

Bosque Co.

4/20/95

File

5579

abt 1230

Milam

PRE-EMPTION.

R. L. Scott

160 Acres

Act

5796.9 R.L.

Sketch and connecting line in  
Milam S. 3570

Decree within holds these  
is a vacancy for  
Preemptible

See end on 5/11/95

2-8-96

Abstr. Vol. 19

Mgl.

287 30

Cancelled in Ab. Vol. 62

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Affidavit } 7/95  
Protect } 18/03

S,

Tom L. Green  
Meridian



The State of Texas, }

County of Bosque

To the County Surveyor  
of Bosque County

By virtue of the accompanying affidavit made in accordance with  
Art. 3939 and 3940, Revised Statutes, and under the provisions of  
"An Act for the relief of actual occupants of the public lands, approved  
April 24th, 1879," I, R L Scott

hereby apply for a survey  
of the following premises, about  
60 acres, to wit:

<u>E. D. C.</u>	<u>James</u>
<u>Peter Wood</u>	<u>Robertson</u>
<u>Vacant.</u>	
<u>Robt Campbell</u>	

Lying north and adjoining  
the Robt. C Campbell Sur-  
vey

and I further state that I claim the same for myself, in good faith, under the laws granting Homestead donations; that I am  
without any homestead of my own, and that I have actually settled upon the land which I claim, \* all  
married man and that I believe the same to be vacant and unappropriated public domain

Signed,

R L Scott

Applicant.

THE STATE OF TEXAS, }

COUNTY OF Bosque

BEFORE THE UNDERSIGNED AUTHORITY, personally

appeared R L Scott Applicant, who being by me duly sworn

according to law, deposes and says that the above and foregoing statement is true and correct.

Signed,

R L Scott

Applicant.

Sworn to and subscribed before me this 18<sup>th</sup> day of March A. D. 1885.

IN TESTIMONY WHEREOF, I hereunto affix my official seal and signature.

C W Tidwell, Clerk County Court  
Bosque County, Texas  
By J L Mingus Deputy

\* Here state if "the head of a family"—if single that applicant is eighteen years of age.



DUTY OF THE SURVEYOR.

ARTICLE 3940. Said application shall be filed with the said Surveyor, and recorded by him in a well-bound book kept for recording pre-emption and homestead applications; and the said Surveyor shall give a receipt therefore, if desired.

ART. 3941. It shall be the duty of the Surveyor of the proper District or County, to convey the land described in the application aforesaid, as soon as practicable, and within twelve months after the date of said application, and the field notes thereof shall be certified to, recorded and mapped, as required by law in other cases, the applicant paying all legal Surveyor

File 5579  
Milam Co.  
R. L. Scott  
Application  
Filed 4/3/95.  
H. J. Green  
Chf. Clerk

Geo. D. Barnard & Co., PRS., ST. LOUIS.

THE STATE OF TEXAS,

County of Bosque

APPLICATION AND AFFIDAVIT  
FOR HOMESTEAD,

—OF—

R. L.  
Scott

Filed the 18 day of March,

A. D. 1895, and recorded in Book 1

Page 12

And Green  
SURVEYOR.



County of Basque } Field Notes  
State of Texas } of a Survey  
of 160 acres  
of land made for R. L. Scott  
it being the amount of land  
to which he is entitled by  
virtue of his affidavit of  
occupancy.

Said Survey is situated  
in Basque County on the waters  
of Hog and Nettie's Creeks about  
20 miles S of Meridian.

Beginning at the S.E. cor-  
ner of the Peter Wood 640 acre Sur-  
vey a mound.

Thence <sup>(measured 2036)</sup> N 30° W with said Wood's  
line 1900, vrs to said Wood's N.E.  
corner.

Thence N. 60° E. 444 vrs, to  
a pile of rock on the brow of a mt.

Thence <sup>(meas 2036)</sup> S 30° E 1900, vrs to a  
corner in the N line of the R. C. Camp-  
bell Survey.

Thence S 60° W 444 vrs. to beginning  
Walter Kilgore }  
Emmett Gibbons } Chairmen.

Surveyed Mch 27-28-29/89.

I, Tom L Greer, Co. Surveyor of  
Basque County, do hereby certify  
that the foregoing ~~attached field~~  
~~notes~~ are survey is made on the ground  
according to law, and that the limits boundaries and  
corners, with marks, natural and artificial are tru-  
ly described in the foregoing plat and field  
notes.

Tom L Greer,



R. L. Scott,  
Honestad  
Donation

File 5579  
Milam R.  
R. L. Scott  
Field Notes  
Filed 4/3/95  
H. J. Woods  
Chief Clerk

FILING FEE PAID.

APR 3 1895

JNO. P. HARRIS, RECEIVER,

GENERAL LAND OFFICE.

upon the basis of 1<sup>st</sup> & 3<sup>rd</sup> calls  
being 1900 vts. for 149 acres.  
If it is intended that thin calls  
should be read N30W 2036 vts, and  
S30E 2036 vts, OK for 160 acres  
Sellers.



# AFFIDAVIT TO ANY FACT

\* STATE OF TEXAS \*

COUNTY OF BOSQUE.

BEFORE ME, the undersigned authority, on this day personally appeared *L. H. Scrutchfield* a surveyor and known to me as such who, being by me duly sworn, on oath deposes and says that he was on the ground when a part of the original survey was made by Geo B Brath & Geo Grim Deputy, surveyors of Milam Land District and that he has been well acquainted with the lines ever since and knows of no vacant land between the R. C. Camille Peter Roads & E. C. Robertson & A. C. Cooper also that he has been County Surveyor of Bosque Co 4 or 5 years and has looked over and been over said land & has never found any vacant land. *L. H. Scrutchfield*

Sworn to and subscribed before me, this the *20* day of

*April*, *20th* 189*5*  
*J. V. Barnett* J. P.  
*Ex-officio Notary Public* Bosque County, Texas.  
*Precinct No 7*





3

File 5579  
Milam/Arce  
R. L. Scott  
Affidavit  
Filed April 13, 95.

W. E. Wood  
Chufleard



The State of Texas, }  
County of Bosque }

To the Commissioners of the  
General Land Office.

We the undersigned  
citizens and land owners of Bosque  
County, Texas, respectfully represent  
that on or about the 27<sup>th</sup> day of March  
1895, Tom L. Greer, Mayor of Bosque  
County, declared to be vacant and  
subject location the following  
described tract of land, to wit, 160  
acres, in Bosque County Texas, beginning  
at a point claimed by said Greer  
to be the S.E. Cor. of the Peter Woods  
640 acre survey, thence N. 30. E. 1900  
m.; thence N 60 E. 444 m.; thence N 30 E.  
1900 m.; thence S 60 W. 444 m. to the  
beginning.

That the said tract of land has been  
filed upon by our R. L. Scott and the  
field notes thereof forwarded to this  
office as vacant land under the  
homestead act.

That said land is not public or  
unpatented land, as claimed by the  
said Greer, but that the same is a part  
of the Peter Woods survey, of 640 acres,



as the undersigned are informed  
and believe, and that the owners  
thereof have had ~~pos~~ it in their  
possession, enclosed, cultivating  
using and enjoying the same for  
many years.

That the map of Boone County  
shows no vacant land between  
the said Peter Wood and the E. S. L.  
Roberts survey, and that the  
division line between said  
surveys is indicated by a base  
line of from seven to eight  
miles in length, extending from  
Gay Creek to Lion Oak Creek.

That the undersigned have  
been informed by surveyors and  
other persons who have seen said  
Peter Wood and said Roberts  
~~survey~~ tracts surveyed that said  
base line, which has old surveyors  
marks or marks upon it in many  
places between its extremities, is the  
true dividing line between said  
surveys, and that according  
to said line there is no public  
or vacant land between said surveys.

That for many years, about  
35 years, the people living in the  
neighborhood of said line have



measured said base line as  
the true division line between  
the said Peter Wood and E. S. C.  
Robinson surveys, and that  
although there has been a great  
deal of surveying by other and  
different surveyors, in the neighborhood  
of said surveys, and upon the south  
lines thereof yet no surveyor, except  
the said Paul L. Green, has ever  
attempted to pull said surveys  
apart and locate a vacancy  
between them.

Wherefore we, the undersigned,  
humbly file this our memorial  
and earnestly protest against said  
land being declared by this  
department to be vacant unoccupied  
land, or that that a patent be  
issued thereon to said R. L. Scott  
or to his assignee, because we  
further say that the present owners  
of said land have bought the same  
in good faith and paid for it  
with hard earned money.

Respectfully Submitted,

Tobias Smith

E. Lane

A. W. Vickrey.

(names over)



W. M. Hill  
 Joshua McClinton  
 J. M. Williams  
 J. Darby  
 J. H. Lyon  
 W. J. Poston  
 J. H. Standiford  
 M. W. Ballan  
 J. M. Ballan  
 R. M. Mayfield  
 H. L. Rice  
 W. W. Wickery  
 W. R. Price  
 R. M. Lane  
 J. A. Dowell

J. A. Mayfield  
 J. P. Allen

The State of Texas I J. V. Jarratt Jr.  
 County of Bosque In and for Precinct No. 7 Bosque  
 County Texas do hereby certify that I am  
 well acquainted with all the parties  
 whose names are subscribed to the foregoing  
 Instrument and know them to be Honorable  
 Law abiding Citizens of Bosque Co.  
 That they are all Land owners.  
 Witness my hand and seal as Notary  
 at Valley Mills Tex this April 20th 1890

J. V. Jarratt Jr.  
 Public Officer Notary  
 Public in & for Bosque Co. Tex





File 5579  
Milam Ave  
R. L. Scott  
Protest  
Filed April 13, 95  
H. J. W. S.  
Chflect.



Asaon Gansby.

J. Gansby, Jr.

Office Of

Gansby Bros.,

5579

2474  
miles

ackd General Merchants.

9/17/9  
Valley Mills, Texas

9-16-1895

A. J. Baker

Auctioneer

Dear Sir:

I have had the  
surveying done as recommended  
by you, on the E. S. C. Roberts &  
Casper & Peter Wood. the  
surveying was done by  
Col. H. W. Dillard and  
he found no vacant  
land for the R. L. Scott  
preemption as made by  
T. L. Greer County, Tex.  
The case is now in Dist  
Court and will not be  
tried before the next  
regular term. Scott is in  
jail for making false aff.



Sharon Gansby.

J. Gansby, Jr.

Office of

Gansby Bros.,

General Merchants.

Valley Mills, Texas

1895

Dear Sir: If there should be  
proved to be any vacant  
land and on account  
of any irregularity some  
presumption will not  
hold then the parties  
who own or have the land  
in possession want to  
take it up under the  
Scrap act.

Very Respect  
J. M. Williams



File 5579, (51)  
Milam Prov.

R. L. Scott  
Letter

Filed 9/17/95

Baker

Cover



I N D E X.

H.B. White -vs- Elzy Lane et.al.

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R.L.Scott -vs- Elzy Lane et.al.

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The State of Texas   ##

District Court, Bosque County, Texas.

County of Bosque   ##

August Term A.D. 1896.

To the Hon. J.M.Hall, Judge of said Court:

Your petitioner H.B.White, now comes and complains of Elzy Lane, T.M.Williams and J.A. Sowell the defendants, and with respect shows to the Court, that all of the parties, reside in Bosque County, Texas; That heretofore, to wit: on the 10th day of April 1896, the plaintiff was lawfully seized and possessed of the tract of land hereinafter described, situated in said County of Bosque holding the same in fee simple, that on the day and year last aforesaid the defendants entered upon said premises, and ejected plaintiff therefrom, and still unlawfully withholds from plaintiff the possession thereof to his damage in the sum of \$1500.00. That the premises so entered upon and unlawfully withheld from plaintiff by defendants is described by metes and bounds as follows viz:

Beginning at the N.W. corner of the E.S.C. Robertson 369 acre survey for corner of this; Thence S. 60 W. 241 varas to a corner in the east line of the R.L. Scott pre-emption survey. Thence S. 30 E. 1992 varas to a corner in the north line of the R.C. Campbell survey; Thence N. 60 E. 880 varas to the S.W. corner of the G.F. Reeder pre-emption survey, in the north line of another R.C. Campbell survey; Thence N. 30 W. 323 varas to a corner in the south line of said E.S.C. Robertson survey - *thence S 60 W 639 var to S.W. corner of said Robertson survey.* Thence N. 30 W. 1669 varas to the place of beginning, containing 121 1/2 acres of land, which was heretofore patented to this plaintiff by the State of Texas, on April 7th 1896 by letter patent No. 53 Vol. 13 which is hereto referred and made a part hereof:

That the above described land and premises consists in part of



H.B. White	##	Suit pending in the District Court,
No.2107 -vs-	##	of Bosque County,Texas.
Elzy Lane et.al.	##	August term A.D.1896.

Now in the above entitled cause comes the plaintiff and after leave of the Court being first had to file his first supplemental petition in replication to the defendants second amended original petition answer filed herein on August 31st 1896, and for plaintiff Supplemental petition says:

1.:

That said answer of defendants,under the ruling of this Court,was filed too late for plaintiff to urge his demurrers thereto; and plaintiff now here moves the Court to strike out said answer,because this Court and the plaintiff herein have not had an opportunity to urge their hereinafter mentioned demurreres,and for this the plaintiff prays judgment of the Court.

2.:

And for further replication to defendants answer, the plaintiff says the same is insufficient in law to entitle the defendant's to be heard thereon;for plaintiff says that if said land sued for was vacant and unappropriated domain,prior to the time that plaintiff filed his claim to purchase the same;then the defendant could not have had adverse possession,and that the paying of taxes on vacant land could not avail them; and axcepting to all the part of said answer attempting to set up a preference right over the claims of plaintiff is insufficient because,the said defendant has not yet applied to the Commissioner of the Land office,or to any other Officer having authority to now purchase said land nor has the defendants ever paid the money,or pffered to pay the money for same and that they have forfeited the right,and all of this plaintiff prays the judgment of the Court:

A.H.Lumpkin,attorney for plaintiffs.



3:.

And for further answer and plea herein the Plaintiff H.B. White now comes and says, that he is an innocent purchaser for a valuable consideration and without any notice of the claim of Defendants herein to all of said lands for plaintiff says that he was notified long before he applied for said 121 1/2 acres of land that the Defendants herein had applied for the same and had forfeited their right to said land because they had not paid for the same as required by law, and that the Commissioner of the General Land office of Texas the Honorable A.J. Baker had publically forfeited Defendants rights thereto and that Defendants at no time has ever complied with the law, and on account of their neglect of duty allowed their said claims to be forfeited by the law That the plaintiff as shown by his said patent No. 53 Vol. 13 of date April 7th, 1896, which is hereto referred to and made a part hereof did honestly and in good faith buy said 121 1/2 acres of said land from the proper authorities of the State of Texas and did pay in cash the said sum of \$2.00 per acre for said 121 1/2 acres besides \$1.00 for file fee and \$5.00 for patent fee making the sum of \$249.00 long before this suit was brought to wit: on or about the 6th day of April 1896 and that he was innocent of any fraud or wrong in buying said land Wherefore on account of the <sup>laches</sup> neglect of duty on the part of Defendants to comply with the law on their application to buy said land and by record of the facts their right or claims has been forfeited by the Commissioner of the General Land office of Texas, this plaintiff is an innocent purchaser without notice or knowledge of said Defendants claim, and that defendants ought not now to be heard on their said plea of superior title or their said prior possession as plead by them



and of all this plaintiff puts himself upon the Country and prays the judgment of the Court and for general relief.

S.H.Lumpkin, Attorney for plaintiff H.B.White.

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Filed September 2nd 1896, Plaintiffs First Supplemental petition.

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H.B.White	##	In the District Court of Bosque
No 2107 -vs-	##	County, Texas.
Elzy Lane et.al.	##	August term A.D. 1896.

Now comes Defendant under leave of the Court and amends his answer filed herein on the      day of August 1896, and for emendant says:

That they are not guilty of the wrongs injuries and trespasses charged them by plaintiff in said petition, and of this they put themselves upon the Country:

And for further answer and cross bill herein defendants aver and charge that the land sued for is and was not at the date of plaintiffs patent vacant land but was part of the E.S.C. Robertson 369 acre survey and a part of the Peter Wood 640 acre survey in Bosque County, Texas as defendants expects to prove under this bill and under their plea of not guilty herein which is not abandoned because of the filing of this special plea.

Defendants aver that notwithstanding said land is a part of said Robertson and Wood survey in accordance to their <sup>true</sup> live lines and corners as actually found upon the ground yet plaintiff is claiming that the same was a part of the public domain of the State of Texas and subject



to the patented by the State. Defendants aver that plaintiff has a pretended patent that was obtained from the State by fraud practised by T.L. Greer who was the County Surveyor of Bosque County who was agent of Defendants to procure a file to be made on said land under the law for these defendants. Said land having been in possession of these defendants for a long period of years to wit: about twenty years: but afterwards said Greer combined and acted with said White the brother in law of said Greer, and with other persons to defraud these defendants out of said land. That these defendants had a superior title and right to the plaintiff by reason of their long possession of said land and that their right continuous for six months after the said land is declared vacant if the same was vacant, which is not admitted but denied and that all of these facts were well known to said White before he purchased the same.

Wherefore the defendants asks that if the Court should hold that said patent was valid then they ask the title be vested out of said White and into these defendants, and they now here tender the price of said land to plaintiff in open Court. Wherefore they ask for judgment of this Cause.

Lockett & Kimball Attorneys for Defendants.

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Defendants First Amended Original Answer filed September 1st A.D. 1896

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H.B.White        ##        In the District Court of  
No 2107 -vs-        ##        Bosque County, Texas  
Elzy Lane et.al.    ##        August term 1897

Now comes the defendants under leave of the Court and amends their 1st Amended Answer filed herein on the 1st day of September 1897 and for amendment says:

That they nor either of them are guilty of the wrongs, injuries and trespasses charged against them by plaintiff in his petition and of this they put themselves upon the Country.

And for further answer herein defendants aver and charge that the land sued for is not and was not at the date of said patent of plaintiff vacant land but was a part of the E.S.C. Robertson 369 acre survey and a part of the Peter Wood 640 acre survey as they actually exist as shown by marked corners and lines upon the ground which lie in said Bosque County, Texas and which is owned by and in the possession of Defendants for more than twenty years prior to the date of said patent.

And for further answer and cross bill herein; Defendants says that over twenty years prior to the date of said patents these defendants entered upon said land described by plaintiff and in good faith enclosed the same by fences believing that said land was as actually marked upon the ground by marked <sup>lines</sup> ~~trees~~ and corners as well as other facts a part and parcel of the said two surveys that is said Robertson and Peter Wood and that since said first entry they have each continued to use enjoy and occupy as such enclosed land said 121 1/2 acres now covered by said Whites patent. That some time in the early part of the year 1895 T.L. Greer acting as County Surveyor made a survey, after many of the old land marks had disappeared by which he claimed said land vacant and these defendants to protect themselves against



possible loss filed upon said land and afterwards delivered to their agent T.L.Greer the money necessary to pay for the said land whereof he told defendant that the authorities at Austin would not receive the money because there was no vacancy there. That as late as the 1st of February 1896 the Commissioner of the General Land office refused to recognize said land as vacant. That these defendants continued to write letters asking if said land was vacant during September October, November and December 1895 and during said time filed a patent with said Commissioner against recognized the claim of the plaintiff and others That not with-standing the said patent and letters of Defendants the said Commissioners did on the 24th day of February 1896 declare said land vacant and on the 2nd day of April thereafter write a letter to the atty for plaintiff S.H.Lumpkin that he would have to furnish proff to said office that said land was not enclosed before patent could issue, and afterwards towit: on the 7th day of April 1896 without any notice to defendants that said land had been declared vacant said officer did issue said patent to said White in fraud of these defendants rights and to their great injury. That said T.L.Greer the agent of defendants and who was the brother-inlaw of plaintiff combined and acted with said White and the Commissioner of the General Land office with the intent to defraud and to deprive this defendantsof said land had a superior right to said land for a period of six months after it was declared vacant by the Commissioner of the Land office towit: February 24th 1896, and was superior to the rights of plaintiff until after the 24th day of August 1896.

Wherefore they say that their right under their files, if said Land is vacant is superior to plaintiff. That each and every act of



said plaintiff Greer, and Baker, were done for the purpose of misleading and defrauding these defendants. and they ask that said patent be cancelled and held for naught and that the right and title acquired by said White be vested out of him and into these defendants and that they be quieted, in their title.

Lockett & Kimball Attorneys for Defendants.

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Defendants Second Amended Answer-filed August 31st A.D. 1897.

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H.B. White	##	Suit pending in the District Court,
No 2107 -vs-	##	Bosque County, Texas
Elzy Lane et.al.	##	August term 1897.

Now in the above entitled cause comes the plaintiff H.B. White and after leave of the Court being first had and obtained to file his Supplemental petition in replication to the defendants Second Amended Original Answer filed herein on August 31st 1897; and for his Supplemental Petition says:

1.:

That the matters and things as set out in said defendants Second Amended Original Answer filed herein on August 31st 1897, are insufficient in law for the defendant to be heard thereon, and of this the plaintiff prays judgment of the Court.

2.:

And for Special Demurrers to said answer the plaintiff says (a) That all those allegations which attempt to charge that the Hon A.W. Baker Commissioner of the General Land office committed a fraud



and collusion with the Hon. Tom. L. Greer County Surveyor of Bosque County, are only conclusions, and no facts are therein alleged which would be sufficient to show any fraud; (b) because it appears from said answers that the said defendants had applied to purchase said land and that they knew that the same had been declared vacant on the 24th day of February 1896, and that the plaintiff White had applied and paid for said land the Statutory price therefor, and received his Patent for same on April 7th and defendants nowhere offer to pay said plaintiff the purchase money or to do equity or offer to do equity in order to have said patent of plaintiff cancelled; (c) because it appears from said answer that the defendants have allowed more than six months to elapse since they knew that the land was vacant, and have failed to offer to purchase the same; (d) because it appears from said answer that the defendants allowed more than ninety days to elapse after they had filed their application in the General Land office before they paid for said land, and because they have never paid for said land; (e) because defendants have never tendered into this Court the purchase price of said land as they would be required to so do in order to get the title vested in them; and all of this the plaintiff prays the judgment of the Court.

S.H. Lumpkin Attorney for plaintiff.

3.:

And for further answer plaintiff now comes and denies all and singular the allegations in the defendants second amended original answer filed herein on the 31st day of August 1897, and of this he puts himself upon the Country.

4.:

And for special plea in this behalf the plaintiff now comes and shows to the Court that long before he applied for the purchase



of said 121 1/2 acres of land under the Scrap Act that the defendants had filed their application in the General Land office for the purchase of the same land, and that on account of neglect of duty on the part of the defendants and each of them to remit the Statutory price, \$2.00 per acre, to the proper officer, as required by law, within the ninety days, as required by law, and on account of the negligence and laches on the part of the defendants to purchase said land within said ninety days from the filing in the General Land office their application and field notes and remitting to the Treasurer of the State the said \$2.00 per acre they have forfeited under article 4205 and 4206 of the revised Statutes all their rights to said land, and are now barred, and were barred at the date of the issuance of the Patent to plaintiff from purchasing said land, and of this the plaintiff is ready to verify and prove; wherefore plaintiff says that the defendants should not be allowed to now purchase said land, or recover the same from him, and for general relief.

S.H. Lumpkin Attorney for plaintiffs.

5.:

And for special plea by way of estoppel the plaintiff says that the defendants and each of them did apply to the said Surveyor of Bosque County, Texas, to purchase said land as patented to him, as here in before alleged and that by so doing the defendants and each of them did declare by their own free acts and deeds that the said land was vacant and subject to be purchased long before plaintiff applied to purchase the same, and that the defendants are now, and were at the issuance of said patent, to him estopping from denying that said land was and is vacant and subject to be purchased as aforesaid; and that on account of the acts of the defendants the plaintiff was induced to



believe that said land was vacant and that he paid the State of Texas the sum of \$2.00 per acre for said land, believing at the time that if said land was not vacant the said defendants would not have applied to purchase the same, and further that the Defendants never did pay

one cent to said land to any one and have parted with the value for *and wherefore he says that the title ought not now in good conscience to be allowed to say that said land is not vacant and keep the case with-out pay for come as required by law!* said vacant land which they now hold, and all of this the plaintiffs

read to verify, wherefore he prays that he have judgment for the restitution of his said lands, damages rents, costs of suit and general relief as heretofore prayed by him in his original petition.

S.H. Lumpkin, Attorney for plaintiffs.

Plaintiff's First Supplemental petition to Defendants 2nd Amended

Original Answer filed <sup>Sept 1st</sup> August 31st 1897.

The State of Texas

##

In the District Court of Bosque

County of Bosque

##

County August Term 1895.

To the Hon. J.M. Hall, Judge of said Court:

Your petitioner R.L. Scott, a resident citizen of Bosque County Texas Now comes and complains of Elzy Lane T.M. Williams Tobias Shultz John O. Scott and Wm. Rice, who also resides in said State and County, and with respect shows to the Court that heretofore to wit: on the 8th day of April 1895 that the plaintiff was lawfully seized and possessed in fee simple and entitled to the possession of the following described tract of land; lying and being situated in Bosque County, Texas, and on the waters of Hog and Neils creeks, and known as the R.L. Scott 160 acres pre-emption survey. About 20 miles South of Meridian, Texas; and which is



described by metes and bounds as follows:-

Beginning at S.E. corner of the Peter Wood 640 acre survey a mound for S.W. corner of this: Thence N.30 W. with said Woods E line 2036 vrs to the said N.E. corner of the said Peter Wood survey- Thence N.60 E. 444 vrs to the N.E. corner of this on the brow of the mountain Thence S 30 E. 2036 vrs to S.E. corner of this on the N. line of the R.C. Campbell survey Thence S.60 W. 444 vrs to the place of beginning, and being the same land surveyed for me by Tom L. Greer County surveyor of Bosque County, Texas, on March the 27-28-29 1895 as my homestead pre-emption survey, and that afterwards to wit on the said 8th day of April 1895 the said defendants unlawfully entered upon said land and premises and forcibly ejected plaintiff (who was and is the legal and equitable owner of said land and premises) from the same and still withholds from plaintiff the possession thereof to his damage in the sum of \$2500.00

Plaintiff avers that prior to his pre-emption of said land, the same was vacant public domain of the State of Texas, and that on said 8th day of April 1895 the same was in a high state of cultivation and was reasonably worth as rents thereon the sum of \$3.00 per acre per annum on said 160 acres from March 1895 to final trial hereof.

Premises considered the plaintiff prays that the defendants E. Lane T.M. Williams, Tobias Shultz John O. Scott and Wm Rice be each cited in terms of law to answer this petition, and that on final hearing hereof that the plaintiff have judgment against the defendants for the restitution of said land and premises for his damages for his rents all costs of suit and for general relief.

S.H. Lumpkin Attorney for plaintiff.

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Original Petition, filed April 10th A.D. 1895.

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R.L.Scott ##

No. 2024 -vs- ##

Elzy Lane et.al. ##

Now comes defendants in the above styled and numbered cause and demurs to plaintiffs petition, and says that the same is insufficient in law to entitle him to be heard thereon, and of this they pray judgment of the Court:

And for further answer herein defendants now come by their attorneys, and deny all and singular the allegations in plaintiffs petition and say that they are not guilty of the wrongs and injuries and trespasses in manner and form as charged and complained of therein against them, and of this they put themselves upon the country.

Gillett & Hale Attys for Defendants.

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Defendants Original Answer filed August 19th 1895.

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R.L. Scott ##

In District Court, Bosque County

No 2024 -vs- ##

January Term A.D. 1895

Elzy Lane et.al. ##

Now in the above styled and numbered cause come the defendants with leave of the Court first had and obtained to amend their original answer filed herein on August 19th 1895 and for amendment says that they demur to plaintiffs petition, and say that the same is insufficient in law to entitle him to be heard thereon and of this they pray the judgment of this Court.



And for further answer herein defendants say that they are not guilty of the wrongs, injuries and trespasses charged against them by plaintiff in said petition, and of this they put themselves upon the Country.

And for further answer and cross bill herein defendants aver and charge that the land sued for is and was not at the time of the accrual of plaintiffs pretended claim vacant land, but was part of the E.S.C. Robertson 369 survey and of the Peter Wood 640 acre survey in Bosque County Texas as defendants expect to prove under this bill and under their plea of not guilty herein, they now waving the right to any evidence they may be entitled to introduce under the said plea of not guilty by reason hereof. Defendants aver that notwithstanding said land is a part of said Robertson and Wood survey according to their true lines and corners as actually found upon the ground, yet plaintiff is claiming that the same was and is a part of the public domain of the state of Texas, and subject to the homestead claims of actual settlers. Defendants aver that plaintiff has made some kind of an affidavit and filed upon said land and has procured the same to be surveyed by T.L. Greer, county surveyor of Bosque County, Texas. Defendants avers and charge that plaintiff's said pretended file was fraudulently made and the survey thereof by the said T.L. Greer was fraudulently procured, and in null and void and confers no rights upon him, because defendants say that the plaintiff is not now, and never has been an actual settler upon said land. Defendants aver and charge that when plaintiff made his pretended application to file upon said land of any part thereof and that when he made affidavit in support and to have the same surveyed he was not in possession of said application, said affidavit being required by law, he was not an actual settler.



upon said land, and that he was not improving the same for a homestead, and that said application and affidavit to the effect that plaintiff was an actual settler upon said land and was improving the same for a homestead was falsely and fraudulently made by plaintiff. Defendants aver that if the Court, after hearing all the facts introduced upon the trial hereof, should hold that said land is vacant, and that said application and affidavit are not fraudulent and void, then they say that said pretended file and claim of plaintiff is void as to them, because they further say that they purchased said land from John Mayfield R.M. Mayfield and T. Shultz from Joshua McQuiston and Bernard Shultz as a part of the said Robertson and Wood surveys, the defendant T.M. Williams having purchased the land for which he is being sued, which is a part of said Robertson survey from John Mayfield, and all that part of the land for which he is being sued, as a part of the said Wood survey from R.M. Mayfield and T. Shultz. That the defendant Elzy Lane purchased the land out of the E.S.C. Robertson survey for which he is being sued, from Joshua McQuiston. And that the defendant Tobias Shultz purchased the land out of the said Wood survey and for which he is being sued from Bernard Shultz, and entered upon it in good faith not knowing that the same was vacant, and believing that they were the true and rightful owners thereof, and have improved it and paid all taxes due thereon to the state. Defendants aver that said land is less than 640 acres, and that since their purchase have been in their actual possession and within their actual enclosure, with other portions of said survey and that they have been and are now actually residing upon said land. Defendants aver that said land as never been declared to be vacant and subject to pre-emption by the Commissioner of the General office of the state of Texas, and that should the Court adjudge the said land to be vacant and subject to pre-emption then defendants say that under the facts, as herein alleged and the laws



of the State of Texas they have a preference right over the claims, file pre-emption, of the plaintiff and all other persons whom so ever to purchase the same from the said State of Texas, and that said right exists for the period of six months from the time said land is declared to be vacant by said commissioner, or by the judgment of this court, and that defendants here by claim, and plead said right, and represent to the Court that in the event that said land is declared to be vacant they desire to purchase it from the State of Texas and will, within six months make the necessary application and file thereon and pay the necessary sums of money to effect said purchase.

Wherefore defendants pray the court to establish upon the ground the true lines and corners of the E.S.C. Robertson and Peter Wood survey and declare the land sued for to be a part thereof, but should the Court adjudged said land to be vacant then defendants pray that plaintiff's pretended application and file be cancelled on account of fraud, and that defendants have the right to purchase said land from the said State of Texas, over the rights of plaintiff and all other persons whom-so-ever for the period of six months from the trial of this cause, and that all conflicting claims with the rights of these defendants be held in abeyance until the expiration of the said six months and as in duty bound will ever pray

And for further answer herein defendants say that they and those under whom they claim have had adverse possession of the lands sued for in good faith for more than one year next before the commencement of this suit and that they and those under whom they claim have placed thereon permanent and valuable improvements of the value of \$--- during the time they have had the possession thereof. That the de-



defendant Elzy Lane has placed on the land which he is sued on herein, the following improvements to wit: 600 yards of cedar posts and barbed wire fence of the value of \$75.00 That on the 4th day of March 1882 he purchased the land sued for from Joshua McCuiston and received from him a warranty deed to the same. That defendant purchased said land as a part of the E.S. Robertson 369 acre survey and that his said grantor pointed out to him said land and represented to him that the same was a part of the said Robertson survey, and that he and those under whom he claims, before placing said improvements upon said land, caused the same to be surveyed by a practical and competent surveyor and that said surveyor informed them that said land was a part of the said Robertson survey, and believing and relying upon said representations they placed upon said land said improvements all of which defendant is ready to verify and prove, wherefore he prays judgment for the value of said improvements as aforesaid.

That the defendant, Tobias Shulz, and those under whom he claims have placed improvements on the land which he is sued for herein, as follows to wit: One string of good rock fence 4 feet high, 500 varas in length of the value of \$250.00 also 1600 varas of good cedar post and barbed wire fence of the value of \$150.00 and has also placed in a high state of cultivation 50 acres of said land which improvements is of the value of \$5.00 per acre, aggregating the sum of \$250.00 all of said improvements aggregating the sum of \$650.00.

That on January 11th 1887 he purchased the land which he is sued for from B. Shulz and received from him a warranty deed to the same. That defendant purchased said land as a part of the Peter Woods survey and that his said grantor pointed out to him said land and represented to him that the same was a part of said Wood survey and that he and



those under whom he claims, before placing said improvements upon said land caused the same to be surveyed by a practical and competent surveyor and that said surveyor informed him that said land was a part of the said Wood survey and believing and relying upon said representations they placed upon said land said improvements; All of which this defendant is ready to verify and prove.

Wherefore he prays judgment for the value of said improvements aforesaid.

That the defendant T.M. Williams and those under whom he claims have placed improvements on the land which he is sued herein for, as follows to wit: 6980 varas of good cedar posts and barb wire fence of the value of \$1000.00 also have put in a high state of cultivation 75 cares of said land which improvements is of the value of \$5.00 per care aggregating the sum of \$375.00 the total value of all his said improvements on said land being \$1375.00. That on January 3rd 1876 he purchased a part of the land he is sued for of John Mayfield and on Jan. 27th 1883 and July 30th 1889 respectively, he purchased a part of the land sued for from R.M. Mayfield and T. Shultz and received from said grantors warranty deeds to the same.

That he purchased a part of said land from John Mayfield as a part of the E.S.C. Robertson 369 acre survey and that he purchased a part of said land from R.M. Mayfield and T. Shultz as a part of the Peter Wood 640 acre survey and that his grantors in said deeds pointed out said lands to him and represented to him the same were a part of the said Robertson and Wood surveys respectively as aforesaid, and that he and those under whom he claims before placing said improvements upon said lands, caused the same to be surveyed by a practical and



competent surveyor, and that said surveyor informed them that said lands were parts of said Robertson and Woods surveys respectfully as described in said deeds and they, believing and relying upon said representations placed upon said lands said improvements. All of which defendants are ready to verify and prove

Wherefore they pray judgment for said improvements as aforesaid.

Sillette & Hale Attorneys for Defendants.

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Defendants first amended original Answer filed Feb'y 6th 1896.

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R.L.Scott                    ##                    In the District Court of Bosque  
No 2024 -vs-                    ##                    County Texas August Term 18  
Elzy Lane et.al.

Now in the above styled and numbered cause comes the defendants Elzy Lane, T.M. Williams, and Tobias Schulz with leave of the Court first had and obtained to amend their first amended original answer filed herein on February 6th 1896, and for amendment and in lieu thereof, say that they demur to plaintiffs petition herein for the reason that the same is insufficient in law to entitle him to be heard thereon, and of this they pray the judgment of the Court.

And for further answer herein said defendants say that they are not guilty of the wrongs injuries and trespasses charged against them in said petition, and of this they put themselves upon the country

And for further answer herein the said defendants say that plaintiff ought not to have and maintain this action against them, because



they and those under whom they claim have had and held peaceable, uninterrupted and exclusive adverse possession of the lands sued for, improving, cultivating, using and enjoying the same, and paying all taxes due thereon to the state of Texas, for a period of more than 30 years next before the bringing of this suit, and that the payment of said taxes and said long continuous possession, claim, use and enjoyment of said land, create a presumption in defendant's favor that the State of Texas has parted with the title to said land by grant thereof and that same has long since ceased to be a part of the public domain of said state? All to which defendants are ready to verify. Wherefore they pray judgment of plaintiff ought to have and maintain this suit.

And for further answer and cross bill herein defendants aver and charge that the land sued for is not now, and was not at the time of the accrual of plaintiffs pretended claim, public vacant land, but was a part of the E.S.C. Robertson 369 acre survey, and of the Peter Wood 640 acres survey on Hog Creek in Bosque County, Texas, as they expect to prove under this bill and under their plea of not guilty herein (they not waiving the right to any evidence they may be entitled to introduce under their plea of not guilty by reason thereof)

Said defendants aver that notwithstanding said land is a part of said Robertson and said Wood surveys according to their true lines and corners as actually found upon the ground, yet plaintiff is claiming that the same is and was a part of the Public Domain of the State of Texas and subject to his said pretended claim and file. Said defendants aver that <sup>affidavit, application are the basis</sup> plaintiff's said pretended claim, and that said pretended claim was fraudulently made and is null and void and confers no right upon him, because defendants says that plaintiff is not now,



now has he ever been an actual settler upon said land, and that when he made his said pretended application and file upon said land he was not in possession of any part thereof, and that when he made said affidavit in support of said application, the same being required by law, he was not an actual settler upon said land, and was not improving the same as a homestead and that said affidavit and application to the effect that plaintiff was an actual settler upon said land, and was improving the same as a homestead was falsely and fraudulently made by him, and that if the court after a full hearing hereof should hold that said land is vacant and that said affidavit and application are not fraudulent and void then these defendants say that said pretended affidavit and application are void as to them, because they say that they became the owners of said land for a valuable consideration, believing the same to be a part of said Robertson and said Wood surveys and that they and those under whom they hold entered upon and took possession of the same in good faith and have so held the same for many years, not knowing that the same was vacant, and believing that they were the true and rightful owners thereof, and have improved it and have paid all taxes due thereon to the State of Texas Defendants aver that said land is less than 640 acres, and that since they became the owners thereof, it has been in their actual possession and inclosure and that they have been and are now actually residing upon said land. Said defendants aver that said land has never been declared vacant and subject to pre-emption by the Commissioner of the General land office of the state of Texas and should the Court adjudge said land to be vacant, they have, under the facts herein alleged and the laws of the State of Texas a preference right over the



claims, files and pre-emption of plaintiff and all other persons whom-so-ever to purchase the same from the State of Texas, and that said right exists for a period of six months from the time said land is declared to be vacant by said Commissioner or by a judgment of this Court and that said defendants here plead and claim asaid right and represent to the Court tht in event said land is declared to be vacant they desire to purchase it from the State of Texas and will within said six months make the necessary file and application thereon, and pay the necessary sums of money to effect said purchase.

Said defendants aver that if the Commissioner of the General land office of the State of Texas ever declared said land to be vacant, or any part thereof, they had no notice or knowledge thereof until about May 26th 1896.

Wherefore these defendants pray the Court to establish on the ground the true lines and corners of said Robertson and Wood surveys and declare the land sued for to be a part thereof: but should the Court adjudge said land to be vacant, then they pray that plaintiff's pretended application and file be cancelled for fraud, and that they have the right to purchase said land from the state of Texas over the rights of plaintiff and all other persons whom-so-ever for a period of six months from the trial of this cause, and that they recover from plaintiff all costs by them in this behalf incurred.

Lockett & Kimball, Gillette & Hale

Attorneys for the Defendants.

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Defendants Second Amended Original Answer. Filed Aug 31- 96-

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H.B.White        ##        Be it remembered that on this the 2nd day  
No. 2107 -vs-        ##        of September A.D. 1897, this cause came on to  
Elzy Lane et.al. ##        be heard and cause No. 2024 of R.L. Scott  
e.tal. -vs- Elzy Lane et.al. and cause No. 2039 of G.E. Reeder -vs-  
Joshua McChristian having heretofore been called regularly on the  
docket for trial, and the parties plaintiffs and the defendants in  
person and by attorney having agreed in open Court that since the  
matters in controversy appertained to the same vacant land it was agreed  
that the three cases above named should be tried at the same time and  
upon the same facts, and thereupon came on to be heard the plaintiffs  
general demurrer and five special exceptions to the defendants second  
amended original answer filed in this cause No. 2107 of White -vs- Lane  
and the Court after hearing the plaintiffs H.B.White's said demurrers  
to said answer filed herein by the defendant in cause No. 2107 and  
being advised as to the law arising on the same is of the opinion  
that the law is against the said demurrers. It is therefore considered  
by the Court that the said general demurrer and all of said special  
demurrers of the said plaintiff H.B.White against the said second amend-  
ed original answer of the defendant Elzy Lane et.al. as set out in said  
supplemental petition filed herein on September 1st 1897 be and the  
same are hereby overruled, to which ruling and judgment of the Court  
the plaintiff White, by his attorney then and there in open excepted.

And the cause further coming on to be heard in connection with  
said cause Nos. 2024-2039 and parties plaintiff and the defendants  
appeared and announced ready for trial, and thereupon came a jury of  
good and lawful men to wit: J.M. Moss and eleven others who after being  
duly selected empanelled and sworn according to law to try said  
cases, and after hearing the pleadings read, evidence adduced upon the  
trial, argument of counsel, and the charge of the Court retired to con-



sifer of their verdict and afterwards towit: on the 4th day of September 1897, returned into open Court the following verdict towit:

" We the jury find that the land sued for is and was not vacant and we further find for the defendants.

J.M. Moss foreman".

which verdict was received and approved by the Court. It is there fore considered by the Court that the plaintiff H.B.White take nothing by his suit and that the defendant Elzy Lane T.M. Williams and J.A. Sowell go hence without day and recover of and from plaintiff all costs in this suit incurred for which they may have their execution.

And it further appearing to the Court that the plaintiff H.B.White claims the land described in his petition in this suit by virtue of patent No. 53 Vol.13. issued to the said H.B.White on April 17th 1896 by the State of Texas, the said White having purchased the said land and fully paid for the same in accordance with an act approved March 29th 1897 Chapter 80 page 61 general laws as described in said patent and in plaintiff's petition. It is therefor ordered adjudged and decreed by the Court that the said patent be and the same is hereby cancelled and held for naught, and that the cloud cast upon the defendants title by reason of said patent be and the same is hereby removed.

It is further ordered by the Court that execution issue in favor of the officers of Court against each party respectively for all costs by them in this behalf incurred.

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Recorded in Civil Minute Book "I" page 533,534,535. Civil Minutes  
District Court of Bosque County, Texas. --

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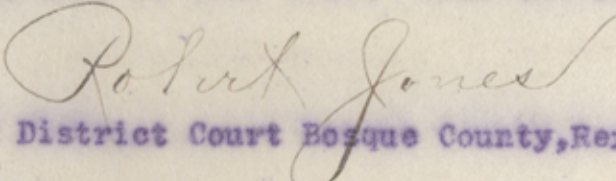


The State of Texas   ##

County of Bosque       ##

I, Robert Jones, Clerk of the District Court of Bosque County, Texas do hereby certify that the foregoing 25 pages contains a true and correct copy of the Original Petition Defendants Original Answer, Defendants First Amended Original Answer, Defendants Second Amended Original Answer, First Supplemental Petition And Plaintiff First Supplemental Petition to Defendants Second Amended Original Answer filed August 31st 1897. in cause No. 2107 H.B. White -vs- Elzy Lane et.al. And the Original Petition, Defendants Original Answer, Defendants first amended original answer, And Defendants Second Amended original Answer in cause No. 2024 R.L. Scott -vs- Elzy Lane et.al. and the final judgment in both of said causes. as the same appear on file in my office.

Given under my hand and seal of said Court this the 14th day of November A.D. 1903.

  
Clerk District Court Bosque County, Texas.



100 acres of land in a high state of cultivation and that the rental value thereof is reasonably worth the sum of \$3.00 per annum from and since the said 7th day of April 1896; and that the balance of said land of 21 1/2 acres is good pastoral land, and is reasonably worth in rents per annum 25 cents per acre, and which said rents are being unlawfully appropriated by the said defendants, to the further annual damage of this plaintiff in the sum of \$500.00.

Premises considered, the plaintiff prays that the defendants Elzy Lane T.M. Williams and J.A. Sowell be each cited in terms of law to answer this petition, and that on final hearing hereof that plaintiff have judgment for the restitution of the above described lands and premises and for his damages, and rents and for all costs of suit, and for general relief.

S.H. Lumpkin, attorney for the plaintiff.

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Plaintiff's Original petition filed in this office April 30th A.D. 1896.

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H.B. White

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In the District Court,

No 2107 -vs-

##

Bosque County, Texas.

Elzy Lane et.al.

##

August term A.D. 1896.

Now comes Defendants and say they are not guilty of the wrongs, injuries and trespasses as laid to their charge in plaintiff's petition and of this they put themselves upon the Country:

Whereupon they pray Judgment of the Court, etc. etc.

Locket & Kimball, Attorneys for Defendants.

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Defendants Original Answer filed in this office August 17th A.D. 1896.



P. 5579

3519-20-24  
 P. 5579

File No. 5579  
 Bosque County.  
 Milam Pre. Land.

R. L. Scott  
 Pleading & Judgment -

Filed 11/18 1883  
 J. P. Robinson  
 atty Com'r  
 W. P. Roberts  
 File Clerk

See under this  
 set of pleadings  
 & decree thereon  
 Milam A. 3519-20  
 + 24. McLaughlin  
 11/19/83