The Second Battle of San Jacinto

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A controversy arising out of events immediately following the Battle of San Jacinto on April 21, 1836, and involving some of Texas' most notable figures, including Sam Houston, resulted in a libel suit which was not settled until November 20, 1866. The settlement came eighteen months after the Civil War had ended and more than thirty years after what may have been the wanton killing of a high-ranking prisoner of war, another prisoner, and one or more Mexican women.

These allegations were brought to public attention by an article in the Texas Almanac for 1859, "San Jacinto Campaign," written by Dr. N.D. Labadie, a surgeon with the Texian army then living in Galveston, where he operated a pharmacy. In addition to medicines his wares also were advertised to include oils, varnishes, window glass, garden seed, cypress and pine shingles, plastering lath, books, and "fine bricks." References were made in the article to Colonel John Forbes, commissary of the Texian army, which he believed defamed his character and damaged his reputation. Forbes wrote a letter in his own defense which the Galveston News published on October 30, 1858, and in a later issue the Almanac disclaimed any intention on its own or Labadie's part "to say anything injurious to him [Forbes] or any other person."

Despite later denying in a deposition that he had read the Labadie article, Sam Houston rose in the United States Senate on February 28, 1859, to defend Forbes and to dismiss the surgeon's allegations. This speech, published in its entirety in the Congressional Globe, subsequently was published in an extracted form in the Southwestern Historical Quarterly (IV, pp. 316-25), with an editor's prefatory note that it "pretends to be a reply to Labadie's account of the San Jacinto campaign . . . ."

Despite the Almanac's later disclaimer, which it can be assumed the publication must have agreed to in advance in order to avoid becoming a party to litigation, attorneys for Forbes and Labadie busied themselves between December 12, 1858 and June 25, 1860 with taking sixteen depositions from San Jacinto veterans, including Houston. These depositions, sworn under oath and authenticated by notaries public, were from battle participants then living in places as widely scattered as Corpus Christi and Cincinnati, Ohio.

Nicholas Descomps Labadie, the defendant in the libel case, was born in Windsor, Canada, on December 5, 1801. He moved to Fort Jessup, Louisiana, in the spring of 1830. The same year he moved to Texas, carrying with him a letter from R.D. Hopkins, for whom he worked, to Stephen F. Austin. After a brief stay at San Felipe de Austin, Labadie

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located at Galveston, moving shortly thereafter to Anahuac, where he practiced medicine and surgery and took part in the Anahuac disturbances. At the outbreak of the Texas Revolution he was assigned to the medical staff of the First Regiment of Texas Volunteers.

Forbes, the plaintiff, also was an immigrant to the United States, born of Scot ancestry in Cork, Ireland, on February 26, 1797. He migrated twenty years later, settling first in Cincinnati. In 1835 he removed to Nacogdoches, where, along with Sam Houston, he negotiated a treaty with the Cherokee Indians. During the early part of 1836 he served as primary judge of the municipality, administering the oath of allegiance to many of the Anglo-Americans then coming into Texas. In the grade of major, he was appointed aide-de-camp to Houston, who later assigned him as the army’s commissary. He was elected mayor of Nacogdoches in 1856 and worked as an attorney and surveyor, and in 1876 was appointed lieutenant colonel on the staff of Governor Richard Coke.

By the time depositions had been taken, the points of contention between Forbes and Labadie had expanded beyond the killing of women and a prisoner of war to include Santa Anna’s gold snuff box, the disposition of battlefield spoils, and possible cowardice on the part of Forbes during the San Jacinto engagement. Derisive and sarcastic as he frequently was, Houston’s deposition is replete with an old man’s crochets, a failing memory, and rare insights into his estimation of contemporaries and battlefield associates.

In his Almanac article, Labadie recounted that shortly after having crossed Buffalo Bayou dismounted, his horse having been taken “without his consent,” he was accosted by Houston, who demanded to know why a member of the staff was afoot. In his deposition, however, Houston declared that “I have no recollection that I ever heard of, or knew Dr. Labadie until 1840. And if Dr. Labadie was a surgeon in the Army, my attention was never called to his appointment, nor do I know by whom he was appointed.”

Houston’s lack of regard for some of his associates in the war for Texas independence is reflected in a later statement: “I have never read the [Labadie] sketch, nor do I believe one word of it was ever written nor seen by Mr. Labadie. I believed upon good information that the facts charged in it were fabricated by [Col. Sidney] Sherman, [Mirabeau B.] Lamar & other small fry, and so far as I am informed, I do not believe it contains one word of truth, where facts could be distorted or misrepresented.”

The general’s derision was even more evident in a further statement in answer to one of the interrogatories. In reference to a Labadie statement about “drones” sharing in the spoils of battle, Houston replied that “the Almanac’s [article], Sherman’s defense . . . and Baron Munchausen are works that I shall postpone the reading of until such time as I have entire leisure for amusement. I cannot tell who the drones referred to were,
unless they were the President ad interim [David G. Burnet] and Robert Potter, Secretary of the Navy. I understand he put [got?] off with a pile, and as neither had rendered the country any service, they might be designated as drones.’

And still later, ‘I have looked upon Dr. Labadie as an inoffensive, good man, harmless in a general way. I am told, though, he is a man of extreme prejudice, this I had not suspected. I believed he was the ‘cat’s paw’, used by the basest of men in the world and was used by them where he now stands, the author of this publication. I do not believe he ever wrote or read a word of it, and was responsible for acts of the most base and unprincipled men now living or dead.’

These and other statements by Houston, along with those of fifteen other deponents, are contained in a paper-bound typescript volume which was discovered in an unusual fashion. Entitled “Sidelights on THE BATTLE OF SAN JACINTO, Compiled by R.B. Blake, Volume II,” it was found on the second floor of a two-story building occupied on the lower floor by a grocery store and meat market owned and operated in Marshall, Texas, for many years by Tom Solomon. During much of this time the second floor was occupied by lawyers’ offices. Some time after this occupancy had ended, an effort was made to clear out records, files, correspondence, and other papers left behind when the premises were vacated. Somehow the volume of depositions was spared, coming into the hands of Wanda Solomon (Mrs. Wayne) Summerford of Marshall, a daughter of Tom Solomon. With the sesquicentennial of San Jacinto impending, Mrs. Summerford recognized the volume’s significance and passed it along to Rodger Cramer, executive editor of the Marshall News Messenger, for a recommendation as to its disposition. From him it passed into the author’s hands. No copy of Volume I has emerged since the discovery of Volume II.

Dr. Labadie’s Texas Almanac narrative, which resulted in Col. Forbes’ suit for libel, is a recollection many years after his service in the Texian army, which began March 11, 1836. A month earlier, a meeting had been held at the home in Liberty County of a Mrs. James whose husband had just returned from the siege and capture of San Antonio. At this meeting, J.N. Morland, described by Dr. Labadie as “one of the leading spirits of the day,” related “the thrilling events of the campaign at San Antonio, the Grass Fight, etc., that had transpired but a few weeks earlier, and the recital increased enthusiasm among all.” It was agreed that a company would meet at Liberty on March 11, fully equipped and prepared for an approaching campaign. When the company assembled, William M. Logan, “who had distinguished himself in resistance to Bradburn’s attempt to set the slave free,” was elected captain.

The narrative of Dr. Labadie’s service continues from March 11 until a few days after San Jacinto, when he was ordered by General Thomas J. Rusk to proceed to Galveston with prisoners, with permission to visit
Anahuac to see his family. There he found one of his two children had
died, all but a few of his cattle had been killed, and his wife, on returning
from the flooded Neches River at Beaumont, where she had fled for safety,
had found only a few pieces of "rusty" bacon left in the house after
"passers-by" had pillaged it. In contrast to Houston's opinion of the man,
the account ends with a stirring tribute to David G. Burnet of Liberty
County: "The fair fame of that county is in no small measure owing to
his firmness, zeal, and moderation, which gave tone and dignity to the
due administration of justice . . . Judge Burnet is now living in retire­
ment, having little or nothing to show for the labors of a long and well­
spent life, chiefly devoted to the public service, without remuneration."

The final paragraph is a "concluding suggestion" that "some suitable
monument should be erected on the ground that drank the blood of our
martyred citizens, commemorative of the event that secured the liberties
of Texas, and inscribed with the names of those who participated . . . ."

The portion of the narrative which prompted Forbes' suit had to do
with Labadie's description of events after the Mexican army had been
routed. "Having pursued the enemy into the woods, we found many had
thrown themselves into the bayou, having only their heads above water," he wrote. "It was here that one or two women were killed by some one
taking aim at their heads, and two or three others taken prisoner. Com­
missary Forbes, of Nacogdoches, was accused of the deed, and arrested,
but not tried, as his accusers were advised not to come forward." He
continued:

I pursued a fresh trail into the marsh, and came upon Col. Bertrand,
who had bogged, and on his knees he begged for his life. Supposing
myself to be alone, I extended my left hand to raise him up, but was
surprised to hear a voice behind me saying: "Oh! I know him; he
is Col. Bertrand, of San Antonio de Bexar. General Teran made him
Colonel." This was said by one Sanchez, a Mexican, in Capt. Seguin's
company, composed of some thirty Mexicans fighting on our side.
He had scarcely done speaking when I observed three others coming
up with levelled guns. I cried out to them: "Don't shoot, don't shoot;
I have taken him prisoner." These words were scarcely spoken, when
hang goes a gun, the ball entering the forehead of poor Bertrand, and
my hand and clothes were spattered with his brains, as he falls dead
at my feet. Then comes up Col. Forbes; he searches his pockets, in
one of which he finds a fine gold snuff-box, saying: "This I will take
to Houston." Disgusted with such acts, I walked away, but shortly
after I again fell in with the same man, Col. Forbes, and shortly
afterward witnessed acts of cruelty which I forebear to recount. My
heart sickened to witness such cruelties on the dead and dying.

It should be noted that Dr. Labadie did not recount that he had seen
Col. Forbes fire the shot which was fatal to Bertrand, nor was there
evidence adduced from any of those from whom depositions were taken
indicating directly that the commissary had been guilty of the wanton kill­
ing. However, there was circumstantial testimony sufficient to raise serious
question about his innocence, although a subsequent court of inquiry appointed by Houston exonerated him of any misconduct:

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\ldots\text{after a strict, thorough and full investigation of all matters bearing upon the case, they find no evidence whatsoever in support of such charges, or of any ground of censure against him in the action of the 21st instant. On the contrary, they find his conduct upon that occasion to have been characterized as that of a courageous, as well as humane soldier.}\]

(Signed) Col. Sherman, President
Lieut. Tinsley, Judge Advocate

This report was approved by the commander-in-chief, General Houston, and Thomas J. Rusk, secretary of war, concurred. Soon afterward, Forbes’ commission was re-confirmed by President Burnet, who, as recorded in the “Sidelights” document, “expressed his gratification at the proofs of his untarnished honor.”

More damning evidence about the death of a Mexican woman came from Thomas F. Corry of Cincinnati, who as a boy had known John Forbes in that city and later in Nacogdoches. His deposition was filed in the district court of Nacogdoches during the November term of 1866. Corry joined the Texian army in April 1836, a private soldier in the company commanded by William Patton of Columbia. This was one of the companies of the Second Regiment, commanded by Sidney Sherman. In his deposition, Corry recounted:

On the twenty-first of April, about an hour before sun-down, I found myself (after the Mexicans were completely routed) upon the margin of San Jacinto Bay, among some scattered Texas soldiers (strangers to me) who were shooting Mexicans that were swimming across the bay, or hiding in the marsh. As this work did not suit my feelings, I left them and soon after met the Plaintiff [Forbes], who was alone on foot and apparently coming from our camp. He had his drawn sword in his hand. We stopped together and he congratulated me upon the glory of the victory, and upon my escape from injury. Almost instantly there came from the timber into the prairie where we stood, two men in the uniform of Texas regulars, bringing with them two prisoners — a man and a woman. Barely had they joined us, when Col. Summerville or Col. Burleson, I do not remember which, who was galloping at two or three hundred yards distance, cried out: “Kill them, God damn them. Remember the Alamo.” The two regulars immediately attacked the man with their bayonets. There was a momentary struggle in which I tried to save the man’s life. At the same time Col. Forbes thrust his sword through the woman’s breast, the blade entering in front, and coming out her back. As the sword was withdrawn she fell forward upon her face, quivering, died, and without a groan. This dreadful deed paralysed me, and the man was killed. I said to Forbes, “Damn you, you have killed a woman . . . I left him instantly . . . I do not believe that Forbes was in the battle. He was, from his office, a non-combatant, and when I met him, was coming from the direction of our camp, and from where no fighting man could find anything to do. I have never spoken to Col.
Forbes from that day to this, although I met him frequently passing about the camp, and afterwards on the street in Houston in 1839.

In answer to a subsequent interrogatory, Corry testified that "The prisoners, of course, I knew nothing about; but I am sure one of them was a woman from her form, her hair, her features and her dress. She was about 25 or 30 years of age, and during the struggle never said a word, nor raised a hand nor budged a step. She was killed by Genl. (sic) Forbes, in her tracks, having made no effort whatsoever to escape or ask for mercy, because, as I have always thought, she felt that as a woman she was safe."

Elsewhere in his deposition, Corry testified that a man, presumably a prisoner of war who accompanied the dead woman, "was immediately dispatched by the regulars."

Continuing his recital, Corry said that he told the fact of the killing of the woman to Dr. Booker, surgeon of the Second Regiment, who was the first man I met, about ten minutes after it happened, and within a quarter of a mile of the place. I told him Genl. Forbes had done it, and how it was done. I expressed myself indignantly, and the Doctor damned Forbes, and said he would spread it all over the camp. He did tell it, and so did I, and that evening, and for several nights after when the tattoo had been beaten, and the troops had gone to their tents, the cried would be heard by everybody, all around the camp, "Who killed the woman?" from one side, and the answer was invariably, "Genl. Forbes," from the other side; both uttered with loud and distinct voices, which Genl. Forbes must have heard, night after night. I recollect the murder of the woman, it being the most horrible thing, that in a life of much adventure, I have ever witnessed.

Corry's account was corroborated in hearsay fashion by the deposition of Thomas H. Mays, a member of Jesse Billingsley's company of Colonel Edward Burleson's regiment and a resident of Bastrop when his deposition was taken. Mays testified that he was told by R.M. Cravens of the women's death: "Well, Tom, our man Forbes has retrieved his character. I asked him how: he said that he [Forbes] had got to the battle ground before him [Cravens], and had killed a Mexican woman; that he saw him [Forbes] kill her. I asked him, 'Is that a fact, Bob'? He replied, 'yes, by G-d, it is, for I saw it myself'. Divers other persons asked him about it, and I heard him tell it several times, and he always told it the same way. It was the general and current rumor throughout the army that Forbes had killed a Mexican woman, and neither Forbes or any person for him ever denied it. I have heard Forbes accused of killing a Mexican woman to his face, and he never denied it, nor did any person deny it for him." Cravens had died in the interim, and there is no deposition recorded in the "Sidelights" volume for him.

Corry's testimony about the cries which echoed throughout the camp was confirmed by several other deponents. Robert K. Goodloe, in testimony taken December 14, 1859, declared that "I frequently heard the plaintiff, Commissary Forbes, publicly accused of killing a Mexican
woman during said battle. I have frequently heard the exclamation made
from one part of the line, ‘Who killed the Mexican woman’? and it would
be answered by perhaps a hundred voices, ‘Commissary Forbes’! I can-
not be positive that this exclamation and reply was ever made in the
presence of Commissary Forbes, but I feel reasonably certain it was.’”

M. Austin Bryan of Brazoria County gave similar testimony: “I heard
after the battle a cry among some of the men in the army to the following
effect, as well as I remember, ‘Who charged up after the Mexicans were
whipped and killed a woman’? ‘Commissary Forbes; brave man he’. This
was the charge made against Col. Forbes by some of the men, but who
they were I cannot say. It appeared to be generally made. (By Commissary
Forbes I mean the plaintiff.)”

Houston was evasive in his testimony. Asked if during his residence
in Nacogdoches he had heard rumors of a Mexican woman killed on the
battlefield, the general answered that “I heard the same report, but cannot
say what other persons believed about it.” Then asked if he knew whether
there “was one or more than one Mexican woman killed in ‘said battle,’”
he replied that “I saw no such dead bodies.”

Allegations of irregularity in the disposition of the battle spoils came
from a number of deponents. From Houston’s testimony, these included
not only the equipment of the Mexican army but a sum of money
apparently totaling about $12,000. Campbell Taylor, a corporal in Captain
Billingsley’s company in the regiment commanded by Burleson, testified
in a deposition taken December 12, 1859, that the spoils were placed in
the custody of Forbes: “It was distributed as I understood, at least some
of it was, and I got nine dollars . . . There was a general dissatisfaction
throughout the army about the distribution of said money. From the first
impression of the amount of money every person was satisfied with the
report, but every count made it less, and when it was finally distributed
each soldier was satisfied that he did not get what he was entitled to.”

This corroborated what Labadie had written in his Texas Almanac
article, as well as statements by several other deponents. In his narrative
Labadie commented that

... the money had been counted so often, and by so many, that it
naturally stuck to their fingers, till about $7,000 was left. I was told
that Gen. Houston cursed them in his peculiar way for their rascally
conduct, and swore the money should be counted no more. His
cursing, as usual, did little good; and, as usual also, those who did
the least towards securing the victory, appropriated to themselves the
largest share of the spoils. The drones got the best of the food in the
camp, and at the last, they seized on all the money they could touch,
whilst the hard workers fared the worst. I got nothing. The blankets,
saddles, etc., taken from the enemy, were sold at auction, but I know
not what became of the proceeds. Col. Lamar was the highest bidder
for Santa Anna’s saddle, his bid, I believe, being $300. It was richly
mounted with silver. Some friends of Gen. Houston claimed it for
him, but Lamar insisted on his right to his purchase, contending that he had done as much as Houston to secure the victory. I understand that $3000 were voted to the navy, but I know not whether any in the navy got a dollar of it.

Other deponents than Corporal Taylor had similar versions of the circumstances. Captain Billingsley testified that "There were rumors and reports to the effect that the money was diminishing in amount daily, and so serious was the report and so great the clamor amongst the men that Capt. Moseley Baker and I determined to notify Col. Forbes that if we did not get the pro rata for our companies by the next day that we would march our companies down, take charge of the money, and distribute it ourselves to the army. I notified Col. Forbes of this resolution, and that night I got the money . . . The money was paid to me before sunrise the next morning."

Robert K. Goodloe testified that "I understood through my Captain, that each man was entitled to twelve dollars. I did not receive but four dollars nor did any of Captain Karnes' men, nor did we receive that until the army arrived at Victoria, I think in the month of June, 1836." Josephus S. Irvine, in his deposition, declared that "I never received any money." Amasa Turner, in a deposition taken in Colorado County on October 1, 1859, said, "It was reported the chest contained about twelve thousand dollars in specie. My company received six dollars to the man during the following Summer, in July, I think." Austin Bryan, a resident of Brazoria, in his deposition dated November 2, 1859, said that all he ever received was a "common Mexican saddle." Joseph P. Borden, at Corpus Christi on September 21, 1859, testified that "About eleven dollars was paid to me, for myself alone, as a soldier at said battle . . . the same being my portion of the amount supposed to be then in hand."

The amount of specie to have been distributed was estimated variously by the deponents to have been between $12,000 and $15,000, including the $3,000 voted to the navy, but the exact amount probably never will be known. There also was confusion about the number of men present in the army at the battle and consequently the amount due each man. However, the most credible figures seem to be those offered by Amasa Turner, a witness for Labadie, who believed $9,000 remained after the allocation to the navy: "If so, it would leave nine thousand to be divided among 783, the number of men Gen. Houston reports to have composed the army on the day of the battle. This honestly divided would give eleven dollars to the man, I think." His calculation thus conforms to the amount Joseph P. Borden said he received but differs sharply from the amounts — or nothing — which others reported.

Evidence by the deponents bearing on the gold snuff box which Labadie charged Forbes with removing from Bertrand's body is even less enlightening. The charge apparently stung Houston, however. In answer to a question posed to him whether in conversation with brother officers
he had exhibited a gold snuff box with the comment "This was presented to me by Col. Forbes," the general was more precise with his language than in answer to some of the other questions:

I never heard of a gold snuff box on the Battleground. Genl. Santa Anna had one, and retained it, after he was discharged and some days thereafter. Dr. Branch T. Arthur presented me, I believe, the same snuff box, and said he was requested to do so by Genl. Santa Anna. I accepted it, have it yet. I immediately wrote to Col. Harkley, who accompanied Genl. Santa Anna to the United States, to procure for Santa Anna a very handsome one, which he did in Philadelphia, amounting to $280.00 in value, which amount I refunded to Col. Harkley. This is all I know about the far-famed snuff box.

With the Civil War intervening and attention diverted elsewhere, Col. Forbes' suit languished in the district court at Nacogdoches until 1866, when both Forbes and Labadie apparently wearied of the contest and decided to terminate it on grounds agreeable to both parties. By this time Forbes was represented by R.S. Walker and Labadie by F.B. Sexton. Richard Sheckle Walker had established a practice in San Augustine in 1846, moving shortly thereafter to Nacogdoches. District attorney for eight years, he later was district judge and a member of the constitutional convention of 1866 and an alternate delegate to the national Democratic convention of 1868. Franklin Barlow Sexton also was an early settler in San Augustine, in 1831, where he attended Wesleyan College. On graduation he read law in the office of James Pinckney Henderson and O.M. Roberts, both subsequently governor of Texas. In 1861 he was elected a representative from Texas to the Confederate Congress and was re-elected in 1863. The Sexton family moved to Marshall in 1872, where he was living when he served as a delegate to the national Democratic convention in 1876.

The role these two prominent attorneys may have played in reaching an out-of-court settlement must remain speculative at best. However, the language of the filing in the Nacogdoches court indicates face-saving at its finest. Labadie declared that "he did not intend upon my knowledge, to charge Col. Forbes with any conduct unworthy of a soldier or a man of honor." He explained in a declaration signed July 28, 1866, in Galveston that the article was written "somewhat hastily" at the request of the Texas Almanac and with a stipulation that its editor would "strike out everything that was not the statement of facts strictly within my own knowledge" — which was not done. He noted that in a subsequent issue of the Almanac "the blunder was remedied by all that related to Col. Forbes being left out, showing that there was no intention on my part or the publishers to say anything injurious to him or to any other person."

For his part, Forbes had submitted a certified copy of the proceedings of the court of inquiry, as previously noted, which the Almanac reproduced with the comment that President Burnet's re-confirmation of Forbes' commission, "as Col. Forbes informs us, 'expressed his gratification at the
proofs of his untarnished honor'." The editorial comment continued: "We should here add that Dr. Labadie denied any intention to make or endorse any charges against Col. Forbes, and says the construction put upon the passage referred to is a perversion of his meaning, caused probably by some typographical error. We can only say that we did not suppose the manuscript liable to the above construction, and we extremely regret to have been instrumental in doing injustice to Col. Forbes . . ."

Based on these gestures, Forbes moved to dismiss the suit, and it was agreed that each party be adjudged to pay his own costs. The long-continuing suit thus ended in the filing of Cause No. 2509, on November 20, 1866, in the district court of Nacogdoches County, J.E. Mayfield, clerk. Thus, after two intervening wars, the two contestants had made their peace with each other, though not without having provoked a long-forgotten record of how some of the veterans of San Jacinto remembered the battle.

Labadie survived less than four months after being discharged as defendant in the libel suit, dying March 13, 1867, and is buried in the Catholic Cemetery at Galveston. Forbes died in Nacogdoches on February 10, 1880, and is buried there beside his wife in Oak Grove Cemetery.