

Judgment: Quiet Title

John Swofka v. Unknown Heirs of Sarah M. Smith, et al. — No. 5996, District Court of Robertson County, Texas — January Term, A.D. 1913 (entered February 26, 1913)

Included for family land history: Tract No. 4 is the same 43-acre parcel of the Howard F. Thornton survey sold by J. C. Roberts to Colen Bodiford in 1885, and traces J. C. Roberts's own acquisition of it.

I. Procedural Background

On February 26, 1913, this cause came on for hearing in the District Court of Robertson County, Texas. All parties appeared, either in person or by counsel, except the defendants styled in plaintiff's petition as persons unknown, both as to residence and name — the “unknown heirs” defendants — who appeared by J. L. Goodman, a duly authorized attorney appointed as attorney and guardian ad litem for them. All parties announced ready for trial, and both fact and law were submitted to the Court. This is a suit to remove numerous clouds on title accumulated across decades of unrecorded releases, lost powers of attorney, and defective acknowledgments, so that plaintiff John Swofka could be quieted in title and possession of five described tracts.

II. Findings on the Underlying Chains of Title

Sarah M. Smith's power of attorney (Tracts 1 & 2). On or about January 18, 1871, Sarah M. Smith, then a feme sole, executed an instrument appointing J. A. J. Smith as her agent and attorney in fact, empowering him to convey Tract No. 1 to P. W. Oden and Tract No. 2 to Lydia Ann Smith. Acting under that authority, J. A. J. Smith executed deeds to both. However, he never recorded the power of attorney, and it has since been lost or destroyed — casting a cloud on title since it forms a link in the chain.

Tract No. 1 — C. Bodiford / W. H. McMicheal notes. On November 2, 1895, plaintiff's vendor C. Bodiford purchased Tract No. 1 from W. H. McMicheal, paying \$100 cash plus two vendor's lien notes of \$225 each, due November 1, 1896 and 1897, at 10% interest. Bodiford paid both notes at maturity, and McMicheal executed a release — but Bodiford never recorded it, and it has since been lost.

Tract No. 2 — Lydia Ann Smith to A. J. White (1887). On October 25, 1887, Lydia Ann Smith, then a feme sole, conveyed Tract No. 2 to A. J. White, taking back two vendor's lien notes (\$50 and \$100). White paid both; Smith executed a release, which White never recorded and which has been lost.

Tract No. 2 — A. J. & M. A. White to A. F. White (1889). On January 1, 1889, A. J. White, joined by his wife M. A. White, conveyed Tract No. 2 to A. F. White. The deed was acknowledged before Notary R. J. Hodges of Stephens County, who privily examined Mrs. White separately and confirmed she signed willingly — but by mistake failed to attach the required certificate of that examination to the deed, creating a defect in the record.

Tract No. 2 — A. F. White to M. E. Wright (1890) and the Rogers transfer. On December 13, 1890, A. F. White and wife M. J. White conveyed Tract No. 2 to M. E. Wright, taking vendor's lien notes of \$105, \$100, and \$100, due 1891–1893. White transferred these notes and the superior title to J. C. Rogers before maturity. Wright paid Rogers in full; Rogers released the notes to Wright, but Rogers never recorded the original transfer to himself, and Wright never recorded Rogers's release — both now lost.

Tract No. 2 — C. C. White to J. F. Bodiford (1883) and the Cole transfer. On or about October 21, 1883, C. C. White and wife O. S. White conveyed [part of] Tract No. 2 to J. F. Bodiford, who gave three vendor's lien notes (\$70, \$140, \$140) due 1894–1896. White transferred these notes and the superior title to T. J. Cole. Bodiford paid Cole in full; Cole released the notes and lien to Bodiford, but neither Cole's transfer nor Bodiford's release was ever recorded, and both are now lost.

Tract No. 3 — Turner to Garner (1884). On November 8, 1884, T. W. Turner and wife T. A. Turner conveyed Tract No. 3 to M. W. Garner by a duly acknowledged warranty deed. Garner never recorded it, and it has been lost.

Tract No. 4 — the Howard F. Thornton survey and the T. C. Moore claim. On September 17, 1888, one T. C. Moore had set up a fictitious claim of title to the Howard F. Thornton 640-acre survey, of which Tract No. 4 is a part. On that date Moore abandoned the claim and executed a quitclaim deed to **J. C. Roberts**, then the owner of the land. That deed was recorded in Robertson County, but is ambiguous and does not fully state the history or terms of the transaction, casting a further cloud on title.

Howard F. Thornton's death and heirs. Howard F. Thornton, owner of the 640-acre survey, died testate in Baltimore, Maryland, before December 3, 1889. He left two daughters as his only heirs and will beneficiaries: **Fannie Thornton**, who married Isaac Tyson, and a second daughter who died before reaching majority, unmarried and without issue, leaving Fannie as her sole heir. By December 3, 1889, Fannie Thornton Tyson held fee-simple title to the entire 640-acre Thornton survey, including Tract No. 4. No probate proceedings on Thornton's estate appear of record in Robertson County, and no proof of heirship or of the younger daughter's death was on file — both casting further clouds.

Identity findings — Yell/Conn and Yell/McNutt. Sarah Jane Yell, granddaughter of Sarah M. Smith, is found to be the same person as “Sallie Jane Yell” and, after marrying T. E. Conn, “Sallie Conn.” Theodosius Yell, also a granddaughter of Sarah M. Smith, married J. W. McNutt and is the same person referenced under both names in the chain of title.

III. The Five Tracts (as described in the judgment)

The metes-and-bounds calls below are heavily garbled in the original scan — bearings, distances, and tree markers are frequently illegible or contradictory. They are transcribed as literally as possible, with the clearest OCR errors corrected (e.g., “brs” for “bears,” “P.O.” for “post oak,” “B.J.” for “Black Jack”), but many individual bearings could not be confidently reconstructed and are left as close to the original as legibility allows.

Tract No. 1 (55 acres). Beginning at the channel of Hurricane Creek or branch, on the boundary line of a survey made for P. W. Oden, 226 vrs. S. 30 E. from his N.E. corner, on the Smith line, an elm [bears] N. 85 W. 5 vrs., and a Black Jack 10 in. diam. bears S. 30 [illegible] vrs.; Thence S. 30 E. with Oden's line 736 vrs. to the channel of Mulberry Creek, a stake whence a post oak 18 in. diam. bears [illegible] E. vrs.; Thence down Hurricane Creek with its meanderings 829 vrs. to the point where the N.E. line of Oden's survey crosses said creek, a stake in the channel, whence a post oak 12 in. diam. bears [illegible], another 10 in. diam. bears 327 vrs.; Thence N. 30 W. with Oden's line 196 vrs. to where said line crosses Hurricane Creek, a stake in the channel, whence a hickory 5 in. diam. bears N. 74½ W. 7 vrs.; Thence up said creek with its meanderings 911 vrs. to the place of beginning, containing 55 acres of land.

Tract No. 2 (48 acres). On the waters of North Walnut Creek, being part of the headright league of W. J. Smith; beginning at the S.W. corner of the P. W. Oden survey; Thence N. 60 W. 550 vrs. to a post [for corner]; Thence N. 30 W. 347 vrs. to the bank of Hurricane Creek, to a stake, from which a post oak bears [illegible] 2 vrs., and another post oak 20 in. diam. bears N. 6[?] vrs.; Thence up the channel of said creek with its meanderings to the mouth of Mulberry Creek; Thence up Mulberry Creek to a tree on its bank marked X for corner, and a pecan or hickory bears N. 6 3 vrs.; Thence S. 30 [?] 581 vrs. to the beginning, containing 48 acres of land, more or less.

Tract No. 3 (49 acres). Beginning at a stake in the bed of the creek from which an elm 4 in. diam. bears [illegible] 15, and a post oak 10 in. diam. bears [illegible] W. 10 vrs.; Thence N. 30 W. 537 vrs. with the line of a survey known as the Galloway survey to a stake, whence a post oak 18 in. diam. bears [illegible] 17 vrs., another 14 in. diam. bears N. [illegible] 17 vrs.; Thence S. 60 W. 434 vrs. to a stake, whence a post oak 10 in. diam. bears S. 11, [vrs.] another [tree] diam. bears [illegible] W. 6 vrs.; Thence S. 353 vrs. to a corner in the bed of the creek, whence an elm 10 in. diam. bears S. 60 E. 30 vrs., and a post oak 10 in. diam. bears S. 44 W. 10 vrs.; Thence up said creek with its meanderings to the place of beginning, containing 49 acres of land, more or less.

Tract No. 4 (43 acres) — the J. C. Roberts / Colen Bodiford tract. Beginning at a stake in the line of the Thornton survey, from which a post oak marked X bears [illegible] W. 4 vrs.; Thence N. 30 W. 540 vrs., whence a post oak marked X bears [illegible] E. [illegible] vrs.; Thence N. 60 E. 475 vrs., a bending post oak 16 in. diam. bears S. 60 W. 3 vrs.; Thence S. 30 E. 520 vrs. to a stake on the line of said Thornton survey of 640 acres; Thence S. 60 W. 475 vrs. to the place of beginning, containing 43 acres of land, more or less.

Tract No. 5 (52 acres) — part of the [W. J.] Smith survey, on Harrison's Creek. Beginning on the North boundary line of the said Smith survey, a stake for corner, from which a post oak 10 in. diam. bears S. 47 [?] 10 vrs.; Thence N. 60 E. 700 vrs. with the said line to a stake, from which a post oak 10 in. diam. bears [illegible] 52 W. 12 vrs., and a post oak 12 in. diam. bears [illegible] 410 vrs.; Thence S. 30 E. 218 vrs. to the bed of the creek, [near] an elm 5 in. diam. [and] a Black Jack, S. 30 E.; Thence South with the meanderings of the creek to the head of the creek for corner, [continuing] within 10 [vrs.] to a pin oak 12 in. diam., to a hickory 5 in. diam.; Thence N. 30 W. to the place of beginning, containing 52 acres of land, more or less.

IV. Decree

It is therefore ordered, adjudged and decreed that plaintiff John Swofka do have and recover of and from the above-named defendants the above-described lands and premises, and that he be quieted in title and possession of same. The Court further ordered that each of the following clouds on title, corresponding to the findings above, be and is hereby removed:

- 1 That Sarah M. Smith was not shown to be a feme sole on January 18, 1871, when she acquired the land.
- 2 J. A. J. Smith's failure to record his power of attorney from Sarah M. Smith, since lost.
- 3 C. Bodiford's failure to record W. H. McMichael's release of the vendor's lien notes.
- 4 A. J. White's failure to record Lydia Ann Smith's release of the vendor's lien and notes.
- 5 That Lydia Ann Smith was not shown to be a feme sole on October 25, 1887, when she conveyed to A. J. White.
- 6 Notary R. J. Hodges's failure to attach a proper certificate of Mrs. M. A. White's separate acknowledgment (Jan. 1, 1889 deed).
- 7 J. C. Rogers's failure to record the transfer of notes and superior title given to him by A. F. White.
- 8 A. F. White's failure to record the release given to him by J. C. Rogers.
- 9 J. F. Bodiford's failure to record the release given to him by T. J. Cole.
- 10 T. J. Cole's failure to record the transfer of notes and lien given to him by C. C. White.
- 11 M. W. Garner's failure to record the deed of conveyance from T. W. and T. A. Turner.
- 12 T. C. Moore's fictitious and pretended claim of title to the Thornton survey.
- 13 The absence on record of probate proceedings on the estate of Howard F. Thornton.
- 14 The absence of proof of heirship of Howard F. Thornton and of the death of his younger daughter (whose interest passed to Fannie Thornton Tyson).
- 15 The inconsistent appearance of "Sarah Jane Yell" as Sarah Jane Yell, Sallie J. Yell, and Sallie Conn.
- 16 The inconsistent appearance of "Theodosius Yell" as Theodosius Yell and Theodosius McNutt.

It was further ordered and adjudged that the plaintiff pay all costs of suit, and that the officers of the Court have execution for their respective costs.

*Note: this judgment resolves several open questions from earlier in this research. It confirms **Howard F. Thornton** died testate in Baltimore, Maryland, shortly before December 3, 1889, leaving two daughters, of whom only **Fannie Thornton Tyson** survived to inherit the full 640-acre survey. It also documents that **J. C. Roberts** acquired Tract No. 4 — the same 43-acre parcel later sold to Colen Bodiford in the November 1885 deed transcribed earlier — by way of a September 17, 1888 quitclaim from one T. C. Moore, who had been asserting a fictitious claim to the Thornton survey. This suggests J. C. Roberts's underlying title to at least this portion of the Thornton survey was, at the time he sold to Bodiford, already resting on a somewhat irregular foundation, later cleaned up in this 1913 quiet-title action decades after both men were done with the land.*

Spell-corrected and reorganized transcription prepared from OCR scan. Obvious OCR errors corrected; punctuation and spacing normalized; original wording and content otherwise preserved. Given the length and density of the original, findings and tract descriptions have been grouped under headings for readability; nothing has been omitted from the substantive content.