

No. 2722

IN THE
COURT OF CIVIL APPEALS

For the
Ninth Supreme Judicial District of the State of
Texas, at Beaumont

THE HEIRS OF JOHN BRICKER

v.

KEYSTONE MILLS COMPANY

An Appeal from Montgomery County.

Statement of the Case.

To the Honorable Judges of Said Court—

The appellants are the heirs of John Bricker, a soldier in the Texas Revolution, a member of Captain Mosely Baker's company, who was killed by Santa Anna's soldiers at the San Felipe crossing of the Brazos on April 7, 1836.

The 640 acres of land in controversy was patented by the Republic of Texas to the heirs of John Bricker for his military services. There is no conveyance out of them.

On September 17, 1932, the Keystone Mills Company, a lumber corporation operating in

delena, continued to live in the homestead with her son David. He made a unique will, in which he left the homestead at Litiz in which he had lived for many years, to his son David and his daughter Sophia but with certain very definite rights to his wife Magdalena. "They shall allow her the southeastern room in the second story as her widow seat. * * * * Shall find and provide for her the necessary victuals, fire wood and candles," etc.

Though he had heard from Texas through the letters from his son Peter that John was killed in the war there, he still nourished a father's hope that maybe John would turn up some day and he set aside one-fifth of his estate for John, "for I do not know if he is alive," and he directs his executors to hold this share subject to John's claim until the 25th day of April, 1849.

Most of the correspondence prior to the Civil War with reference to John's estate was conducted by his brother David. The care with which David preserved letters that he received and often copies of letters that he wrote has enabled us to gather a large volume of this correspondence.

The family was scattered, only David and his sister Sophia remaining at the old home and at some time late in the fifties the three

brothers, George, Peter and David, and the sister, Sophia, made a power of attorney to a kinsman of theirs named Jacob Knoop, authorizing him to come to Texas and settle up the estate. We learn of Knoop's activities chiefly through letters that passed between members of the family in 1873 and 1874. Knoop came to Texas and visited an old acquaintance named Knight, who lived on a farm near Austin, and made some inquiries of Knight about the land. While in Texas Knoop learned that the 640-acre tract and the 320 acres had not been sold, but did nothing more. He returned and told his clients he had located the land and saved it for them, and paid taxes on it.

In 1873 David Bricker wrote one of his nephews:

"Jacob Knoop had a power of attorney from your father Peter, Sophia and myself, to settle the estate when we were with you in 65 I seen him he told me he had saved 900 acres of the land and paid taxes on it, but had done nothing further and did stay in Texas but a short time, did not consider it safe as the war was about breaking out when I seen him. The war was closed, but he had no information from Texas but he would inform me if he got any. He (Knoop) died soon after and I have no further knowledge of the matter."

After Knoop's venture which led to nothing, and the Civil War, no further action was taken by the Bricker heirs with reference to the property until about 1873. In the meantime, George Bricker, the eldest brother, had died in Kentucky in 1871, leaving eight children. Peter, the second son who lived in Delphi, Carroll County, Indiana, at the time of John's death went west with his children and died in Iowa in 1869, leaving several children. David, the youngest of John's brothers, lived in the old homestead at Litiz, Pennsylvania, until his death in 1885. Sophia, the sister, died in 1891, and thus passed all of the first generation without having disposed of the lands.

The Westmoreland Brickers.

About 1857 a man by the name of M. M. Grant living in Austin stopped with old man Knight, who told him about the Bricker land in Montgomery County, and that someone had been making inquiries about the estate. It seems that Grant had come from Pennsylvania and had known a family of Brickers in Westmoreland County. In a letter to W. H. Bricker written in January, 1873, Grant says:

"I had known Bricker's family in my childhood, more than 50 years ago. And only took hold of the matter to save some-

thing for them: I knew that the whereabouts of one of the brothers had long been unknown to the family, who had heard he had gone off with Jo Smith and joined the Mormons about 1825."

Acting on this information, Grant got in touch with these Westmoreland Brickers and easily convinced them that their missing brother John had not gone with the Mormons, but had died in the Revolution in Texas, and that they were entitled to the Montgomery County land. The result was that in July, 1857, various Brickers of this Westmoreland family executed a deed to M. M. Grant to these lands which was duly recorded in Montgomery County. Grant was never able to get from these Brickers any evidence that would connect their missing brother with the title.

In 1873 W. H. Bricker, son of Peter Bricker, Jr., who had died four years previous, was living in Cambridge, Iowa, and his oldest son had just come down in Texas. In some way this son was introduced to Grant, who was anxious to get in touch with some member of the Bricker family who could furnish him proofs essential to establish his title. Accordingly, he started a correspondence with W. H. Bricker which lasted several years. This correspondence stirred W. H. Bricker to get in

touch with his various scattered kinsmen and to make an effort to settle up his Uncle John's estate.

On January 4, 1873, he wrote his Uncle David at Litiz telling about Grant's letter and inquiring of Uncle David if these Westmoreland Brickers were cousins of his. He asked Uncle David to tell him all about Uncle John and any other information that would enable him to answer Grant's letter and to inquire into the title.

Uncle David at once wrote Daniel Knoop in Ohio in order to locate the papers that had been given his deceased brother Jacob.

In February, 1873, Grant wrote W. H. Bricker a second letter:

"I received yours of the 2nd inst. * * * At the time I took up the case it seemed perfectly clear to me that John Bricker was one of the family who had the deed to me. And I suppose there would be no difficulty in proving his identity now, although two of the persons who came with him and could have provided it they are now dead. * * * I never paid one cent to the heirs and the deed was only made to me to enable me to act more efficiently for them. All I did in the matter was done out of friendship for the family,

whom I had known all my life, and was done to save a part at least of what John Bricker had left. You cannot think how much trouble I had to save the land from confiscation during the war, as the property of Northern men. * * * I have paid taxes on the two surveys up to this time. * * * I am neither a lawyer nor a professional land agent. * * * I will honestly give you any assistance I can. * * * I can give you no reference near you, but will say, I am an old man, have been a church member for more than 40 years, and ought to be honest, at least."

About the time Grant wrote this letter he had thoroughly convinced himself that the Westmoreland Brickers had no claim to the land, and had reconveyed it to them, and his deed of reconveyance dated January 2, 1873, is recorded in Montgomery County Deed Records. Referring to this deed, he said in his letter to W. H. Bricker:

"I have reconveyed the land to the Westmoreland Brickers of Pennsylvania for \$550 and had sent the deed before seeing your son, which seems will barely cover my outlays and not pay for trouble."

Referring to these transactions in another let-

ter by Grant in the following September, Grant says:

"Until I had a conversation with your son I had no idea that the Westmoreland Brickers and you were of different families * * * The persons who brought it to my notice at first were sincerely mistaken and the Westmoreland Brickers were not to blame as all their information came through me and I have a letter from Judge Kuhns renouncing all claims for them. This letter I have sent to Mr. Peel."

Mr. Peel was an attorney in Montgomery whom W. H. Bricker had employed to file suit to recover the 1476-acre tract.

Grant tells W. H. Bricker that he had a lot of trouble in preserving the land, and thinks he should be paid \$600 for things he had done.

"Guarding the lands against confiscation during the war. I was a northern man and opposed to secession. Some hotbloods informed on me for holding the Bricker lands for northern men and I was forced to spend both time and money in the case just as certainly as I paid taxes."

Urging that he be paid \$600, he repeats:

"I again assert all I have done in the case was honestly done but done under a

mistake which I only discovered lately—that your John Bricker was the one entitled to the land. I am now fully satisfied and have so notified Mr. Peel."

The Second Generation of John Bricker's Heirs.

William H. Bricker, son of Peter, Jr., and nephew of John, was living in Iowa when he got Grant's letter and knew so little about the family that he was under the impression that the Westmoreland Brickers were his cousins, probably the children of his Uncle George, who had died two years before. When he learned they were no kin, his suspicions were aroused, and he wrote Grant telling him they were perpetrating a fraud, and this was the occasion of Grant's letter to him telling him that he had persuaded them that their John was the one who fell at San Felipe.

William corresponded with his Uncle David, the only surviving brother of John, and all the cousins, children of his Uncle George, his own brother and sisters, and got authority to come down to Texas and settle up the estate which had been pending thirty-seven years.

He came to old Montgomery, which was the county seat of the county, and employed lawyer Peel who looked at the records and concluded that the sale of the 1476-acre tract by Shepherd,

the administrator, had not been regular, and that it could be recovered.

A suit was filed and tried in 1874 in which the second generation of the heirs recovered a portion of the land.

At that time Uncle David was living and had a son Owen, who was a law student at Yale, and he wrote his nephew William that he would talk with Owen, "who was learned in the law."

William gathered all the old letters in the family, and after the case was over kept a large part of them, which were put in a pasteboard box, where they remained until this suit was filed in 1934, and we had the letters and the box in court. Others were returned to the homestead in Litz, where they were dug out of the attic.

When William was in Texas in 1873, he met Wade, the surveyor who had surveyed these lands for Shepherd, the Administrator of his Uncle John's Estate, and Wade remembered his Uncle John very well. He also located Isaac L. Hill living at Burton, Washington County, Texas, who was with his Uncle John when he was killed, and who had written the letter to William's father, Peter, Jr., in 1837, telling of John's death.

He inquired about the 640-acre tract and the 320-acre tract, and was told they had little

value, and since there was a deed of record from the Westmoreland Brickers to Grant, and from Grant back to them, William concluded they had some kind of a claim to these lands, for the deeds to and from Grant clouded the title. He went down to Westmoreland County and found them, and wrote his Uncle David that they had acted only on Grant's advice, and would not be able to prove anything. William had aroused hopes in the scattered kinsmen that they could recover the headright tract, 1476 acres, which was quite valuable, and when he failed he and they were much disappointed, and they criticised him for his failure.

After his trip to Texas he tried to get all of the heirs to give him a power of attorney to do something with the 640-acre tract and the 320-acre but Uncle George's children would not answer his letters, and in August, 1874, he wrote Uncle David:

"I do not see why they treat me as they do. Their case is as good as it ever was."

In the same year ^{William} he wrote that he had talked with the lawyers at Montgomery about suing the Westmoreland Brickers to clear the title. His brother John would not join in the power of attorney, and in March, 1875, he wrote his last letter to Uncle David, who died in 1885,

and dropped the whole matter as far as the records show.

All the while the land remained unclaimed and wild as when Wade had first surveyed it forty years before.

About twenty-five years ago these same Westmoreland Brickers whom Grant had represented sold the land to Mrs. Ida G. Davis, who in 1912 sold it to the Keystone Mills, who has claimed it since, and has cut the timber off it. But they got no title, for the Westmoreland Brickers had none. Oil was discovered on it in 1933.

When we had progressed this far in the preparation of this brief for presentation of the case in the Court of Appeals we were offered \$200,000.00 in settlement, and submitted the offer to the heirs, who number 82 people, and live in 17 States, and they instructed us to settle, and it was done.

So, after 99 years, the third and fourth generations of the heirs of John Bricker receive recompense for the life John Bricker gave to his country in April, 1836.

*Attorneys for the Heirs
of John Bricker.*

**These Are the "Heirs of John Bricker" Who
Inherited His Estate.**

When John Bricker died at San Felipe he left surviving him his father and mother, three brothers and one sister. The brothers were George, Peter, Jr., and David. The sister was Sophia, who afterwards married Diehm. The list below shows the now living descendants of these brothers and sister who inherited his estate, and among whom the money received in settlement was distributed.

I.

Living descendants of George Bricker, elder brother of John:

Mary Ellen Skinner—Dayton, Kentucky.
 Allic Hayes—Dayton, Kentucky.
 George Pearson—Jameson, Missouri.
 Edward Pearson—Chicago, Illinois.
 Molly Pearson Dolman—South Tacoma,
 Washington.
 Mamie Hart—Dayton, Kentucky.
 William Ferris—Long Island, New York.
 Bertha T. Ferris—Brooklyn, New York.
 Thelma Kerr—Brooklyn, New York.
 Ralph Ferris—Brooklyn, New York.
 Margaret Moore Rice—Dayton, Kentucky.
 Millie Moore Rice—Ft. Thomas, Kentucky.
 Frederick B. Moore—Newport, Kentucky.
 Thelma Clark Bagby—Newport, Kentucky.
 Ruth Clark—Newport, Kentucky.
 Nelle Moore—Miami Beach, Florida.
 Walter Moore, Jr.—Miami Beach, Florida.
 Walter M. Martin—San Pedro, California.

Carrie Bell Moore LeRoy—Cincinnati, Ohio.
 Margaret Bell Havlin Greiner—Cincinnati,
 Ohio.
 George W. Havlin—Cincinnati, Ohio.
 Sadie Moore—Hamilton County, Ohio.

II.

Living descendants of Peter Bricker, Jr., sec-
 ond brother of John:

Georgie Scrivner—Reydon, Oklahoma.
 Laura Smithson—Pasadena, California.
 Alice Snyder—Los Angeles, California.
 W. J. Ropp—Sierra Madre, California.
 Lyman Pitzer—Arberg, Arkansas.
 Edith Cox—Wichita, Kansas.
 Manuel Pitzer—Ponca City, Oklahoma.
 Orna Johnston—Ponca City, Oklahoma.
 Joseph Pitzer—Ponca City, Oklahoma.
 Ellen Janssen—Tonkawa, Oklahoma.
 Thomas P. Pitzer—Wetmore, Colorado.
 Margaret Medford—Winona, Kansas.
 William Gaines—Peabody, Kansas.
 Sam O. Gaines—Oklahoma City, Oklahoma.
 John T. Gaines—Columbia, Missouri.
 Alice Doty—Spencer, Iowa.
 Althea Trotter—Zuni, New Mexico.
 Joseph R. Keys—Mindemines, Missouri.
 Elizabeth E. Letton—Mindemines, Missouri.
 Robert H. Ledbetter—Redmond, Oregon.
 Lucy B. Sharp—St. Paul, Kansas.
 Peter B. Bricker—Girard, Kansas.
 Cora Bricker—Mindemines, Missouri.
 Walter H. Evans—Washington, D. C.
 Joseph B. Evans—Goble, Oregon.
 Fred G. Armick—Camden, Indiana.
 Walter B. Armick—Chicago, Illinois.
 Ethel Bushell—Terre Haute, Indiana.

Hazel Langenbach—Terre Haute, Indiana.
 Margaret Edna Webster—Elkhart, Kansas.
 George William Olinger, Stonington, Colo-
 rado.
 Bernice Falla—Burbank, Colorado.
 Hazel Diebel—Jewell, Kansas.
 Bertha Lewis—San Bernardino, California.
 James A. Olinger—Glendale, California.
 Rose E. Rodman—San Bernardino, Cali-
 fornia.

III.

Living descendants of Sophia Bricker, sister
 of John:

Aaron Diehm—Manheim, Pennsylvania.
 Mary K. Diehm—Penryn, Pennsylvania.
 John Randolph Diehm—Penryn, Pennsylvania.

IV.

Living descendants of David Bricker, the
 youngest brother of John:

Anna B. Bricker—Lititz, Pennsylvania.
 Sophia Bricker—Lititz, Pennsylvania.
 Charles S. Bricker—Lititz, Pennsylvania.
 Elizabeth B. Bricker—Lititz, Pennsylvania.
 E. Magdalena Bricker—Lititz, Pennsylvania.
 David P. Bricker—Lititz, Pennsylvania.
 Anna Hermstead—Bethlehem, Pennsylvania.
 Emma Bricker—Lancaster, Pennsylvania.
 Owen P. Bricker, Jr.—Lancaster, Pennsyl-
 vania.