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Opinion in regard to State of Title of Porciones 71 and 72

J C. Sullivan

John Closner

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*Belongs to Mrs. H. P. Gifford
Here for reference of file*

PORCION NO. 71, Narcisco Cavazos Original Grantee.

The abstract fails to show a copy of the original grant, though there appears a confirmation by the Legislature of the State of Texas under the Act of February 10, 1852. See Vol. 3, page 69, Gammel's Laws.

There does not appear to be any family tree of Narcisco Cavazos, showing who were his heirs and to what portions they had title.

The first conveyance which the abstract shows to this property is a deed dated May 4, 1842, and is a Mexican deed from Asmir Christian Bredall to E. D. Smith. This instrument recites that the grantor Bredall acquired this land by purchase from Juan Lambe in 1838, who purchased same from Manuel de la Vina, the grantee of Ramon Cavazos Hinojosa, who inherited from his father Matias Cavazos, the grantee of Narcisco Cavazos. The acknowledgement of this deed is not given.

From the above will be seen that there is no record of any conveyance from the date of the original grant in 1767 to 1842.

In 1854 461 acres out of this porcion were levied on by the Tax Collector and sold to Roland Ritchie, as the property of Carlos Flores and Roland Ritchie, for settlement of taxes of 1853. This abstract does not show what, if any, interest the said Flores or Ritchie had in this porcion

In 1857 a survey of this porcion was made for E. D. Smith, who obtained the interest of Narcisco Cavazos in 1842.

In 1857 E. D. Smith and wife conveyed all their interest in this porcion, without stating what interest was conveyed, to Nathaniel Jackson.

According to the conveyances, Nathaniel Jackson died, leaving his widow Mathilda, and the following children Eli, Martin, Columbus, Bryant and John Jackson, and Mathilda Roland.

Mathilda Jackson, widow, and her children then conveyed to Pedro Garza by special warranty deed dated September 10, 1872. The recitations in this deed are very confusing, and it can not be ascertained whether it was a conveyance of their entire interest, or, as the latter part of the deed shows, only an eighth. From the ^{latter portion of the} subsequent ~~deed~~ it would seem that it was merely a conveyance of an eighth.

Mathilda Jackson, widow, conveys her interest in the land to Nancy Rutledge. She then joins in a conveyance in 1875 to Eli Jackson, purporting to act for herself and the children of her son, Bryant Jackson, and

is joined by her three children, Columbus, Martin and John. This conveyance purports to be a conveyance of 660 acres, the interest of Lucinda Lyons in the estate of her father Nathaniel Jackson. The acknowledgements to these conveyances are defective.

Mathilda Rowland in 1876 conveys 714 acres out of Porcion 71 to Eli Jackson.

Mathilda Jackson then conveys a certain interest out of the porcion to Eli Jackson.

Columbus Jackson then sells 156-1/4 varas, his inheritance from his deceased father Nathaniel Jackson, to W. J. T. G. Brewster.

Then follows an agreement between Eli Jackson, Martin Jackson, W. J. T. G. Brewster and Pedro Garza, as follows: It recites all former conveyances; that the heirs of Jackson had amicably divided the porcion among themselves, each taking 157-1/2 yards front on the river, or a one-eighth portion thereof. One of the children, Lucinda, relinquished her right to the other seven. When Bryant Jackson sold his lot to Pedro Garza, Pedro Garza agreed to take Lucinda's portion and to surrender lot No. 4, which he had purchased of Bryant. Then Eli purchased No. 3 and No. 4. Afterwards Brewster purchased No. 6 and No. 7, thus vesting the title to the porcion, according to this agreement, three parts in Eli Jackson, one part each in Mathilda Jackson and Martin Jackson, two parts in W. Brewster and one part in Pedro Garza.

Up to the time of the execution of this agreement, it was impossible to determine what part of the porcion belonged to the claimants.

Assuming the division of the property as shown in the agreement, the title proceeds.

Mathilda Jackson then conveys 268 acres to Nancy Rutledge, or one-third of her interest in the porcion.

Emile Dorsey purports to inherit from her mother, Mathilda, and conveys her interest by an invalid deed to her husband in 1880.

Maria Jackson Champion, purports to inherit some interest in this land from her mother Mathilda, and conveys same in 1880 to Alexander MacHaney.

Emile Jackson Dorsey, joined by her husband then makes a proper conveyance in February, 1882, of an indefinite interest in said porcion.

Mathilda Roland, by her attorney Peyton Roland, (if Peyton Roland was her husband this conveyance is void) conveys all her interest to Eli Jackson.

Emile Jackson Dorsey and husband then convey an indefinite portion of this tract to Eli Jackson.

✓ Martin Jackson then conveys a certain portion of this tract to the Methodist Episcopal Church.

James, Lucinda and William Jackson convey all their interest in the portion of Lucinda Lyons, containing 660 acres.

Alexander MacHaney and wife then convey 69 varas front to John Closner.

Eli Jackson then conveys 885 acres, or 200 varas front, to John Closner.

Eli and Martin Jackson then convey 419 acres, or 155 varas front, to John Closner.

Under the above conveyances John Closner purported to obtain title to 1739 acres.

Minerva, William and George Brewster mortgaged 1159 acres of this porcion to John Closner in 1897. This mortgage does not appear to have been released.

Minerva Brewster then conveys her interest as a survivor of the community estate of her husband W. G. T. Brewster, or a half interest in 1159 acres, to William Brewster.

Angela Jackson in 1898 conveys all her interest to 1000 acres out of this tract, to Nathaniel Jackson.

Eli, Robert, Nathaniel, Amalia and Amanda Jackson in 1899, convey 666-2/3 acres out of Porcion 71 to John Closner.

Josephine Dorsey, under a conveyance from Gorge Brewster and wife, claims twenty acres out of this Porcion.

T. Martinez, under a conveyance from Martin Jackson and wife, claims fifteen acres out of this tract.

Louis, Isaac and Manlis Routledge purport to claim each a small interest in this porcion by virtue of a conveyance from Nancy Routledge, who under the recitations in the deed, acquired same by purchase from her mother, Mathilda Jackson.

A. T. Hester purports to claim an undivided 361 acres out of this tract by virtue of a conveyance to him from Martin Jackson, who purports to own same by virtue of inheritance from his father, Nathaniel Jackson.

Robert Jackson then conveys 28 acres to Nathaniel Jackson, who with Eli, Robert, Amalia and Amanda Jackson, convey all their title to two-thirds of their inheritance from the estate of Alica Jackson, one of the children of Eli Jackson, to John Closner.

Eli, Nathaniel, Amalia and Amanda Jackson convey, in 1903, all their interest in this porcion, excepting a strip 220 Mexican varas wide from east to west and one mile long.

There is an unreleased mortgage from Closner and wife, executed in 1901, in favor of Geo. Bruley, on the following lands out of Porcion No. 71, 885 acres, 2434 acres and a strip 69 varas front on the river and 25000 varas deep, to secure three notes aggregating \$10,200.00 due February 15, 1902, 1903, and 1904, with interest at 8%.

From the detailed conveyances, the lack of acknowledgements in full, absence of complete description in the various deeds and of maps of the respective shares and parts thereof purported to be conveyed, no administration or no family trees, it is impossible to determine the present exact condition of the title.

PORCION NO. 72.

The grant does not appear in the abstract, but Porcion No. 72, as shown by the confirmation by the Texas Legislature of February 10, 1852, was formerly granted by the Spanish Government in 1767 to Jose Maria Balli and the confirmation is to said Balli, his heirs and assigns, being Confirmation No. 16, Cameron County.

There is no record of any administration on the Estate of said Balli, nor any affidavits of heirship or family tree by which could be reasonably determined who were his heirs. However, in 1857, Ygnacio, Guadalupe and Victoria Balli, claiming to be the heirs of said original grantee, convey Porcion 72 to one W. H. Robertson. This conveyance is void by reason of the fact that no seal is attached to the acknowledgement.

In the same year, 1857, Begnigno Leal, the husband of Victoria, Ygnacio Balli and his wife Guadalupe, Isidro Balli, and his wife (Leal), purport to convey said entire grant to one D. L. McGraw. This conveyance is also void because of invalid acknowledgements, no seals appearing thereon.

The same parties then purport to convey the entire porcion to both W. M. Robertson and D. L. McGraw, but this conveyance is also void on account of defective acknowledgements, and the failure to have the signature of the wife acknowledged separately and apart from their husband.

Under the above conveyances the said McGraw and Robertson claim to have title.

In 1869 Wm. McGraw, purporting to be the son and sole heir of D. L. McGraw, executes a power of attorney to E. Dougherty to sell out his interest in said porcion.

In 1872 the State of Texas, through the District Attorney, files a petition in escheat, alleging in said petition that in October, 1859, William Robertson, the owner of the land, had died without heirs, and asked a judgment revesting the title to saidland in the State of Texas.

This suit was opposed by one L. H. Box, attorney for A. Routledge, who claimed to own the entire porcion by limitation, and if not the entire part, 640 acres thereof because of improvements made.

In 1875 Box withdraws all his pleadings in this case, permits the State to take a judgment in escheat. A sheriff's sale is had and Box

buys in the property personally. It should follow that the attorney was charged as trustee for his client, Routledge, unless some authority be shown in the abstract authorizing him to purchase the land individually.

Box, however, purports to claim said porcion, and in 1876 purports to purchase the interest of Wm. McGraw, by virtue of a deed from his attorney Dougherty, but the acknowledgement ~~by~~ said attorney Dougherty is fatally defective. In this conveyance by McGraw, through his attorney, to Box, a mortgage is retained for unpaid purchase money, and this mortgage has never been released so far as the abstract shows, except so far as appears from a statement made in a release executed by A. J. Leo of one of the notes, reciting that ~~the~~ former note had been paid and that he, as endorsee of the second note, released the entire mortgage. This release is further supported by an affidavit of Wm. P. Dougherty, a son of E. Dougherty, the original Trustee, filed in 1904.

It would appear from the above that as neither Routledge or McGraw obtained good title by virtue of the conveyances from the supposed heirs of the original grantee, Balli, that the record title up to this point, in absence of any claim of limitation, would still be in the said heirs of said Balli.

Lina H. Box, the claimant of the entire porcion, died August 8, 1881, leaving a will bequeathing all his property to his three children, John L. Myona and Emma Box, and providing that in case a child which his wife Louisa was then enciente should be born, that child should also inherit an equal portion.

There is no record shown in the abstract of the birth of this child, but Louisa Box, the widow, takes out papers of guardianship on four children, John L., Myona, Emma and Lina, the latter doubtless the new born child.

The executrix duly qualified and obtained an order of court for the sale of 550 varas front out of this porcion, or 2434 acres, which land was sold to John Closner in 1892 and the same approved by the court.

Afterwards the said widow, for herself and as guardian of her minor children, confirms this sale.

In 1902, Louisa, the widow, and her son John L., mortgaged to Closner 2421 acres out of this tract to secure \$3000.00. This mortgage, so far

as the record shows, has not been released, but a second mortgage on the same land was executed by the same parties in 1903 in favor of M. Fernandez, and this mortgage has also never been released.

Myona and Lina, two of the four children of L. H. Box, mortgage all their interest, 888 acres, to M. Fernandez. This mortgage is not due until February, 1905.

The widow and four children of Box then convey 2-1/2 acres adjoining the sugar factory to John Closner in 1903.

Louisa Box and children, all being of age at that time, 1904, convey a strip of land one mile in length to the Union Trust Co., in consideration of the building of a railway over their lands. This conveyance was conditioned that the road be in operation by December 31, 1904. (Was the railroad then in operation?) The land thus conveyed by Louisa Box and children, if taken out of any of the mortgaged portion, unless consented to by the mortgagees, would be an invalid conveyance as against them.

Louisa and her four children then convey to Closner twelve acres adjoining the 2-1/2 acres heretofore conveyed.

In 1903 the estate of L. H. Box is closed, all children being of age.

Under the above conveyances to him, Closner purports to own 2434 acres, or 550 varas front by 25,000 varas, out of Porcion 72, and he mortgaged same to M. Stakler to secure three notes aggregating \$12,000.00, due 1904, 1905 and 1906. This mortgage has not been released.

He then conveys a strip of land 100 feet wide as a right-of-way for the railroad, and donates another strip out of the land 300 varas by 3500 varas for depot grounds.

Closner then mortgages to Louis Kowalski, subject to the above Stalker mortgage, 4867 acres out of Porcion No. 72, to secure \$13,200.00, one-half due December 23, 1904, and the other one-half due April 23, 1905.

In 1902 John Closner obtained a conveyance from Louisa Box and her four children to 225 varas front by 25,000 varas, in consideration of his defending a suit styled Hilderbrand vs. Box, in the Federal Court at Brownsville, the said 225 varas front adjoining the 550 varas heretofore conveyed to him. There is nothing in the abstract to show the nature of this Hilderbrand suit, except a notation made by the abstractor, J. H.

Edwards, to the effect that the suit has been dismissed for want of prosecution. Whether this dismissal of the Hilderbrand suit has had the effect of vesting in Closner the 225 varas front, of 990 acres, can not be ascertained without an investigation of the record of the case.

The condition of the title to the Porcion is, therefore, as follows:

(1) While the record title, owing to the invalid conveyances made by the heirs of Balli, is still in said heirs of Balli, under and by virtue of the conveyances by the heirs of L. H. Box, the fact of possession by themselves and Closner, good title by limitation is now in John Closner to 550 varas front, of 2434 acres, (~~225 varas front of about 990 acres~~) 12-1/2 acres and 2-1/2 acres, on which is located his improvements; but in the absence of an investigation of the record in the Hilderbrand case, no opinion can be rendered as to the state of his title with reference to the 990 acres.

(2) The above lands and other lands of John Closner are subject to two liens, one of \$12,000.00 in favor of M. Stalker, and one of \$13,200.00 in favor of Louis Kowalski. *As the unreleased mortgages heretofore mentioned.*

J. D. Sullivan

J. D. Sullivan & Co.

January 3, 1905.

Opinion

in regard to

State of Ark.

of
Provisions

* 71 ~~28~~ # 72

John Hoover
Clerk

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