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Max S. Lale

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ALBERT SIDNEY JOHNSTON'S 'CRUEL UNCERTAINTY'

by Max S. Lale

More than eight years after he died at Shiloh, Albert Sidney Johnston's heirs still were battling rival claimants for final title to a league of Harrison County land which the Confederacy's second ranking general officer had acquired—or thought he had acquired—in 1838. The tract lies four miles east of Marshall, though the city had not yet been settled at that time and would not become an incorporated municipality for another six years. The general's title difficulties, and his administrator's after the general's death, were common to the period and the place. As one of a breed, the early Texas settler and landowner was a singularly litigious human being whose passion for land led him to courthouses all over the Republic and the state it would become. Johnston's tribulations were not unique.

As early as 1832, the East Texan for whom Harrison County is named had complained of the "cruel uncertainty as to land titles," and it was on the motion of Jonas Harrison that the San Felipe de Austin convention named a committee "to take into consideration the situation of the land business to the east of San Jacinto." Harrison, a brilliant eastern lawyer turned backwoods recluse and parttime legal advocate, was one of 10 delegates named to the committee, which ended its report four days later, on October 6, with a plea for appointment of a commissioner with authority to give title to settled lands.

The report noted that "a number of industrious citizens have settled in the district of country between the San Jacinto and Sabine rivers; and that the settlers have made extensive and valuable improvements in farms, mills, cotton gins, and machinery; and having been obedient to the constitution, in the year 1828, grants of land were made to them by the government, and Don Juan Antonio Padilla was appointed commissioner to issue titles. Unfortunate circumstances prevented the said commissioner from completing the objects of his commission, and business remained in suspense. In 1831, Don Jose Francisco Madero was appointed commissioner by the government for the same purpose, but unfortunately he was arrested by military authority, and prevented from issuing the titles. These repeated delays and embarrassments have defeated the paternal intentions of the government, in favor of the inhabitants of that remote section of the state . . . The uncertainty of their situation causes an uneasiness among the inhabitants, and cannot be favorable to the public tranquility, and is in the highest degree prejudicial to the prosperity of the country . . .".

Strictly speaking, Johnston's title problem was not one of simple delay. His land lay north of the Sabine in an area of the republic even more remote than that cited by Harrison. Where earlier settlers had entered Texas through the Natchitoches/Nacogdoches-San Augustine corridor or the Gulf ports, they now had begun to arrive in the far northeast section through the Port Caddo gateway or overland from Shreveport. Port Caddo, since consigned to oblivion, was developing as a thriving river port on the Caddo Lake-Cypress Bayou system and was an international entry point and entrepôt for both immigrants and riverboat cargo for which the republic assigned a resident customs agent for collection of import duties. Only 20 miles distant from the site at which Marshall subsequently would be platted, Port Caddo was for years the first point in Texas reached by many immigrants.¹ Among these in the early days were determined

Max S. Lale is from Marshall, Texas.

settlers whose regard for the legal niceties of land title were minimal. Johnston's problem, in short, was squatters.

Given the difference in the nature of their respective difficulties, Johnston still must have uttered a fervent "amen"—from the eminence of 30 years and the special niche reserved in heaven for fallen heroes—to Harrison's observation about cruel uncertainty.

And, by one of the curious quirks of fate which make the study of East Texas history so fascinating, the man to whom Johnston at one time turned over certain land management functions had had his own difficulties along similar lines—and these with Sam Houston, with whom Johnston's own relationship had not been too amicable! John Nathan Craven, in his biography of James Harper Starr, recounts the story of Houston's 12-year attempt at law to gain title to Starr's Nacogdoches home and 254 acres of land adjoining it.²

Starr, whose last years were spent in Marshall and whose name descends to many distinguished residents, counted Johnston only one among many clients of his land office. By 1861 the former Secretary of the Treasury in the Republic of Texas owned lands in 27 counties and managed real estate holdings for hundreds of clients all over the country. Johnston became his client after service as Secretary of War, a post in which he found his own views often running counter to those of Sam Houston.

Craven relates that after Houston's appearance before the court at Nacogdoches in 1855, from which came a compromise settlement on the part of weary litigants, Starr was constrained to write: "I feel much relieved by the result. Shall enjoin it upon my children never to content at law with a *great man* who has such proclivities for swearing. *Ordinary men* with such proneness for making affidavits 'according to any pattern' may be resisted, for they will not be believed, but beware of *great men* with such tendencies."³

Starr, who early had felt respect for Houston, if not affection, dated his difficulties with the former president from 1842, when an army of Santa Anna invaded Texas, occupying San Antonio, Goliad and Refugio before withdrawing into Mexico. Starr at that time opposed Houston's efforts to return the capitol to Houston from Austin, resulting in a bloodless "war" which became one of the most curious chapters in Texas history.⁴

In contrast to his relationship with Houston, Starr's feelings of affection toward Johnston never abated, and he assisted the general's son, William Preston Johnston, in preparing a biography of his old friend in the autumn years of his life in Marshall. He not only provided biographical material, he also gave the assistance his age and health would permit to see that the partisanship among pro-Houston and anti-Houston factions did not result in an attack on the Johnston biography.⁵

William Preston Johnston reciprocated by arranging for Starr to sit on the orator's stand when the Army of Tennessee Association unveiled a statue of the general in a New Orleans cemetery in 1877. Among others on the stand that day was Jefferson Davis.⁶

The former president of the Confederacy thus paid homage to a man who, commanding the Second Cavalry as a brevet-brigadier general for his conduct of the Utah campaign against the Mormons, "represented all President Davis's ideals of a soldier" when the War between the States began.⁷ His record as a land speculator was less distinguished.

Johnston was the man whose name Davis sent up to the Senate on August 31, 1861, as the second on the list of generals authorized by the act of May 16,

1861, ranking only under the adjutant general, Samuel Cooper, and a file ahead of Robert E. Lee. By this promotion order, which placed Joseph E. Johnston fourth, Davis incurred the enmity of this officer, who believed he should have been named the South's senior general officer. This break influenced command considerations throughout the war.⁸

But this was almost a lifetime, as the life span was measured in those days, after Albert Sidney Johnston entered the land business. His Harrison County venture began in October 1838, more than three months before the act creating the county was enacted into law by the Congress of the Republic of Texas in January 1839, with President Mirabeau B. Lamar's signature following shortly.

Johnston became the owner of his league of Harrison County land in a transaction by the terms of which Garnett Duncan bought one-half of four leagues from one William Brookfield, and George Hancock and Edward Ogden bought the other half, conveying one-half of their half to Johnston in exchange, it would appear from the surviving records, for his perfecting title to the entire four leagues. The four partners in the venture agreed that the four-league tract should be conveyed to Johnston and that "he shall have the right to sell or dispose of or to manage the same exactly as if the property was all his own." In the drawing of lots to determine which partner should claim title to which league, Johnston became the owner of League No. 2, "originally the league of Hiram Blossom."⁹ This league was patented originally to Blossom on October 10, 1835, by the Republic of Texas.¹⁰

Charles P. Roland, in his biography of Johnston, asserts a somewhat different version of the transaction. He reports that the general actually bought the league with proceeds from the sale of property he owned in Louisville and in Missouri, adding that Johnston also bought the leagues of Duncan, Hancock (a kinsman) and Ogden with the understanding that he would hold title to the land but was bound to pay any proceeds to his associates. This arrangement, he suggests, may have been a device for getting around a Texas law which prohibited aliens from owning land in Texas except by titles obtained directly from the government of the republic.¹¹ Whatever the arrangements, it seems clear that Johnston was motivated in the transaction by the desire common to many prominent figures in early Texas history to acquire wealth through land speculation, for he also invested in real estate in Austin and Galveston and in a tract of 1,280 acres in Van Zandt County. "I have waded up to my chin in Galveston lots," he wrote to a kinsman.¹²

The partners in the Harrison County venture agreed that

said Johnston is not to incur any liability to account for anything more than he or his heirs or assigns may receive from the said several parties, he having accepted this trust at the request of said other parties and for their benefit and accomodation only; it is clearly understood that said Johnston is not to be chargeable for neglect and that he only binds himself to release the land on account for the proceeds if he sells it, and any expenses he may think proper to incur in relation to the land the said Duncan for his part and the said Ogden and Hancock for their part agree and bind their heirs and assigns to reimburse whether it turns out profitably or not.¹³

This agreement, dated October 11, 1838, in two separate instruments, was subsequently acknowledged before J. W. Bredlove, commissioner for Texas at New Orleans on February 6, 1861, along with a companion document dated October 11, 1838, in which the four partners executed a partition deed setting

out the understandings of their agreement.¹⁴ The latter document was executed at Louisville, Johnston's home town. In the acknowledgement before the Texas commissioner it was stipulated that "we now ratify and confirm the foregoing deed as our act, on the date of its date, and we ratify and confirm to said A.S. Johnston the legal title to all the land referred to in the foregoing deed; all of which was in the year Eighteen Hundred and Thirty-Eight conveyed to and vested in said Johnston, and if necessary we again grant and convey the same to him *nunc pro tunc*, that the same may be duly recorded upon personal acknowledgment of all the grantors."

Two years after the four leagues were acquired, in a "transfer" dated February 10, 1840, and filed for record October 4, 1841, William Brookfield conveyed

all his right, title and interest in and to four leagues of land belonging to him unto Albert S. Johnston, a citizen of the Republic, for and in consideration of the sum of five thousand dollars, the receipt of which the said Brookfield declares and acknowledges, and that payment has been made to his entire satisfaction, which four leagues of land more severally granted to Hiram Blossom, Henry Harper, Samuel Murphy and Samuel Monday by George W. Smith, commissioner, acting for the Government of the State of Couahila and Texas as will more fully and specifically appear by the certified copies of the deeds issued by said commissioner to said Blossom, Harper, Murphy and Monday, respectively, all of which the said Brookfield has transferred and handed over to the said Johnston for his better security and evidence of title; said four leagues of land are situated between the Sabine River and Soda Lake of Red River, the metes and bounds of each league will be found fully defined and described in the respective deeds as before mentioned.¹⁵

By the date of this "transfer," Johnston already had determined to retire from public life in order to become a planter, a decision which he executed by resigning his post as Secretary of War the same month. This decision doubtless was encouraged by a disagreement with Houston which led Johnston on January 5, 1840, to write a note remonstrating "the most vituperative language with regard to me" and declaring "you will not be surprised that I inform you that *immediately* after a termination of the present session of Congress I will hold you accountable." Fortunately, Houston backed away from a confrontation, declaring in a reply to an intermediary dated January 7 that "the reported expressions said to have been used, evenings since, *never* were used by me, nor has anything transpired within my knowledge which could change the estimation which I have always entertained of the high and honorable bearing of General Johnston and his character."¹⁶

To set himself up as a farmer, following his resignation, "it was necessary for General Johnston to raise the means by selling his real estate elsewhere," according to his son and biographer.¹⁷ Accordingly, the general went to Louisville for this purpose, returning to Texas during the summer. This, it will be recalled, was almost two years after Johnston acquired the Blossom league in Harrison County, a transaction which Roland says was financed by the sale of property in Louisville and in Missouri, and several months after Brookfield acknowledged receiving \$5,000 from the General. Under the circumstances, there must be some question whether Johnston actually purchased the Harrison County land from the proceeds of his property elsewhere, as Roland asserts, or whether he was acting for his three partners in a fiduciary capacity, as they seemed to imply in their earlier agreements.

A case can be made that Johnston used the proceeds from his 1840 sales to buy China Grove Plantation in Brazoria County, which he described as, consisting "of 1,500 acres of cotton-land, between 300 and 400 acres cleared, with gin, fences, etc.; and 4,428 acres of rich prairie, affording fine grass for stock, and in every way more suitable for production of sugar-cane than richer bottom-lands."¹⁸ The purchase was made in partnership with a friend who was both a planter and merchant. Johnston's son, in his biography, recorded that the estate was undoubtedly valuable, "but the price, nearly \$16,000, was too great; and the purchase proved to be injudicious and disastrous." The General performed his responsibilities under the partnership agreement, "realizing the necessary funds by the sale of real estate at considerable sacrifice," but the partner, near bankruptcy, subsequently appealed to be relieved of his obligation. "General Johnston, with a sense of obligation perhaps too scrupulous, at once assumed the whole responsibility, thus incurring a load of debt from which he was not freed for ten years," his son wrote.¹⁹

The General's tribulations in Brazoria County mirrored his disappointment with his Harrison County land, though there is no indication that he ever intended to operate the latter as a plantation as he did China Grove. His Northeast Texas venture was purely speculative, however its purchase had been negotiated.

None of the legal safeguards which Johnston and his Harrison County partners undertook served to secure them in possession of their land. It subsequently developed that there were rival claimants to the title, under terms of a certain Anna Dunman Survey overlying the limits of the Henry Harper, Hiram Blossom, Samuel Monday (or Munday, as it sometimes appears in the records) and Samuel Murphy (or Murphey) leagues comprising the holdings of the Johnston partnership. As Roland describes the conflict, "the title of prior ownership was not clear, and settlers promptly moved onto the land. For the remainder of his life, Johnston attempted to validate his title but was never able to do so."²⁰

Litigation over the rival claims developed as early as October 1845, during the time Johnston was engaged in a vain attempt to save China Grove, either by its sale "or by that of other property."²¹ It seems possible an effort to sell the Harrison County property, in order to use the money at China Grove, could have triggered the initial litigation, which dragged on for 24 years before a final finding in the district court seven years after the General's death at Shiloh. Johnston began the task of perfecting titles which he had accepted under the terms of his partnership by filing suit against William T. Scott, one of the largest landowners in Texas, whose holdings lay in the eastern half of Harrison County, between Marshall and the Louisiana line. This suit revolved around title to 720 acres of land in the Blossom league.²² In the same month, Johnston also filed suit against Jesse Parchman and Richard Hooper, joined 24 years later when the case finally came to trial by a long list of defendants who by that time had become party to the suit, to determine title to the entire Blossom league. In his original petition, Johnston alleged that he was "owner of a league of land situated in the eastern part of said county and Republic of Texas, lying north of Sabine River and south of Soda Lake," on which the said defendant Parchman, "on the 1st day of March, 1843, and on divers other days and times from the date first mentioned . . . entered upon said land, took possession of the same, plowed and broke the ground, cut down large quantities of timber growing upon the same, and he still holds forceable possession of said land to plaintiff's damage \$10,000."²³

By October 1849, Johnston found himself on the defensive. In that month, the county levied on the "Smith half" of the Blossom league, "being the south half of said headright," insofar as title to it "was vested in or claimed by said A. Sidney Johnston." In a sheriff's deed dated November 6, 1849, and witnessed by W.P. Hill and George Adkins, the sheriff of Harrison County transferred title to John Graves in consideration of 3¢ per acre.²⁴

A year later, in a sheriff's deed dated December 4, 1850, title to the Samuel Murphy league (owned by Garnett Duncan in the original partnership arrangement) was transferred to James G. Haralson. This sale proceeded out of three executions issued by the clerk of the district court on August 7 and 8, 1850, on judgments given against Johnston in July for the sum of \$7.70 in each of "three several suits." The deed recites that

whereas on the 4th day of November James M. Curtis, deputy sheriff of the court, did levy on all the right, title and interest of the aforesaid A. Sidney Johnston in and to one league and labor of land lying in said county . . . known as the headright of Samuel Murphy, and the same being advertised according to law to sell the same at the court house door of said county on the first Tuesday in December, A.D. 1850, in the legal hours of sale, the aforesaid tract of land was exposed to public sale by Solomon R. Perry as sheriff of the county aforesaid to the highest bidder for cash and James C. Haralson was then and there the highest bidder to the amount of one dollar.

Perry witnessed that "I . . . have hereunto set my hand and affix my seal using a scrawl for a seal this 4th day of December, A.D. 1850."²⁵

This letter instrument was filed for record on December 4, the date of the deed. However, the earlier Graves deed to the south half of the Blossom headright was not filed for record until February 3, 1857, a year and a half after Johnston and Mrs. Johnston had executed a special warranty deed on June 18, 1855, in favor of William P. Johnston, the general's son by his first marriage, to the entire Blossom league. This deed conveyed "a certain tract of land situated in the State of Texas, granted by the Mexican Government through George W. Smythe, commissioner for issuing titles to settlers, to Hiram Blossom situated between the Sabine River and Lake Soda of Red River, being *sitio* No. 2 of four *sitios* sold by Wm Brookfield to Geo Hancock and Edmd Ogden and Garnett Duncan and is now the property of aforesaid A.S. Johnston and wife, and contains one league of land." The consideration was shown to be \$1.00 cash. This deed was acknowledged before James J. Dozier, commissioner of Texas, Jefferson City, Missouri, on August 31, 1855, by the general, and again on February 7, 1871—more than 16 years later—by Mrs. Johnston, this time before N.R. Wilson, then the commissioner in Jefferson City.²⁶

By December 1857, partner Duncan apparently had wearied of the litigation. In an agreement dated the 15th, Duncan noted that

certain suits have been instituted in Texas and pending for a long time in the name of A.S. Johnston, plaintiff, to recover four leagues and labors of land near Marshall, Texas, granted severally by Sam'l Munday, Sam'l Murphy, H. Harper and H. Blossom, all of which are still pending in the court of original jurisdiction at Marshall, except the one against Elbert Smith and Otis A. Wheeler upon the Monday grant, which is now pending in the Supreme Court at Tyler, upon appeal or

wishes to release himself from all further trouble in or attention to those suits, and as the preparation is similar in at least three of the suits, and he sits, and as the preparation is similar in at least three of the suits, and he does not wish to contribute thereto, it is hereby agreed with B. Ballard (who owns H. Harper league) that he the said Ballard will take charge of and prosecute all of said land claims owned by him and Duncan, with authority to compromise, adjust, and settle in whole or in part as to him may seem best, and that he will out of his funds pay all the costs, fees, expenses and charges which have been incurred in and about said land . . . and also all taxes and public dues, and also all costs and fees, charges and taxes that may hereafter be incurred in and about said suits and claims.

Duncan washed his hands of the whole affair by agreeing further to give half of the said leagues to Ballard, on condition that "he the said Duncan is not bound to do any service or be obligated to give any council (sic) or advise him in the premises." Duncan also agreed to relinquish any right to taxes or costs paid by him in the past.²⁷

One can almost hear "the said Duncan" heave a monumental sigh of relief to be rid of the whole worry.

Five months later, in a power of attorney dated May 8, 1858, in Jefferson County, Kentucky, William Preston Johnston, to whom the General and Mrs. Johnston had deeded the Hiram Blossom league, gave to the same Dr. Benjamin Ballard of New Orleans all authority "to exercise a general and special supervisory control and management of said land, to lease and sell the same or any part thereof, and to receive and collect the rents and purchase money for the same, to institute and prosecute suits for ejectment of trespassers, to employ counsel at his discretion, to carry out the objects of his agency, to compromise, arbitrate and settle any and all suits and adverse claims to said lands or any part thereof . . ."²⁸

In an all-inclusive gesture, which a later Madison Avenue generation would speak of as "touching all the bases," General Johnston, then commanding the Second Regiment of U.S. Cavalry in the Utah Territory, also executed a power of attorney in favor of Doctor Ballard to act for him in a like capacity. This instrument was acknowledged before Albert G. Brown, Jr., clerk of the federal district court in Green River County, U.T., on May 19, though it was not filed for record in Harrison County until June 27 of the following year.²⁹

Johnston's affection for his adopted state is reflected in correspondence with his son in the summer of the same year. William P. Johnston, acting on the advice of Texas attorneys, recommended to his father that he enter suit in federal court to evict the squatters living on the Blossom league. It was the opinion of counsel that federal judges might be more favorably disposed toward Johnston's claim than state judges. There was only one rub. Johnston would have to renounce his Texas citizenship, and this he would not contemplate:

My citizenship in Texas was obtained at the cost of the bloom of health & the prime of life spent in the service of the state [and of] property which if I had now would constitute a princely estate—I will not give it up now, tho' I should lose in consequence every foot of land I have in the state, this I would regard as a mere mess of pottage in comparison with my citizenship.³⁰

"Johnston," declared his biographer Roland, "considered himself a Texan for time and for eternity."³¹

Doctor Ballard, acting under the power of attorney given him by the General, in an instrument dated October 1, 1860, gave his own power of attorney to George Lane and J.M. Clough of Marshall to act in his name in any matters pertaining to Johnston's claim.³² The latter, one of Marshall's most distinguished sons, was to survive only slightly more than one year. He enlisted as a private in the company organized in Marshall by his brother-in-law K.M. Van Zandt, son of the famous Republic of Texas figure whose home was on Van Zandt Hill, now occupied by East Texas Baptist College, and died a lieutenant colonel at Fort Donelson in early 1862. Van Zandt survived many bloody contests to build an illustrious career after the war.

Of George Lane, the other of the two to whom Doctor Ballard gave his power of attorney in the Johnston land claim, General Walter P. Lane, a brother, tells a delightful tale in his memoirs:

As I was coming to Marshall in an ambulance [two days after the Battle of Mansfield, in which he commanded a brigade and was wounded] with John Neff . . . we met two superannuated old gentlemen, with vengeance in their eyes and old double-barreled shot-guns in their hands, going down to participate in the battle. When I got near them they proved to be my brother, Judge Lane, and Col. Ward, both of Marshall. I told them the battle was over and the enemy in full retreat, and that as one of them was a lawyer, and the other a railroad director, I thought they were better muscled for something else than fighting, and not to go down there and eat what little the men had, as they were short of rations. But go they would, and go they did. On reaching the army they crowned themselves with glory. Col. Ward, in taking an armful of corn for his horse out of a field without permission, came near being shot; and Judge Lane, who volunteered to be put on the extreme picket next to the enemy, the orders being that no gun was to be fired, as it would cause an alarm, getting tired of the monotonous duty, and, forgetting the orders, fired at a squirrel he saw run up a tree. He missed the squirrel, but brought out the whole regiment, who raised a laugh and returned to camp, knowing the judge knew but little of military matters . . . They enjoyed themselves hugely for about two weeks, when, seeing no prospect of murdering any of the enemy, they returned quietly home. They reported, on their return, that a soldier's life was the jolliest thing they had ever experienced; that their rations were cooked, their horses fed, no guard duty to perform, with nothing to do but lie about camp and make the time pass pleasantly with their fellow soldiers.³³

What with the alarms and excursions of the war years, with their sequestration suits and other legal matters arising from the war, the Johnston cases were passed to another time, when attention could be returned to purely personal, civil actions. During these years, of course, General Johnston had literally poured out his life's blood on the field of Shiloh, and new heroes had stepped upon the stage, all marching toward an April Sunday in 1865.

It was not until June 1866 that George Lane, the survivor of the two to whom Doctor Ballard had given power of attorney in 1860, filed a petition in the county court at Marshall asking that letters of administration be granted to Jesse H. Curlin in connection with the "large" estate of the fallen general.³⁴ The application was approved.³⁵ Curlin took his oath, and his bond was accepted by the court on September 3.³⁶ The probate minutes show that Johnston was possessed at his death, among other assets, of "one league of land situated in

Harrison County originally granted to Hiram Blossom," along with three other leagues "held by the deceased in trust for others, said lands being four leagues valued at \$40,000."³⁷

It took another three years and more for Curlin and Lane to clear up the title contest with William T. Scott which first had been filed in October 1845, twenty-five years earlier. In a judgment entered in the fall term, the district court recognized a compromise worked out between Curlin and Lane, on the one hand, and Scott and his attorney George L. Hill, on the other. This compromise called for Scott to pay the costs of the case "except as to the cost of taking the Ruez deposition" and one dollar per acre in U.S. currency "or its equivalent," one-half to be paid down and the other half payable in 12 months, with a lien to the Johnston estate pending final payment.³⁸

A compromise also settled the suit against Jesse Parchman and Richard Hooper. This case, it will be remembered, involved an allegation of trespass, for which Johnston claimed damages of \$10,000 in a petition filed October 9, 1845, in the district court. The same team of Curlin and Lane handled the case for the Johnston estate, and George L. Hill again represented the defendants, whose numbers by this time had grown to considerable proportions. The terms again were the costs of the case and one dollar per acre "in U.S. currency or its equivalent in specie," to be paid one-half down and the balance in 12 months by note of each defendant. The court accepted this compromise as its judgment and described by metes and bounds the tracts thus awarded to A.J. Brightwell, Joseph W. Slater, William L. Perkins, Peter B. Parchman, Washington Mathis and J.C. Darden (for the use and benefit of C.S. and R.M. Slater).

George L. Hill, the defense attorney, made himself a party to the suit and was awarded title to 320 acres on the basis of a deed from Johnston through his agent Ballard to W.P. Hill, from whom George L. Hill acquired his claim. William Scott also made himself a party to the suit for purposes of recognizing the compromise settlement worked out earlier in his case.³⁹

It took another year to work out a solution to the problem of the sheriff's deed to John Graves, but this time the case went to a jury for decision. Johnston had entered his suit against Graves on October 10, 1845, enunciating claim to the whole of the Blossom league, after Graves had moved onto the land in 1842, possessed of a bond for title to the tract from James Adams dated March 21, 1837. Graves had defended his title to the tract in a successful suit against the heirs of James Adams, the judgment being entered on January 17, 1851.

By the time the Johnston-Graves suit came on for trial in the October 1870 term of the district court, Robert Scott and Frances M. Scott, executrix of the estate of Samuel T. Scott, had become defendants in the action involving the north half of the Blossom headright. George B. Adkins represented the Graves interests as executor of the Graves will.

A jury headed by A.I. Clark as foreman found for Curlin, representing the Johnston estate, against the Graves and Scott heirs as to the north half of the league and ordered that a writ of possession issue for the land and the costs of the case. For the first time, however, a final decision in the longdrawn contest went against Johnston when the court ordered "that as to the south half of said league of land, the plaintiff take nothing and that the defendant go hence without delay."⁴⁰

Thus the sheriff's deed conveyed by Sheriff T. Kennedy to John Graves on November 6, 1849, stood up before a district court jury, and the hero of Shiloh, through his attorney, finally lost title to half of the Hiram Blossom league.

possession of which he had entered upon so hopefully 32 years earlier.

Jonas Harrison's phrase about the "cruel uncertainty" of land titles was perhaps even more true than he had expected it to prove, at least in the case of Albert Sidney Johnston's land venture in Harrison County.

NOTES

¹For a more detailed account of early immigration into Northeast Texas, see James Curtis Armstrong, "The History of Harrison County, Texas, 1839 to 1880," (Unpublished Master's Thesis, University of Colorado, 1930).

²John Nathan Craven, *James Harper Starr, Financier of the Republic of Texas*, (Austin, 1950), 89-92.

³Craven, *James Harper Starr*, 92.

⁴Dorman H. Winfrey, "The Texan Archive War of 1842," *Southwestern Historical Quarterly*, LXIV, (October 1960).

⁵Craven, *James Harper Starr*, 172-3.

⁶Craven, *James Harper Starr*, 182.

⁷Douglas Southall Freeman, *Lee's Lieutenants, A Study in Command*, (New York, 1943), I, App. II, 709.

⁸Freeman, *Lee's Lieutenants*, 113.

⁹Recorded in Vol. S, 299-302, Deed Records of Harrison County, Texas.

¹⁰Though not recorded, this information is contained in Abstract of Land Titles, Vol. I, 661, as reflected in the abstract for "Hickory Hollow Farms" which straddles the Old Shreveport Road east of Marshall and constitutes a portion of the original grant. I am indebted to the late William F. McFarland for his courtesy in allowing me to examine the abstract during the time he and the late Charles A. Fry, his brother-in-law, owned the property.

¹¹Charles P. Roland, *Albert Sidney Johnston, Soldier of Three Republics*, (Austin, 1964), 101-02.

¹²Roland, *Albert Sidney Johnston*, 102.

¹³Recorded in Vol. S, 275-77, Deed Records of Harrison County, Texas.

¹⁴Recorded in Vol. S, 408, Deed Records of Harrison County, Texas.

¹⁵Recorded in Vol. A, 111-13, Deed Records of Harrison County, Texas.

¹⁶William Preston Johnston, *The Life of Gen. Albert Sidney Johnston, Embracing His Services in the Armies of the United States, The Republic of Texas, and the Confederate States*, (New York, 1878), 121.

¹⁷Johnston, *The Life of Gen. Albert Sidney Johnston*, 123.

¹⁸Johnston, *The Life of Gen. Albert Sidney Johnston*, 129.

¹⁹Johnston, *The Life of Gen. Albert Sidney Johnston*, 129.

²⁰Roland, *Albert Sidney Johnston*, 101-02.

²¹Johnston, *The Life of Gen. Albert Sidney Johnston*, 130.

²²Recorded in Vol. I, 604, Civil Minutes of the District Court of Harrison County.

Texas.

²³Recorded in Vol. I, Civil Minutes of the District Court of Harrison County, Texas.

²⁴Recorded in Vol. P, 351-2, Deed Records of Harrison County, Texas.

²⁵Recorded in Vol. J, 165, Deed Records of Harrison County, Texas.

²⁶Recorded in Vol. X, 236-7, Deed Records of Harrison County, Texas.

²⁷Recorded in Vol. Q, 280, Deed Records of Harrison County, Texas.

²⁸Recorded in Vol. Q, 279-80, Deed Records of Harrison County, Texas.

²⁹Recorded in Vol. R, 363, Deed Records of Harrison County, Texas.

³⁰Roland, *Albert Sidney Johnston*, 235.

³¹Roland, *Albert Sidney Johnston*, 235.

³²Recorded in Vol. S, 605-6, Deed Records of Harrison County, Texas.

³³Walter P. Lane, *The Adventures and Recollections of General Walter P. Lane, A San Jacinto Veteran, Containing Sketches of Texan, Mexican and Late Wars, with Several Indian Fights Thrown In*, (Marshall, Texas), 1928, 111-2.

³⁴Recorded in Book J, 356, Probate Minutes, Harrison County, Texas.

³⁵Recorded in Vol. F, 125, Probate Minutes, Harrison County, Texas.

³⁶Recorded in Book J, 356, Probate Minutes, Harrison County, Texas.

³⁷Recorded in Book J, 357, Probate Minutes, Harrison County, Texas.

³⁸Recorded in Vol. I, 604, Civil Minutes, District Court of Harrison County, Texas.

³⁹Recorded in Vol. I, 600, 603, Civil Minutes, District Court of Harrison County, Texas.

⁴⁰Recorded in Vol. J, 38, Civil Minutes, District Court of Harrison County, Texas.