

Peter McDermott Store (Block 1 Lot 8)

In February of 1851, Collatinus Ballard sold Lot 8 in Block 1 to the Murchison Lodge No. 80. On the site, the Lodge constructed a two-story wooden building using the top floor as a meeting hall and renting out the lower floor. Records show that one of the early tenants was Dr. Marshall B. Bennett, who returned from the Mexican War and opened an office for the general practice of medicine.

On February 7, 1851, the Lodge sold to Peter McDermott, the lower story of their hall with all the right that Lodge had in and to the lot on which the hall stands. In return, McDermott agreed to leave the Masons the undisturbed and unmolested right of way to the upper story of the building.

McDermott's pattern of operation was like Collatinus Ballard. He owned and operated a gin, purchased county produce, dealt in cattle and hogs, as well as cotton, and shipped or carted them to town of Lavaca on the Texas coast. McDermott did an extensive business boasting in 1852 of having "the largest stock in the upper county". But, McDermott also had about \$12,000.00 to \$15,000.00 out on credit that he had extended to settlers in the area.

While the day to day operations were all McDermott, he did have a partner. In 1851 and 1852, John W. Kelly and Peter McDermott were trading together as merchants in Hallettsville under the firm name of Peter McDermott & Co.

On March 24, 1852, Peter McDermott and John W. Kelly signed a promissory note for \$1,086.75 to be paid to James E. North and Emile Marqueze of New Orleans doing business as James E. North & Co. The note was due 10 months from the date of issue. While promissory notes like this were common business practice, this note would later become a legal issue for Kelly.

On September 7, 1852, Kelly and McDermott entered and filed an agreement to dissolve their partnership. The agreement that was filed on October 10, 1852 stated that "That they (McDermott and Kelly) should dissolve the partnership and McDermott retain in this hands the effects of the concern amounting to \$20,101.86 for which he bound himself to pay all the debts and liabilities of the said firm." Once all the debts were paid and McDermott paid himself 20% from the amount of the assets for his services, the residue of said assets would be divided with Kelly.

In January of 1853, the bloody flux, an intestinal infection, was present in the Lavaca County and one of its victims was Peter McDermott. An ill McDermott

wrote a will on January 25, 1853 and died on the 28th day of January. He was survived by his wife Ann and children. In his hastily written will, McDermott named Dr. Marshall B. Bennett, Lewis L. Layton, and A.W. Hicks his executors over an estate valued at \$40,000.00.

Upon the death of McDermott, John W. Kelly became involved in two civil cases involving unpaid notes. When McDermott died, he had not complied with the terms of the dissolution agreement leaving Kelly as the sole survivor of the partnership and in debt in the amount of \$14,000.00. Kelly contented that at the time of McDermott's death, that he (McDermott) had in his possession assets belonging to the firm in the amount of \$16,000.00 and that the executors had incorrectly combined McDermott's individual assets with those of the firm in the estate inventory. The executors also refused to deliver any portion of the assets to Kelly.

In February of 1853, the probate court ordered that the executors of the estate pay to the widow and heirs of Peter McDermott the sum of \$400.00 for their maintenance for one year. Bennett, and Layton (Hicks by this time was no longer an executor) qualified as the executors filed a bond of \$40,000.00 and provided to the probate court a full appraisal of the estate including all assets and claims.

Immediately, McDermott's widow, Ann, filed suit against the executors in the local court. Ann McDermott, and others, represented that Bennett & Layton took into their possession all the property of the estate. The suit contends that the two men took into their possession property belonging to the estate that was not included in the appraisal presented to the court, but had assigned and converted the same to their own use and benefit for the purpose of defrauding Ann and other creditors of said estate. McDermott and the creditors stated that the only way a complete and correct appraisal of the estate could be accomplished was by referencing the invoices, bills and account books of McDermott's firm which were in the possession of the executors and unavailable to the plaintiffs.

In April of 1853, Bennett, and Layton, at public auction, sold the McDermott building and property (Lot 8 in Block 1) excepting the upper story of said building which housed the Masonic Lodge to Abner K. Foster and John M. Bennett. Foster and Bennett executed their notes for the purchase money for the property.

McDermott's widow and the creditors filed additional paperwork in June 1853 concerning their claim that the executor's intention was to defraud the heirs and creditors. The plaintiff's state that the executors continued to conceal from them

the invoices, bills and account books belonging to the estate, were filing false and fraudulent bills of sale of estate property, and had committed a breach of their bond by paying off unapproved claims against the estate including one to John W. Kelly for \$12,292.00.

In November 1853, John W. Kelly and Bennett and Layton, entered into an agreement assigning some of the assets from the estate to Kelly. These assets were claims due, a list of open promissory notes, and a list of open accounts due to McDermott & Co. Kelly was to collect these outstanding claims then apply to proceeds to the payment of debts and liabilities of the said firm of Peter McDermott & Co. Kelly was to refund the residue, if any, to Bennett & Layton. In return, Bennett and Layton agreed to supply any additional funds necessary to pay the liabilities not covered by funds received from the claims. The purpose of this agreement was to prevent litigation concerning the debts owned by McDermott & Co at the time of Peter's death. Earlier, it had been ruled that even though the partnership of McDermott and Kelly had been dissolved, Kelly was still legally responsible for the payment of the debts.

As if Kelly did not have enough financial problems, remember the promissory note that McDermott and Kelly signed in March 1852 with James E. North & Co. Now that unpaid note has become an issue for Kelly as well.

In a petition filed with the Lavaca County District Court on October 3, 1853, James E. North and Emile Marqueze of New Orleans doing business as the firm James E. North & Co., stated that the note signed on March 24, 1852 was due and unpaid. The said note had been allowed by the executors of the McDermott estate and approved as a just claim against the estate. The petition called for John W. Kelly to appear in court and they asked for judgment against Kelly for the note plus interest.

Kelly replied that before the death of McDermott, they had shipped 100 bales of cotton to New Orleans valued at \$4000.00 and he (Kelly) believed and charges that said cotton was shipped to pay debt and that North & Co. had received several bales of that cotton valued at \$500.00 which North & Co. had not credited to the debt owned them by McDermott and Kelly.

North & Co. responded that that in Kelly's response he did not state that the cotton had been shipped to North & Co. and therefore presented no defense to the plaintiffs' suit. The court issued the judgment that John W. Kelly should pay the

sum of \$1,150.70 which was the amount of the note sued upon with the interest due and the costs of the plaintiffs in this cause.

Yet another civil case was filed concerning the estate of Peter McDermott. On August 29, 1854, Abner K. Foster and John M. Bennett filed a petition in court concerning the April 1853 sale of Lot 8 in Block 1 from the executors of the McDermott estate, Dr. Marshall B. Bennett, and Lewis W. Layton. Foster and Bennett stated in the petition that Bennett and Layton had sold the property knowing that they did not have the authority to enter that sale. Also, Foster and Bennett included John W. Kelly in the cause due to the fact that the promissory note they had given Bennett and Layton for the property had been assigned to Kelly (Note: see November 1853 agreement) and Kelly was harassing them concerning payment on the note.

Foster and Bennett asked that the sale be rescinded, the note for the purchase money be cancelled and returned and the bond for the title be cancelled unless at the hearing of this cause, the executors be able to make a good title to said building and lot I which they pray a confirmation sale title, title note and possession and a decree to that end.

Bennett and Layton admitted that they did not have authority to dispose of real estate and asked the court to void the sale. They then asked the probate court to give them the permission to sell the real estate to settle the estate. Foster and Bennett agreed to not further prosecute the cause and the case was dismissed on October 16, 1854.

While this case had been settled, Ann McDermott and the creditors were still pursuing their case against Bennett & Layton. On November 1, 1854, Bennett and Layton were again cited to appear in County Court and give a new bond as executors of the estate of Peter McDermott.

Lewis L. Layton failed to appear and was suspended as an executor by the court. Bennett filed a new bond in the amount of \$40,000.00. The petitioners (McDermott's widow and the creditors) still contended that Bennett had violated his bond by paying off debts not probated as required, not collecting on debts due the estate, and filing a list of insolvent claims due the estate that at the time were good and solvent and were collected by Bennett and converted to his own use and benefit with the full intention of defrauding Ann and the other creditors of said estate. They also contended that Bennett filed with the court that the estate had cash in hand of \$14,044.29 while in fact the balance in hand should have been

\$30,000.00. Bennett was also accused of filing a fraudulent receipt for funds supposed paid to Ann McDermott of \$400.00 for her yearly allowance, ordered by the probate court in 1853 that she never received.

The court ordered that Dr. Marshall B. Bennett of Hallettsville, Lavaca County, Texas, Lewis L. Layton, who is a non-resident of the State of Texas and whose residence is unknown to the petitioners and all of the men who signed their two bonds to appear in court in August 1856. The court also ordered that Bennett bring to court the invoices, bills, and account books of the firm of McDermott & Son.

While all this controversy was swirling around him, Dr. Marshall B. Bennett rented part of the lower story of the McDermott building for his general practice of medicine with John M. Bennett as the firm of Bennett & Bro.

On April 3 1855, A.B. Leavitt and William B. Parker of the town of Victoria who were merchants in the firm of Leavitt & Parker filed suit against Dr. Marshall B. Bennett and John M. Bennett of Hallettsville doing business as Bennett & Brother, merchants and druggists. The petition stated that Bennett & Brother were jointly indebted to Leavitt & Parker for the sum of \$1,000.00 for a promissory note of \$834.80 due January 1, 1855 plus interest. Leavitt & Parker wanted the Bennetts cited to appear in court in March 1855 and asked for judgment against the Bennetts for the note and interest due.

The Lavaca County Sheriff deputy, J.J. Ballard, served citations to both Bennetts. While John Bennett accepted his citation in the usual fashion an interesting note was added to the citation of Dr. Marshall B. Bennett when it was returned to the court. "Executed by dropping at the feet of the defendant M.B. Bennett a copy of the Petition and a certified copy of this citation, he having refused to accept the same, done in presence of William Martin and John Watson."

On October 17, 1855, the parties appeared in court by their attorneys and jointed asked the court to dismiss the case at the cost of the defendants, Bennett & Bennett and the cause was dismissed.

During this court case, on August 13, 1855, Dr. M.B. Bennett and Lewis L. Layton, executors of the last will and testament of Peter McDermott, sold Lot 8 in Block 1 (legally this time) to John M. Bennett and Abner K. Foster for \$1,010.00. The deed stated that Layton had been removed for the further execution of said will and M.B. Bennett was now the sole executor of the will. Foster immediately turned around and sold his interest in the property to John M. Bennett.

On September 17, 1855, John M. Bennett sold Lot 8 in Block 1 to William B. Davis, Wiley T. Rogers, and Bluford B. Walker; one undivided half unto Davis and to Rogers and Walker the other undivided half. The sale excluded the second floor of the building and right of way to same which was reserved for the Murchison Lodge #80.

Almost two years later, the November 1853 agreement between Kelly and Bennett & Layton came under scrutiny when Kelly filed a petition on September 21, 1855 against Bennett & Layton that they had fraudulently represented to him at the time of the agreement that the known liabilities of the firm were \$8,726.68 while in fact the amount was \$14,000.00. Kelly also claimed that they defrauded him by representing the claims they gave him in the agreement were good and solvent claims when in fact they were totally worthless and insolvent and that in fact some of the money due to the partnership in these claims had already been paid to Bennett and Layton prior to the agreement.

Bennett and Layton had also interfered and prevented Kelly from collecting said claims and dismissed suits instituted by Kelly in their names on such claims and they had received \$3,000.00 on such claims after the date of the agreement and did not share the money with Kelly but converted the funds for their own use. Kelly state that Bennett and Layton have never complied with the agreement to supply the funds to cover any deficiency that might be due on the firm's liabilities after application of the proceeds of said claims assigned to Kelly. This left Kelly with having to pay on said liabilities due by the firm in the sum of \$12,000.00 out of his own personal funds. Kelly asked the court for a judgment of \$10,000.00 plus damages and court costs against Bennett & Layton.

When the case was called to court and the court was informed that while Lewis W. Layton had been duly cited to appear at court, he did not appear. The court ruled that the cause be continued between Kelly and Bennett only.

The cause again came to court on February 10, 1856. This time, Dr. Marshall B. Bennett took the offensive. In a statement read by his attorney, Bennett denied that Kelly was ever the surviving partner of McDermott because their partnership had been dissolve by mutual consent long before the death of McDermott and that therefore Kelly has no rights as survivor by virtue of said partnership. So, in consideration of said agreement of dissolution Bennett did make agreement with Kelly that Kelly would take assets from the agreement to pay off debts and that Bennett and Layton would make up any differences to Kelly after executing estate

if any remained. Bennett states that Kelly failed to collect on any of the claims awarded to him in the agreement. Bennett stated that nothing remains and that the estate is and was insolvent by a large sum.

With the two parties at an impasse, Kelly and Bennett agreed to enter arbitration to settle the suit between them in February 1856. S.T. Rabb and C. Ballard were chosen as arbitrators and they chose Josiah Dowling as the umpire in the case. The parties met with the arbitrators and after an investigation of all information submitted before them, they with the umpire chosen by them made an award in these words: "We the arbitrators find for the plaintiff John W. Kelly \$4,176.26. Kelly agreed with the ruling and asked to have the payment awarded to him. The case finally ran its course and was dismissed by the court at the plaintiff's cost.

In the Fall of 1856, Ann McDermott and a list of creditors made one more appearance in court to have the estate settled to their satisfaction.

(Note: this is the last record found in Civil Case #429 Ann McDermott et al vs M.B. Bennett et al. According to the index of Civil Court Cases, no judgment was recorded on this case.)

On February 5, 1857, Anne McDermott and her children appeared in the Lavaca County Probate Court in a last-ditch effort to usurp Bennett from his position as executor. On that day, the McDermott family again accused Dr. M.B. Bennett of embezzling funds and gross neglect and mismanagement of the estate of Peter McDermott. The case was continued by the court repeatedly until August 31, 1857 when the court ruled that McDermott had to provide security for any costs. When by September 28th of that year McDermott had failed to provide the court ordered security, the court ordered that the case be dismissed.

In March, 1860, over seven years since Peter McDermott's death, M.B. Bennett filed a final settlement of the estate.

References:

**Lavaca County Civil Case #274 Leavitt & Parker vs. Marshall B. Bennett & John M. Bennett*

**Lavaca County Civil Case #317 John W. Kelly vs M.B. Bennett & Lewis W. Layton executors of Peter McDermott*

**Lavaca County Civil Case #429 Ann McDermott et al vs. M.B. Bennett et al executors of Peter McDermott*

**Lavaca County Civil Case #162 James E. North & Co. vs John W. Kelly*

**Lavaca County Civil Case #198 John M. Bennett & Abner K. Foster v. Lewis W. Layton, M.B. Bennett, and John W. Kelly*

- *Lavaca County Civil Case #274 Leavitt & Parker vs. Marshall B. Bennett and John M. Bennett*
- *Lavaca County Deed A/396*
- *Lavaca County Probate #236 Peter McDermott*
- *Lavaca County Probate Minutes Book B p. 25, 105, 313 & 316*
- * Lavaca County Probate Minutes Book C p. 8 & 41*
- * Lavaca County Deed A/271*
- *Lavaca County Deed A/561*
- *Lavaca County Deed B/107*
- *Lavaca County Deed C/539 & C/540*
- *Lavaca County Deed G/174*
- *Hallettsville Tribune January 11, 1974 & January 25, 1974*
- *Hallettsville Herald August 5, 1977*
- *On the Headwaters of the Lavaca and Navidad p. 147*
- *Free State of Lavaca p. 162*