. Groos Comm'r Gen'l. Land Office Texas for 640 acres of land.

Said Survey is No. 549 in Pecos County situated at the middle Escondido Spring about 22 miles South 85° East of Fort Stockton Texas.

Beginning at a stone set for N. W. cor. of this Survey, from which the N. W. cor. of Survey No. 310 in name of J. M. Shoffner bears S. 83 1/4° W. 5464 vrs. and from which the middle Escondido Spring bears S. 47° E. 720 vrs. —— Thence N. 80° E. 1900 varas to a stone set for the N. E. cor. of this Survey —— Thence S. 10° E. 1900 varas to a stone pile for S. E. cor. of this Survey —— Thence S. 80° W. 1900 varas to a stone pile for S. W. cor. this Survey. Thence N. 10° W. 1900 varas to the place of beginning. Surveyed May 9th 1879.

Marcial Dominguez } Chain
Guillermo Garcia } Carriers

I Thos. C. Nelson County Surveyor Pecos County do hereby certify that the foregoing Survey was made according to law, and that the limits, boundaries and corners, with the marks, natural and artificial, are truly described in the foregoing

counter 48323

plat and field notes, and that they are recorded in my office in Book A. No. 1 Page. 151.

Thos. C. Nelson
County Surveyor Pecos Co.

No. 27937
Texas Scrip
D. C. Mabry
640 Acres
Fieldnotes
No. 544

Filed Oct. 10 1879
Thos. C. Nelson
Chief Clerk

Corrected map
of Pecos County.
Sept 27/94 Surveyor's Records

Cert. Oct 10/94
Issued

FILING FEE PAID
OCT 10 1879

Ck Feb 15
Mar 79

County 48324

Pecos Co Rld SK 114

GENERAL LAND OFFICE, AUSTIN, TEXAS, May - 26 — 1941

I, Bascom Giles Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof ~~and attached hereto~~ is a true and correct copy of the original of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I, hereunto set my hand and affix the seal of said office the day and Date first above written.

Bascom Giles Commissioner of the General Land Office

counter 48325

Oct 3 9

Maurice B. Moore, Esq.)
Austin) Sir

You are hereby notified of your appointment as a Commissioner or Inspector on behalf of the State of Texas, to accompany the Surveyors, Messrs. C. W. Holt and R. M. Thompson who have contracted to survey One Million Acres of land for the University of Texas.

Your duty will be to see that the Surveyors select and Survey the best land to be procured, rejecting such as is unfit for either agriculture or pasture, except where it may be necessary to include a small portion of such inferior land in order to secure living water. You will also see that at least two corners of each survey are marked with stone or earth mounds, and that the corners of the Blocks, not to exceed six miles square, are marked with earth or stone mounds at least three feet high and six feet in diameter at the base.

You will also keep a memorandum of the blocks and surveys and note the character of soil, grass and timber and the water if any--if not water, on the land surveyed note how near the water may be found.

It cannot of course be expected to procure good first class land, but you will accept none which will not yield good grass for pasturage.

Yours Respectfully

W. C. Walsh
Com. G.L.O.

Chap. / Sec. LXXXI
Acts 1879.

counter 18326

H'

Maurice D. Moore Esq
Austin

Sir

You are hereby notified of your appointment as a Commissioner of this Office on behalf of the State of Texas to go Conjointly the Surveyors Messrs C. H. Ward and R. M. Thompson who have contracted to survey One million Acres of land for the University of Texas.

Your duty will be to see that the Surveying Select and survey the best land to be procured, rejecting such as is unfit for either agricultural or pasturage, except where it may be necessary to include a certain portion of such inferior land in order to square surveying lines. You will also see that at least two Corners of each Survey are marked with stone or earth mounds and that the Corners of the Blocks, not to exceed six miles square, are marked with earth or stone mounds at least three feet

counter 48327

[illegible] Send Depot Quartermaster at the
[illegible] First class Rail a Memorandum
[illegible] the Clerk and Conveys and note
[illegible] Quantity of Coal Grass Number of
[illegible] Cords if any — if no Note, on the
[illegible] Coal Conveyed. Make how Cross the
[illegible] Make Cross in Square.

Grass is expected to Convey the
first class Coal. but they will
get none which Coal will not
Good Grass for Conveyance

Yours Respectfully
M. Macon
Engr & CO

Courtesy 18328

Pecos Co Rld Sk 114

Appointment of Maurice B. Moore as Commissioner or Inspector in the selection and survey of one million acres of land for the University of Texas dated October 3, 1879.

GENERAL LAND OFFICE, AUSTIN, TEXAS, Septh - 25 — 40

I, Bascom Giles Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof ~~and attached hereto~~ is a true and correct copy of the ~~original~~ Letter on pages 241 + 242 of Letter book # 100 a record of this office.

IN TESTIMONY WHEREOF, I, Hereunto set my hand and affix the seal of said office the day and date first above written.

Bascom Giles Commissioner of the General Land Office

counter 48329

INSET NO. 1
SCALE 1/4

INSET NO. 2
SCALE 1/2

UNIVERSITY LAND
PECOS COUNTY, TEXAS

Surveyed by Frank E. Friend, Special Surveyor of University Lands
Surveyed at intervals from July 1926 to Oct. 1932

Scale 1000 vrs. = 1 in.

Legend
- Original Corners
- Approved Resurvey Corners
- Corners set in this Resurvey
- Abandoned improved roads
- Proposed net wire fences
- Net wire fences
- Main Highways
- Windmills
- Houses

This map of University Land and other Lands immediately adjacent thereto, showing natural and artificial objects, is true and correct being based on a survey made on the ground at intervals from July 1926 to October 1932.

Frank E. Friend
Licensed Land Surveyor of Texas and Special Surveyor of University Lands
San Angelo, Texas April 24, 1933

Compiled and drawn by J.A. Conklin
counter 98330

922
Austin

(24)

Pecos Co. Rld Sketch 114
Exhibit 13y University
Frank F. Friends Sketch,

Flat Folder

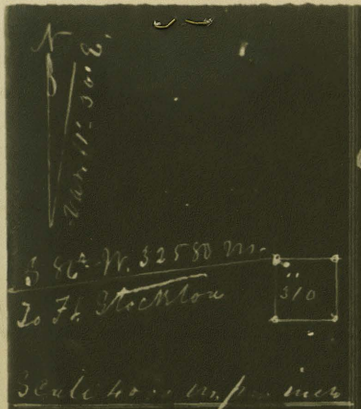
Fl'

counter 18331

Pop #2
Portion T.L. Blk 16

FIELD NOTES COVERING SURVEY
OF J. N. SHOFFNER identifying
West Escondido Spring

counter 48332



State of Texas } Survey No. 310 —
County of El Paso } 277¾ Acres —

Plat & field notes of a resurvey of a Survey of Two Hundred & Seventy seven & three fourths Acres of land made for Peter Gallagher, it being the land to which he is entitled, by virtue of duplicate unlocated balance Certificate No. 4135 first Class, for 277¾ Acres, issued to J. H. Shattuck by Francis M. White Comm'r Nov. 20th 1861.

Said Survey is situated on the El Paso & San Antonio Road, at Escondido Springs in Pecos County — Beginning at a rock Mound, in the Centre of an Old Mescal Camp, from which the head Spring of the Escondido bears S. 75° E. 225 Varas, and from which, the N.E. Corner, of Sur. No. 150 made for Jose Antonio L. Montes, by virtue of Certificate No. 5025/5026, for 320 Acres, dated Sept. 2nd 1856 bears South 86° W. 32580 Varas —

Thence S. 1252/4 V. to a rock Mound,
Thence E. 1252/4 V. to a rock Mound,
Thence N. 1252/4 V. to a rock Mound on the Top of the Hill — Thence W. 1252/4 V. to the place of beginning — Surveyed May 20th 1874

William T. Simpson
George W. Lee } Chainmen

I do hereby Certify that the above Survey was made according to law that the lines boundaries & Corners, with the Marks Natural & Artificial, are truly described

over,

Counter 48333

3/ File ~~15/10~~ 73
1283
Bryan 3rd & 2nd Class
Field Notes ~~1 p 27~~ 3/4 acres
G: ~~1. 211. 798. 81.~~

J N Shaffner

Filed Aug 19/74
Rhoda Fisher
Chf Clk.

Patented Febry. 12th 1878.
Thos. G. Mallot

Plat of Fieldnotes
of Survey No- 310-

Peter Gallagher

Pecos Co.

c/c Oct 3/74
JHK

to the foregoing plat & fieldnotes, that the
same accords in every respect with the
official plat & fieldnotes of the survey
of the tract of land therein described
as surveyed for Peter Gallagher

Pecos Co Rld Stk 114

GENERAL LAND OFFICE, AUSTIN, TEXAS 6-20 1936

I, J H Walker Commissioner of the General Land Office of the State of Texas do hereby certify that on the reverse hereof and attached hereto is a true and correct copy of the original of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said office the day and Date first above written.

J H Walker Commissioner of the General Land Office

cocntes 18335

S. F. 14312
No 4

RECEIVED
AUG 8 - 1941

BLOCK 19 UT, PECOS COUNTY

Pecos Co. R.L.O. Sk. No 114

REFERRED TO LAW

Sparks

In respect to the boundaries of this block, the position of the University is as follows:

1. The east boundary is a line extending north and south through a point 240 varas east of East Escondido Spring. The north terminus of this line, approximately 1200 varas north of the spring at the old stage stand, is marked by a rock from the bed of Tunis Creek embedded in the ground at the foot of a bunch of mesquites. One mile plus a few varas south on the slope of a hill is an old well-constructed surveyor's mound such as is called for in Thomson's field notes of Section 19, Block 19. Four miles south of said mound is a rock mound well constructed of the same type as the Ocotillos and of sufficient age for it to serve as Thomson's southeast corner of Section 5, Block 19. Three rock mounds are called for on this line, and the University presents said mounds as those called for by Thomson in his field notes.

2. The west line of Block 19 is marked by three rock mounds: No. 1 being a pebble mound at the northwest corner of Section 21 in said block; No. 2 being known as the Ocotillos, a well constructed, firmly embedded rock mound in a saucerlike stone on a promontory overlooking Block 19; and No. 3 is a rock mound at the southwest corner of Section 19 at the foot of the mountain. This mound is of a construction different from the Ocotillos and the mound at the southeast corner of Section 5, but it bears every evidence of a surveyor's mound and is of sufficient age to serve as Thomson's southwest marker of Section 19 in Block 19. Maurice B. Moore, who accompanied the surveyors in the field and filed a sketch of each system of blocks with their field notes, calls for the Middle Escondido Spring to be 3650 varas from the northwest corner of Section 21. This would make the distance from the Ocotillos corner to the spring 1725 varas. Conklin and Creath, University surveyors, make the distance 1730 varas. (This week in company with A. N. Lea, County Surveyor of Pecos County; Mr. J. T. Baker, a substantial citizen of that county; and the University surveyors, Messrs. Friend, Conklin and Creath, Judge Gaines and I made a careful inspection of this line and the location of the spring and the monuments mentioned.)

3. The south line of said block is a broken line controlled by the Boulder and the stone mound at the southeast corner of Section 19 and the rock mound at the southeast corner of Section 5.

4. The north line is the line extending from the rock embedded in the ground north of East Escondido Spring to the pebble mound 1925 varas north of the Ocotillos.

August 7, 1941

counter 48336

(12)

911

S.F. 14312
Nott

BLOCK 19 UT, PECOS COUNTY

In respect to the boundaries of this block, the position of the University is as follows:

1. The east boundary is a line extending north and south through a point 240 varas east of East Escondido Spring. The north terminus of this line, approximately 1200 varas north of the spring at the old stage stand, is marked by a rock from the bed of Tunis Creek embedded in the ground at the foot of a bunch of mesquites. One mile plus a few varas south on the slope of a hill is an old well-constructed surveyor's mound such as is called for in Thomson's field notes of Section 19, Block 19. Four miles south of said mound is a rock mound well constructed of the same type as the Ocotillos and of sufficient age for it to serve as Thomson's southeast corner of Section 5, Block 19. Three rock mounds are called for on this line, and the University presents said mounds as those called for by Thomson in his field notes.

2. The west line of Block 19 is marked by three rock mounds: No. 1 being a pebble mound at the northwest corner of Section 21 in said block; No. 2 being known as the Ocotillos, a well constructed, firmly embedded rock mound in a saucerlike stone on a promontory overlooking Block 19; and No. 3 is a rock mound at the southwest corner of Section 19 at the foot of the mountain. This mound is of a construction different from the Ocotillos and the mound at the southeast corner of Section 5, but it bears every evidence of a surveyor's mound and is of sufficient age to serve as Thomson's southwest marker of Section 19 in Block 19. Maurice B. Moore, who accompanied the surveyors in the field and filed a sketch of each system of blocks with their field notes, calls for the Middle Escondido Spring to be 3650 varas from the northwest corner of Section 21. This would make the distance from the Ocotillos corner to the spring 1725 varas. Conklin and Creath, University surveyors, make the distance 1730 varas. (This week in company with A. N. Lea, County Surveyor of Pecos County; Mr. J. T. Baker, a substantial citizen of that county; and the University surveyors, Messrs. Friend, Conklin and Creath, Judge Caines and I made a careful inspection of this line and the location of the spring and the monuments mentioned.)

3. The south line of said block is a broken line controlled by the Boulder and the stone mound at the southeast corner of Sec. 19 and the rock mound at the southeast corner of Section 5.

4. The north line is the line extending from the rock embedded in the ground north of East Escondido Spring to the pebble mound 1925 varas north of the Ocotillos.

8/7/41

J. H. Walker

counter 18337

BASCOM GILES
COMMISSIONER
GENERAL LAND OFFICE
AUSTIN, TEXAS

(16)

Pecos Co. Rld Srv. No 114

Pictures of the "Grandote" corner

Blk 19 University.

See page 4 - Item #1 for identification

1



2



3



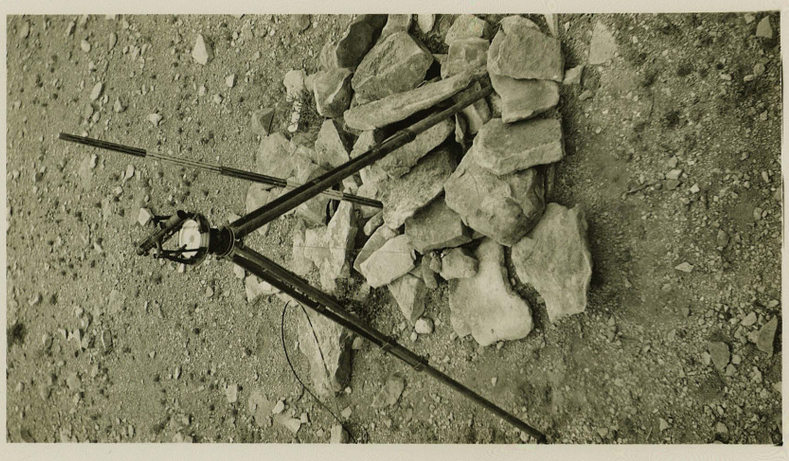
counter 18338

4



5







7



counter 18339

Pecos Co. Rd Sk No 114

REPORT OF CLINT SMALL, JR. AND CURTIS R. HALE -
RE FIELD INVESTIGATION OF UNIVERSITY BLOCKS
18 AND 19, PECOS COUNTY, TEXAS - J. L.
NUTT - SF 14312 .

December 2, 1942.

Mr. Bascom Giles, Commissioner,
The General Land Office,
Austin, Texas.

Dear Sir:

Pursuant to your instructions, we met with Mr. J. L. Nutt and Mr. Jess Conklin, who represents the University, in Fort Stockton, Saturday, November 28th, at 8:00 A.M., and proceeded to investigate certain natural and artifical objects which have some bearing on the proper location of the boundary lines of University Blocks 18 and 19 in Pecos County.

We were first taken to what is known as the Western or Head Escondido Spring. The spring controls the location of Section 1, Block 21, University Lands, and is called for in the field notes of that section. This spring is a good, bubbling spring with an excellent flow of water. It is located in a valley between two ranges of hills several miles apart. We saw at this point the old corrals of the Stage Stand which was located here many years ago. We also looked at an old mescal pit mentioned in some of the field notes near the spring. This spring is an unmistakable land mark and it has long been a camping place even in Indian times.

We next proceeded to the rock mound found by Surveyor Estill and described by him in his testimony and report in connection with the Nutt application. This rock mound has the appearance of being fairly old and is composed of five large stones surrounding one stone buried in the center, which Estill calls his Key Stone. Near this rock mound we looked at a seep spring. Estill described this spring in his report and testimony. This spring is rather small and does not run. The water comes out of the ground in a slow seep and it does not appear to be very old. The rock mound is not called for in any field notes and we found nothing to substantiate it since it did not conform to any other objects found.

We next looked at what the University of Texas claims is the Middle Escondido Spring. This is a large hole of water which is clear and rather deep. It is located at the foot of a rock bluff and we found that water was seeping rather rapidly out of the North bank. This hole of water is a prominent land mark and appears to have been there many years. It is located in a fork in the main creek bed. We noticed several large bass in this hole of water which testified as to its everlasting quality. This is undoubtedly the spring called for in the field notes of the Massey Survey and we were informed that the rock mounds at the corners of the Massey Survey conformed fairly well to this spring. Mr. Nutt did inform us, however, that he could point out several holes of water up and down the creek that were very similar to this one, although this is apparently the largest hole anywhere in this vicinity. There were indications that this vicinity was a popular camping place along Tunis Creek for several miles because of the presence of good water.

counter 48340

N'

We next looked at several rock mounds in the vicinity of where the Southwest corner of Section 19, Block 19, would fall. The first rock mound we looked at was called the "Red Rock Corner" and is discussed by Mr. Avera in his testimony in connection with this problem. This mound is fairly old and made of red rocks which are not common to the vicinity and were probably carried in. It is undoubtedly man made but we found nothing to substantiate it, as it was located in flat, open country and is slightly less than course and distance from the Eastern Escondido Spring. None of the parties claimed that it was an original corner. We also looked at what Mr. Walker calls his "Boulder Corner" which is quite a distance West and South of the Red Rock Corner. We found that this mound had been disturbed since Mr. Estill made his survey but the rocks which composed it were lying close at hand and we were able to tell from the marks on the rocks that they were arranged in a man made pile at this point. Mr. Conklin informed us that he first knew of the mound fourteen years ago. Also in this vicinity and slightly East of Boulder Corner is a corner set by Frank Friend, which we did not look at since it had been constructed by Mr. Friend and was not claimed as original by either party.

We next proceeded to the vicinity of where the Northwest Corner of Section 19, Block 19, would fall. Here we looked at four rock mounds located in a radius of not over 200 varas, and Mr. Nutt stated that he knew of several more in the immediate vicinity. None of these mounds appeared to be of any great age, but all were undoubtedly made by surveyors. There are no mounds called for in the field notes at this point and it occurred to us that these various mounds were probably placed there by surveyors backing in from Section 1, Block 21, for the Northwest Corner of Section 19, Block 19. While we were in this immediate vicinity, we looked at two rock mounds which fall close to the Southwest corner of the Massey Survey. These two mounds appear to be made by surveyors but did not appear to be original. They do conform fairly close to the calls for the Middle Spring. We did not go to the North corner of Block 19 where Mr. Nutt stated several rock mounds were located. He and Mr. Conklin were both of the opinion that none could be substantiated as original.

We next looked at the Eastern Escondido Spring which is located adjacent to the Baker Ranch house. This spring is an unmistakable natural object. It has been cleaned out by Baker and is now a good sized hole of water with many fish in it. No surveyor could be mistaken over five or six varas as to its location. We then looked at an old rock mound that is very close to course and distance from this spring for the Southeast Corner of Section 1, Block 19. This is a very good mound and Mr. Nutt stated that he was entirely in agreement with Mr. Friend that this was the Southeast Corner of Section 1, Block 19. We also looked at what is recognized as the Northeast Corner of Section 1, Block 19. The University has set a small keg filled with cement at this corner and stacked around the keg were several medium-sized stones. Mr. Conklin stated that this corner was pointed out to Mr. Friend by Baker, the ranchman, who lived nearby. It does not conform to course and distance nearly so well as the Southeast corner. Since there is a road that runs right by this corner it is possible that it could have been moved several varas either way. Both of these corners were good corners and if they are not the original corners they are very close to the location of the original corners.

We next looked at the rock mound on the side of the mountain, called for in the field notes of the Southeast Corner of Block 18. This rock mound is located on the slope of a large mountain or hill and is in an open, unprotected spot. It is composed of several medium-sized rocks and stones neatly arranged and was clearly a man made mound. It was not near any

counter 78341 N2

water and there would have been no occasion for it to have been built by campers or anyone except a surveyor. There is nothing to indicate that this was an original mound other than the fact that it was definitely on the side of a hill and was a man made mound. It appeared to be as good a mound as any we saw but no better than many of the rest. Mr. Friend's corner in this same vicinity falls close to the bottom of a draw and is definitely not on the side of a hill. This corner could not be located much further East and still be on the side of a hill since a draw opens up into the valley at this point. We were taken to this corner by Mr. Tom McKenzie whose ranch house is nearby and who stated that this corner had been pointed out to Mr. Friend by his father who had been in the country many, many years and that his father had advised him of its presence many times. He contends that this is the Southeast corner of Block 18.

Our investigation left us with the opinion that several fairly old looking rock mounds could be located at nearly any corner and that corroborating evidence of a more substantial nature would be necessary before any reliance could be placed on any of them. The only evidence of this nature we observed was the three Escondido Springs supporting the mounds in their vicinity and the fact that the mound on the side of a mountain did conform to that description.

This concluded our investigation and we returned to Austin.

Respectfully submitted,

CLINT SMALL, JR.

counter 48342

N3

SKETCH OF PART OF PECOS COUNTY, TEXAS.

SHOWING A SURVEY MADE BY ME IN AUGUST AND NOVEMBER 1927

THIS THE 14th DAY OF AUGUST 1942

J. A. Simpson

LICENSED STATE LAND SURVEYOR

VARIATION USED IN BLK. 19 U.L.--- 9° 50' E.

VARIATION USED IN BLK. 125 TR. ST. L. RY. CO.---11° 00' E.

N

Scale: 1000 vrs. = 1"

◎ Original corners identified by me

Old Rk. md. S20 W and 15 S of N.W. 21

Old sto. md

Old large rk. md mkd N.E. 20 A.N.L.

Escandida Spr

set Rk. in md sto.

Rk. md

Old sto. md

Old Rk. md

Rk. md 3' high

Rk. md 3' high

sto. md

3 2 1

21 20 11 10 1 551

7 T. C. Ry. Co.

12 University 9 2 Land

13 Blk. 8 3 19

6

310 J. N. Shaffner

500 N. Lewis

101 J. Pointevant

549 550

7 1 Wm D. C. Henley 102 J. Pointevant

19 18 14 7 4

7 16 5 T. C. Ry. Co.

17 15 6 5

T. & St. L. Ry Co.

8 15 17 4 16 2

Blk. 125

9 14 13 18 3 T. C. Ry. Co

19 20 1 T. C. Ry. Co.

counter 48343

E. 6841.5 (6830)

N. 2680. (2680)

W. 1100 West Escondido Spring

(3870) S. 3867.6

N 89° 54' W 1940.1 1900.8

7 E. 5761.5 16 (5730)

S 0°24' E 1907.9 N 0°06' E 1907.9

S 89°54' E 1923.5 1900.8 1900.8

8 15 17

Texas & St. Louis

N 89° 54' W 1900.8 N 89° 54' W 1900.8 1900.8

9 14 13 18

S 0°32' W 1922.9 N 42°22' E 1913.6 1919.6 1919.6

Ry. Co. Block 125

S 89° 54' E 1939.8 S 89° 54' E 1900.8 S 89° 54' E 1900.8

10 11 12 19

S 0°21' E 1909.0 1909.0 N 0°06' E 1909.0

N 89° 54' W 1924.8 N 89° 54' W 1900.8 N 89° 54' W 1900.8

3 2 2

S 0°09' E 1900.2 1900.2 N 0°06' E 1900.2

T. & St. L. Ry. Co.

S. 10660.9 W. 5813.5

S 89° 54' E 1916.3 1900.8 1900.8

10 11 12 3

S 0°22' E 1901.7 1901.7 N 0°06' E 1901.7

Block 126

S 89° 54' E 1900.8 S 89° 54' E 1900.8 S 89° 54' E 1900.8

15 14 13 10

549 (23) 550 (20)

Middle Escondido Spring

(24) (19)

E. 1900.8 E. 1900.8

19 18

(25)

S. 1900.8

W. 1900.8 W. 1900.8

5 T. C. 17

4 Ry. Co.

N. 1900.8

W. 1546.2

16 2

S. 1900.8

W. 1900.8 S 89°54' E 375.4

3 Block

N 0°06' E 1161.5 S 0°06' W 3065.0

S 89° 54' E 3106.7 567.3

1900.8 1900.8

9 8

N 89° 54' W 1900.8 N 89° 54' W 1900.8

20 1 180½

S 0°06' W 1900.2 1900.2 N 0°06' E 1900.2

E. L. & R. R.

1900.8 1900.8 1900.8

1900.2 1900.2 1900.2

S 0°06' W 71.86.8

1900.8 1900.8 1900.8

4 41

R. R. Co.

S 89° 54' E 1900.8 S 89° 54' E 1900.8 S 89° 54' E 1900.8

9 8 7

Block 104

Jasper County School Land

S. 10690.1 E. 6860.6

S 89° 54' E 7230.1

6 5

Block 100

S. 1866.8.1 & E. 4492.3

W. 1900.8 W. 1900.8 W. 1900.8 W. 1900.8 W. 2368.3

21 (22) 20 (21) 11 10 1

551 East Escondido Spring

N. 1934.5

S. 2275.6 845.2

W. 1900.8 W. 1900.8

12 9 2

N. 1900.8 N. 1934.5

13 8 3

N. 1900.8 N. 1934.5

Block 19

University Land

14 7 4

N. 1900.8 N. 1934.5

W. 1900.8 W. 1900.8 W. 1900.8 W 1900.8 W. 2368.3

17 15 6 5

N. 1900.8 N. 1900.8

S 1589.1

counter 18344

T. & ST. L. Ry. Co.

BLK. 14-4

J. V. Massey

549

550

Poitevent

101

102

Block 19

UNIV. OF TEXAS

T C

TEXAS & ST. LOUIS

Ry. Co.

Ry. CO.

Block 125

Block 3

TEX. & ST. LOUIS Ry. Co.

E. L. & R. R. Ry. Co.

Block 126

Block 4

100

41

180½

JASPER CO. SCH. L.D.

LEGEND

( ) - figures in ( ) taken from Univ. of Tex. map as surveyed by F.F. friend.

* Taken from survey by J.A. Simpson made in 1928.

○ Rk. md. for corner by J.A. Simpson.

◎ Rk. md. – original corner.

State of Texas

I, James K. Avera, Licensed Land Surveyor, hereby certify that this map correctly represents the location of natural and artificial objects found by me on the ground (except where shown otherwise).

James K. Avera

James K. Avera
Licensed Land Surveyor

Given under my hand and seal of office this 17th day of August, 1942

James K. Avera

Licensed State Land Surveyor
San Angelo, Texas

PART OF J. L. Nutt Ranch and adjoining area
Pecos County, Texas
SURVEYED OCT., 1939; AUG. & SEPT., 1940
by
JAMES K. AVERA
Licensed Land Surveyor, San Angelo, Texas

Scale 1" = 500 varas

counter 48345

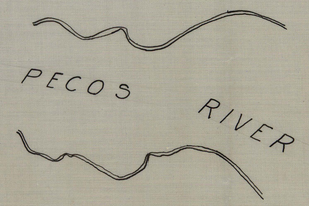
GENERAL LAND OFFICE

TRACING OF PART OF A MAP OF PECOS CO. OF 1873

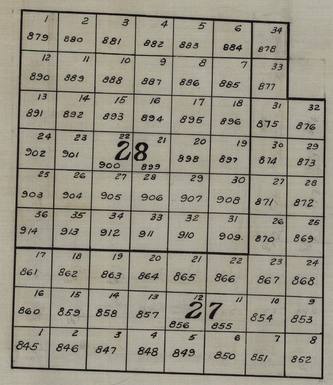
Scale: 1" = 4000 v

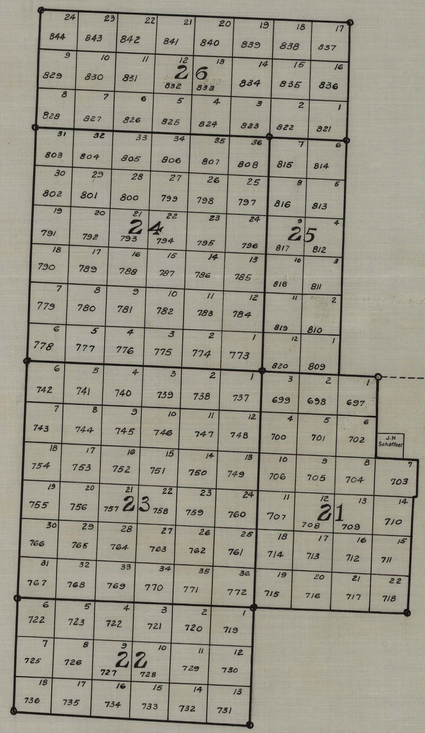
Traced Apr. 30, 1942

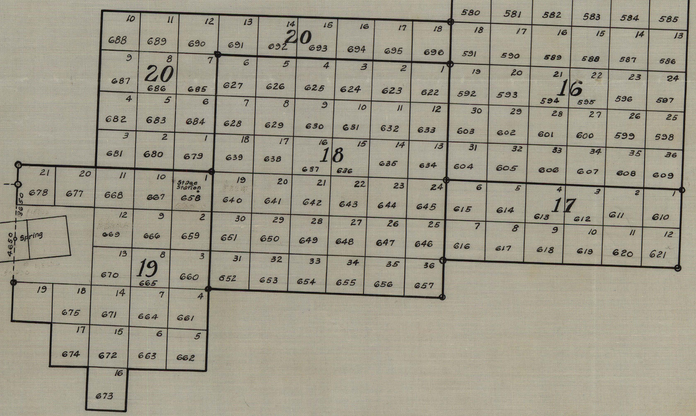
By B.F. Priest



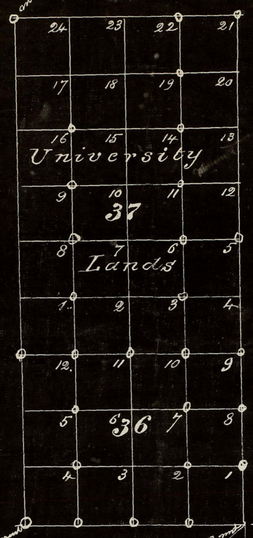


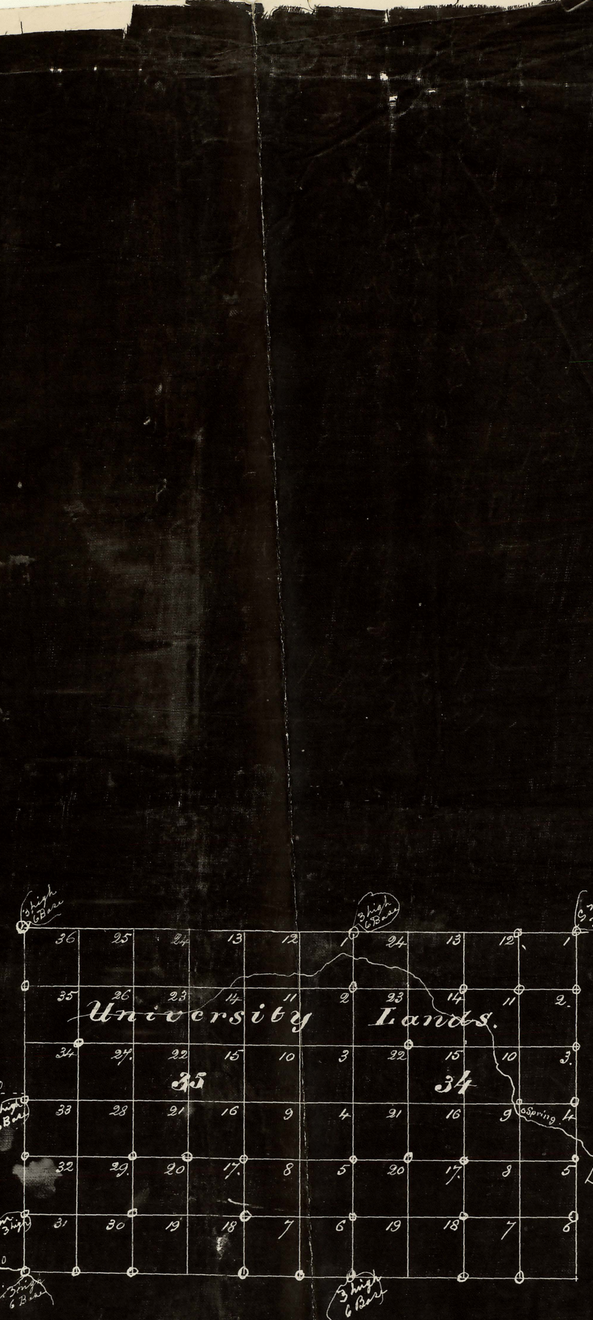


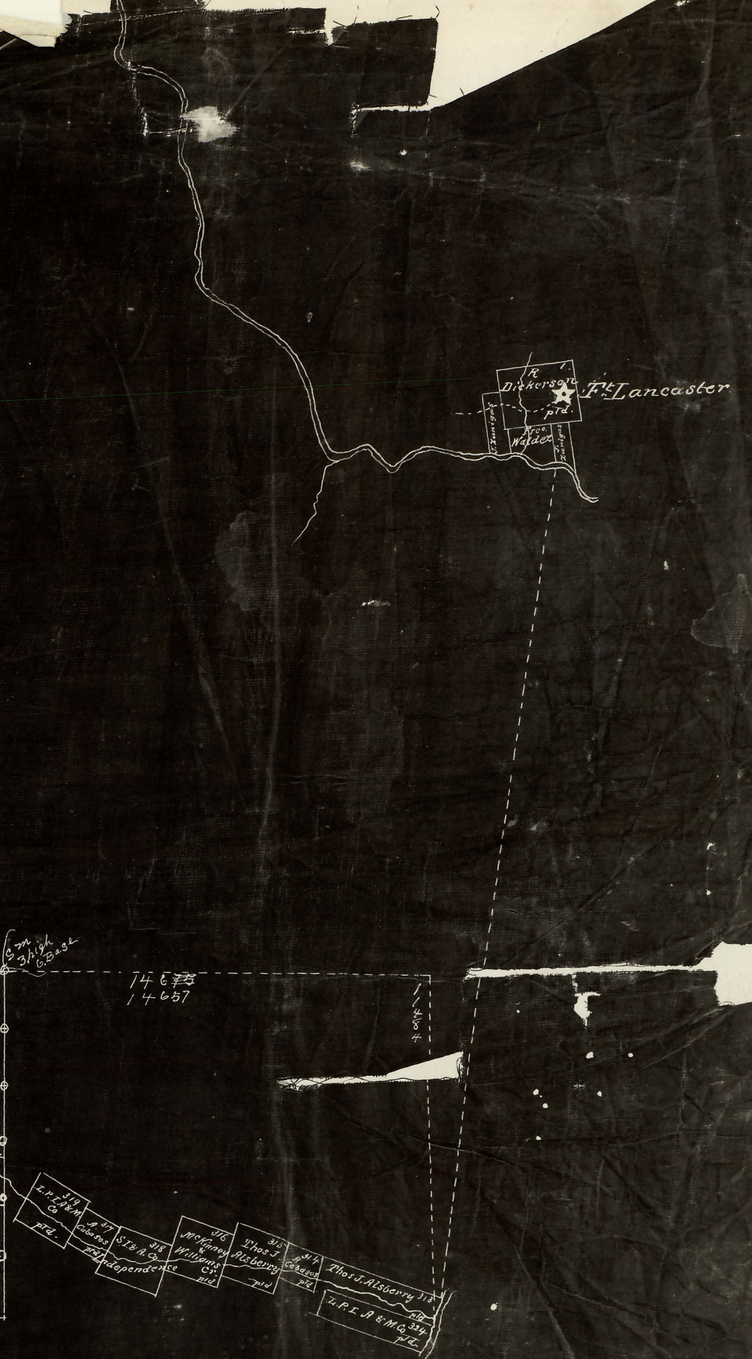




counter 18376






Ft Lancaster
Ft Dickerson
Ft Wacker
Texas
Mexico
Rio Grande
Thos J. Rusk
Thos J. Rusk
Thos J. Rusk

Tom Green Co.

Pecos River

Crockett Co.

Pecos River

University Lands

16

17

18

counter 48348

103d Merid.

Texas and Pacific

Block 48

Block 28

University Lands

Block 27

Ft Stockton

Block 26

University Lands

Block 24

Block 25

University Lands

Block 23

Block 21

Block 20

Block 19

Stage Station

Spring

Well

Windmill

Tank

Corral

Adobe

Stone

Brick

Frame

Shed

Store

Saloon

Dwelling

Blacksmith Shop

Post Office

Jail

Mason

Lodge

Church

School House

Cemetery

Graveyard

Monument

Flag Staff

Telegraph Office

Telephone

Express Office

Depot

Water Tank

Section Boss

Section House

Section Foreman

Section Gang

Section Tool House

Section Hand

Section Hand on Duty

Section Hand Off Duty

Section Hand Sick

Section Hand Dead

Section Hand Injured

Section Hand Killed

Section Hand Discharged

Section Hand Resigned

Section Hand Transferred

Section Hand Promoted

Section Hand Demoted

Section Hand Suspended

Section Hand Reinstated

Section Hand Retired

Section Hand Pensioned

Section Hand Died

Section Hand Buried

Section Hand Exhumed

Section Hand Reburied

Section Hand Cremated

Section Hand Ashes

Section Hand Urn

Section Hand Monument

Section Hand Epitaph

Section Hand Obituary

Section Hand Funeral

Section Hand Pallbearer

Section Hand Mourner

Section Hand Widow

Section Hand Widower

Section Hand Orphan

Section Hand Heir

Section Hand Executor

Section Hand Administrator

Section Hand Guardian

Section Hand Ward

Section Hand Trustee

Section Hand Beneficiary

Section Hand Creditor

Section Hand Debtor

Section Hand Bankrupt

Section Hand Insolvent

Section Hand Solvent

Section Hand Rich

Section Hand Poor

Section Hand Middle Class

Section Hand Working Class

Section Hand Upper Class

Section Hand Lower Class

Section Hand Aristocrat

Section Hand Democrat

Section Hand Republican

Section Hand Socialist

Section Hand Anarchist

Section Hand Communist

Section Hand Fascist

Section Hand Nazi

Section Hand Jew

Section Hand Gentile

Section Hand Catholic

Section Hand Protestant

Section Hand Baptist

Section Hand Methodist

Section Hand Presbyterian

Section Hand Episcopalian

Section Hand Lutheran

Section Hand Mormon

Section Hand Quaker

Section Hand Shaker

Section Hand Holiness

Section Hand Pentecostal

Section Hand Seventh Day Adventist

Section Hand Jehovah's Witness

Section Hand Christian Scientist

Section Hand Unitarian

Section Hand Universalist

Section Hand Swedenborgian

Section Hand Theosophist

Section Hand Spiritualist

Section Hand Atheist

Section Hand Agnostic

Section Hand Deist

Section Hand Pantheist

Section Hand Polytheist

Section Hand Monotheist

Section Hand Henotheist

Section Hand Kathenotheist

Section Hand Monolatrist

Section Hand Henotheist

Section Hand Kathenotheist

Section Hand Monolatrist

counter 48349

Block 3.

105					
106					
147					
148					
189					
190					

4	5	6	7	8	

18	17	16	15	14	13

Pecos Co.

Scale 4000 varas to the inch

General Land Office, Austin, May 12th 1880

I, W. C. Walsh, Commissioner of the General Land Office do certify that the above Sketch of Pecos Co. is a true copy of the Map now in use in this Office

In testimony whereof I hereunto set my hand and cause the Seal of Office to be affixed, the day & date first above written.

W. C. Walsh
Comr

counter 18350

(22)

Pecos Co. Rec. Sk. 114

I, A. N. Lea, County Surveyor of Pecos County, Texas, do hereby certify that on the reverse hereof is a true and correct copy of the original on file in my office.

April 29, 1942. A N Lea

County Surveyor of Pecos County, Texas.

counter 48351

UNIVERSITY LAND
PECOS COUNTY, TEXAS

Surveyed by Frank F. Friend, Special Surveyor of University Lands

Surveyed at intervals from July 1926 to Oct. 1932

Scale 1000 vrs. = 1 in.

Legend
- Original Corners
- Approved Resurvey Corners
- Corners set in this Resurvey
- Abandoned improved roads
- Proposed net wire fences
- Net wire fences
- Main Highways
- Windmills
- Houses

This map of University Land and other Lands immediately adjacent thereto, showing natural and artificial objects, is true and correct being based on a survey made on the ground at intervals from July 1926 to October 1932

Frank F. Friend
Licensed Land Surveyor of Texas
and Special Surveyor of University Lands
San Angelo, Texas April 24, 1933

Compiled and drawn by J.A.Conklin
Counter 7835R

INSET NO. 1
SCALE 14

INSET NO. 2
SCALE 12

East 6830
1 B21 U.T.
N. 2680
West Escondido Spring
W 1100
South 1650

H. & G. N. R. R. Co. Block 11
T. C. Ry. Co. Block F
Block 16 University Land
Block 20 University Land
Block 18 University Land
Block 17 University Land
Block 19 University Land
G. C. & S. F. Ry. Co.
Block 603
G. C. & S. F. Ry. Co. Block C4
Block 604
Block 206
Texas & St. Louis Ry. Co. Block 125
Block 180½
Jasper County School Land Block 104
T. & St. L. Ry. Co. E. L. & R. R.
Block 126
R. R. Co.
Block 100
T. & St. L. Ry. Co. Block 127
G. C. & S. F. Ry. Co. Block R3

Spring Corner
Garza Irrig. & Mfg. Co.
Mary Simmons
J.V. Massey
Jno. L. Wright
S. B. Moffett
C.N. Peterson
W.F. Wilson
B.M. Smith
Mrs. A.L. Canon
J.T. Cloud
Mrs. M.F. Moorman
Chas. Boese
Henry Petty
I.J. Hunter
Mrs. M.J. Walker
Mrs. A.M. Dunnan
Jas. H. Lasater
Mrs. T. Cooper
Phillip Sanders
C.J. Williford
Ada Parker
J.D. McCaughan
W.H. Snider
Mrs. R.S. Sandell
Mrs. E. Barnes
A.C. Miller
N. Martin
M.J. Clinton

(23)

Pecos Co. Rio Sx. 114

Exhibit by University

Plant F. Friends Sketch.

Flat Folder

Rb'

counter 48353

D453

1087

THE UNIVERSITY OF TEXAS
AUSTIN

SCOTT GAINES
LAND ATTORNEY

February 9, 1943

J. H. WALKER
UNIVERSITY LANDS OFFICER

RECEIVED
FEB 10 1943

REFERRED TO MAP

Mr. Carl F. K. Blucher
103 West 32 Street
Austin, Texas

Dear Carl:

Referring to our brief conversation yesterday regarding the East Escondido System of University lands, I recall your statement that certain leases were issued before the Friend resurvey was made. The remark impresses me that you regard the resurvey as having shifted the section lines from the original Thomson position.

According to the Land Commissioner's findings of fact in the Nutt case and the reports by Surveyors Collard, Bucey, Lea and Friend, the sum of the north lines of Blocks 16 and 18 is 12 miles plus 529 varas. If the Lea line is the true east boundary of Block 16 and if the south boundaries of Blocks 16 and 18 correspond in length to the north boundaries, the divisional section lines running through the blocks would be off course 1° 30'. The theory of the Lea survey, at least the theory of those accepting it as fixing the Thomson courses, is that the lines of the original survey are off course 1° 30' due to a difference between the declination of the needle at that time approximately 11° 30' East and Thomson's given variation of 10°. The map of Pecos County now in use in the Land Office appears to be constructed on the theory that the lines run 1° 30' off of their called courses. The compiler followed Lea's 1911 sketch on file in the General Land Office.

Although R. M. Thomson signed the field notes of the system of 123 surveys, writing the notes from a sketch furnished him, C. W. Holt and H. C. Barton made the actual ground surveys. Captain Holt took Horace Thomson's place as one of the compassmen after the latter had been wounded at one of the Escondido Springs. Because of bad blood existing between Maurice B. Moore, Inspector and Commissioner for the selection of lands, and a member of the surveying party, the crews were divided, Holt taking charge of one and Barton the other. Captain Holt, as shown by correspondence from the Land Commissioner, was regarded as painstaking and accurate as a surveyor. His measurement of lines through the south part of the system extending east and west is about 400 varas shorter than Barton's measurements through the north part of the system. In other words, Barton's north boundary as measured and marked on the ground is about 400 varas longer than Holt's south boundary as

COPY

25

counter 48354

measured and marked on the ground. Both surveyors ran from west to east without making north and south connections. This throws the east boundary of Block 16 about 1° 30' off its true course. As the surveyor moves westward, the declination would decrease gradually were it not for some identifiable rock mounds in Blocks 16 and 17.

Mr. Friend in his resurvey took the north boundaries of Blocks 16 and 18 as a basis and projected his lines on perpendiculars southward. It will be noted that after leaving the mountain corner (northeast corner of Block 16) Mr. Friend makes no tie to any natural or artificial objects called for in the original survey until he reaches the northeast corner of Section 1, Block 19. Accordingly, if the theory advanced as the original location of these lines be true, which it is, they would go on the ground in a slightly different position from that given by Mr. Friend. My information is that practically all of the leaseholders some years ago agreed on the Friend divisional lines as marking the boundaries of their leases. The only surveys this agreement would affect would be the east tier of Block 16. My information further is that all the drilling that has been done in the two blocks has been in accordance with the Friend resurvey. Of course, if a holder of a permit-lease desires to establish the original location of his section or sections, the problem of finding that exact location will be up to him. There is not a single section in the entire system that can be set with absolute certainty in its original position.

Mr. Moore's failure to call for the East Escondido Spring in making his water connections shown in his classification is due to the fact that he was with the Holt party who passed south of the spring. Mr. Moore does not seem to have known of the existence of this spring.

The foregoing statements to some extent are based on hearsay evidence, all of which is believed to be true, but some of it may not be admissible under the application of strict rules. The supporting mounds, however, are there and one of the witnesses is still living.

Very truly yours,

J. H. Walker

JHW:G

cc to Hon. Bascom Giles

counter 18355

02

P. O. Box 1590 Phone 4151

CARDINAL OIL COMPANY

SAN ANGELO, TEXAS

April 2, 1943

Mr. J. H. Walker
Mr. Scott Gaines
University of Texas
Austin, Texas

COPY

Gentlemen:

Sometime ago I called you with reference to possible appeal by Mr. Nutt from decision of the Land Commissioner regarding boundary line of Block 16, University Lands, Pecos County.

At the time of my call, you advised that Geo. T. Wilson of San Angelo was attorney for Mr. Nutt. I had not known this. I immediately contacted Mr. Wilson and was advised by him that it had always been the intention of Mr. Wilson and his client, Mr. Nutt, to accept the decision of the Land Commissioner. He stated that no suit had ever been filed regarding the boundary situation and that the time limit for such suit expired on March 16.

In view of the acceptance by Mr. Wilson and Mr. Nutt of the Land Commissioner's ruling regarding the West boundary line of University Block 16, it occurs to us that the road is now opwn for a ruling on the East boundary line of said Block 16.

Will you please advise whether anything further has transpired with reference to locating the East boundary line of Section 16, and if not, whether progress can now be made in view of the attitude of Mr. Wilson and Mr. Nutt.

Yours truly,

/s/ Geo. D. Morgan

Geo. D. Morgan

GDM:AT

counter 48356 (26)

October 28, 1949

Mr. Byron L. Simpson
1511 Rio Grande
San Angelo, Texas

Dear Mr. Simpson:

Your request for instructions in surveying sections in G. C. & S. F. Ry., Blk. 603, and Blk. 604, Pecos County, Texas, has been received.

The beginning point is located at the NE corner of Section 1, University Land, Blk. 16, and the East line of this block extends S 1° 49' W, and passes through an old stone mound located 270.8 varas West and 98.5 varas South of Frank Friend's stone mound at the SE corner of Section 36, Blk. 16.

In constructing Sections 1, 2 and 3, Blk. 604, the West line of this block is constructed from a stone mound on side of mountain and described as being the SE corner of Section 36, Blk. 18, University Land. From this corner a line should be projected N 1° 49' E for a distance of 1900.8 varas, which should be the NW corner of Section 1, Blk. 604. From that corner a line should be projected Eastward to the intersection of the line running S 1° 49' W from the NE corner of Section 1, Blk. 16, University Land. The South lines of Sections 1, 2 and 3 are constructed from the stone mound on side of mountain eastward to its intersection of the line running Southwestward from Section 1, University Blk. 16.

Sections in Blocks 603 and 604 should be constructed as follows: Beginning at a rock mound on side of mountain, same being the SE corner of Section 36, University Land, Blk. 18, SW corner Section 1, NW corner Section 9 and NE corner Section 10, Blk. 604; thence West to an intersection of the East line of Section 3, University Land, Blk. 19. The South lines of

counter 78357
S-50674
119702-3

Sections 2 through 10, Blk. 603, are constructed from a large rock mound at the common corner of Sections 4, 5 and 6, of University Land Blk. 19 to its intersection with the West line of Section 10, Blk. 604.

The southernmost tier of sections in Block 603 should be limited to 1900.8 varas North and South, and their South lines should continue Eastward from the SE corner of Section 9, Blk. 603 to the West line of Blk. C-4, G. C. & S. F. Ry. Co.

All sections in this area should be pro-rated proportionately, both East and West and North and South, unless otherwise stated.

Sincerely yours,

BASCOM GILES, COMMISSIONER
OF THE GENERAL LAND OFFICE

HUvR:jp

counter 18358