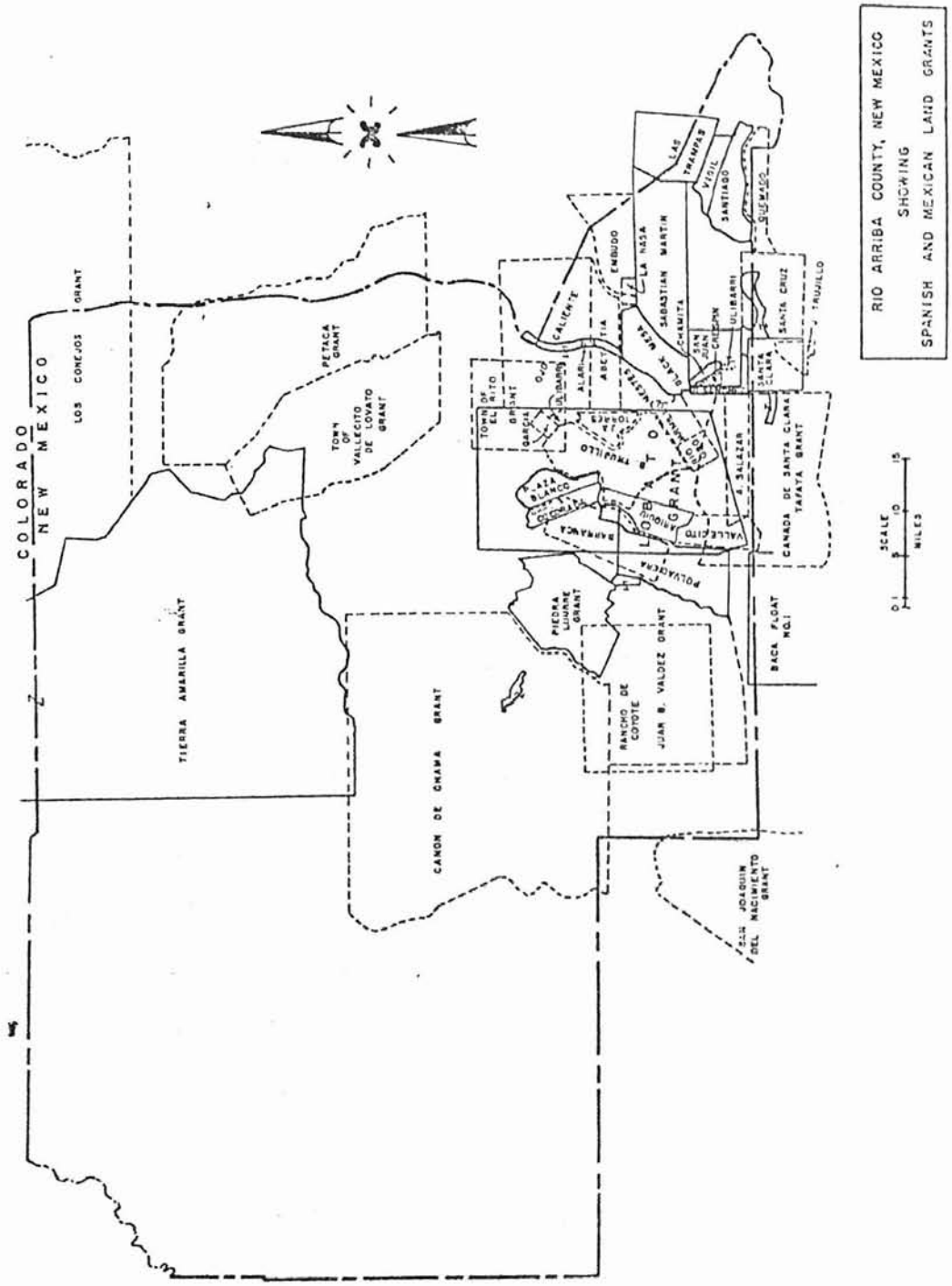
* See State of Colorado
** See Sandoval County

* See San Miguel County (Luis Cabeza de Vaca Grant)
** See Santa Fe County
***See Taos County


RIO ARRIBA COUNTY, NEW MEXICO
SHOWING
SPANISH AND MEXICAN LAND GRANTS
COLORADO
NEW MEXICO
LOS CONEJOS GRANT
PETACA GRANT
TOWN OF VALLECITO DE LOVATO GRANT
TIERRA AMARILLA GRANT
CANON DE CHAMA GRANT
PIEDRA LUMBRE GRANT
RANCHO DE COYOTE
JUAN B. VALDEZ GRANT
BACA FLOAT NO.1
CANADA DE SANTA CLARA TAFAYA GRANT
SAN JOAQUIN DEL NACIMIENTO GRANT
LOBATO GRANT
TRUJILLO
POLVADERA
BARRANCA
VALLECITO
J. SALAZAR
TOWN OF EL RITO GRANT
GARCIA
ALARID
ABEYTIA
CALICANTE
EMBUDO
LA NASA
SEBASTIAN MARTIN
CHAMITA
SAN JUAN CAMPOSA
ULIBARRI
SANTA CLARA
SANTA CRUZ
TRUJILLO
LAS TRAMPAS
VIGIL
SANTIAGO
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THE PETACA GRANT

On January 29, 1836, Jose Julian Martinez together with his father, Antonio Martinez, and Francisco Antonio Atencio and his sons petitioned the Ayuntamiento of the Town of Ojo Caliente asking for a grant covering a piece of vacant land, known as the Petaca and situated upon the Ojo Caliente River, for agricultural purposes. The Ayuntamiento forwarded the petition to the Departmental Deputation on February 22, 1836, stating that the lands had been granted some twelve years previously but the former owners had forfeited same because they had failed to settle upon and improve the premises as required by law. It also recommended that the grant be made, but only to Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio since Atencio's sons were minors and thus had no authority to join in the petition. The Departmental Assembly, in turn, referred the matter to Governor Albino Perez, who, on February 25, 1836, granted the request and ordered the Alcalde of Ojo Caliente to designate the boundaries of the donation and place the applicants in legal possession of the land. Pursuant to and by virtue of the authority delegated to him, Alcalde Jose Antonio Martinez on March 25, 1836, together

with the interested parties went to Petaca where he pointed out the following natural objects which he designated as the exterior boundaries of the grant:

> On the north, the hill commonly called Tio Ortiz Hill; on the east, the Arroyo de la Aguaje de Petaca; on the south, the entance to the Canoncito and lands of Jose Miguel Lucero; and on the west, the Vallecito Grant.

The alcalde then proceeded to allot individual lots, each with 150 varas of river frontage, to the three original grantees and thirty-three associates, who had joined them in the formation of the new colony. The lots commenced at the Canoncito de Petaca and extended northward. A lot, 250 varas in width, was also designated as a plaza and for other public purposes. Once the survey and allotments had been made, the colonists were placed in legal possession of their individual lots.[1]

The settlement was in existence when the United States conquered the area in 1846 and had been continuously occupied and used since its inception except for short periods when Indian hostilities forced its inhabitants to seek safety at Ojo Caliente. The heirs and legal representatives of the original grantees filed a petition[2] on February 12, 1875, in the Surveyor General's Office seeking

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[1]S. Exec. Doc. No. 31, 44th Cong., 1st Sess., 5-9 (1876).

[2]The Petaca Grant, No. 105 (Mss., Records of the S.G.N.M.).

the confirmation of the grant. Eight days later Surveyor General James K. Proudfit issued his decision[3] in which he stated that he had no doubt concerning the validity of the grant papers and, therefore, recommended it be confirmed to Jose Julian Martinez and the thirty-five other colonists named in the Act of Possession. A preliminary survey of the grant was ordered by Proudfit in 1878 at the request of the claimants. Between May and October, 1878 Deputy Surveyors Griffin & McMullen made the survey. It showed that the grant contained 186,977.11 acres.[4]

On July 28, 1883, S. S. Farwell wrote Surveyor General Henry M. Atkinson stating he had acquired the interests formerly owned by a number of the original colonists, and that his attorney, after having examined his title, had advised him that title to the entire grant, except for the individual tracts which had been allotted to the thirty-six settlers, was vested in Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio. Therefore, he requested Atkinson to re-examine the grant with a view of determining if Proudfit had made a mistake and, if an error in fact had been made, should it be reported to Congress in order that the grant might be confirmed to the proper persons. Surveyor

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[3] Ibid.

[4] Ibid.

General Atkinson reviewed the case and wrote a Supplemental Report[5] on August 1, 1883. He stated:

> I question whether the right to review the acts of my predecessors exists, except in instances where the case is remanded back by Congress for rehearing or review, but as that body has the final action and decision in these cases, with entire discretionary power to make grants, or confirm those made by the Spanish and Mexican Governments, it is presumed that if error exists in the record of the case, there could be no objection to pointing out to Congress such error, in order that its action may conform to the requirements and obligations of the Treaty of Guadalupe Hidalgo and the rights of persons thereunder.

Briefly stated he found that Perez had granted the premises to Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio but Alcalde Martinez had no authority to inject new grantees into the concession or alter in any manner the terms of the grant. He concluded by holding that legal and equitable title was vested in the three parties who had applied for and received the grant and recommended that it be confirmed to them. In support of this position, he pointed out that:

> It was a custom in those days, on account of the danger existing from hostile Indians in some localities, for persons receiving concessions to take with them for protection or assistance as herders employees to whom they gave small parcels of land to cultivate, and to which they may have acquired a prescriptive right as against the grantees, but such persons held no interest in the general commons of the grant and were not beneficiaries thereunder.

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[5]S. Exec. Doc. No. 45, 48th Cong., 1st Sess., 2-4 (1884).

Congress still had not acted upon the claim when George W. Julian was appointed Surveyor General. The Petaca Grant was one of the grants which were re-examined by Julian under instructions[6] from the Commissioner of the General Land Office dated December 11, 1885. In a Supplemental Report[7] dated April 17, 1886, he stated that the record before him presented three important questions. First, was there a valid grant? Second, did the evidence show the existence of any party having an interest in the land? And, third, had the grant been surveyed correctly? In answer to the first question, Julian asserted that:

> ... written documentary evidence, no matter how formal and complete, or how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands and there is nothing in the public records of the country to show that such evidence ever existed... The equity of the claim is a different question. The genuineness of the grant is sufficiently established... The strictness of the law of 1824 as to the record evidence of grants was never followed in New Mexico, where grant claimants were too much accustomed to hold the evidence of their titles in their private custody, although they frequently deposited them in public archives. When the United States took possession of those archives, they were, therefore, necessarily incomplete, and some of them in all probability were scattered and lost in the year 1870 through the reckless conduct of William A. Pile, who was then Governor of New Mexico. In the light of these facts, I think it would be a great hardship to reject altogether the claim now made and that justice will be best served by recognizing an equitable title to the land granted.

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[6] S. Exec. Doc. No. 113, 49th Cong., 2d Sess., 2 (1887).

[7] S. Exec. Doc. No. 52, 49th Cong., 2d Sess., 4-6 (1887).

Julian avoided answering his second question by holding that the problem could best be settled by another tribunal. In connection with the third question, he held the Griffin & McMullen Survey obviously was erroneous for it covered almost twice the area originally claimed by the petitioners. He pointed out that since the governor had made the grant to Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio, it could not under the Colonization Law of 1824 exceed 33 square leagues. Since he had no way of knowing the true area covered by the grant, he recommended that the equitable title of the "proper claimants" be confined to the "land actually covered by the grant." Commissioner William A. J. Sparks reviewed all three reports which had been filed in connection with the grant in an effort to reconcile the conflicting views and recommendations. On January 21, 1887, Sparks notified Secretary of Interior L. Q. C. Lamar that in his opinion the claimants had failed to prove that they had legal title to the lands in question. He specifically called attention to the fact that the grant had never been approved by the Departmental Deputation and the expediente had not been filed as required by the Colonization Laws. He concluded by holding that since "the record was the grant," the claimants had no legal title to the land. However, since the claimants had entered upon, occupied and cultivated the allotted lands and were in

possession of the premises in 1848, they had an equitable claim. He, therefore, recommended the confirmation of the claim as a community grant for an area not to exceed four square leagues.[8]

With so many divergent views on its merits, it is no wonder that Congress failed to act upon the claim. This confusion led to the institution of three separate suits in the Court of Private Land Claims for the recognition of these various interests. The first was filed[9] on February 17, 1893, by Antonio Serafin Pena and thirty-two other persons for themselves and on behalf of all others who claimed to be the heirs and legal representatives of the thirty-six parties who were named in the Act of Possession. The second suit was filed[10] on March 3, 1893, by L. Z. Farwell, who had purchased the interests of most of the heirs of Jose Julian Martinez, Antonio Martinez and Francisco Antonio Atencio. Farwell contended that they owned an undivided interest in all of the grant, except for the individual lots distributed to the other 33 colonists named in the Act of Possession. The

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[8] Report of the Secretary of Interior for the Fiscal Year Ending June 30, 1887, 281-283 (1887).

[9] Pena v. United States, No. 99 (Mss., Records of the Ct. Pvt. L. Cl.).

[10] Farwell v. United States, No. 153 (Mss., Records of the Ct. Pvt. L. Cl.).

third suit was brought[11] two days later by Jose A. Garcia, who had purchased the interest formerly owned by Juan Jose Jacques, one of the original colonists listed in the Act of Possession. The three suits were consolidated[12] by the court for purposes of trial. The consolidated case came up for hearing on June 7, 1895, and was continued from time to time for the purpose of taking testimony, until the trial was concluded on March 20, 1896. The record raised four principal questions to be passed upon by the court. The court noted that while the grant papers were genuine and the governor had the power to issue the concession, it had to interpret the testimonio in order to determine to whom the grant had been made. The second question pertained to the government's contention that the grant had been abandoned prior to the time that the United States had acquired New Mexico. The government's testimony which was somewhat vague and inconclusive but tended to prove that the grant had not been permanently settled until 1848, when the original grantees and a number of new colonists petitioned for and were placed in possession of the grant and additional allotments made to the new settlers. The next question concerned the boundaries

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[11] Garcia v. United States, No. 233 (Mss., Records of the Ct. Pvt. L. Cl.).

[12] 2 Journal 72 (Mss., Records of the Ct. Pvt. L. Cl.).

of the grant. The government pointed out that someone had altered the description in the testimonio. It was obvious that its eastern call originally had read "on the east the mesa de la Trilla de la Petaca" but had been erased and rewritten to read "the Arroyo de las Aguaje de Petaca." The final question concerned the question as to whether the court had authority to confirm an equitable title since no legal title could be established without some record of the grant being found in the Archives of New Mexico. In its opinion[13] dated September 5, 1896, the court found (a) the grant was a community grant made in favor of all the thirty-six grantees to whom possession had been delivered under the Act of Possession; (b) the grant had been occupied by the grantees since its inception except for short periods when Indian hostilities rendered living on the land too hazardous; (c) that the east boundary of the grant was located at the Mesa de la Trilla; and (d) the evidence showed that the Archives of New Mexico had been "poorly kept" and that operating at a distance of 50 years since the grant was originally made, it would be unfair to hold that it was invalid merely because the expediente could not be found in the public records, especially in view of the fact that the testimonio had been recognized as being genuine. Therefore, the court held that a preponderance of the evidence

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[13] 3 Journal 108 (Mss., Records of the Ct. Pvt. L. Cl.).

showed the grant to be good and valid and should be confirmed in favor of all those placed in possession by Alcalde Martinez on March 25, 1836, to the extent of the natural boundaries described in the testimonio but not to exceed eleven square leagues.

The government appealed the decision on the ground that the confirmation should be limited to the area covered by the thirty-six original allotments. On December 18, 1899, the United States Supreme Court issued its decision[14] reversing the Court of Private Land Claims and holding that the Petaca Grant was in severalty to the thirty-six original colonists for the tracts of which they were given possession. The case was then remanded to the Court of Private Land Claims in order that additional testimony could be taken to identify such parties and the extent of their lands.

The case was reopened and additional evidence was taken during the months of July and August, 1900. The evidence showed that there was no controversy as to the extent of the lands from north to south, but a question arose as to how far the lots extended from east to west. The claimants contended that the lots extended to the exterior boundaries of the grant, thus making the tracts several miles wide. The government, on the other hand, contended that the

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[14]United States v. Pena, 175 U.S. 500 (1899).

lots simply extended across the valley proper. Thus, the lots would be only two to three hundred yards in width. The court, on August 9, 1900, held[15] that the individual lots extended only across the valley and that the 250 vara lot set aside for public purposes was owned by the original thirty-six colonists as joint tenants. An official survey of the grant was made by Deputy Surveyor Jay Turley on June 29, 1901, which disclosed that the Petaca Grant contained only 1,392.10 acres. A patent for such land was subsequently issued to the Board of Commissioners for the Petaca Grant.[16]

In his paper[17] concerning the activities of the Court of Private Land Claims, Justice Wilbur F. Stone says:

> Another case was the Petaca grant. This was claimed to be about thirty miles long and twenty in width, embracing 100 square miles of pine forest. It had been bought by one of the Farwells of Chicago, who established sawmills and lumber camps in the pineries and for ten years shipped lumber by rail from Tres Piedras to the markets of Colorado and New Mexico, but had reserved the best portion of the pineries for future use. The court found that the original grant comprised only a paltry strip about five miles long and a few rods wide, embracing the little garden patches on the Canon of Petaca Creek, belonging to

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[15] 4 Journal 183 (Mss., Records of the Ct. Pvt. L. Cl.).

[16] The Petaca Grant, No. 105 (Mss., Records of the S.G.N.M.).

[17] Stone, "A Brief History of the Court of Private Land Claims," New Mexico Bar Association Proceedings, 17 (1904).

some poor Mexicans, who were made all the poorer by having the ownership decreed to them by court. The great pineries yet untouched were turned over to the Public Domain of Uncle Sam, to be gobbled up by lumber poachers, who will take care that they cut off the best part first.

THE TOWN of VALLECITO de LOVATO GRANT

Jose Rafael Samora and twenty-five other residents of the Pueblo Santa Cruz petitioned the Alcalde of Abiquiu on February 23, 1824, for possession of a tract of land in the Vallecito de Lovato for agricultural purposes. The petition was referred by Alcalde Francisco Trujillo to the governor of New Mexico for his further action with a report that the lands were vacant and the petitioners did not have any lands to support themselves and their families. On February 27, 1824, an unsigned decree was allegedly issued by Acting Governor Bartolome Baca granting the request and directing Trujillo to give the petitioners immediate possession of the requested tract "in order that they may not lose time in their labor until the necessary formalities can be had, which cannot be verified at this time, the excellent deputation not being in session..." In response to this order, Trujillo, together with the

interested parties, proceeded to the Vallecito de Lovato where, on September 22, 1824, he designated the following natural objects as fixing the boundaries of the tract:

> On the north, the source of the Ojo Caliente River; on the east, the Mesa de la Zorita; on the south, the Vadito adjoining the lands owned by Juan Galbis; and on the west, the cuchella known as Valle de Los Caballos.

Following the completion of the survey, Trujillo allotted individual lots for use by the colonists. These lots were located on both sides of the river and ranged in size from 100 to 360 varas in length. A 150 vara lot was also set aside as a plaza and lands at the Vadito and Cuestecito were designated as common watering places. The Act of Possession closed with a notation that such proceedings were to be presented to the governor "in order that he may approve, reform, or determine that which he may deem proper," and that those so placed in possession were not "authorized to exchange, sell or alternate the same until they shall have acquired title...."[1] It does not appear that any further action was taken on this grant; however, the town which the colonists established on the tract was a flourishing community of not less than twenty-five families when the United States conquered New Mexico in 1846.[2]

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[1]Archive No. 898 (Mss., Records of the A.N.M.).

[2]S. Exec. Doc. No. 31, 44th Cong., 1st Sess., 16-20 (1876).

The inhabitants of the Town of Vallecita petitioned[3] Surveyor General James K. Proudfit on May 20, 1875, seeking the confirmation of their claim. In addition to filing their testimonio, the petitioners called Proudfit's attention to the expediente of the grant which was then on file in his office.[4] In further support of their claim, the claimants introduced the testimony of a number of highly credible witnesses who testified that the original grantees had continuously occupied the lands from 1824 up to and including the date of the filing of their petition, except for short periods when Indian troubles prevented such occupation. Proudfit issued an opinion[5] on October 13, 1875, in which he found the concession to be good and valid notwithstanding the fact the governor had failed to sign the decree of February 27, 1824. And, therefore, he recommended its confirmation by Congress to the heirs and legal representatives of the original grantees. A preliminary survey[6] made by Deputy Surveyors Elkins & Marmon in June, 1878, showed that the grant contained 114,400.54 acres.

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[3]The Town of Vallecita de Lovato Grant, No. 108 (Mss., Records of the S.G.N.M.).

[4]Archive No. 898 (Mss., Records of the A.N.M.).

[5]S. Exec. Doc. No. 31, 44th Cong., 1st Sess., 20 (1876).

[6]The Town of Vallecito de Lovato Grant, No. 108 (Mss., Records of the S.G.N.M.).

Congress had not taken any action on the grant prior to the appointment of George W. Julian as Surveyor General. The Town of Vallecito Grant was one of the claims which he re-examined pursuant to Commissioner William A. J. Spark's instructions of December 11, 1885.[7] In a Supplemental Report[8] dated May 12, 1886, Julian stated that in his opinion a legal grant had not been made to Jose Rafael Samora since the alleged grant by Baca had not been signed and the proceedings by Trujillo had not been approved by the governor. Julian was especially suspicious of the genuineness of the governor's decree notwithstanding the fact that it had been found in the archives. He pointed out that the decree was written on a six by eight inch scrap of unstamped paper and there was no evidence that it was in Baca's handwriting. He also called attention to the fact that the two signatures by Trujillo were dissimilar. Continuing he stated that even if the grant papers were genuine, they did not indicate that a grant had been made but amounted merely to a license permitting the claimants to occupy the land until it could be formally granted to them. In conclusion, Julian recommended that the grant be rejected

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[7]S. Exec. Doc. No. 113, 49th Cong., 2d Sess., 2 (1887)

[8]The Town of Vallecito de Lovato Grant, No. 108 (Mss., Records of the S.G.N.M.).

on the grounds that the claimants had failed to establish either a legal or equitable title.

Congress had not acted on either of the reports prior to the establishment of the Court of Private Land Claims. Therefore, the various claimants of the grant sought the assistance of that august body. On February 28, 1893, Merejildo Martinez and thirty-six other persons claiming to be the heirs and legal representatives of Jose Rafael Somora and his twenty-five associates filed suit[9] against the United States for the confirmation of the grant. A second suit for the confirmation of the grant was filed on March 2, 1893,[10] by S. Endicott Peabody, who claimed to be the owner of the grant by virtue of having purchased certain interest from the heirs and legal representatives of Jose Rafael Somora. He contended that since neither the original petition or the grant by Governor Baca specifically named Somora's twenty-five associates, they could not legally be grantees. On the following day a third suit seeking the recognition of the claim was instituted[11] by Jose Salazar y Ortiz, who had purchased the lots which had been allotted to Benito Sanches and Francisco Trujillo

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[9]Martinez v. United States, No. 142 (Mss., Records of the Ct. Pvt. L. Cl.).

[10]Peabody v. United States, No. 204 (Mss., Records of the Ct. Pvt. L. Cl.).

[11]Salazar v. United States, No. 236 (Mss., Records of the Ct. Pvt. L. Cl.).

by Alcalde Trujillo on September 22, 1824.

The three suits were consolidated[12] for purposes of trial. Since the grant conflicted with a portion of the Tierra Amarilla Grant, the owners of that grant were joined as parties defendant. The defendants in their answers put in issue the allegations contained in the plaintiffs' petitions. They also specially asserted that on the date of the alleged grant the governor of New Mexico had no authority to make a valid grant and that even if he did, the documents introduced by the plaintiffs, at best, amounted to a mere license to occupy and use the land pending the consummation of a valid grant.

The case came up for trial on October 5, 1897. After a full hearing on the merits of the grant, the court, on the same date, announced its decision[13] rejecting the claims; notwithstanding the plaintiffs' strenuous contentions that the reference to the grant in the title papers concerning the Petaca Grant, which were recognized as valid, amounted to a recognition of the grant by the Mexican Government. The court's decision virtually adopted the contentions advanced by the defendants. The plaintiffs appealed the decision to the United States

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[12] 3 Journal 97-98 (Mss., Records of the Ct. Pvt. L. Cl.).

[13] 3 Journal 300 (Mss., Records of the Ct. Pvt. L. Cl.).

Supreme Court, which affirmed[14] the Court of Private Land Claims' decision. The Supreme Court held that the fact that a subsequent grant to other parties of other lands was therein bounded by "the boundary of the Vallecito Grant" is no evidence of and is inadequate proof of the legal existence of the latter grant.

THE TIERRA AMARILLA GRANT

Manuel Martinez, on behalf of himself, his eight sons and all other persons who might accompany him, petitioned the governor of New Mexico on April 23, 1832 for a grant covering a tract of land called Tierra Amarilla which was situated on the Chama River. He requested that the grant be made for agricultural and ranching purposes and cover all of the lands within the following boundaries:

> On the north, the Navajo River; on the east, a range of mountains; on the south, the Nutrias River; and on the west, the mouth of the Laguna de los Caballos.

Martinez pointed out that while he had a small tract of land at the Town of Abiquiu, it had been depleted by years

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[14]Peabody v. United States, 175 U.S. 546 (1899).

of constant cultivation. Therefore, in order that he and others in a similar position might continue to support their families, he requested that he and his associates be given the requested tract of fertile land which was located some seven leagues north of the Town of Abiquiu. The petition was referred by Santiago Abreu, the governor of New Mexico, on April 25, 1832, to the Provincial Deputation for its consideration. On the same day, the Provincial Deputation requested the officials of the Town of Abiquiu to fully advise it concerning the propriety of issuing the grant. In compliance with this request, the officials of the Town of Abiquiu on May 15, 1832, reported that the lands which had been solicited by Martinez were of an excellent quality, had an abundance of water and wood, and could support at least five hundred families. However, they recommended that the pastures and watering places located within the requested tract be reserved as a commons for the benefit of the inhabitants of the Town of Abiquiu. Upon learning of the contents of this report, Martinez protested on the grounds that it would be unjust and work a hardship upon the grantees to exclude the very lands which were so essential to their earning a livelihood on the frontier. He pointed out that such an exception would unquestionably cause endless disputes and difficulties between the

grantees and the inhabitants of the Town of Abiquiu. On July 20, 1832, the Provincial Deputation granted Manuel Martinez and his associates the tract of land described in Martinez' petition subject, however, to the express reservation of the pastures, watering places and roads located thereon for the benefit of the general public. The Provincial Deputation also ordered the Alcalde of the Town of Abiquiu to deliver possession of the grant to Martinez and all other persons who associated with him in the formation of the proposed new settlement. The alcalde was further instructed to allot to each of the grantees an individual tract of land sufficient in size to grow four or five fanegas of wheat. Due to the hostility of the Indians and the dangers which would be incurred in going to the grant, the alcalde refused to go to Tierra Amarillo and formally deliver legal possession of the grant to the grantees as instructed. However, Martinez moved to the grant and continued to live there during the periods when the Indians were peaceful. After his death, Martinez' children continued to occupy and use the grant up until about 1854.[1]

On August 25, 1856, Francisco Martinez, one of the heirs of Manuel Martinez, filed a petition[2] in the

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[1] H. Exec. Doc. No. 1, 34th Cong., 3d Sess., 478-492 (1856).

[2] The Tierra Amarillo Grant, No. 3 (Mss., Records of the S.G.N.M.).

Surveyor General's Office seeking the confirmation of the Tierra Amarilla Grant, which he alleged contained approximately 24 square leagues, or 106,312 acres of land. Surveyor General William Pelham promptly investigated the claim and in a decision[3] dated September 25, 1856, held that he was satisfied that the Provincial Deputation had authority under the laws of Mexico to make donations of land to individuals, that the title papers evidencing the grant had been proven to be genuine, and that the failure of the Alcalde of the Town of Abiquiu to deliver possession to Martinez did not invalidate the grant since such failure had been satisfactorily explained. He concluded by holding the grant to be good and valid and recommended its confirmation by Congress to Francisco Martinez. The grant was confirmed as Private Land Claim No. 3 by an act of Congress approved June 21, 1860.[4]

On June 30, 1875, John M. Isaacs, one of the then owners of the grant, requested the Surveyor General to survey the grant in order that a patent might be issued. In response to his request, the Commissioner of the General Land Office authorized the Surveyor General to make the survey provided the owners would select eleven leagues out of the grant as

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[3] Ibid.

[4] An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

full satisfaction of their claim. The Commissioner contended that since the area and location of the boundaries of the grant were unknown when Congress confirmed the claim, it should be presumed that it had no intention to confirm title to an amount of land in excess of eleven leagues, which was the maximum which could be granted to an individual under the Colonization Law of 1824.[5] Elias Borvoort, Attorney for the owners of the grant, by letter[6] dated May 13, 1876, notified the Surveyor General that his clients would not accept any survey which did not conform with the description contained in the grant. As a result of the decision of the Colorado Supreme Court in the Tameling Case,[7] which had just held that the Act of June 21, 1860,[8] confirmed a number of grants to the full extent of their exterior boundaries, the Commissioner dropped this contention. The grant was surveyed by Deputy Surveyors Sawyer & McBroom in July, 1876. This survey showed that the grant contained a total of 594,515.55 acres, a part of which was located within the State of Colorado.[9] The grant

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[5]Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[6]The Tierra Amarillo Grant, No. 3 (Mss., Records of the S.G.N.M.).

[7]Tameling v. United States Freehold and Emigration Company, 2 Colo. 411 (1874).

[8]Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[9]The Tierra Amarilla Grant, No. 3 (Mss., Records of the S.G.N.M.).

was patented to Francisco Martinez on February 21, 1881.[10] While the patent was in the conventional form it contained a recitation in one of the prefactory clauses stating the pastures, watering places and roads were to be free according to the custom of every settlement. This caused the residents living on the grant to believe that it was a community grant with unrestricted pasturing and wood gathering privileges on the unallocated lands being guaranteed to all of the inhabitants of the grant. This erroneous belief has led to a myriad of litigation. Both the State and Federal Courts have consistently held that the actions of Congress confirming a grant are not subject to judicial review and that regardless of whether or not the grant was a private or community grant, the confirmation of a grant as a private grant by Congress and the patent issued in pursuance thereto vested in the patentee an absolute title to all common and unallocated lands.[11]

Having failed to find satisfaction in the courts, many of the inhabitants of the grant have joined an organi-

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[10] 17 Deed Records 162 (Mss., Records of the County Clerk's Office, Santa Fe, New Mexico).

[11] H.N.D. Land Co. v. Suazo, 44 N.M. 547, 105 P.2d 744 (1940); Flores v. Bouesselback, 149 F.2d 616 (3d Cir., 1945); Martinez v. Rivera, 196 F.2d 192 (10th Cur., 1952); Martinez v. Mundy, 61 N.M. 87, 295 P.2d 209 (1956); and Rayne Land & Livestock Co. v. Archuleta, 180 F.Supp. 651 (D.N.M., 1960).

zation of Spanish Americans known as the "Blackhands," which is using violence to press their claims. The Blackhands are employing guerilla tactics as a protest against the ranchers who have purchased the commons and unallocated lands within the grant. Homes are being burned, machinery riddled with gunfire, cattle killed, and fences cut.[12] These incidents point out that the land problems of New Mexico have not been fully solved even of this late date.

THE CANON de CHAMA GRANT

Francisco Salazar, together with his two brothers and twenty-eight poor and needy citizens, petitioned Joaquin Alencaster, the governor of New Mexico, seeking a grant covering a tract of vacant land situated on the Chama River for agricultural and pastoral purposes. Alencaster, under date of July 6, 1806, ordered the Alcalde of Santa Cruz to personally examine the lands solicited by the petitioners and give him a full report on the property before acting upon the request. In response to Alencaster's order, Alcalde Manuel

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[12] Knowlton, "Causes of Land Loss Among the Spanish Americans in Northern New Mexico," 1 Rocky Mountain Social Science Journal, 201-211 (1966).

Garcia de la Mora inspected the area and, on July 14, 1806, reported that the requested tract was unoccupied and situated:

> ... one league from the last grant (that of the Martinezes), to the side on which the sun rises, and that thence to the western boundary, which divides the said Chama River Canon from the Gallina River, there are about two leagues, somewhat more or less, of cultivable lands, and, the town being placed in the center, the thirty-one families applying for it may be accommodated, and land enough remain for the increase that they may have in the way of children and sons-in-law and the section of the country is a very desirable one, and the settlers may therefore proceed with their building, and for the other two boundaries there is assigned them on the north and on the south one league for pastures, for on these two sides no injury can result, as there is neither a settlement nor a grant now made... and the said Canon is distant from Abiquiu about five leagues.

After carefully studying the report, Alencaster granted the land to the petitioners on August 1, 1806, and ordered Garcia to place the colonists in possession of the grant and allocate to each of the settlers a lot of land capable of growing three cuartillas of wheat, three almudes of corn, another three of beans, and having a site for a small house and garden. On March 1, 1808, Garcia placed Salazar and the twenty-four other colonists, who finally elected to participate in the project, in legal possession of the grant and allocated an individual farm tract to each of them except Salazar, who received a double allotment. A town site was also set aside and named San Joaquin del Rio de Chama. The following natural objects were designated as the exterior boundaries of the grant:

> On the north, the Ceballa Valley; on the east, the boundaries of the Martinez Grant; on the south, the Capulin River; and on the west, the Segita Blanca.[1]

In 1832 Juan de Jesus de Chacon filed a petition in Governor Antonio Chaves' office asking him to enjoin the Alcalde of the Town of Abiquiu from evicting them from the lands upon which they had settled in 1830. It seems that Alcalde Jose Maria Ortiz had allocated and placed Chacon and two associates in possession of certain tracts located within the Canon de Chama Grant as colonists under the Colonization Law. However, the original grantees had protested and the then Alcalde of the Town of Abiquiu, Juan Antonio Gallago, had taken the position that such action was illegal and that they were trespassers and intruders. The question was referred by the governor to the attorney general of New Mexico, Antonio Barreiro, who made an extensive investigation into the matter, and, on May 6, 1832, held that the Canon de Chama Grant was valid and that distributions made by Alcalde Ortiz should be annulled.[2]

The grantees continuously occupied and used the grant except for a number of occasions when it was temporarily abandoned due to Indian hostilities. In spite of the immense size

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[1] S. Exec. Doc. No. 45, 42d Cong., 3d Sess., 5-8 (1873).

[2] The Canon de Chama Grant, No. 71 (Mss., Records of the S.G.N.M.).

of the grant, only a narrow strip of land lying within the Canon de Chama was cultivated but livestock was pastured upon the adjoining mesas. By 1861 the grant was owned by more than four hundred persons who claimed under and through the original grantees. On January 3, 1861, the claimants submitted a petition[3] to the Surveyor General seeking the confirmation of their title to the 184,320 acres which they estimated to be embraced within the boundaries of the grant. Surveyor General James K. Proudfit, after carefully considering the record, recommended[4] to Congress on December 17, 1872, that the grant be recognized and confirmed as a community grant. A preliminary survey of the grant was made by Deputy Surveyor Stephen McElroy in May, 1878. The McElroy Survey, to the surprise of everyone, showed that 472,736.95 acres were embraced within the boundaries set forth in the grant papers.[5]

A bill was presented during the last session of the 46th Congress for the confirmation of the grant. This bill was referred to the House Committee on Private Land Claims for its recommendations. The Committee, in turn, requested the Secretary of Interior to furnish it with more information

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[3] Ibid.

[4] S. Exec. Doc. No. 45, 42d Cong., 3d Sess., 9-10 (1873).

[5] The Canon de Chama Grant, No. 71 (Mss., Records of the S.G.N.M.).

concerning the grant. In a letter[6] dated May 20, 1880, Commissioner J. A. Williamson traced the history of the grant and concluded by recommending that it be confirmed subject only to the reservation of mineral rights.

No further action was taken on the grant until June 28, 1886, when Surveyor General George W. Julian submitted a Supplemental Report[7] to Congress. He found that the grantees had failed to establish a legal title to the grant and, if they had acquired an equitable title, it was limited to the individual allotments located within the Chama River Canyon, which covered only 166.22 acres. Next, Julian viciously attacked McElroy stating that his survey was manifestly and shockingly incorrect. He asserted that the surveyor had "no right to wander out of the canyon from ten to fifteen miles in search of the natural objects named as the boundaries of the tract but should have sought them within the canyon."

Meanwhile, the original village of San Joaquin had been abandoned and most of the inhabitants of the grant had moved to Abiquiu, Santa Cruz, or Tierra Amarilla. Speculators and "earth hungry monopolists" quietly began to purchase

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[6]H. R. Report No. 131, 47th Cong. 1st Sess., 1-2 (1882). Since the Canon de Chama Grant was made during the Spanish Colonial Period, it was not bound by the eleven league limitation placed on Mexican Grants, but would not cover minerals, which after 1783 were reserved as a prerogative of the sovereign.

[7]S. Exec. Doc. No. 21, 50th Cong., 1st Sess., 26 (1887).

scores of outstanding interests under the Chama Grant. After the formation of the Court of Private Land Claims, the new owners instituted suit[8] in that forum for the confirmation of their title. After receiving a great deal of oral and documentary evidence, the court, on September 24, 1894, held the grant to be valid but covered only the individual farm tracts situated in the Chama River Canyon which had been allotted to the settlers prior to the signing of the Treaty of Guadalupe Hidalgo. The plaintiffs promptly appealed the decision to the United States Supreme Court which, based on its decision in the Sandoval Case,[9] held[10] that the grant was a community grant and all unallotted lands within its exterior boundaries belonged to the government. A resurvey of the grant was made in accordance with the Supreme Court's decree in September, 1901, by Deputy Surveyor Joseph F. Thomas. His survey showed that the grant covered only a narrow strip of land containing only 1,422.62 acres of land situated in the bottom of the Chama River Canyon. A patent based on the Thomas Survey was issued on May 5, 1905.[11]

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[8]Rio Arriba Land & Cattle Company v. United States, No. 107 (Mss., Records of the Ct. Pvt. L. Cl.).

[9]United States v. Sandoval, 167 U.S. 278 (1897).

[10]Rio Arriba Land & Cattle Company v. United States, 167 U.S. 298 (1897).

[11]The Canon de Chama Grant, No. 71 (Mss., Records of the S.G.N.M.).

While the Supreme Court's opinion undoubtedly disappointed the owners of the grant, it was accepted as finally fixing the boundaries of the grant. However, on October 17, 1966, the members of an organization called the Federal Alliance of Land Grants took over the rest camp in the Kit Carson National Forest, which is located within the boundaries of the grant set out in the Act of Possession, and established the Pueblo Republican de San Joaquin del Rio de Chama. The leader of the group, Reies Tijerina, claimed that the 500,000 acres covered by the national forest belonged to the "Republic" since it was located on the Canon de Chama Grant under which members of the organization claimed an interest. Tijerina contended that the government was obligated under the Treaty of Guadalupe Hidalgo to protect the property rights of Spanish Americans and the members of his organization were willing to shed their blood to defend their rights. The organization is attempting to raise enough "furor to get their case before the U. S. Supreme Court."[12]

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[12] The Houston Post, October 17, 1966.

THE RANCHO de COYOTE GRANT

Nepumecena Martinez de Arregon, through his attorney, Maye Wieks of Los Angeles, California, filed suit[1]

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[1]Martinez v. United States, No. 248 (Mss., Records of the Ct. Pvt. L. Cl.). Martinez filed five additional suits. His petition in each of these suits was similar to that in the Rancho de Coyote Grant. The first was for the confirmation of the Rancho de la Gallina Grant. Martinex v. United States, No. 244 (Mss., Records of the Ct. Pvt. L. Cl.). The second was for the Rancho de Rio Arriba Grant. Martinez v. United States, No. 245 (Mss., Records of the Ct. Pvt. L. Cl.). The third was for the Rancho de Los Rincon Grant. Martinez v. United States, No. 246 (Mss., Records of the Ct. Pvt. L. Cl.). The fourth suit was for the Rancho de Abiquiu. Martinez v. United States, No. 247 (Mss., Records of the Ct. Pvt. L. Cl.) The fifth suit was for a rancho whose name he did not know. Martinez v. United States, No. 223 (Mss., Records of the Ct. Pvt. L. Cl.). Since none of the petitions contain a description, it is impossible to locate the grants. However, it would appear that they cover the same land as the Rancho de Coyote Grant. Each of these suits was dismissed at Martinez' request. 2 Journal 164, 271; and 3 Journal 197-198 (Mss., Records of the Ct. Pvt. L. Cl.).

Wieks also filed a series of cases for a number of other California residents seeking the confirmation of (1) Maria Martinez de Berry's interest in the Rancho de la Merced del San Joaquin del Rio Chama y de las Gallina Grant, which allegedly covered 44 leagues. Martinez v. United States, No. 218 (Mss., Records of the Ct. Pvt. L. Cl.); (2) Marco Antonio Chaves' interest in the Rancho de Comanches Grant, which allegedly covered 22 leagues. Chaves v. United States, No. 219 (Mss., Records of the Ct. Pvt. L. Cl.); (3) Clotilda Chaves de Spencer's interest in the Rancho de Rio Puerco Grant, which allegedly covered 22 leagues, Chaves v. United States, No. 220 (Mss., Records of the Ct. Pvt. L. Cl.); (4) Luciano Chaves' interest in the Rancho de los Corrales, which allegedly covered 22 leagues. Chaves v. United States, No. 221 (Mss., Records of the Ct. Pvt. L. Cl.); (5) Clotilda Chaves de Spencer's interest in the Rancho de

in the Court of Private Land Claims against the United States on March 3, 1891, seeking the confirmation of the Rancho de Coyote Grant. He alleged that his ancestors had acquired an interest in the grant, which had been duly made and juridical possession lawfully given, but that he did not possess or know where the grant papers were located. However, he assured the court that he would make every effort to supply all deficiencies in his petition and amend it as soon as he had obtained this data. He also alleged that the grant contained approximately one hundred square leagues of land. His petition closed with an allegation that he was an ignorant, illiterate, non-resident of New Mexico, with limited means, and, by reason of his ignorance, poverty, and the remoteness and fragmentary condition of the archives in the Surveyor General's Office, he had been unable to obtain either the details pertaining to the issuance of the grant

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Gallina Grant, which allegedly covered 22 leagues. Chaves v. United States, No. 222 (Mss., Records of the Ct. Pvt. L. Cl.); and (6) Agapito Ortega's interest in a 22 league rancho, the name of which he did not know. Ortega v. United States, No. 226 (Mss., Records of the Ct. Pvt. L. Cl.). The petition in each of these cases, like most of the others Wieks prepared, contained no description of the grant. However, the names of the grants indicate that they covered lands within or in the vicinity of the Canon de Chama and San Joaquin del Nacimunto Grants. These suits obviously were filed to protect the fanciful claims of each of the plaintiffs from being barred by the two year statute of limitations prescribed under Section 12 of the Act of March 3, 1891. Court of Private Land Claims Act, Chap. 539, 26 Stat. 854 (1891). Each of these suits subsequently was dismissed at the plaintiff's request. 2 Journal 164; and 3 Journal 197-198 (Mss., Records of the Ct. Pvt. L. Cl.).

or its legal description. The government filed a demurrer in which it called the court's attention to the fact that Martinez' petition did not state sufficient facts upon which to base a decree against the United States nor describe the nature of the claim, date, by whom made, to whom made, or its boundaries as required by Section 6 of the Act of March 3, 1891.[2] It also noted that no map was attached showing the location of the grant. To overcome these objections, Martinez filed an amended petition on January 28, 1895, alleging that the grant had been issued to "_____ Martinez and _____ Madrid" in about 1820, and that the grantees, in response to a command by the governor, had been placed in legal possession of the tract known as "El Coyote" which was bounded:

> On the north, by the Capulin mountains; on the east, by the Salina Creek and Pedernales Mountains; on the south, by the Vallecito de la Cueva; and on the west, by the mountains extending from Jemez to Piedre Lumbre.

In an effort to explain his failure to file the grant papers, Martinez alleged that the testimonio and other papers were in "_____ Martinez'" possession when he left New Mexico in 1849 to settle in California, but they had been lost following his death. The government filed

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[2]Court of Private Land Claims Act, Chap. 539; Sec. 6, 26 Stat. 854 (1891).

a general answer putting in issue the allegations contained in the amended petition.

The case was set for trial on June 11, 1898. Martinez undoubtedly realized that without some documentary evidence to support his contention that a valid grant had been issued he would be unable to sustain his claim. Therefore, when the case came up, Martinez notified the court that he no longer wished to prosecute the suit. Whereupon, the court entered a decree dismissing his petition and rejecting the claim.[3]

THE JUAN BAUTISTA VALDEZ GRANT

Sometime during the month of January or February, 1807, Juan Bautista Valdez, a loyal Spanish subject and resident of the Town of Abiquiu, presented a petition to the Alcalde of the Town of Abiquiu, Manuel Garcia, requesting that a grant be issued to him and seven companions covering the tract of "perhaps more than two thousand varas of land in the Canon de los Pedernales which they had cleared." Garcia forwarded

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[3] 3 Journal 393 (Mss., Records of the Ct. Pvt. L. Cl.).

the petition to Governor Joaquin del Real Alencaster on February 12, 1807, with a recommendation that the requested grant be made. On December 16, 1807, Alencaster issued the concession and directed Garcia to place Valdez in possession of "the piece of land which the petition of applicant treats." In response to the governor's decree, a party consisting of Garcia, his attending witnesses, Valdez and his nine companions went to the Canon de Pedernales where the alcalde inspected the premises and, after finding that it contained about one league of land, which could be cultivated and that the grant did not conflict with the vested rights of any third party, he designated the following natural objects as its boundaries:

> On the north, the boundaries of the Martinez lands; on the east, the Pedernales River which reaches the boundary of the Polvadera; on the south, the source of the Pedernales; and on the west, a white mesa.

Following the completion of the survey, Garcia delivered royal possession of the grant to the ten colonists.[1]

On July 5, 1814, the grantees appeared before the Aldalde of the Town of Abiquiu, Pedro Ignacio Gallegos, and asked him to partition the grant amongst its inhabitants. In response to their request, Gallegos went to the grant, surveyed the occupied tracts, and issued a hijuela

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[1]The Canon de los Pedernales Grant, No. 113 (Mss., Records of the S.G.N.M.).

or certificates of possession to each of the interested parties covering the tract which he had been using. Valdez was allotted a tract known as the Encinas Tract, which was described as being bounded:

> On the north, by some permanent stones; on the east, by a mound in the puertecita which faces towards La Joya; on the south, by the tops of the mountains; and on the west, by a small mountain in the Canada de los Corrales.

The nine other interested parties were in turn given individual lots measuring 550 varas in width along the river northwest of the Encinas Tract. The alcalde noted that in order to give the colonists sufficient lands to support their families, it was necessary to extend the limits of the grant to include some wild lands along the upper part of the grant.[2]

At the time the United States acquired New Mexico, there were two small settlements located on the grant. The first was known as the Town of Canones, and the other was the Rancho de Encinas.

The heirs of Juan Bautista Valdez petitioned[3] Surveyor General T. Rush Spencer on June 12, 1871, seeking the recognition of their title to the Encinas Tract, which they estimated to contain 20,500 acres of land. In support

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[2]The Encinas Grant, No. 55 (Mss., Records of the S.G.N.M.).

[3]Ibid.

of their petition, they filed the hijuela which had been given to Juan Bautista Valdez by Gallegos on July 5, 1814. They contended that the hijuela was an Act of Possession, which evidenced the delivery of possession in connection with the issuance of the grant mentioned therein. Luis Valdez, one of the petitioners, gave an affidavit in which he stated that he had made a diligent search for the expediente of the grant but he had been unable to locate it. Thus, in order to explain the petitioners' failure to produce any evidence that a grant had been made, he contended that it probably had been either mislaid, lost or destroyed. At the hearing on the matter, a number of witnesses offered testimony to the effect that Valdezes had claimed and occupied the tract since 1807. After considering the petition and proof for some four months, Surveyor General Spencer issued a report[4], dated November 16, 1871, in which he held that in view of the long continuous possession and occupancy of the Encinas Tract by Juan Bautista Valdez, his heirs and successors, "it must be concluded that there was a grant, and that they claimed and held the land thereunder." Surveyor General Spencer concluded his report by holding the claim to be good and valid and recommending its confirmation

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[4]H. R. Misc. Doc. No. 181, 42d Cong., 2d Sess., 45-49 (1872).

by Congress. A preliminary survey of the Encinas Tract, which was made in April, 1879, by Deputy Surveyors Sawyer & McBroom, indicated that it covered only 6,583.29 acres.[5]

The claim was still pending before Congress when Surveyor General George W. Julian took office. In response to the Special Instructions[6] from the Commissioner of the General Land Office dated December 11, 1885, Julian proceeded to conduct a re-examination into the validity of the grant. By Supplemental Opinion[7] dated June 22, 1886, he pointed out that the only evidence indicating that a grant had been made covering the lands in question was a vague recital in the hijuela and that it would be highly unusual to presume that a valid grant had been made based upon such scanty and indefinite evidence. Therefore, he found that the petitioners had failed to establish either a legal or equitable interest in the land and recommended that the claim be rejected by Congress.

Meanwhile, the testimonio of the grant was located and Antonio Valdez and other heirs of Juan Bautista Valdez petitioned[8] Surveyor General Henry M. Atkinson on August 10, 1878, for the confirmation of the grant which they referred

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[5]The Encinas Grant, No. 55 (Mss., Records of the S.G.N.M.).

[6]S. Exec. Doc. No. 113, 49th Cong., 2d Sess., 2(1887).

[7]S. Exec. Doc. No. 53, 49th Cong., 2d Sess., 3-4 (1887).

[8]The Canon de los Pedernales Grant, No. 113 (Records of the S.G.N.M.).

to as the Canon de los Pedernales Grant. On February 1, 1879, Atkinson rendered an opinion[9] in which he stated that he had compared the signatures of Alencaster and Garcia on the testimonio, which had been found in the possession of one of the claimants prior to its being filed in his office, with the signatures of said officials on other documents in the Archives of New Mexico, and was fully convinced that the grant papers were genuine. However, he had a serious question as to the extent of the grant. He pointed out that there was a vast variance between the 2000 varas of land called for in Juan Bautista Valdez's petition and the approximately 256,000 acres which the claimants contended were contained within the boundaries set forth in the Act of Possession. Atkinson closed by recommending that Congress confirm the grant but concluded (a) that it covered only the lands situated within the Canon de los Pedernales and referred to in Valdez's petition, since an alcalde had no power to increase the size of a concession; and (b) that it should be confirmed in the name of Juan Bautista Valdez and his heirs and legal representatives in view of the fact that his "companions" were not named in any of the grant papers.

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[9] Ibid.

Surveyor General Clarence Pullen executed a contract for the survey of the Canon de Pedernales Grant on June 10, 1885, and forwarded it to the General Land Office for approval. The General Land Office returned the contract unapproved on June 24, 1885, with the suggestion that Pullen's successor, George W. Julian, cause a most searching inquiry to be made into the validity of the claim. Julian wrote a Supplemental Opinion[10] pertaining to the grant on July 15, 1886, in which he recommended its rejection. Julian stated "a single reading of the unauthenticated title papers can scarcely fail to awaken suspicion and invite scrutiny." He pointed to the several defects and inconsistencies which were readily apparent from merely reading the record in the case. First was the fact that Valdez and seven companions had petitioned for the grant covering 2,000 varas or a tract of land about a mile in length and bounded on both sides by the walls of the river canon, which they had previously cleared, but Garcia had placed him and his nine companions in possession of a tract covering some four hundred square miles of land. Next, he called attention to the fact that the date on which possession had been delivered was prior to the date of the grant, which was impossible and could not be presumed to be an error. Finally, he noted that Valdez had stated that the

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[10] Ibid.

land was needed due to his having a large family, while the record disclosed that he only had four children. Julian then discussed what he termed "the more material considerations". He held that the expansion of the boundaries of the grant by Alcalde Garcia was not only unconscionable and void but was an

> ...extension of land stealing which would rival the performance of the present day and Surveyor General Atkinson was abundantly justified in branding it in his opinion as "infamous." The whole story is so superlatively preposterous as to justify the suspicion that both the order of the Governor and the report of the Alcalde are the inventions of a later time and so clumsily planned as to expose their true characters. It is intrinsically improbably, if not morally impossible, that the circumstances of the case could have occurred as stated.

Julian concluded his opinion with the statement that he did not feel warranted in recommending confirmation of the claim or any portion thereof and pointed out that its rejection would work no hardship on the claimants, since they were in possession of the land and could prefect their titles under the homestead laws. Julian later publicly attacked[11] the validity of the grant and even went so far as to venomously assert that there had been no grant or delivery of possession and that the title papers were fraudulent and void. Such adverse publicity undoubtedly deterred any further action on the grant by the wily politicians in Washington.

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[11] Julian, "Land Stealing in New Mexico," 145 The North American Review, 20 (1887).

The creation of the Court of Private Land Claims in 1893 afforded the owners of the grant another opportunity to press their claim. On March 2, 1893, suit[12] was filed in that forum praying for the confirmation of the grant based upon the 1807 proceedings. The United States, in its answer, placed all of the allegations in the plaintiffs' petition in issue.

The case came up for hearing on June 8, 1898, at which time the plaintiffs introduced their title papers and a considerable amount of oral corraborative testimony. The evidence intorduced by the United States, while recognizing the validity of the grant, tended to restrict its boundaries to a narrow strip of land in the Canon de los Pedernales. On December 20, 1898, the court announced its decision[13] confirming the grant to the heirs, legal representatives, and assigns of Juan Bautista Valdez insofar as it covered the tract of land originally requested by Valdez in his petition. Neither party appealed from this decision. The grant was surveyed by Deputy Surveyor William McKean in 1899, and his survey showed that the grant contained only 1,468.57 acres. A patent for said amount of land was issued on June 19, 1913.[14]

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[12] Valdez v. United States, No. 179 (Mss., Records of the Ct. Pvt. L. Cl.).

[13] 4 Journal 76 (Mss., Records of the Ct. Pvt. L. Cl.).

[14] The Encinas Grant, No. 55 (Mss., Records of the S.G.N.M.).

THE PIEDRA LUMBRE GRANT

Lieutenant Pedro Martin Serrano petitioned the Governor of New Mexico asking for a grant covering a tract of land in the valley known as Piedra Lumbre, in order that he might build a home thereon for his large family and as a pasturage for his extensive herds of cattle, sheep and horses. He stated that the lands he solicited were located about three or four leagues west of the Pueblo of Abiquiu and had originally belonged to Jose de Riano. It seems that Governor Gervacio Cruzat y Gongora had granted Riano a league of land at Piedra Lumbre and possession thereof had been delivered to him by Lieutenant Governor Juan Puez Hurtado. Antonio Montoya, who in the meantime had traded Riano a house at Santa Fe for the grant, discovered that the rancho covered much more land than the recited one square league. Title to the grant was later acquired by Lieutenant Domingo de Luna, who in about the year 1760 authorized Serrano to use it as pasture for his stock. Early in 1766, Luna sold his interest in the grant to Serrano. Since none of its prior owners had settled upon the grant and, under Spanish law, it might have been abandoned, and in order to avoid any future confusion as a result of the

grant's containing so much excess land, Serrano requested a grant de novo covering all of the land within the following boundaries:

> On the north, some red bluffs; on the east, a stoney hill; on the south, Pedernal Hill; and on the west, the mesa adjoining the Canon de la Piedra Lumbre.

On February 11, 1766, Governor Thomas Velez Cachupin requested Serrano to advise him of the number of livestock he possessed and the distance between the boundaries set forth in his petition. In response to this request, Serrano, on the same day, advised the governor that he had 480 head of cattle, 164 horses and mules, and 2,700 sheep. He also stated that the grant was three leagues from east to west and about the same distance from north to south. After fully considering the matter, Cachupin, on February 12, 1766, granted Serrano the requested tract and ordered the Alcalde of Santa Cruz, Manuel Garcia Paraja to deliver royal possession thereof to the new grantee. Paraja met with the adjoining land owner, Geronimo Martin, the officials of the Pueblo of Abiquiu and the grantee on February 18, 1766, and since no one objected to the issuance of the concession, he proceeded to survey and place Serrano in possession of the premises.[1]

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[1] S. Exec. Doc. No. 50, 42d Cong., 3d Sess., 4-7 (1873).

The grant papers were filed for record in the Kearney Land Register after the United States acquired jurisdiction over New Mexico.[2] After the office of the Surveyor General was created, the owners of the grant requested[3] that their claim be inquired into and confirmed. On February 3, 1873, Surveyor General James K. Proudfit issued a decision[4] wherein he held that the testimonio which had been filed in the case by the petitioners, was genuine beyond doubt and, therefore, he approved the grant and recommended its confirmation by Congress. A preliminary survey of the grant was made in November, 1877, by Deputy Surveyor Charles H. Fitch for 48,336.12 acres. The claim was still pending before Congress when the Court of Private Land Claims was established.[5]

On August 19, 1892, Aniceto Martin and fifteen other parties claiming to be the heirs of Mariano Martin filed suit[6] in the Court of Private Land Claims against the United States, seeking the confirmation of the Piedra Lumbre Grant. In support of their claim, the plaintiffs filed a testimonio which showed that Mariano Martin for himself

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[2]B. Record of Land Titles, 160-162 (Mss., Records of the S.G.N.M.).

[3]The Piedra Lumbre Grant, No. 73 (Mss., Records of the S.G.N.M.).

[4]Ibid.

[5]Ibid.

[6]Martinez v. United States, No. 30 (Mss., Records of the Ct. Pvt. L. Cl.).

and the other heirs of Pedro Martin Serrano, who was sometimes known as Pedro Martin, petitioned the governor of New Mexico, Joaquin Alencaster, seeking the re-validation of the grant which had been given to their grandfather in 1766. Such a re-validation was necessary because the hostility of the Navajos had forced the owners of the grant to abandon the grant for a numer of years prior to 1806. On July 15, 1806, the governor directed the Alcalde of Santa Cruz to report on the merits of the petition. Alcalde Manuel de la Mora on July 16, 1806, reported that all of the allegations contained in the petition were true. On August 10, 1806, Alencaster issued a decree re-validating the grant and ordering the alcalde to give the petitioners possession of all of the tillable lands which they had under cultivation and belonged to them as a result of their ancient rights. In compliance with the governor's order, the Alcalde of Santa Cruz, Manuel Garcia, delivered possession of the grant to the petitioners. A number of persons claiming interests in the grant under the 1766 concession intervened as cross-defendants. The government in its answer contended that the 1766 grant undoubtedly had been forfeited and that the 1806 grant was limited to the land which was under cultivation in 1806.

The case came up for hearing on August 25, 1893 at which time a considerable amount of evidence was

introduced. Five days later, the court handed down its decision[7] which held both the original grant in 1766 and the proceedings held in 1806 were genuine; that, if the original grant had been forfeited, the 1806 proceedings revalidated the entire grant; and that such revalidation inured to the benefit of the heirs of Pedro Martin Serrano. The government appealed the decision to the United States Supreme Court. Matthew G. Reynolds, the government's attorney, among other things contended that the court had erred in confirming the grant to the heirs of Pedro Martin Serrano. He believed that if the grant was to be confirmed, it should be confirmed "only to the plaintiffs for the interests which they might prove they held in the property." He pointed out that the evidence of ownership in this case was vague, indefinite, and depended on a mass of verbal testimony pertaining to the geneology of a large number of persons whose names were the same. He asserted that the Act of March 3, 1891,[8] which created the court, did not contemplate abstract confirmations. He felt that if the court's practice of confirming grants to the original grantee and his heirs and legal representatives was continued:

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[7] 1 Journal 208 (Mss., Records of the Ct. Pvt. L. Cl.).

[8] Court of Private Land Claims Act, Chap. 539, 26 Stat. 854 (1891).

> ... then where old papers can be found in possession of private individuals, or among the archives, although the grantee may never have taken possession of the property, may have abandoned it a century and a half ago, yet if some irresponsible Mexican can be found to swear he is the great-grandson of the original grantee named in the papers the Court will confirm a grant to an unlimited quantity in the abstract on the original grantee, his heirs and legal representatives. The danger of perpetration of frauds upon the government under the present construction of the act is very much greater than it ever has been from the forgery and the manufacturing of title papers and deeds.[9]

For some unexplained reason, the government decided not to further prosecute its appeal and it was dismissed on February 1, 1897.[10]

The grant was surveyed by Deputy Surveyor George H. Pradt between the 14th and 28th days of November, 1897. The survey covered 49,747.89 acres. The grant was patented on July 21, 1902.[11]

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[9] Report of the United States Attorney dated October 9, 1893 in Martinez v. United States (Mss., Records of the General Services Administration, National Archives, Washington, D.C.), Record Group 60, Year file 9865-92.

[10] Martinez v. United States, 17 S.Ct. 1001, 41 L. Ed. 1185 (1897) (mem.)

[11] The Piedra Lumbre Grant, No. 73 (Mss., Records of the S.G.N.M.).

THE POLVAREDA GRANT

Juan Pablo Martin, a lieutenant in the militia company of the Pueblo of Abiquiu and Lieutenant Alcalde of Santa Cruz, petitioned Governor Tomas Velez Cachupin asking for a grant covering a tract of unappropriated land commonly known as the Polvareda. Martin stated there were a few patches of land on the tract fit for cultivation and that the balance was suitable only for grazing purposes. He stated that while he had a small piece of land, it was not large enough to support his large family and growing herds of livestock. He described the tract as being bounded:

> On the north, by the junction of the Pedernales Mountain Creek with the Polvareda Creek; on the east, by the straight road crossing the west boundary of the Pueblo of Abiquiu and running southward, that is to say towards the Cerro Pelado; on the south, by the head of the Polvareda Creek; and on the west, by the Pedernales Mountain Creek.

On February 11, 1766, Governor Cachupin requested Martin to advise him of the kind and number of livestock which he owned and the distances between the boundaries mentioned in his petition. In compliance with the governor's command, Martin informed Cachupin, on the same date, that he had one hundred sheep and goats. He also estimated that the grant covered an area one and a half leagues from east to west

and three leagues from north to south. On the following day, the governor, in view of Martin's need for additional lands, his personal merits, and his belonging to a pioneer New Mexican family, granted him the sitio which he had solicited, upon the condition that he settle thereupon within a period of four years in order to acquire a complete title to the premises. Cachupin also directed the Alcalde of the Pueblo of Santa Cruz, Manuel Garcia Parejas, to place Martin in royal possession of the grant. The alcalde was cautioned to bear in mind that the grant was not to injure the rights of the Indians of the Pueblo of Abiquiu and, if it should develop that the grant was in fact detrimental to their interest, he was to suspend the proceedings concerning delivery of possession and report the matter to the governor. Parejas was also instructed to return the original copy of his actions to the governor for filing in the archives. In obedience with these instructions, Parejas summoned the inhabitants of the Pueblo of Abiquiu and Jose Martin, who were the adjoining land owners, and notified them of the grant and his intention to deliver possession of the land. Since no one protested, Parejas proceeded to perform the formal ceremonies of delivery of royal possession to Martin. The expediente

was thereafter returned to Cachupin who deposited it in the Archives of New Mexico.[1]

For more than a century, Martin or his descendants continuously occupied and claimed the grant. On March 17, 1876, the heirs of Juan Pablo Martin filed[2] their claim in Surveyor General James K. Proudfit's office. However, before he could pass upon the validity of the grant, he was asked to resign and his successor, Henry M. Atkinson, did not get around to investigating the validity of the grant for over six years. In his decision[3] dated December 22, 1882, Atkinson held that the muniments of title, which were relied upon by the claimants, were to be found in the archives and were undoubtedly genuine. Thus, he concluded that the grant was good and valid and should be confirmed to the heirs, legal representatives and assigns of the original grantee according to the boundaries set forth in the grant and Act of Possession. A preliminary survey of the grant was made by Deputy Surveyor John Shaw in June, 1883, which showed that the grant contained 35,924.18 acres. J. M. C. Chaves protested the approval of the Shaw Survey on the ground it conflicted with the western portion of the Pueblo of Abiquiu Grant. This protest undoubtedly deterred

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[1]Archive No. 568 (Mss., Records of the A.N.M.).

[2]The Polvareda Grant, No. 131 (Mss., Records of the S.G.N.M.).

[3]Ibid.

prompt congressional action on the claim.

The Polvareda Grant was one of the claims to be re-examined by George W. Julian after he was appointed Surveyor General. In a Supplemental Opinion[4] dated December 14, 1888, Julian stated that although he believed that the title papers were genuine, he had two objections to Surveyor General Atkinson's action recommending the approval of the grant. First, he called attention to the fact that the petition filed by the heirs of Juan Pablo Martin did not specifically name the claimants. He was of the opinion that petition should have set forth the names of the individual claimants as it was not the duty of his office to investigate and adjudicate the titles derived under a grant subsequent to its issuance. His second objection was that the claimants had failed to show that the conditions of settlement contained in the grant had been performed. As a result of these two imperfections, he recommended the rejection of the claim. Julian's adverse report undoubtedly caused Congress to be even more reluctant to take action on the complex problems presented by the claim. Therefore, it is not surprising to find that the grant was still pending in Congress on the date of the establishment of the Court of Private Land Claims.

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[4] Ibid.

On October 27, 1892, Frank Perew for himself and the heirs and legal representatives of Juan Pablo Martin filed suit[5] seeking the confirmation of the grant. Perew based his claim to an interest in the grant on mesne conveyances from Martin's descendants. Gregoria Velarde and Felix Garcia, who had also purchased certain interests in the grant, intervened as party plaintiffs on June 7, 1893. Amelia F. Salazar, as next of friend of his wife and minor children who owned certain interests in the grant as remote descendants of the original grantee, also intervened as party plaintiffs. The government filed a motion to dismiss the petitions of the intervenors on the grounds that they had been filed after March 3, 1893, which was the deadline established by the Act of March 3, 1891.[6] It filed another motion to strike the allegation made by Perew that he was bringing the suit "on behalf of heirs and legal representatives of Juan Pablo Martin," because the act did not authorize a plaintiff to assert a claim to any land derived from Spain or Mexico on behalf of anyone save himself, unless he was a trustee, agent, attorney-in-fact, guardian, or curator and no such authority had been shown or alleged by Perew. It also

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[5]Perew v. United States, No. 43 (Mss., Records of the Ct. Pvt. L. Cl.).

[6]Court of Private Land Claims Act, Chap. 539, Sec. 12, 26 Stat. 854 (1891).

contended that the act did not contemplate nor authorize the court to confirm grants in the abstract in the names of the original grantee but only permitted the confirmation of the titles of party plaintiffs and then only to the extent of their individual interests.

The case came up for trial on August 1, 1893, at which time the court overruled the government's motions and ordered the plaintiffs to proceed with the presentation of their case. The plaintiffs introduced their title papers and supported their claim in the oral evidence showing that grant had been occupied "as far back as the memory of man runneth naught." The government in turn reiterated its position that the court had no authority to confirm the grant in the abstract. After fully considering the pleadings and proof, the court in its decision[7] dated August 9, 1893, found the grant to be good and valid to the extent of the boundaries set forth in the expediente and, therefore, ordered its confirmation to the heirs, legal representatives and assigns of Juan Pablo Martin. The government appealed the decision to the United States Supreme Court, however, for some unexplained reason sought and secured the dismissal of the action on February 1, 1897.[8]

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[7] 1 Journal 176-179 (Mss., Records of the Ct. Pvt. L. Cl.).

[8] United States v. Perew, 17 S. Ct. 1001; 41 L.Ed. 1185 (1897) (mem.).

After the dismissal of the appeal, a survey of the grant was ordered by the Surveyor General pursuant to Section 10 of the Act of March 3, 1891.[9] The survey was made by Deputy Surveyor Clayton G. Coleman. His survey disclosed that the grant contained a total of 35,761.14 acres and conflicted with the Juan Jose Lovato and Pueblo of Abiquiu Grants to the extent of approximately 5,000 acres. Notwithstanding this conflict, the survey was approved and a patent based thereon was issued on September 20, 1900.[10]

THE BARRANCA GRANT

Anastacio C. de Baca filed suit[1] in the Court of Private Land Claims on February 17, 1893, seeking to obtain the recognition of the Barranca Grant. In his petition, Baca stated that on March

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[9]Court of Private Land Claims Act, Chap. 539, Sec. 10, 26 Stat. 854 (1891).

[10]The Polvareda Grant, No. 31 (Mss., Records of the S.G. N.M.).

[1]Baca v. United States, No. 97 (Mss., Records of the Ct. Pvt. L. Cl.). A second suit seeking the confirmation of this grant was filed on March 3, 1893 by Juan Andres Martin, who claimed an interest thereunder by inheritance from Geronimo Martin. Martin v. United States, No. 265 (Mss., Records of the Ct. pvt. L. Cl.). This suit was dismissed by Martin on August 24, 1896. 3 Journal 60 (Mss., Records of the Ct. Pvt. L. Cl.).

2, 1735, Geronimo Martin, Ignacio Martin, Juan de Gamboa, Pascual de Manzanares and Tomas de Manzanares petitioned Acting Governor Juan Paez Hurtado for a grant covering a tract of unoccupied land bounded:

> On the north, by Copper Mountain; on the east, by the lands of Captain Antonio Montoya; on the south, by some mountainous hills; and on the west, by the hill that goes to Piedra Lumbre.

The petitioners explained that they were destitute and landless and had been compelled for some time to borrow land at the Pueblo of Chama in order to grow enough food to support their families. Therefore, in order to relieve their suffering they prayed that Hurtado would grant their request. Hurtado acted favorably on the petition on the same date and directed the Lieutenant Alcalde of Santa Cruz, Diego de Torres, to place the petitioners in royal possession of the land. Seven days later, Torres, acting under the authority of Hurtado's decree, placed the petitioners in possession of the tract of land described in their petition. Hurtado was Lieutenant Governor of New Mexico and was serving as acting governor in March of 1735 while Governor Gervasio Cruzat y Gongora was on an official visit to El Paso del Norte. Upon his return to Santa Fe, Cruzat revoked the grant by noting such revocation on the bottom of the expediente of the grant.[2] To overcome this obstacle, the petitioner pointed out that sometime prior

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[2]Archive No. 518 (Mss., Records of the A.N.M.).

to 1750 the Indians became extremely hostile and the inhabitants of a number of the settlements along the northwestern frontier abandoned their homes and on February 21, 1750, Governor Tomas Velez Cachupin issued a proclamation ordering them to return to their colonies.[3] In March, 1750, a number of the settlers of the Pueblo of Abiquiu, including Geronomi Martin appeared before the local alcalde and agreed to resettle their lands. Next, he showed Geronimo Martin conveyed a portion of the premises to Joseph Martin on July 30, 1764, and Jose Martin, together with his brothers and sisters, petitioned Governor Juan Bautista de Anza seeking a revalidation of the ancient title which they had inherited from their father, Joseph Martin. Governor Anza investigated the merits of the request and finding no opposition,ordered the local alcalde to sustain the petitioners in their possession of such land. A copy of Archives Number 518 and 1110 together with the original copy of the deed and 1784 proceedings were attached to the petition. The petition estimated that the grant covered 25,000 acres and called attention to the fact that the claim had never been presented to or acted upon by the Surveyor General.

The government filed a general answer denying the plaintiff's allegations and a special answer alleging

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[3]Archive No. 1100 (Mss., Records of the A.N.M.).

that the grant had been revoked by the governor of New Mexico within a few months after its issuance. In support of its special defense, the government attached a copy of Archive No. 524,[4] which was a decree dated November 11, 1735 and signed by Governor Cruzate. In this instrument Cruzate states that upon his return he revoked the grant which had been made to Geronimo Martin for "good reason" and in addition he ordered Martin under penalty of one hundred peso fine to cease building the house which he had commenced upon the grant. The governor also ordered him to tear down the portion which he had already constructed and vacate the premises within eight days and that if he failed to comply with this portion of the decree he would impose upon him "the penalty prescribed by law for those who obtained land of his majesty without legal title."

When the case came up for trial on August 27, 1896, Baca presented his muniments of title together with oral testimony tending to prove that the original grantees and their descendants had claimed and occupied the grant from 1735 up to the date of trial. The plaintiff was also able to trace his chain of title back to the original grantees. He then argued that Governor Cruzate had no authority to revoke the grant without holding a denounciation proceeding, but if it had been legally revoked in 1735, it had

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[4]Archive No. 524 (Mss., Records of the A.N.M.).

been reinstated in 1750 and confirmed in 1784.

The government, in turn, introduced the Revocation Decree of 1735 and argued that since the grantee was in possession of the land in 1735, a denunciation proceeding was not necessary. It contended that a denunciation proceeding was necessary only if a grantee failed to settle on a grant as required by law or had abandoned his grant. Next, the government then turned its attention to counteracting the plaintiff's contention that the grant had been either reinstated or confirmed. It argued that even if the Proclamation and 1750 Proceedings could be considered as a reinstatement of some land grant, they did not contain a description sufficient to legally identify the land involved and that the same objection was equally applicable to the 1764 deed and 1784 proceedings. The court's attention was also called to the fact that the Barranco Grant was totally within the boundaries of the Juan Jose Lovato Grant which previously had been confirmed by the court.

After fully considering the evidence, testimony, and arguments in the case, the court issued a decree[5] rejecting the claim on September 5, 1896. The plaintiff did not appeal from this decision.

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[5] 3 Journal 92 (Mss., Records of the Ct. Pvt. L. Cl.).

THE JUAN JOSE LOVATO GRANT

Captain Cristobal Torres was granted a tract of land on the Chama River by Governor Juan Domingo de Bustamante on June 6, 1724. The tract was described as being bounded:

> On the north, by the Sierra de las Grullas; on the east, by the Pueblo de Chama; on the south, by the Sierra Santa Cruz; and on the west, by the hill called Piedra Lumbre.

Torres was placed in royal possession of the premises three days later by Lieutenant General Juan Paez Hurtado. However, before Torres could settle upon the grant, he died. The grant was "upon due proceedings first had" revoked on October 24, 1733, by Governor Gervasio Cruzat y Gongora and the lands listed as realengos or crown lands.[1] Later the tract was granted by Governor Gaspar Domingo de Mendoza to Juan Jose Lovato and Diego de Torres, the son of Cristobal de Torres. This second grant was subsequently denounced as forfeited and the lands annotated as part of the royal domain when Lovato, in ignorance of the prohibitions contained in the royal land, sold his interest in the grant. Finding himself in a destitute position, Lovato humbly petitioned Mendoza for a

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[1] Archive No. 943 (Mss., Records of the A.N.M.).

new grant covering the same tract and promised this time to comply with the royal laws. On August 24, 1740, Mendoza issued a decree regranting the solicited tract to Lovato and directing the Alcalde of Santa Cruz, Juan Garcia de Mora, to place him in royal possession of the premises. Possession was accordingly delivered on September 11, 1740.

Alcalde Jose Romo de Verga, who had been appointed by Governor Joaquin Codallos y Rabal to affect a distribution of the lands owned by the Estate of Juan de Mastes, ordered Lovato on May 30, 1744, to vacate the grant within a few months under penalty of a one hundred peso fine. It seems that Mastes, sometime prior to 1724, had received a grant covering a portion of the land contained within the Juan Jose Lovato Grant. A suit had been instituted in 1725 by Cristobal Torres against Mastes to clear his title. At the trial of this cause, it was shown that at the time Hurtado delivered possession of the grant to Torres, Mastes had consented to and raised no objections to the delivery of possession of the entire tract to Torres.[2] Lovato promptly protested the action taken by Roma and requested the governor to set the eviction order aside on the ground that the 1725 litigation had extinquished Mastes' title

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[2] Archive No. 944 (Mss., Records of the A.N.M.).

to the lands covered by the Juan Jose Lovato Grant. On June 15, 1744, Governor Codallas decided that the grant to Lovato by Governor Mendoza on August 24, 1740, was a valid, subsisting and permanent grant and he was entitled to be protected. Thereafter, Lovato and his heirs and assigns occupied and claimed most of the lands covered by the grant.[3]

A petition[4] seeking the confirmation of the grant was filed in Surveyor General H. M. Atkinson's office on March 31, 1884. Surveyor General Atkinson considered the claim on April 3, 1884, and decided[5] that it was valid and so reported to Congress. However, Congress took no action upon Atkinson's recommendation.

After the Court of Private Land Claims was established, the owner of the grant turned to that forum for assistance. On February 28, 1893, Jose Isabel Martinez and forty-seven other heirs of Juan Jose Lovato filed suit[6] against the United

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[3]The Juan Jose Lovato Grant, No. 198 (Mss., Records of the S.G.N.M.).

[4]Ibid.

[5]Ibid.

[6]Martinez v. United States, No. 140 (Mss., Records of the Ct. Pvt. L. Cl. Meanwhile, Juan and Jesus Torres had filed suit in the Court of Private Land Claims seeking confirmation of their claim to the same tract of land based upon the June 6, 1724, grant by Governor Bustamante to Cristobal Torres. Torres v. Unites States, No. 250 (Mss., Records of the Ct. Pvt. L. Cl.). The government contested recognition of the Torres claim on the ground that the grant had been revoked by Governor Cruzate. When this case came up for trial the plaintiffs announced that

States seeking the confirmation of their title to the 100,000 acres of land which they estimated were covered by the grant. The only defense which the government offered against the recognition of the Juan Jose Lovato Grant was that it conflicted with three previously confirmed grants. The court in its opinion[7] dated July 9, 1894, found the plaintiffs' title to be good and valid, and conferred the grant to all of the lands within the boundaries except for the portion thereof which conflicted with the Town of Abiquiu, Plaza Blanco, and Plaza Colorado Grants.

To the surprise of everyone, the official survey of the grant which was made by Deputy Surveyor Sherrand Coleman on October 15, 1895, showed that the grant contained 205,615.72 acres. A patent, based on this survey, was issued on January 15, 1902.[8]

The Coleman Survey also showed that thirteen patented homestead entries aggregating 1,856.73 acres were located within the grant. On April 23, 1900, the owners of the grant filed supplemental petition[9] in the Court of Private Land Claims

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they no longer desired to prosecute their claim and the case was dismissed on June 15, 1898. 3 Journal 404 (Mss., Records of the Ct. Pvt. L. Cl.).

[7] 2 Journal 45-48 (Mss., Records of the Ct. Pvt. L. Cl.).

[8] The Juan Jose Lovato Grant, No. 198 (Mss., Records of the S.G.N.M.).

[9] Martinez v. United States, No. 140 (Mss., Records of the Ct. Pvt. L. Cl.).

under Section 14 of the Act of March 3, 1891,[10] seeking a judgment for the value of the lands covering said homestead entries which the government allegedly had disposed of in violation of the terms of the Treaty of Guadalupe Hidalgo. This was the first suit for a money judgment against the United States under this act. The government in its answers contended that the plaintiffs, in their original petition, had asserted that there were no conflicting or adverse claims and therefore, had waived their right to proceed under Section 14 of the act. In its decision[11] dated May 11, 1900, the court found for the plaintiffs and awarded them damages in the amount of $2,320.91. The government promptly appealed the decision. The Supreme Court, on April 3, 1902, reversed[12] the decision of the Court of Private Land Claims on the ground that the unexplained delay of the plaintiffs in instituting their action for more than four years after the discovery of the homestead entries amounted to an abandonment of their claim.

The Juan Jose Lovato Grant was the second largest grant conferred by the Court of Private Land Claims and was

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[10]Court of Private Land Claims Act, Chap. 539, Sec. 14, 26 Stat. 854 (1891).

[11]4 Journal 171 (Mss., Records of the Ct. Pvt. L. Cl.).

[12]United States v. Martinez, 184 U.S. 441 (1902).

one of the two grants which was conferred for more than 100,000 acres. Had the Court of Private Land Claims realized that there were so many other conflicting grants located within its boundaries, it is doubtful that it would have confirmed the Juan Jose Lovato Grant.

THE TOWN of ABIQUIU GRANT

During the latter part of the first half of the Eighteenth Century the Spaniards mounted a fierce campaign against the hostile Indians who encircled the Northern frontiers of New Mexico. Following a number of successful engagements, the Spaniards secured the release of a number of half-breed Indian captives or Genizaros, who were settled in 1744 on the site of an ancient Yuque Pueblo. This settlement was called the Pueblo of Santa Rosa de Abiquiu. On August 12, 1747, it was raided by the Utes. A number of its inhabitants were killed and the rest lost heart and moved to Santa Cruz. It was resettled soon afterwards and, in 1748, contained twenty families, but because of further depredations by the Utes and Navajos, it was again abandoned. When the viceroy learned of the second

failure of the settlement, he ordered Governor Tomas Valez Cachupin to permanently re-establish the pueblo in accordance with Law 8, Title 3, Book 6, of the Recopilacion de Leyes de los Indios.[1] Pursuant to such instructions, Cachupin, on May 10, 1754, personally escorted the Genizaros back to Abiquiu. Upon arriving at the pueblo, Cachupin, in the presence of Fray Felix Joseph de Ordones y Machado and Juan Jose Lovato, Alcalde of the Pueblo of Santa Cruz, surveyed and granted to the Genizaros a tract of land described as being bounded:

> On the north, by the Chama River; on the east by an arroyo; on the south, by the road of the Tiguas running to Navajo; and on the east, by Sierra Pelado looking towards the Rio de los Frijoles.

The Commissary visitor to the Franciscan Missions of New Mexico, Fray Francisco Atanasio Dominguez, described the Pueblo of Abiquiu in 1776 as follows:

> The Pueblo and Mission of Santa Rosa de Abiquiu is 9 very good leagues northwest of Santa Clara over a rough road with small hills and arroyos between them, all sandy, and with an occasional small level place. The pueblo stands on a triangular hill. . .. It is some 18 leagues from Santa Fe and lies to the northwest of the villa. This mission was recently founded by Don Tomas Valez for Christian Genizaro Indians.

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[1] This law provided, "The sites on which pueblos and reductions must be formed shall have convenience of water, land and wood, entrance and departure, and lands for cultivation, and an exido of a league in length where the Indians can have their cattle without their mixing with those of the Spaniards." Hall, The Laws of Mexico, 61 (1885).

> He had it named the Pueblo and Mission of Santa Tomas de Abiquiu, but the settlers use the name Santa Rosa, as the lost mission was called in the old days.[2]

The Mexican officials undoubtedly recognized the validity of the Pueblo of Abiquiu Grant for its officials frequently passed on problems affecting it. In 1825 its inhabitants petitioned for and secured a distribution of individual farm tracts which they were occupying and using. This distribution was performed during the month of April, 1825, by Alcalde Juan Cristobal Quintana in obedience with a decree issued by Bartolome Baca, Governor of New Mexico. The proceedings were promptly reported to Baca, who on May 2, 1825, returned them to Quintana and requested him to clarify certain ambiquities contained in his report. On February 27, 1829, the inhabitants of the Pueblo of Abiquiu petitioned Manuel Armijo, Governor of New Mexico, seeking an official survey of the southern boundary of the grant. In response to this request, the boundary was surveyed as a straight line running from east to west through a point located on the Tigua Highway and near the edge of the Sierra Paladisa. Alcalde Miguel Quintana endorsed his approval on the report pertaining to these proceedings on March 19, 1829. Another document, which was dated October 10, 1831, pertained to the settlement of a boundary

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[2]Adams and Chavez, The Missions of New Mexico, 1776, 120 (1956).

dispute between the owners of the Vallecita Grant and the inhabitants of the Pueblo of Abiquiu. In this document the south boundary of the grant was once again described as being located at an old landmark on the Tigua Highway to Navajo or 10,700 varas south of the center of the pueblo. In 1841 the Acting Alcalde of Santa Cruz, Maria Chavez, made additional allotments of land within the Pueblo of Abiquiu Grant.[3] Also a number of grants, each made subsequent to 1754, contained a call for adjoinder to the Pueblo of Abiquiu Grant or made reference to it by name. As a matter of fact, during the Spanish and Mexican regime, it was one of the best known grants in New Mexico.

Despite the constant efforts by the Mexican Government to stop the depredations of the Utes, Apaches, Navajos, and Commanches, it was never able to effectively stop them from pillaging the frontier settlements. Nor did peace come to the inhabitants of the Pueblo of Abiquiu with the assumption of jurisdiction over New Mexico by the Anglo-Americans. When General Stephen Watts Kearny marched into Santa Fe in 1846, he found that the territory had become callous to the forays of the wild savages. Even before the Treaty of Guadalupe Hidalgo bound the United States to constrain the

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[3]The Town of Abiquiu Grant, No. 140 (Mss., Records of the S.G.N.M.).

hostile Indians, Kearny took affirmative steps to alleviate this problem. Colonel Alexander W. Donephan with a strong detachment of troops was sent into the Navajo country to force them to seek peace. Two companies of the Army of the West were also stationed at the Pueblo of Abiquiu, which had long been recognized as a strategic barrier against the Utes and Apaches.[4]

On January 24, 1883, Jose M. C. Chaves, for himself and the other claimants of the Pueblo of Abiquiu Grant, petitioned Surveyor General Henry M. Atkinson requesting the confirmation of the concession. No action was taken on the application for nearly two years. In a long and detailed report dated October 28, 1885, Surveyor General George W. Julian advised Congress that the grant raised a number of interesting questions. First, he noted that the instrument produced and relied upon by the claimants as a testimonio of the grant had not been authenticated and, therefore, could not be considered as evidence in determining the validity of their claim. However, in fairness to the petitioners, he stated that the archives showed that the Spanish officials mentioned in the grant papers, at the time of the issuing of the concession, actually held the offices which the grant

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[4]Stanley, The Abiquiu Story, 21 (n.d.); and Spencer, Cycles of Conquest, 170 (1962).

papers indicated and had authority to issue the grant or deliver possession of the premises. He also called attention to the recitation in the proceedings pertaining to the 1829 boundary dispute between the Pueblo of Abiquiu and the Town of Vallicato showed that an unsuccessful effort had been made to locate the expediente of the grant in the archives at Santa Fe and this could account for its absence from the archives which had been turned over the United States when it acquired New Mexico. Next, he turned his attention to the two documents which pertained to the distribution of farm lots among the inhabitants of the pueblo in 1825 and 1841.[5] He stated that in his opinion these two ancient documents probably were originals but the petitioners had not shown that they were genuine or when they were filed in the archives. Following this he pointed out that in 1754 grants had to be approved by either the King, the Viceroy, or the Audiencia of Guadalajara and there was no evidence that the Pueblo of Abiquiu Grant had been approved. However, he was quick to explain that the decisions of the Supreme Court of the United States applicable to similar grants had held that such confirmation could be presumed. Next, he raised the question as to whether the long continuous possession of the land by the inhabitants of the Pueblo

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[5]Archive Nos. 61 and 65 (Mss., Records of the A.N.M.).

of Abiquiu prefected a title by prescription. In answer to this issue he held that a title by prescription could not be acquired under either the laws of Spain, Mexico, or the United States. After appearing to have debunked the grant, Julian proceeded to build a case for the recognition of the claim. First, he stated that since there was no direct evidence that a valid grant had been issued, the applicants, if they were to prevail, would have to substantiate their claim with circumstantial evidence. He then stated that the only documents which could be found in the Archives of New Mexico pertained to the distribution of the individual lots and while insufficient to prove a valid grant by themselves, they did raise a presumption that the governor, Bartolome Baca, and Jose Antonio Chaves had some evidence of and were satisfied that a valid grant previously had been issued; otherwise, they would not have made the allocations. He noted that the Spanish Government had been very lenient towards the Christianized Indians and had issued numerous decrees designed to protect them and their rights, passing then to the oral testimony of the four aged witnesses who had testified that the residents of the Pueblo of Abiquiu had claimed and occupied the lands covered by the grant at all times during their memory. Their testimony also fixed its boundaries. Julian's concluding question was, "On the basis of the documentary and oral evidence presented by the

claimants, has a grant been established?" In answer thereto he stated that a careful survey of all papers and proof in the case indicated that the Spanish and Mexican Governments would probably have recognized the grant, and therefore, under the terms of the Treaty of Guadalupe Hidalgo, the United States was bound to confirm the petitioners' claim which he estimated to contain 10,980 acres.[6]

Since Congress repeatedly failed to pass upon the grant, the creation of the Court of Private Land Claims afforded its claimants an opportunity to gain the recognition of their title. On December 5, 1892, Reyes Gonzales and Jose M. C. Chaves, as the owners of the undivided interests in the Pueblo of Abiquiu Grant, filed suit[7] against the United States praying for the confirmation of the grant unto them and their co-owners. The government raised no special defenses at the trial and its attorney, in his Report[8] to the Attorney General, stated:

> The title papers are all genuine and the repeated recognition of it by the Mexican Provincial Authorities

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[6]The Town of Abiquiu Grant, No. 140 (Mss., Records of the S.G.N.M.).

[7]Gonzales v. United States, No. 52 (Mss., Records of the Ct. Pvt. L. Cl.).

[8]Report of the United States Attorney dated February 7, 1894, in the Case of Gonzales v. United States (Mss., Records of the General Services Administration, National Archives, Washington, D. C.), Record Group 60, Year File 9865-92.

> under the Mexican Republic all attest to its genuineness. Repeated action was had from time to time in relation to it by the Provincial Authorities down to 1831 growing out of local disputes as to ownership of different parts thereof, all recognizing the validity of same.

After carefully considering the evidence submitted and arguments of both sides, the court issued a decree[9] confirming the grant on April 18, 1894. A survey of the grant was made by Deputy Surveyor Sherrand Coleman and showed the grant covered 16,547.20 acres. Coleman's survey located the north boundary of the grant along the south bank of the Chama River. The claimants protested the approval of the survey on the grounds that the north boundary line should have been located along the Rio Chama as it ran in 1754. The court overruled the protest and approved the survey. A patent was finally issued by the Board of Grant Commissioners of the Abiquiu Grant on November 11, 1909.[10]

THE VALLECITO GRANT

Jose Garcia de la Mora and twelve associates petitioned Governor Joaquin del Real Alencaster for a colonization

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[9] 2 Journal 86-88 (Mss., Records of the Ct. Pvt. L. Cl.).

[10] The Town of Abiquiu Grant, No. 140 (Mss., Records of the S.G.N.M.).

grant covering a tract of vacant land at the place called Vallecito, which was located on Vallecito Creek (Canon Seco) between the Santa Clara mountains on the east and those "looking towards the ranch of Jose Riano on the west." Alencaster, on April 7, 1807, ordered the Alcalde of Santa Cruz to give him a list of the names of Garcia's twelve associates and advise him if he knew of any objections to granting the request. Eleven days later Alcalde Manuel Garcia de la Mora answered his request. In addition to furnishing the governor with a list of the applicants he stated that there would be no objection or injury resulting from the issuance of the grant so long as the pasture lands remained as commons and the grantees enclosed their fields. Adter carefully considering the matter, Alencaster granted the tract to the petitioners subject to the following conditions:

1. If the grantees failed to fence their farms they would be subject to a fine of $50 for the first offense and waive all damages occasioned by livestock invading their fields.

2. Even if their lands were enclosed, they would not be entitled to damages to their crops if livestock got into their fields since they had no obligation to maintain such fences.

3. The surrounding pasture lands were reserved as commons and, while they could keep the livestock of any third party 600 varas from their fields and acequeas, they were not to injure such animals.

4. Each grantee was to receive an individual farm lot sufficient in area "to plant a fanega of corn and 2 or 3 of wheat" together with a homesite.

The decree closed with an order directing the Alcalde of Santa Cruz to allot the land and place each grantee in possession of his respective tracts. Following this decree is a portion of another instrument which appears to have been an Act of Possession. It reads as follows:

Canada October 25, 1807

In view ....

However, the balance of the instrument had been torn off and lost.[1]

The heirs and legal representatives of Jose Garcia de la Mora petitioned[2] Surveyor General Clarence Pullen asking him to investigate the claim which they described as being about 15 miles in length along Vallecito Creek between the Santa Clara and Vallecito Mountains. The northern boundary was described as being along the road to Navajo and the southern boundary of the Pueblo of Abiquiu Grant. The location of the southern boundary was not indicated.

The Surveyor General's Office took no action on the claim and, therefore, when the Court of Private Land Claims was established, Jose Asabel Martinez and five other persons claiming an interest in the grant as heirs or as

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[1]Archive No. 378 (Mss., Records of the A.N.M.).

[2]The Vallecito Grant, No. F-183 (Mss., Records of the S.G.N.M.).

assigns of the original grantees brought suit[3] against the United States in that forum on February 28, 1893, seeking the confirmation of the grant. They asserted that the grant covered approximately 38,000 acres and described its boundaries as:

> The summits of the mountains to the east and west of the Vallecito River and extending from north to south along the river about fifteen miles.

The plat attached to the petition showed the southern boundary as being located along the bluffs north of the Santa Clara River. The government in its answer placed the plaintiffs' allegations in issue. Martinez's deposition was taken by his attorney on November 22, 1893, in an effort to more definitely establish the location of the boundaries of the grant and show that it had been continuously occupied by the grantees and their descendants since its inception. However, on cross examination by the government's counsel, he testified that while his father had been given a hijuela to an individual tract of land situated within the grant he had lived near the junction of the Chama and Rio Grande Rivers. It also was established that the grant was located within the boundaries of the Juan Jose Lovato Grant.

Even if it were presumed that possession had been delivered, it is obvious that this was not a single grant

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[3]Martinez v. United States, No. 141 (Mss., Records of the Ct. Pvt. L. Cl.).

but a series of thirteen grants covering small individual farm tracts along the river valley. Such small claims did not warrant the expense and trouble which would be necessary to secure their recognition as private land claims. Therefore, the "grant" theory was abandoned and the interested parties elected to secure title to their individual tracts under the homestead laws. When the case came up for trial on September 30, 1897, the plaintiffs announced that they no longer wished to prosecute their cause and the court forthwith dismissed their petition and rejected the claim.[4]

THE PLAZA COLORADO GRANT

Rosalia, Ignacio, and Juan Lorenzo Baldes, residents of the Pueblo of Santa Cruz, petitioned Governor Gaspar Domingo de Mendoza for a grant covering a tract of unappropriated land lying near the Post of Abiquiu and described as being bounded:

> On the north, by the Copper Hills; on the east, by the lands petitioned for by Manuel de la Rosa; on the south, by the Chama River; and on the west, by a little hill opposite the Town of Abiquiu.

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[4] 3 Journal 288 (Mss., Records of the Ct. Pvt. L. Cl.).

As justification for their request, the petitioners advised the governor that they no longer had sufficient land to support their families and animals. They explained that while they originally had an adequate tract of land at Santa Cruz, the spring freshets had gradually reduced its size by accretion notwithstanding their continuous efforts to repair the damages. The tract had finally diminished to the point where it would no longer meet their expanding needs. Thus, the petitioners had decided to move closer to the frontier. In response to their petition, Mendoza on June 20, 1739, granted them the requested tract and directed the Alcalde of Santa Cruz to place them in royal possession of the land. The grantees presented their title papers to Diego Torres, Acting Alcalde of the Pueblo of Santa Cruz, and requested him to deliver possession of the grant to them and allot each of them the portion thereof which he or she was entitled. They agreed that Rosalia should have the greater portion since she had been primarily responsible for their obtaining the grant and her two brothers had joined the venture at her invitation. Torres went to the grant and performed the customary ceremonies pertaining to the delivery of royal possession of the premises. Following the performance of those formalities, Torres measured the bottom lands along the north bank of the Chama River, which were capable of cultivation, and found that they were fifteen hundred varas

wide. This he divided into quarters. The eastern half was allocated to Rosalia, the east four hundred varas of the west half were awarded to Ignacio, and the balance was given to Juan Lorenzo.[1] The grantees took immediate possession of the grant and continuously occupied and used it until their deaths. Thereafter, their descendants and their assigns held peaceful possession of the grant.

Meanwhile, in 1825 or 1826, Juan Domingo Valdes, the grandson and sole heir of Rosalia Baldes, conveyed the interest which Rosalia formerly had owned to Jose Maria Chaves. By that time, the testimonio of the grant had become very worn and dilapidated; therefore, the owners of the grant obtained a certified copy of such document on April 26, 1836 from Jose Maria Chaves, but such copy did not state the capacity in which he certified same. This copy together with fragments of the original grant papers were filed in the Surveyor General's Office by Chaves on January 3, 1861. Surveyor General Alexander P. Wilbar issued a certified copy of the testimonio to Chaves for his protection.[2] It is a good thing that he did for the papers filed by Chaves were subsequently lost or destroyed.

The owners of the grant did not formally seek its confirmation until May 4, 1885, when J. M. C. Chaves, who

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[1]The Plaza Colorado Grant, No. 149 (Mss., Records of the S.G.N.M.).

[2]Ibid.

by inheritance had acquired his father's interest, petitioned[3] Surveyor General Clarence Pullen on behalf of himself and the other owners of the grant for the recognition of their interests. After taking testimony in support of the grant and carefully considering the merits of the claim, Pullen's successor, George W. Julian, announced his decision[4] recommending the confirmation of the grant on April 25, 1886. In this decision, Julian held that the certified copy of the grant was evidence of the lost instrument in the absence of anything to the contrary and that such copy when taken in conjunction with the oral testimony and the reference to the grant contained in the grant papers to the Plaza Blanca Grant, which adjoined it on the east, tended to establish the validity of the applicants' claim. Julian stated that in his opinion the call contained in the description of the grant for it to be bounded "on the east by the lands petitioned for by Manuel de la Rosa" was an error and should have called for the "lands petitioned for by Manuel Bustos", who shortly thereafter had received the Plaza Blanco Grant from the same authorities. A preliminary survey of the grant was not made; however, from the testimony presented before the Surveyor General, it was estimated that the grant

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[3] Ibid.

[4] Ibid.

extended nine to ten miles from north to south and was about four miles wide on the north side and narrowed to a width of two miles along the river. Thus, the grant would contain about 18,200 acres of land. Congress took no action on Julian's recommendation and the Plaza Colorado Grant was one of the claims pending when the Court of Private Land Claims was established on March 3, 1891.

On December 1, 1891, the owners of the Plaza Colorado Grant filed suit[5] in the Court of Private Land Claims against the United States for the recognition of the grant. The petition did not list the owners of the grant, state the full particulars of the grant, nor contain a sketch map of the claim. The government filed a demurrer to the plaintiffs' petition on the grounds that Section 6 of the Act of March 3, 1891,[6] required plaintiffs to set forth such information in their petitions. In a decision[7] dated March 4, 1892, the court held that reference to the grant was insufficient and full particulars surrounding its issuance together with a sketch map should be incorporated in or attached to the petition. It also held that while everyone owning or claiming an interest in the grant would be a proper party to the

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[5]Chaves v. United States, No. 2 (Mss., Records of the Ct. Pvt. L. Cl.).

[6]Court of Private Land Claims Act, Chap. 539, Sec. 6, 26 Stat. 854 (1891).

[7]1 Journal 20 (Mss., Records of the Ct. Pvt. L. Cl.).

action they were not necessary parties unless their interests were adverse to the plaintiffs' and they were in possession of the grant. To cure the defects pointed out by this decree, the plaintiffs filed an amended petition on April 15, 1892. The case came up for hearing on May 8, 1893, at which time the plaintiffs introduced their title papers, the proceedings in connection with the Surveyor General's investigation, and oral evidence supporting their claim. The preponderance of the evidence showed the grant papers to be genuine and that the plaintiffs and their predecessors had occupied the grant "as far back as the memory of man runneth." The government offered no special defenses against the recognition of the claim. On December 4, 1893, the court entered a decree[8] confirming the Plaza Colorado Grant, according to the boundaries set forth in the Act of Possession, in the name of the original grantees, their heirs and legal representatives. Since the United States was satisfied that the grant was valid and the court's decision was correct, it did not appeal the decision.

An official survey of the grant as confirmed, was made in November, 1895, by Deputy Surveyor Sherrard Coleman. This survey showed that the grant covered a total of 7,577.92 acres. The plaintiffs protested the approval of the survey on the grounds that the west boundary had been located

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[8] 2 Journal 35-38 (Mss., Records of the Ct. Pvt. L. Cl.).

along the foot of the eastern side of the little hill opposite the Town of Abiquiu when, in fact, it should have been located further south or along the north bank of the Chama River as it ran in 1739 instead of along the then north bank of the Chama River.[9] By decision[10] dated September 10, 1896, the court approved Coleman's survey as being substantially correct. A patent was accordingly issued on February 8, 1907.[11]

THE MANUELA GARCIA de las RIBAS GRANT

Juan Garcia filed suit[1] on March 3, 1893, against the United States in the Court of Private Land Claims in an effort to secure the recognition of his interest in the Manuela Garcia de las Ribas Grant. In support of his claim he referred to the expediente[2] of the grant which was among

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[9] The Plaza Colorado Grant, No. 149 (Mss., Records of the S.G.N.M.).

[10] 3 Journal 161 (Mss., Records of the Ct. Pvt. L. Cl.).

[11] The Plaza Colorado Grant, No. 149 (Mss., Records of the S.G.N.M.).

[1] Garcia v. United States, No. 249 (Mss., Records of the Ct. Pvt. L. Cl.).

[2] Archive No. 322 (Mss., Records of the A.N.M.).

the archives turned over to the United States when it acquired New Mexico. This document recited that Manuela Garcia de las Ribas, widow of Captain Salvador Montoya, for herself and her two sons; and Francisco Quintana, a widow with two daughters, "registered" a tract of uninhabited land in a nook on the north side of the Rio Chama in front of the old Pueblo of Abiquiu on which four or five fanegas of corn could be planted. They further described the tract as being bounded:

> On the north, the hills; on the east, the lands of Felix Bustos; on the south, the Chama River; and on the west, some bluffs, the river ford, and the intake of an irrigation ditch.

They explained that while they needed the land to support their children and servants they could not plant the land during the winter which "in this kingdom is long" and therefore, in view of their helplessness they requested that they be given ample time to settle upon the premises. On April 14, 1735, Acting Governor Juan Paez Hurtado considered the petition and since the King had charged his officials to protect and assist widows, he granted the request on condition that they settle upon the property within one year. He also directed the Alcalde of Santa Cruz to place the grantees in royal possession of the grant. Alcalde Juan Estevan Garcia de Noriega delivered possession of the grant to the three widows and allocated each one third (832 varas) of the total river frontage. At the foot of

the expediente was a notation that the grant had been recalled by "Cruzat."

The government answered the petition on September 29, 1896, by putting into issue the plaintiff's allegations and also asserting, as a special defense, that the claim was not a perfect grant on the date of the Treaty of Guadalupe Hidalgo since it had long since been recalled and revoked by a competent authority. This was the defense which the government had successfully urged in connection with the Juan Estevan Garcia de Noriega[3] and Barranca[4] Grants. While the petition did not indicate the quantity of land covered by the grant, an investigation conducted by a special agent of the government's attorney's office indicated that it contained 7,577.92 acres and covered the same lands as the Plaza Colorado Grant.

Confronted with precedent established by the Garcia and Baca cases,[5] the plaintiff announced to the court on June 15, 1898, that he no longer wished to prosecute the suit. Whereupon, the court dismissed[6] his petition and rejected the grant.

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[3]Garcia v. United States, No. 254 (Mss., Records of the Ct. Pvt. L. Cl.).

[4]Baca v. United States, No. 97 (Mss., Records of the Ct. Pvt. L. Cl.).

[5]Supra., notes 3 and 4.

[6]3 Journal 406 (Mss., Records of the Ct. Pvt. L. Cl.).

THE PLAZA BLANCA GRANT

Manuel Bustos, a resident of Santa Cruz, petitioned Governor Gaspar Domingo de Mendoza for a grant covering a piece of unappropriated land capable of growing one and a half fanegas of corn situated on the north bank of the Chama River and west of the lands of Vicente Jiron. Bustos asserted that he needed the land in order to support his large family and animals. On July 18, 1739, Mendoza, after carefully considering the application, granted the land and ordered the alcalde or his lieutenant to deliver royal possession of the grant to Bustos, subject to all of the conditions required by law. The Acting Alcalde of the Pueblo of Santa Cruz, Diego Torres, together with his attesting witnesses, Juan Jose Lovato and Juan Jose de la Serna, went to the grant and proceeded to perform the ceremonies necessary to deliver possession of the grant to Bustos. First, the alcalde surveyed the grant, which he described as being bounded:

> On the north, by the Copper Hills; on the east, by the lands of Vicente Jiron; on the south, by the Chama River; and on the west, by the lands of Rosalia Baldes.

Following the completion of the survey, Torres took Bustos:

> .... by the hand and led him over said tract, and he cast stones and plucked up grass, shouting, "Long live the King, our Sovereign, and may God preserve him!" in sign of his own proprietorship, with all the other ceremonies required by law....

Bustos promptly settled upon the grant, cultivated the valley lands and pastured his sheep and goats upon the adjoining hills. Thereafter, the grant continuously was occupied and used by Bustos or his heirs and their assigns.[1]

By mesne conveyances Jose Maria Chaves acquired title to the grant. On January 3, 1861, he filed[2] the expediente of the grant in Surveyor General Alexander P. Willar's office. He allegedly had been permitted by the alcalde to withdraw the grant papers from the archives of the Pueblo of Abiquiu for the purpose of filing them with the Surveyor General. However, for some unexplained reason he did not seek the recognition of his title to the grant at that time. A petition[3] requesting confirmation of the grant was not filed until nearly a quarter of a century later, when, on May 4, 1885, J. M. C. Chaves petitioned Surveyor General Clarence Pullen for that purpose. Pullen was succeeded by George W. Julian before any action was taken on the claim. On April 25, 1886, Julian issued

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[1] The Plaza Blanca Grant, No. 148 (Mss., Records of the S.G.N.M.).

[2] Ibid.

[3] Ibid.

an opinion[4] in which he found the grant to be valid and recommended its approval by Congress. However, he was of the opinion that any questions relating to the extent of boundaries and the ownership of the present claimants should be determined by the courts. Notwithstanding Julian's favorable opinion, Congress failed to act on the claim prior to the creation of the Court of Private Land Claims in 1891.

J. M. C. Chaves for himself and on behalf of the other owners of the grant instituted a suit[5] in the Court of Private Land Claims against the United States on August 24, 1892, seeking the recognition of their interests. The case came up for trial on November 17, 1893, at which time the plaintiffs introduced their title papers and supported their title with deeds and depositions. The government admitted the genuineness of the plaintiffs' documentary evidence and did not raise any special defenses. After having the case under advisement for five months, the court on April 18, 1894, finally held[6] the grant to be good and valid and confirmed title to the lands covered thereby to the heirs and assigns of the original grantee. For obvious reasons, the United States elected not to appeal from the decision.

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[4] Ibid.

[5] Chaves v. United States, No. 32 (Mss., Records of the Ct. Pvt. L. Cl.).

[6] 2 Journal 88-90 (Mss., Records of the Ct. Pvt. L. Cl.).

Pursuant to Section 10 of the Act of March 1, 1891,[7] the grant was surveyed by Deputy Surveyor Sherrard Coleman. Coleman's work disclosed that the grant contained a total of 8,955.11 acres of land. The plaintiffs protested the approval of the survey on the grounds that Coleman had located (1) the southern boundary of the grant along the northern boundary of the Chama River as it ran in 1893 instead of locating it along the northern bank of that river as it was situated in 1739, and (2) the portion of the eastern boundary of the grant north of the junction of the Arroyo Jiron and the Arroyo de la Mena ran along the latter instead of the former. By decree dated September 10, 1896, the court overruled the protest and approved the survey. A patent was finally issued covering the grant on November 27, 1914.[8]

THE BARTOLOME TRUJILLO GRANT

Late in the summer of 1734, Bartolome Trujillo, Juan Jose de la Serna, Salvador de Torres, Miguel Montoya, Juan

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[7]Court of Private Land Claims Act, Chap. 539, Sec. 10, 26 Stat. 854 (1891).

[8]The Plaza Blanca Grant, No. 148 (Mss., Records of the S.G.N.M.).

Trujillo, Miguel Martin Serrano, Josefa de Torres, Cristobal Tafoya, Francisco Trujillo and Vicente Jiron "registered" a tract of land in the Chama River Valley which was situated between the lands of Ventura Mestas on the east and Arroyo de Abiquiu on the west. The petitioners asserted that they needed such lands in order to support their large families and desired to occupy the land as soon as possible. However, they pointed out that due to the severity of the weather they probably could not construct shelters and plant enough food to sustain their families during the coming winter. Therefore, they requested an extension of the period prescribed by law for the settlement of the premises. On August 23, 1734, Governor Gervacio Cruzat y Gongora took up the matter. After carefully examining the petition and appreciating the needs of the petitioners, he granted them the "lands at a place called Abiquiu" upon the condition that they settle upon the grant within a period of one year. Thus, he had extended the legal period for settlement in view of the fact that it would be impossible for them to occupy the land prior to the following spring. He concluded his decree by directing Juan Paez Hurtado to place the grantees in royal possession of the grant and allot the following quantities of corn planting land to each individual:

Bartolome Trujillo, two and a half fanegas;
Juan Jose de la Serna, one and a half fanegas:
Salvador de Torres, two fanegas in a bend on the

south side of the river and one half a fanega on the north bank opposite Bartolome Trujillo's house; Miguel Montoya, two and a half fanegas from the Arroyo de Abiquiu east past the Pueblo of Abiquiu; Juan Trujillo and Miguel Martin Serrano, a total of two and one half fanegas; Josefa de Torres, one and a half fanegas in the basin; Cristobal Tafoya, one and a half fanegas; Francisco Trujillo, one fanega; and Vicente Jiron, one half a fanega.[1]

Hurtado met the grantees at Abiquiu on August 21, 1734, and proceeded to allot the following ten individual tracts:

1. Miquel Montoya, two and a half fanegas of land bounded:
   On the west by the Arroyo running from south to north into the Chama River; on the north, the Chama River; on the east, a large rock (Penasco); and on the south, the hills.

2. Juan Trujillo, one and one quarter fanegas of land bounded:
   On the west by a large rock (Penasco) and the lands of Miguel Montoya; on the north, the Chama River; on the east, three large cottonwoods; and on the south, the hills.

3. Captain Miguel Martin Serrano, one and a half fanegas of land bounded:
   On the west, three large cottonwoods and the lands of Juan Trujillo; on the north, the Chama River; on the east, a clump of cottonwoods and a thicket of garambullo trees; and on the south, the hills.

4. Francisco Trujillo, one fanega of land bounded:
   on the west by a clump of cottonwoods, a thicket of garambullo trees and the lands of Captain Miguel Martin Serrano; on the north, by the Chama River; on the east, by the sand hills beyond the Corrals of Antonio de Salazar; and on the south, the road to Abiquiu as far as a pool of water.

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[1] A fanega of land is the quantity of land which can be planted with a fanega (approximately one and a half bushels) of seed. A fanega of corn will plant 8.82 acres of land. S. Exec. Doc. No. 5, 50th Cong., 1st Sess., 1 (1887).

5. Juan Jose de la Serna, one and a half fanegas of land bounded:
   On the west, a dry arroya which runs from the hills into the Chama River near the Corrals in which Antonio de Salazar encloses his stock; on the north, the Chama River; on the east, a dry arroyo which is Josefa de Torres' western boundary; and on the south, the hills.

6. Josefa de Torres, one a a half fanegas of land bounded:
   On the west, by a dry arroya from the hills to the Chama River; on the north, the Chama River; on the east, a cross and the lands of Cristobal Tafoya; on the south, the hills.

7. Cristobal Tafoya, one and a half fanegas of land bounded:
   On the west, a cross; on the north, the Chama River; on the east, a cross and the lands of Salvador de Torres; and on the south, the hills.

8. Salvador de Torres, two fanegas of land bounded:
   On the west, a cross; on the north, the Chama River; on the east, the lands of Ventura Mestas; and on the south, the hills, together with two almudes of land located in a bend on the north bank of the Chama River opposite the house of Bartolome Trujillo.

9. Vicente Jiron, one half a fanega of land located on the north side of the river in a bend opposite Antonio de Salazar's corrals and bounded:
   On the west, the irrigation ditch, which Bartolome Trujillo uses; on the east, a cross in the middle of the bend; and on the south, the Chama River.

10. Bartolome Trujillo, two and a half fanegas of land bounded:
    On the west, a cross and the lands of Vicente Jiron; on the north, some bluffs which run west; on the east by an arroya running from north to south into the Chama River; and on the south, the Chama River.

Following the completion of the surveys, Hurtado performed the customary formalities of placing the grantees in possession of the grant and their respective tracts.[2]

Sometime prior to 1750, Indian hostilities forced Bartolome Trujillo to move from the grant to Santa Cruz. In 1750 the Viceroy instructed Governor Tomas Valez Cachupin to resettle the abandoned settlements north and northwest of Santa Fe. Pursuant to such instructions, Cachupin issued a proclamation ordering the former settlers at Abiquiu to return to their lands under penalty of forfeiture. When Bartolome Trujillo failed to return to his ranch, which was known as San Jose de Garcia, Pedro Sanchez, a resident of Santa Cruz, attempted to register the tract. Upon learning of Sanchez's actions, Trujillo petitioned Cachupin for a revalidation of his title to the ranch. he stated that he was a poor man, needed the tract to support his large family and had never intended to abandon it. He asserted that he had always intended to return when it became safe to do so and had failed to comply with the governor's order only through ignorance. In conclusion, he promised to promptly reoccupy the tract and he offered to give the crown sixty pesos worth of produce by November 1, 1752, if his title was revalidated. On October 5, 1752, Cachupin examined Trujillo's "petition

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[2]Archive No. 954 (Mss., Records of the A.N.M.).

seeking an act of clemency" and granted same upon the condition that he pay the "gratuitous contribution which he had offered to the Crown" within the time referred to at current produce prices and delivered at his expense to Santa Fe. The Alcalde of Santa Cruz was directed to place Trujillo in royal possession of the land if the adjoining landowners offered no objections to his revalidation of his title. Alcalde Juan Jose Lovato met Trujillo and the adjoining landowners who witnessed the delivery of possession without objection. Lovato designated the following natural objects as the boundaries of his tract:

> On the north, some red bluffs; on the east, the riverlet that comes down from the Pueblo Colorado; on the south, the Chama River; and on the west, the lands of Vicente Jiron.[3]

The Bartolome Trujillo Grant, consisting of its ten separate tracts, was never presented to the Surveyor General, but on March 3, 1893, Francisco Serna filed a suit[4] in the Court of Private Land Claims seeking its confirmation. On the same date Bartolome Trujillo, a great grandson of Bartolome Trujillo, filed suit[5] in the Court of Private Land Claims seeking the confirmation of title to his interest in the

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[3]Archive No. 976 (Mss., Records of the A.N.M.).

[4]Serna v. United States, No. 263 (Mss., Records of the Ct. Pvt. L. Cl.).

[5]Trujillo v. United States, No. 257 (Mss., Records of the Ct. Pvt. L. Cl.).

tract known as San Jose de Garcia. The area for the Bartolome Trujillo Grant was not given but the San Jose de Garcia tract contained an estimated 2,000 acres. Upon discovery that the San Jose de Garcia tract was one of the parcels comprising the Bartolome Trujillo Grant, the court consolidated the two cases under Cause No. 257. The government's attorney, in discussing the matter with Thomas B. Catron, who represented both plaintiffs, called his attention to the fact that the Bartolome Trujillo Grant was located within the Juan Jose Lovato Grant and since the later grant had previously been confirmed, the court no longer had jurisdiction over the lands. Catron readily agreed and on May 9, 1900, moved the court to enter a decree dismissing the case without prejudice to any interests the plaintiffs might have adverse title to or under the Juan Jose Lovato Grant. In response thereto, the court on the same day entered such a decree.[6]

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[6] 4 Journal 166 (Mss., Records of the Ct. Pvt. L. Cl.).

THE JOSE ANTONIO TORRES GRANT

A suit[1] was filed by Joseph Torres on March 3, 1893, against the United States in the Court of Private Land Claims for the confirmation of the Jose Antonio Torres Grant. The basis of the claim is found in the expediente[2] of the grant which was among the archives turned over to the United States upon its acquisition of New Mexico. From this expediente, it appears that on March 8, 1735, Jose Antonio Torres, being on the point of marriage appeared before Acting Governor Juan Paez Hurtado and registered a tract of land located on the north bank of the Chama River and "close to those of Bartolome Trujillo." He stated that while his father, Diego Torres, had a small tract of land which he had offered to give him as his inheritance, such tract due to the fact that he had so many brothers would not be large enough to support both him and his proposed wife, let alone their plans for a large family. He estimated that the requested tract contained half a fanega of corn planting land and was bounded:

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[1]Torres v. United States, No. 255 (Mss., Records of the Ct. Pvt. L. Cl.).

[2]Archive No. 955 (Mss., Records of the A.N.M.).

> On the west, El Rito del Colorado (which formed the eastern boundary of Bartolome Trujillo's land); on the north, the lands of Captain Antonio de Ulibarri; on the east, the lands of Ventura Mestas; and on the south, the Chama River.

Hurtado stated that he had recently received a similar application from Francisco Trujillo for a piece of land to support his family. Therefore, he would issue the grant provided Torres would give one-half of the land to Trujillo and conditioned further upon their settling upon the land within the time prescribed by law. Torres readily agreed to these conditions. Whereupon, Hurtado issued the grant and directed the Alcalde of Santa Cruz to place the grantees in possession of the premises. While the expediente did not show that possession had ever been delivered, Torres alleged that the necessary ceremony had been performed by the Alcalde of Santa Cruz on March 28, 1735. The area of the grant was estimated to be at least 5,000 acres. The government filed its answer on December 29, 1896, putting in issue the allegations contained in the plaintiff's petition together with the affirmative defense which pointed out that the expediente showed on its face that the grant had been recalled by Cruzat.

Since the plaintiff's action was based on facts substantially similar to those involved in the Garcia case,[3]

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[3]Garcia v. United States, No. 254 (Mss., Records of the Ct. Pvt. L. Cl.).

wherein the court rejected the Juan Esteban Garcia de Noriega Grant. On June 15, 1898, Torres notified the court that he no longer wished to prosecute his action. Therefore, the court on the same date, dismissed[4] his petition and rejected the claim.

THE JUAN ESTEVAN GARCIA de Noriega grant

On March 3, 1893, Andres Garcia filed suit[1] against the United States in the Court of Private Land Claims in an effort to secure the recognition of the Juan Estevan Garcia de Noriega Grant. The claim was based on an expediente contained in the Archives of New Mexico and was estimated to contain 5,000 acres of land. The expediente consisted of three instruments. The first was a petition wherein Captain Juan Estevan Garcia de Noriega, Alcalde of Santa Cruz,

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[4]Journal 403 (Mss., Records of the Ct. Pvt. L. Cl.).

[1]Garcia v. United States, No. 254 (Mss., Records of the Ct. Pvt. L. Cl.).

[2]Archive No. 320 (Mss., Records of the A.N.M.).

"registered" a tract of vacant land containing about a fanega and a half of corn planting land situated above the Pueblo of Colorado and which he more fully described as being bounded:

> On the north, by some red mountains; on the east, by the lands of Captain Antonio de Ulibarri; on the south, by some high wooded hills; and on the west, by the Canon de la Caja del Rio.

The second instrument was a decree dated February 17, 1735, by Juan Paez Hurtado, Acting Governor of New Mexico during the absence of Governor Gervasio Cruzat y Gongora who was temporarily absent from the capitol on a judicial visit to El Paso del Norte. By this decree Hurtado granted the requested land and directed the Lieutenant Alcalde of Santa Cruz, Captain Diego de Torres, to deliver possession of the grant to Garcia. The final instrument is an Act of Possession dated February 25, 1735, which recites that Torres, acting in compliance with the writ of grant made by Acting Governor Hurtado, placed the grantee in royal possession of the premises. At the foot of the Act of Possession was the following undated notation:

> Santa Fe
>
> This grant with the possession of the lands which in it are expressed, is ordered to recall; of which note is taken in the book of government.
>
> Cruzat

The government in its amended answer asserted that the claim should be rejected for two reasons. First, because it showed

on its face that it had been revoked by Governor Cruzat in the same year that it had been made, and second, because it was totally within the boundaries of the Juan Jose Lovato Grant, which had been previously confirmed by the court, and thus, the court no longer had jurisdiction over the lands in question.

When the case came up for trial on February 11, 1898, Garcia argued that the governor had no authority to summarily revoke a valid grant. The court rendered a decision in this case on February 16, 1898, in which it held that the facts in the case were precisely the same as those in the Baca case,[3] involving the Barranca Grant, and which had been rejected in 1896. Therefore, the court rejected the claim and dismissed the plaintiff's petition.[4] Garcia did not elect to appeal the decision.

THE ANTONIO de ULIBARRI GRANT

Antonio de Ulibarri filed suit[1] in the Court of Private

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[3]Baca v. United States, No. 97 (Mss., Records of the Ct. Pvt. L. Cl.). This case held that the governor could revoke a prior grant made by an acting governor.

[4]3 Journal 368 (Mss., Records of the Ct. Pvt. L. Cl.).

[1]Ulibarri v. United States, No. 261 (Mss., Records of the Ct. Pvt. L. Cl.).

Land Claims on March 3, 1893, seeking the recognition of his claim to a tract of land at the place formerly called Pueblo Colorado.[2] The claim is predicated upon Archive No. 1022,[3] which is the expediente of a grant made to Captain Antonio de Ulibarri, Chief Alcalde of Santa Fe, by Acting Governor Juan Paez Hurtado on January 20, 1735. Possession of the grant was delivered on February 15, 1735, by the Alcalde of Santa Cruz and the following natural objects were designated as the boundaries of the grant:

> On the north, a bald mountain (Serro Pelon), which is located on the edge of a wide meadow (Canada de Ancha); on the east, a ridge (una sexa); on the south, the lands of Bartalo Trujillo; and on the west, a wooded ridge (una sexa montuosa).

The grant contains an estimated 1,000 acres of land located on both sides of the El Rito River. The government filed a motion seeking to require Ulibarri to join the owners of the Juan Jose Lovato and Cristobal de Torres Grants as party defendants since the grant conflicted with such grants. It also filed a general answer putting into issue all of the plaintiff's allegations together with a special defense alleging that the grant had been revoked in 1735 by Governor Gervacio Cruzat y Gongora upon his return to New Mexico following his

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[2]The Pueblo of Colorado was an ancient Indian pueblo located on the El Rito del Colorado River several miles above its confluence with the Chama River. It should not be confused with the Plaza Colorado.

[3]Archive No. 1022 (Mss., Records of the A.N.M.).

judicial visit to El Paso del Norte.

Since the facts in this case were similar to those pertaining to the Juan Estevan Garcia de Noriega Grant, which had been rejected in the Garcia case,[4] Ulibarri realized that the probability of obtaining the confirmation of his claim was remote. Therefore, when the case came up for trial on June 15, 1898, he announced that he no longer wished to prosecute the claim and a decree[5] was entered dismissing his petition and rejecting the claim.

THE TOWN of EL RITO GRANT

Jesus Maria Vigil, a resident of the Town of El Rito, for himself, and on behalf of all other interested parties, petitioned[1] Surveyor General Henry M. Atkinson on October 22, 1883, seeking the confirmation of a grant which had been given to his great grandfather, Joaquin Garcia in about 1780. He alleged that the grant covered the following described tract of land situated on both sides of the El Rito River:

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[4]Garcia v. United States, No. 254 (Mss., Records of the Ct. Pvt. L. Cl.).

[5]3 Journal 407 (Mss., Records of the Ct. Pvt. L. Cl.).

[1]The Town of El Rito Grant, No. F-197 (Mss., Records of the S.G.N.M.).

> Commencing in the hills southwest of the Ojo de Santo Domingo (including said spring) running thence northerly to the highest summit of the mountains called Sierra Negra; thence to and along the northerly limits of the valley known as the Valle de los Caballos to the highest summit of a certain red mountain called Sierra Colorado; thence along the next easterly high lands in a southerly direction to a line extended due easterly from the point of beginning; and thence westerly along said line to the point of beginning.

He alleged that judicial possession of the grant had been delivered. He stated that he was unable to produce any documentary evidence of that grant and presumed that they had been lost. He also pointed out that several towns were located upon the grant and its lands had been continuously occupied and cultivated since time immemorial. He concluded by advancing the theory that the long possession of the tract coupled with the tradition that a grant had been made established a presumption in favor of the validity of his claim.

Meanwhile, Epifanio Lopez for herself and the other settlers and residents of the Town of El Rito petitioned[2] Atkinson for the confirmation of the grant as a community grant to the extent of four square leagues on the theory that the grant had been issued to Garcia for the purpose of forming a colony and each Spanish settlement was a proprio vigore entitled to four square leagues of land. The inhabitants of

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[2]The Town of El Rito Grant, No. 151 (Mss., Records of the S.G.N.M.).

the towns of La Pablozon, Plaza del Medio, Plaza de los Atencios and Plaza de la Cuesta filed similar petitions.[3]

During his investigation of the claims, Surveyor General George W. Julian, who, in the meantime, had succeeded Atkinson, received the testimony of a number of witnesses. One of these witnesses, Jose Maria Chaves, stated that he had personally known Joaquin Garcia and knew that he claimed the lands covered by the grant by virtue of a concession made to him sometime prior to the turn of the nineteenth century. He even recalled having examined the title papers to the grant in connection with a suit that was before him while he was Probate Judge of Rio Arriba County. Several of the other witnesses testified that the grant covered an area of 9 miles square or approximately 51,000 acres and was bounded:

> On the north, by the Jarita and Valley of the horses; on the east, by Red Mountain; on the south, by Black Mountain; and on the west, by Santo Domingo Spring.

It was also shown that in 1846 there were several hundred families living in the five settlements located on the grant and many of the inhabitants claimed and occupied individual tracts based on deeds executed between 1808 and 1843 from Garcia.

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[3] Ibid.

On June 17, 1886, Julian rendered his opinion[4] in the case. He held that while the petitioners had failed to establish a legal title to the land, the heirs and legal representatives of Joaquin Garcia had established an equitable title to the lands actually occupied which should be recognized by the United States. Julian stated that his recommendation was not based on a presumed or implied grant but on the ground that the uninterrupted possession and occupation in good faith of the small and irregular tracts by poor and uneducated persons of Spanish or Mexican descent led him to believe that the former sovereign would have honored the claims. Therefore, he held the claim to such tracts were protected by the Treaty of Guadalupe Hidalgo. Continuing, he called Congress' attention to the fact that the recognition of these small claims would tend to Americanize their owners and put them on the same level as homesteaders, to whom they were analogous. However, he contended that they should not be put to the trouble and expense of perfecting their claims under the homestead laws since their equitable titles were already vested. Julian's favorable opinion caused the General Land Office to reserve the lands from entry under the homestead laws, but Congress failed to act on the claim.

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[4] Ibid.

Following the creation of the Court of Private Land Claims under the Act of March 3, 1891,[5] Tomasa Tenorio de Quentana filed suit[6] for the confirmation of the grant as a descendant of Joaquin Garcia. She described the grant as a tract covering approximately 50,000 acres of land being bounded:

> On the north, by the mountains of horse valley; on the east, by the Pueblo Colorado; on the south, by the cejita; and on the west, by the little mountain of the Canada de Madera.

The government filed a general answer putting in issue the allegation contained in Tenorio's petition. When the case came up for trial on June 11, 1898, Tenorio announced to the court that she would not further prosecute her claim. A decree[7] was accordingly entered by the court rejecting the claim and dismissing her petition. Thereafter, the lands were restored for entry under the homestead law[8] and the claimants perfected titles to their individual tracts under that law.

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[5]Court of Private Land Claims Act, Chap. 539, 26 Stat. 854 (1891).

[6]Tenorio v. United States, No. 224 (Mss., Records of the Ct. Pvt. L. Cl.).

[7]3 Journal 393 (Mss., Records of the Ct. Pvt. L. Cl.).

[8]Homestead Act, Chap. 561, 26 Stat. 1097 (1891), 43 U.S.C. Sec. 161 (1964).

THE RIO del OSO GRANT

Jose Luis Valdez filed suit[1] in the Court of Private Land Claims on March 2, 1893 in an effort to secure the recognition of the Rio del Oso Grant. In his petition, Valdez alleged that some time prior to June 20, 1840 Jose Antonio Valdez and five other persons petitioned the Prefect of the First Instance of the Department of New Mexico, Juan Andres Archuleta, who, at that time also was serving as Acting Governor, seeking a grant covering a tract of land on the Rio del Oso. Archuleta approved the petition, made the grant, and ordered Jose Ramon Vigil, Alcalde of the Pueblo of Santa Clara, to place the grantees in legal possession of the premises. Valdez averred that he did not possess the original or a copy of either the petition or grant, but believed that he could find and produce them before the case came up for hearing. Next, he referred to the Act of Possession, the testimonio of which had been deposited in the Surveyor General's office on April 27, 1876.[2] This instrument recites that on August 3, 1840 Vigil proceeded to the grant and placed the six grantees in legal possession of

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[1] Valdez v. United States, No. 177 (Mss., Records of the Ct. Pvt. L. Cl.).

[2] The Rio del Oso Grant, No. F-112 (Mss., Records of the S.G.N.M.).

the concession. The Act of Possession described the boundaries of the grant as follows:

> On the north, the Canada del Almagre; on the east, the junction of the Arroyo del Almagre and the river; on the south, the heights near the river; and on the west, the edge of the Cuesta de la Yuta.

In closing, Valdez alleged that the grant contained approximately 5,000 acres and called attention to the fact that the claim had never been considered or passed upon by the Surveyor General. The government filed a general answer on December 29, 1896 denying the allegation contained in the plaintiff's petition. It also filed a motion seeking to require the plaintiff to join as necessary parties the owners of the Juan Jose Lobato Grant since the Rio del Oso Grant was located entirely within its exterior boundaries.

The plaintiff apparently was unable to locate the petition and grant and recognized that under Section 13(1) of the Act of March 3, 1891[3] the Court of Private Land Claims was expressly prohibited from allowing any claim unless it was satisfied that the title had been lawfully and regularly derived from the government of Spain or Mexico. Thus, when the case came up for trial on May 17, 1897, Valdez requested the Court to dismiss his petition. The Court promptly granted his request.[4]

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[3] Court of Private Land Claims Act, Chap. 539, Sec. 12(1), 26 Stat. 854 (1891).

[4] 3 Journal 209 (Mss., Records of the Ct. Pvt. L. Cl.).

THE ROQUE JACINTO JARAMILLO GRANT

Jose Pablo Jaramillo, the owner of an interest in the Roque Jacinto Jaramillo Grant, filed suit[1] in the Court of Private Land Claims on March 3, 1893 seeking the confirmation of such grant. The claim was based on Archive No. 413[2], which recited that Governor Juan Domingo Bustamante had originally granted a tract of land on the Rio del Oso to Juan Manuel de Herrera and a number of associates. The grantees had formed a settlement on the grant but gradually each of the grantees except Herrera abandoned hia interest and moved away. Early in 1746 Roque Jacinto Jaramillo moved to the grant. Shortly thereafter he and Herrera jointly petitioned Governor Joaquin Codallos y Rabal requesting a new grant be issued to them. On January 11, 1746 Codallos directed the Alcalde of Santa Cruz to notify the other grantees of the application. In compliance with the governor's order, Lieutenant Alcalde Juan de Beytia sent a notice to the Town of Abiquiu, where the interested parties then resided, ordering them to appear before him two days later. On January 25, 1746 Juan Valdez, on behalf of his widowed mother, Rosalia Valdez, testified that they had resided upon the grant for two years but had

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[1]Jaramillo v. United States, No. 228 (Mss., Records of the Ct. Pvt. L. Cl.).

[2]Archive No. 413 (Mss., Records of the A.N.M.).

abandoned their interest in the grant upon moving to Abiquiu. Ignacio Valdez stated that he had never settled on the grant. Vincento Jiron told Beytia that he also had failed to settle upon the grant and wished to relinquish any right he might have in the premises. In a decree dated one month later Codallos regranted the tract to Jaramillo and Herrera and directed Beytia to notify the adjacent owners of the grant and deliver legal possession of the premises to the two new grantees. On March 12, 1746 Beytia showed the adjoining landowners, Ventura Mestas and Juan Tafoya, a copy of the governor's decree. They accompanied Beytia and the two grantees when he surveyed the grant and, upon its completion, they raised no objection to the proceedings. Whereupon, Beytia gave the grantees royal possession of such land. Since the owners of the grant had not presented the claim to the Surveyor General's office for investigation, there was no preliminary survey of the claim, however, they claimed it contained approximately 10,000 acres and was bounded:

> On the north, by the lands of Alfarez Torres;
> on the east, by the lands of Juan de Mestas;
> on the south, by the lands of Juan de Tafoya;
> and on the west, by the entrance of the canyon
> of the sierra.

The case came up for trial on February 9, 1898 at which time the plaintiff offered his muniments of title and oral testimony tending to establish an interest in the grant through inheritance from at least one of the original grantees, showing the continuous use and occupation of the grant subse-

quent to 1746, and fixing its boundaries. The government in turn raised two special defenses against the confirmation of the grant. First, it contended that the grant had been revoked and annulled on March 14, 1763. In support of the contention it introduced a certified copy of a testimonio which showed that Joaquin Mestas petitioned Governor Tomas Velez Cachupin for a grant at the place called Vallecito, which was located southeast of the Town of Abiquiu. On January 20, 1763 Cachupin ordered the Alcalde of Santa Cruz to give him a report upon the propriety of the request. Alcalde Carlos Fernandez investigated the matter and, on March 5, 1863, reported that the requested tract was eight leagues in length and four in width. He also pointed out that the grant was in the district of Rio Oso, which had been given to Roque Jaramillo and others, and which they had lived on it for two years, all except Jaramillo had abandoned it due to a scarcity of water. Continuing, he stated that some years afterwards Jaramillo had asked for the land in his own name and, while it had been regranted to him, it had not been occupied or used other than as a pasturage for his cattle until 1762, when his children "built some huts and planted a few stalks of corn" thereon. In conclusion, Fernandez advised the governor that due to the scarcity of agricultural and grazing lands in the vicinity of the Pueblos of San Ildefonse, Santa Clara, Chama, and Abiquiu it would be

prejudicial to those settlements to make the proposed grant. On March 14, 1763 Cachupin issued a decree denying the request and declaring that the lands should be reserved as a commons for the use of all settlers. To further advance the public welfare, he annulled the Jaramillo Grant since it had not been settled in accordance with the law. This document was certified as being "a faithful and legal copy of the original" by Jose Francisco Vigil on May 30, 1831; however, the certificate did not indicate his authority to issue such certificate. The government offered evidence that Vigil's signature was genuine and he was an Alcalde in 1831. The plaintiff objected to the introduction of this equally unauthenticated document. The Court decided to accept the document subject to the plaintiff's objection. The government's second defense was that since the grant was located wholly within the boundaries of the Juan Jose Lovato Grant, which had been previously confirmed by the court, the court had exhausted its jurisdiction insofar as the lands in question were concerned.

At the conclusion of the hearing, the court ignored both of the government's defenses and confirmed the grant but desired additional evidence concerning the location of its boundaries. A hearing for such purpose was held on May 5, 1900, at which time the plaintiff offered a great deal of oral testimony tending to prove that the grant was bounded:

On the north, by the lands of Alferez Torres

> which were located at the Arroyo del Toro opposite Capirote Hill; on the east, by lands of Juan de Mestas which were located at Barancas Blanca on the Rio Oso between an old pueblo and the confluence of Rio Oso and the Chama River; on the south, by the lands of Juan de Tafoya which were located at Cerro Negro; and on the west, by the entrance of the Rio Oso into the canyon midway between the old pueblo and the settlement of San Lorenzo.

Meanwhile, the United States Supreme Court in the Conway case[3] held that where the government had previously confirmed a grant, it exhausted its power insofar as the lands covered thereby were concerned and could not be called upon a second time to confirm another grant to a different person to the same land. More simply stated, the doctrine of this case is that nothing can be gained by the government's divesting itself for a second time of a title which it has already released. Therefore, once a title had been confirmed, the Court of Pivate Land Claims should respect the confirmation leaving the conflicting claimants free to resort to the local courts to settle their differences. As a result of this decision, the court, in its opinion[4] dated May 10, 1900, held that in view of the fact that the grant was located wholly within the boundaries of the Juan Jose Lovato Grant it could no longer adhere to its former opinion confirming the plain-

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[3] United States v. Conway, 175 U.S. 60 (1899).

[4] 4 Journal 203 (Mss., Records of the Ct. Pvt. L. Cl.).

tiff's title but must reject the claim on the ground that it had no power to confirm the grant. The decision was not appealed by either party and Jaramillo apparently abandoned his claim for he failed to further prosecute his claim in the local courts.

THE ANTONIO DE SALAZAR GRANT

Antonio de Salazar, for himself and his brothers, petitioned Governor Juan Ignacio Flores Mogollon for a grant covering the tract of vacant land which their grandfather, Captain Alonzo Martin Barba, had owned prior to the Pueblo Revolt. He described the tract as being bounded:

> On the north, by some rock corrals; on the east, by the Rio Grande; on the south by the lands of Jose Naranjo; and on the west by the lands of Salvador de Santistievan.

Mogollon granted the tract to the petitioners on August 25, 1714 with the understanding that the grantees would settle upon the grant within six months. He also directed the Alcalde of Santa Cruz to place them in royal possession of the land. By virtue of the governor's order, Alcalde Sabastian Martin on August 31, 1714 delivered possession of

the land to the grantees with the formalities prescribed by law and designated its boundaries as being:

> On the north, the junction of the Rio Grande and Chama Rivers; on the east, the Rio Grande; on the south, as far as the boundaries of the Pueblo of Santa Clara; and on the west, the hills.

Prior to the completion of the ceremonies, Juan de Alienza protested the issuance of the grant and contended that it conflicted with the grant which he, his father, and brothers owned. Salazar agreed that Alienza's grant was superior and the Antonio de Salazar Grant should in no way be construed as prejudicing his rights.[1]

Sometime during the next two years, a question arose concerning some aspects of title to the grant. The question was presented to Inspector General Juan Paez Hurtado during his judicial visit to Santa Cruz on November 14, 1716. Hurtado collected all the documents pertaining to the controversy in order that "it may be determined in justice, and to it will be given the proper place. . ."[2] However, there is no evidence that any further action was taken in connection with this matter.

The descendants of Salazar were in possession of the land at the time New Mexico became a province of the United

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[1] Archive No. 829 (Mss., Records of the A.N.M.).

[2] Ibid.

States, but failed to present their claim to the Surveyor General for investigation until August 25, 1882. On that date Ramon Salazar, for himself and the other owners of the grant, filed a petition[3] seeking the confirmation of the grant under the provisions of Section 8 of the Act of July 22, 1854.[4] Under date of January 8, 1883 Surveyor General Henry M. Atkinson; in a report[5] to Congress, approved the claim and recommended its confirmation to the heirs, legal representatives, and assigns of Antonio de Salazar and his brothers, according to the boundaries set forth in the Act of Possession, reserving all minerals to the United States. A preliminary survey of the claim was made in June 1883 by Deputy Surveyor John Shaw. His survey showed the grant as covering an area of 23,351.12 acres.[6]

Since no action had been taken on this claim by Congress, George W. Julian proceeded to reexamine the case when he became Surveyor General. By Supplemental Report[7]

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[3]The Antonio de Salazar Grant, No. 132 (Mss., Records of the S.G.N.M.).

[4]An Act to establish the office of Surveyor General of New Mexico, Kansas, and Nebraska, to give donations to actual settlers therein, and for other purposes, Chap. 103, 10 Stat. 308 (1854).

[5]H. R. Exec. Doc. No. 15, 48th Cong., 2d Sess., 8 (1884).

[6]The Antonio de Salazar Grant, No. 132 (Mss., Records of the S.G.N.M.).

[7]S. Exec. Doc. No. 23, 50th Cong., 1st Sess., 2-3 (1887).

dated September 28, 1886, Julian called Congress' attention to the fact that although there seemed to be no controversy over the genuineness of the grant papers, he seriously doubted that Salazar had timely fulfilled the condition pertaining to the settlement of the grant. While Atkinson had taken the position that the certificate given by Hurtado was intended to be a revalidation of the grant, Julian contended that this was "merely a promise that the case would be considered." Julian asserted that this "case" undoubtedly concerned some controversy which had arisen more than two years after the issuance of the grant and might have pertained to either the non-compliance by the grantee of the condition of settlement or some conflict with parties whose vested rights were interfered with by the grant, or some objection to the Act of Possession which unquestionably covered different lands than those described in the governor's granting decree.[8] In summary Julian was of the opinion that the grant was not perfect when the Visitor-General made the statement referred to, nor is there any evidence that it subsequently was perfected. Therefore, the grant at best was merely an equitable title, which Congress was not obli-

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[8] The land covered by the granting decree apparently was located north of the Juan de Ulibarri Grant while the tract described in the Act of Possession appears to embrace all of the land covered by that grant.

gated to recognize. Passing next to the preliminary survey of the grant, Julian pointed out that three of the boundaries designated in the Act of Possession were well defined and unmistakable but the location of the west boundary was ambiguous and, therefore, should have been fixed at the foot of the hills nearest the east boundary or about 1-1/2 miles west of the river.' Acting Commissioner S. M. Stocksager in his letter transmitting the Supplemental Report to Congress estimated that the maximum quantity of land to which such an equitable claim could attach would not exceed 2,900 acres, most of which would be absorbed by the patented Pueblo of San Juan Grant.[9] In light of the perplexing questions raised by Julian's Supplemental Report, it is not surprising to find that Congress continuously postponed taking action upon the claim.

On March 3, 1893 Bernardo de Salazar filed suit[10] in the Court of Private Land Claims seeking the confirmation of the Antonio de Salazar Grant. This petition was amended on August 26, 1897 in response to a motion by the government to make the owners of the Pueblo of San Juan, Cristoval Crespin, Juan Jose Lovato, Pueblo of Santa Clara, Juan de Ulibarri, and Bartolome Sanchez Grants parties defendant.

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[9] S. Exec. Doc. No. 23, 50th Cong., 1st Sess., 2 (1887).

[10] Salazar v. United States, No. 235 (Mss., Records of the Ct. Pvt. L. Cl.).

This was necessary since the grant conflicted with all or a portion of each of such grants. Since the Bartolome Sanchez Grant, which under Julian's theory covered all of the lands embraced without boundaries of the Antonio de Salazar Grant, had been previously confirmed, the plaintiff realized that the court had no power to confirm the grant. Therefore, when the case came up for trial on June 13, 1898, he announced that he did not wish to further prosecute the claim. Whereupon the court entered a decree[11] rejecting the claim and dismissing the plaintiff's petition.

THE JUAN TAFOYA GRANT

Francisco Tafoya filed suit[1] against the United States in the Court of Private Land Claims on March 3, 1893 seeking the confirmation of a grant which had been made to "Juan and Antonio Tafoya" on June 8, 1724 by Governor Juan Domingo de Bustamante. The petition alleged that possession had been given to the grantees by the Alcalde of Santa Cruz, Cristobal Torres on June 10, 1724 and described the grant

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[11] 3 Journal 396 (Mss., Records of the Ct. Pvt. L. Cl.).

[1] Tafoya v. United States, No. 266 (Mss., Records of the Ct. Pvt. L. Cl.).

as being bounded:

> On the north, by some high dark wooded hills which form the point of mountains; on the east, the lands of the Pueblo of Santa Clara; on the south, the mesilla of San Ildefonso; and on the west, by a high mountain.

The grant was estimated to contain 86,000 acres of land. On October 20, 1896 the United States filed a motion to require the plaintiff to make the owners of the Antonio Salazar and the Canada de Santa Clara Grants parties defendant since the Juan Tafoya Grant conflicted with them.

Meanwhile, the Court of Private Land Claims had confirmed the Canada de Santa Clara Grant,[2] which covered substantially the same land as the Juan Tafoya Grant.

Confronted with this adverse decision, Tafoya requested that her petition be dismissed, without prejudice to any claim she might have under the Canada de Santa Clara Grant, when the case came up for trial on June 14, 1898. The Court granted her motion on the same date and rejected the grant.[3]

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[2] Pueblo of Santa Clara v. United States, No. 17 (Mss., Records of the Ct. Pvt. L. Cl.).

[3] 3 Journal 401 (Mss., Records of the Ct. Pvt. L. Cl.).

THE PUEBLO OF SAN JUAN GRANT

When Don Juan de Onate entered the Rio Arriba area of New Mexico in July, 1598, he discovered a group of Tewa Indians living in two pueblos near the junction of the Chama and Rio Grande rivers. The first was the Pueblo of Kaypa, which Onate renamed San Juan de los caballeros, and the other was the Pueblo of Yugeuingge, which was located a mile away on the west bank of the Rio Grande. The Tewas were friendly and the inhabitants of Yugeuingge voluntarily moved to San Juan when Onate established his headquarters at Yugeuingge, which he renamed San Gabriel. Thus, the area became the center of the oldest European civilization in the United States.[1]

In 1609 the Spanish headquarters were moved from San Gabriel to Santa Fe. Between 1609 and 1680, history makes no mention of the Pueblo of San Juan, but in the later years it once again becomes prominent in the history of New Mexico for it was the home of Pope, the leader of the Pueblo Revolt. In all history there is no rebellion to equal that of the Pueblo Indians of upper New Mexico in 1680 for secrecy and success. For four years Pope had quietly spread the seeds

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[1]Forrest, Missions and Pueblos of the Old Southwest, 77 (1962).

of revolution among the Pueblo Indians and in all that time there was no leak or traitors until just five days before the date set for the simultaneous massacre of every white person in New Mexico. The first knowledge the Spaniards received of the plot was on August 9, 1680 when Governor Antonio de Otermin learned of the scheme from several different sources. Once the element of surprise was lost, Pope quickly sent word to the leaders of all the Pueblo tribes, except the Piros in southern New Mexico, to strike the fatal blow on the following day. How this feat was accomplished, has never been fully explained but on August 10, 1680 the Pueblo Indians from the Pueblo of Pecos on the east to the Pueblo of Oraybi far to the west in Arizona arose in unison and massacred some four hundred Spaniards. All that saved Santa Fe and a majority of the Spaniards from destruction and death was the advance warning received the previous day. Realizing the gravity of the situation and that it would be impossible to indefinitely withstand the seige at Santa Fe, Otermin, on August 21, 1680, led the survivors in a torturous retreat to El Paso del Norte. It was thirteen years before the Spaniards could gather enough strength to reoccupy New Mexico.[2] After the re-

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[2] 1 Hackett, Revolt of the Pueblo Indians of New Mexico, 3-19 (1942).

conquest of New Mexico by Governor Diego de Vargas in 1693, the Pueblo of San Juan became one of the most prosperous and progressive of the upper Rio Grande pueblos.

The Pueblo Indians created a serious problem for the United States after it acquired New Mexico. Since its inception, the United States had consistently treated all Indians as wards of the government and, up to 1846, it had a policy of settling Indians upon reservations in which they had no vested rights. These reservations were subject to relocation whenever the press of civilization warranted their being moved further westward. However, under Mexican law, the Pueblo Indians were recognized as citizens and Article VIII of the Treaty of Guadalupe Hidalgo[3] provided that the rights of Mexicans were to be "inviolably respected." Thus, the rights of the sedentary Pueblo Indians to the extensive land areas which they claimed warranted prompt investigation. One of the duties imposed upon the Surveyor General by Congress under the Act of July 22, 1854[4], was the reporting:

> . . . in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in

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[3] 5 Miller, Treaties and Other International Acts of the United States of America, 217-218 (1937).

[4] An Act to establish the office of Surveyor General of New Mexico, Kansas and Nebraska, to grant donations to actual settlers therein, and for other purposes, Chap. 103, Sec. 8, 10 Stat. 308 (1854).

> the said pueblos respectively, and the nature of their title to the land; such report to be made according to the form which may be furnished to the Secretary of Interior; which report shall be laid before Congress for such action therein as may be deemed just and proper, with a view to confirm bona fide grants, and give full effect to the Treaty of 1848, between the United States and Mexico.

In accordance with these instructions, Surveyor General William Pelham made a thorough investigation of the New Mexico pueblos. He found that there were twenty-two pueblos with a total population of 8,000 Indians. In his Annual Report[5] dated September 30, 1856, he recommended the speedy confirmation of thirteen pueblo claims, which included the claim of the Pueblo of San Juan. The report was accompanied with copies of the Spanish grants to thirteen of the pueblos. The grant to the Pueblo of San Juan was dated September 25, 1689 and was issued by Domingo Jironza Petroz de Cruzate, Governor of New Mexico at El Paso del Norte and certified by Don Pedro Ladron de Guitara, Secretary of Government and War. The testimonio of the grant,[6] which had been filed in the Surveyor General's Office on August 18, 1855, recited that after being assured that notwithstanding the inhabitants

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[5] H. R. Exec. Doc. No. 1, 34th Cong., 3d Sess., 493-518 (1856).

[6] Ibid., 500; and The Pueblo of San Juan Grant, No. C (Mss., Records of the S.G.N.M.). The grant to the Pueblo of San Juan was believed genuine until Will M. Tipton, an investigator for the Court of Private Land Claims, conclusively proved it to be spurious.

of Pueblo of San Juan participation in the Pueblo Revolt, "it was impossible for them to fail in giving in their allegiance." Based upon this assurance, Cruzate granted the pueblo the lands located within the following described boundaries:

> On the north, the Rio Bravo del Norte, completing one league on both sides of the river, measuring from the northeast corner of the temple of said pueblo on the east and on the west one league and on the south one league.

By Act approved December 22, 1858[7], Congress affirmed title to seventeen pueblo grants, including the grant to the Pueblo of San Juan. A survey of the grant made in July, 1859 showed that the grant contained 17,544.77 acres of land. The grant was patented on November 1, 1864.[8]

THE TOWN OF CHAMITA GRANT

Antonio Trujillo, a resident of the Villa of Santa Cruz, petitioned Governor Juan Domingo de Bustamante, seeking the revalidation of the grant which he had previously

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[7] An Act to confirm the land claims of certain pueblos and towns in the Territory of New Mexico, Chap. 5, 11 Stat. 374 (1858).

[8] Report of the Secretary of Interior, 290 (1887).

received from Governor Juan Flores Magollon. He stated that the boundaries of this grant were:

> On the north, a table land; on the east, a hill which joins the Rio Grande; on the south, the Chama River; and on the west, an augostura or narrow which forms said table land.

He further alleged that after Alcalde Sebastian Martin delivered royal possession of the grant to him, he constructed an irrigation ditch and opened a field, but had failed to settle upon the premises within time prescribed by law. Governor Bustamante considered the petition "as presented", regranted the tract to Trujillo on June 8, 1724 "in the name of his Majesty," and directed the Alcalde of Santa Cruz to proceed to place him in possession of the land. Ensign Cristobal Torres, the Alcalde of the Villa of Santa Cruz, redelivered possession to Trujillo on June 20, 1724, as directed by the governor. A thriving community gradually developed around the original settlement made by Trujillo and served as the trading center for the area. By the time the United States acquired New Mexico, this town, which was known as Chamita, contained at least 300 inhabitants.[1]

Manuel Trujillo, for himself and the other residents of the Town of Chamita, filed the testimonio in the

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[1] H.R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 241-242 (1860).

grant and petitioned[2] Surveyor General William Pelham, on June 9, 1859, requesting the confirmation of claim. Pelham promptly proceeded to investigate the validity of the claim and on the same date he held a hearing at which two witnesses gave the following testimony:

Question: Have you any interest in this case?

Answer: None.

Question: Where do you reside, and what opportunity have you had of knowing the Town of Chamita?

Answer: We are both natives and residents of Los Luceros, distant about twelve miles from Chamita; have resided there all our lives.

Question: Was the Town of Chamita in existence when the United States took possession of the country?

Answer: It was, and was in existence many years before.

Question: How many inhabitants are there in the town?

Answer: It is a large town; contains at least 300 souls.

Based on this most cursory examination, Pelham, on July 2, 1859 found that since the grant was so old as to be beyond a period of being proven and no one had contested the claim, he considered it to be good and valid. However, since the

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[2] The Town of Chamita Grant, No. 36 (Mss., Records of the S.G.N.M.).

claimants had presented no evidence linking themselves with the original grantee he recommended that Congress confirm the grant to the legal representatives of Antonio Trujillo. Congress confirmed the grant by Act approved June 21, 1860.[3] A preliminary survey of the grant was made in March, 1877 by Deputy Surveyors Sawyer & McElroy. While their survey shows that the grant contained 1636.29 acres, it also disclosed that most of the grant was situated within the boundaries of the Pueblo of San Juan Grant which was senior to the Town of Chamita Grant in all respects.[4]

Early in 1920 the heirs of Antonio Trujillo requested a patent to the grant. By decision dated October 30, 1920, Commissioner Clay Tallman held that while the Act of June 21, 1860 made no provision for the issuance of patents, the practice had been to issue patents to grants confirmed under the provisions of the second section of the Act of March 3, 1869.[5] He also found that, notwithstanding the fact that the Town of Chamita Grant conflicted with the Pueblo of San Juan Grant, the patent should issue with only a notation of the problem. Thus, all questions of priority and superiority of right to the area in conflict

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[3] An Act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

[4] The Town of Chamita Grant, No. 36 (Mss., Records of the S.G.N.M.).

[5] An Act to confirm certain private land claims in the Territory of New Mexico, Chap. 152, Sec. 2, 15 Stat. 342 (1869).

would be left to the judicial tribunals for determination. However, before a patent was issued Commissioner William Spry, by decision dated January 22, 1923, revoked the previous decision. He held that a second patent to the same land would only add to the confusion and would in no way strengthen the effectiveness of the confirmation of the grant under the Act of June 21, 1860. He contended that the Land Department had no jurisdiction in the matter since the controversy could only be settled in the Courts.[6]

Shortly thereafter, the Pueblo Lands Board[7] was created to quiet titles of non-Indian claims to lands within Pueblo Indian Land Grants. In its report on the San Juan Pueblo dated April 15, 1929, the Board found that the legal representatives of Antonio Trujillo had held continuous, exclusive and adverse possession of fifty-two tracts covering 838.814 acres of land within the Pueblo of San Juan Grant since March 16, 1889. Therefore, the Board extinguished the Indians' title to such lands.[8]

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[6]The Town of Chamita Grant, No. 36 (Mss., Records of the S.G.N.M.).

[7]An Act to quiet the titles of lands within Pueblo Indian Land Grants, and for other purposes, Chap. 331, 43 Stat. 636 (1924).

[8]Patrick L. Wehling to J. J. Bowden, Oct. 7, 1966.

THE CRISTOVAL CRESPIN GRANT

Cristoval Crespin, a resident of Santa Cruz, petitioned Governor Juan Ignacio Flores Magollon for a grant covering the surplus lands near the junction of the Rio Grande and Chama rivers remaining after the issuance of the grants which had been requested by Salvador de Santistievan and Bartolome Lovato. In support of his application, Crespin stated that he and his widowed mother were one of the families which Governor Diego de Vargas had recruited in the Zacatecas, Mexico, for the resettlement of New Mexico in 1693. Since his mother had not received any land, he had been forced to join the Army to earn a livelihood and for the next fourteen years he served the King. In 1714, he was seriously injured in an accident and given a disability discharge from the Army. He requested the Governor to reward him for his long faithful service by granting him a tract of farm land for the support of his large family. Crespin closed his petition by requesting the grant be made jointly to him and Nicolas Griego. On August 29, 1714 Governor Magollon granted the request and ordered the Alcalde of Santa Cruz to place the grantees in royal possession of all the surplus

lands after allocating four fanegas of corn planting land to Santistievan and two for Lovato. The grant was made, however, subject to the condition that the grantees settle thereon within six months. Pursuant to a public notice given the day before, Alcalde Sebastian Martin surveyed the grant on August 31, 1714, and delivered possession of the following three tracts to the grantees. The tracts were described in the Act of Possession as being bounded as follows:

First Tract

On the north, the acequia madre; on the east, the lands of Salvador de Santistievan and Nicolas Valverde; on the south, the Chama River; and on the west, the Chama River up to where the acequia madre begins.

Second Tract

On the north, the Angostura of the mesa along the Chama River; on the east, the lands of Bartolome Lovato; on the south, the hills; and on the west, the Chama River.

Third Tract

On the north, the lands of Bartolome Lovato; on the east, the Chama River; on the south, the lands of Antonio de Salazar up to where the Rio Grande and Chama Rivers join; and on the west, the hills.

Nicolas Griego commenced opening some fields and constructing an irrigation system on the grant in April, 1715, but Crespin having been attacked with a prolonged illness was unable to settle upon the grant or

assist him in the development of the land. About this same time, Joseph Trujillo, a tenant of Bartolome Sanchez, commenced grazing some livestock on the grant. This prompted Crespin to petition Governor Magollon for the revalidating of the grant and a one year extension for the settlement of the grant. On November 25, 1715 Magollon issued a decree in which he recited that he knew that the allegations contained in Crespin's petition were true, extended the time for the settlement of the grant for a year, and ordered Trujillo to tear down his corrals and vacate the land.[1]

For the next century and a half, the records are silent on the status of the grant. On the last day on which suit could be filed under the Act of March 3, 1891,[2] Jesus Crespin instituted an action[3] against the United States in the Court of Private Land Claims for the confirmation of the 3,000-acres grant. The case was set down for trial on June 13, 1898. Only four months before, the Court had recognized the Bartolome Sanchez Grant which covered all of the grant. The plaintiff undoubtedly realized that he would be unable to prove to court that the grant had not

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[1]Archive No. 167 (Mss., Records of the A.N.M.).

[2]Court of Private Land Claims Act, Chap. 539, Sec. 12, 26 Stat. 854 (1891).

[3]Crespin v. United States, No. 232 (Mss., Records of the Ct. Pvt. L. Cl.).

been recalled by Governor Felix Martinez on January 13, 1716 as a result of this investigation of all of the grants which conflicted with the Bartolome Sanchez Grant. Therefore, he advised the Court that he no longer wished to prosecute his claim. Thereupon, the court dismissed his petition and rejected the claim.[4]

THE JUAN DE ULIBARRI GRANT

It was nine thirty on the night of March 3, 1893, the last day on which suit could be brought under the law of March 3, 1891,[1] Thomas Benton Catron, as Attorney for Juan Ramon Duran, filed a mimeographed form petition[2] with the blanks hastily inserted in long hand in the office of the clerk of the Court of Private Land Claims. In this petition, Duran prayed for the confirmation of the Juan de Ulibarri Grant. Duran's claim was based on Archive No. 1020[3] which showed that Juan de Ulibarri, Bartolome

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[4] 3 Journal 395 (Mss., Records of the Ct. Pvt. L. Cl.).

[1] Court of Private Land Claims Act, Chap. 539, Sec. 12, 26 Stat. 854 (1891).

[2] Duran v. United States, No. 253 (Mss., Records of the Ct. Pvt. L. Cl.).

[3] Archive No. 1020 (Mss., Records of the A.N.M.).

Lavato, Joseph Madrid, and Simon de Cordoba petitioned Governor Jose Chacon Medina Salazar y Villasenor, the Marquès de la Penuela, for a grant covering a tract of land located on the west side of the Rio Grande and described as being bounded:

> On the north, by the Pueblo of Chama Grant; on the east, by the Rio Grande; on the south, by the some stone corrals and on the west, by some hills.

The petitioners alleged that they desired to settle upon such land since it contained a number of excellent agricultural sites and wood was easily accessible. Chacon granted the land to the petitioners on February 22, 1710. Since Ulibarri was the alcalde of the area, he was directed to deliver royal possession of the premises to himself and his associates. The government called the court's attention to the fact that the grant either conflicted with or adjoined the Bartolome Sanchez, Town of Chamita, Pueblo of San Juan, Cristobal Crispin and Antonio Salazar Grants and requested the court to join the owners of those grants as party defendants. It was also shown that the grant covered approximately 500 acres of land and had never been presented to the Surveyor General for his action.

During the trial of the case involving the Bartolome Sanchez Grant,[4] it was pointed out that there was no evidence

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[4]Sanchez v. United States, No. 264 (Mss., Records of the Ct. Pvt. L. Cl.).

that judicial possession had ever been delivered to the grantees and that the grant apparently had been recalled for Bartolome Sanchez, pursuant to a decree dated November 25, 1711, was placed in possession of the Bartolome Sanchez Grant, which embraced among other lands, the lands covered by this grant. Confronted with these insurmountable obstacles Duran advised the court that he no longer desired to prosecute his claim when it came up for trial on June 13, 1898. Whereupon, the court entered a decree[5] rejecting the claim and dismissing his petition.

THE BARTOLOME SANCHEZ GRANT

On July 27, 1707, Bartolome Sanchez, a sergeant in the militia, petitioned Governor Francisco Cubero y Valdes for a certain piece or parcel of land described as being bounded:

> On the north, by the ancient Pueblo of Quemada; on the east, by the Mesa de San Juan: on the south, by the boundaries of Santa Clara on the other bank of the Rio Grande; and on the west, by the Santa Clara Grant.

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[5] 3 Journal 398 (Mss., Records of the Ct. Pvt. L. Cl.).

Sanchez stated that he did not own any land and the purpose for his requesting the grant was to secure sufficient land to support his family. Envisioning the benefits which Sanchez and his family could derive from the requested lands, Cubero granted his prayer and ordered the Alcalde of Santa Cruz to place him in royal possession of the premises. Alcalde Juan Roque Guiterrez, in compliance with Governor Cubero's order, delivered royal possession of the grant to Sanchez on August 8, 1707.[1]

Under spanish Law, it was necessary to actually settle on the premises within three months from the date of delivery of possession and, thereafter, continuously occupy it for four years. Since he had failed to comply with this provision, Sanchez petitioned Governor Joseph Chacon on November 25, 1711, stating that as a result of his duties as a soldier, he had been unable to settle upon the premises and was in danger of having his sitio denounced by a third party. Therefore, he requested the governor to reward him for his services by revalidating the concession and grant a moratorium on the requirement that he occupy the land as long as he remained in the service of the Crown. Chacon acted

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[1]Archive No. 824 (Mss., Records of the A.N.M.). The call in the description for the grant to be bounded on the north by the ancient Pueblo of Quemado undoubtedly refers to the old pueblo at the foot of Black Mesa and not the Pueblo of Quemado, whose title was litigated in Pueblo of Quemado v. United States, No. 212 (Mss., Records of the Ct. Pvt. L. Cl.).

favorably on the request and, on November 25, 1711, ordered the Alcalde of Santa Cruz to redeliver possession of the grant to Sanchez. Alcalde Roque de la Madrid performed this ceremony on February 20, 1712.[2]

Thr grant was apparently still unoccupied on May 27, 1714, when Catalina Griego, widow of Diego Trujillo and her son, Antonio Trujillo, appeared before Governor Juan Ignacio Flores Magallon and produced the papers to a grant which had been made to Diego Trujillo by Governor Pedro Rodriguez Cubero in 1701, covering a tract of land "sufficient for planting four fanegas of corn." This tract was located within the Bartolome Sanchez Grant. They advised Magallon that possession of the grant had not been given to Trujillo because of his sudden and untimely death. Continuing, the petitioners announced that they had assigned all of their interests in the tract to their near relatives, Salvador Santistievan and Nicolas Valverde, in whose favor they requested the grant be confirmed. After examining the merits

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[2]Archive No. 827 (Mss., Records of the A.N.M.). Sanchez was probably prompted to seek the revalidation of his grant as a result of the issuance of the Juan de Ulibarri Grant on February 22, 1710. The Juan de Ulibarri Grant covered approximately the same lands as the Bartolome Sanchez Grant. However, it apparently was recalled when the Bartolome Sanchez Grant was revalidated. Archive No. 1020 (Mss., Records of the A.N.M.).

of the petition, Magallon revalidated the concession and ordered the Alcalde of Santa Cruz to give the assignees possession of the grant. Royal possession of this concession was delivered on August 8, 1714, by Alcalde Sebastian Martin.[3] Later during the same month, the balance of the lands covered by the Bartolome Sanchez Grant were included in three additional grants made by Magallon. These were the Bartolome Lovato, Antonio de Salazar, and Cristoval Crispin Grants.[4]

Late in the fall of 1715, Bartolome Sanchez gave Captain Joseph Trujillo permission to pasture livestock on the grant. Trujillo moved his herds to the grant and built a number of corrals. On November 25, 1715, Bartolome Lovato and Cristobal Crispin each petitioned Magallon requesting the revalidation of their respective grants and a one year extension of time within which to settle upon such lands. Both of the petitioners sought to justify their requests by pointing out that their failure to occupy their grants had been caused by illness. They also requested the governor to order Trujillo to "vacate the land and take down the corrals he may have built." Both of the grants were subsequently revalidated and Trujillo ordered to tear down his

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[3]Archive No. 926 (Mss., Records of the A.N.M.). The Diego Trujillo Grant was located in the Canada de Yunque and included the ancient Pueblo de Yunque.

[4]Archives No. 167, 433 and 829 (Mss., Records of the A.N.M.).

corrals. However, he was not ordered to move his livestock off the premises since they were classified as commons.[5] The restriction of his tenant's use of the grant caused Sanchez to become appraised of the four adverse claims for the first time and he acted swiftly to protect his interests. On January 13, 1716, he appeared before Governor Felix Martinez complaining that such grants had been illegally issued. Martinez, on the same date, ordered all the interested parties to present a copy of their title papers within three days in order that he might fully investigate the circumstances and condition of each of the conflicting claims.[6] Nothing appears to have been done in the matter at that time for later in the year Bartolome Lovato complained to the Inspector General of New Mexico, Juan Paez Hurtado, that he and other grantees were being embarrassed in the settlement of their lands as a result of the order of January 13, 1716, and requested a swift decision in the matter. Hurtado, after investigating the matter, recommended[7] that the governor distribute the lands so that each of the interested parties could reap the benefits of his labor. Hurtado also made the following entry[8] at the foot of the Antonio de Salazar Grant:

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[5]Archives No. 167 and 436 (Mss., Records of the A.N.M.)

[6]Archive No. 834 (Mss., Records of the A.N.M.).

[7]Archive No. 437 (Mss., Records of the A.N.M.).

[8]Archive No. 829 (Mss., Records of the A.N.M.).

> Having examined all of the grants, it will be decided with justice and the considerations to which it is entitled will be given it.

This is the last piece of documentary evidence bearing upon this controversy. It is not known whether a new distribution of the land was ordered as mentioned by Hurtado, whether Sanchez's claim to all the land was recognized, or whether all of the grants were subsequently recalled by the Spanish officials. The latter possibility appears to be the most probable when it is realized that the choicest portion of the lands in controversy was granted by Governor Juan Domingo Bustamante to Antonio Trujillo on June 8, 1724.[9]

On March 3, 1893, Bartolome Sanchez, a great-grandson of the original grantee, filed suit[10] in the Court of Private Land Claims seeking the confirmation of the Bartolome Sanchez Grant. In his petition, Sanchez alleged that the grant was good and valid when the United States acquired jurisdiction over the area, the claim had never been presented to the Surveyor General for his consideration, and the grant covered approximately 10,000 acres. In response to a motion filed by the government, Sanchez filed an amended petition naming the United States and the claimants of the Juan de Ulibarri,

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[9] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 241-242 (1860).

[10] Sanchez v. United States, No. 264 (Mss., Records of the Ct. Pvt. L. Cl.).

Cristobal Crispin, the Pueblo of San Juan, the Black Mesa, and the Antonio de Salazar Grants as co-defendants. In their answers, the defendants asserted that even if originally valid and revalidated, the Bartolome Sanchez Grant had been forfeited due to the grantees' failure to timely comply with the conditions of settlement and had been regranted to third parties.

The case came up for trial on September 30, 1897. The documentary evidence introduced by the parties was quite voluminous and wholly from the archives and records of the Surveyor General's Office. The plaintiff offered oral testimony by two witnesses tending to show that the grant had been occupied by the original grantees and his descendants continuously after 1716. In its closing argument, the government contended that the 1716 concessions by Governor Magallon raised a powerful presumption that Sanchez had lost his right to the land and that even if Governor Magallon had illegally deprived Sanchez of his vested right, the Court of Private Land Claims was not the forum to correct such injustice. In support of this contention, the government's attorney cited the following language from the Supreme Court's decision in the Cessna case:[11]

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[11] Cessna v. United States, 169 U.S. 165 (1898).

> It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession, but it is no part of the duty to right the wrongs which the grantor nation may have heretofore committed.

Continuing, the government's attorney argues that the record indicated that the grant had probably been recalled by Martinez in 1716 as evidenced by the regranting of the choicest portions of the grants in 1724. He asserted that the regranting of such land shortly after its ownership had been thoroughly adjudicated was inconsistent with the contention that the grant was still valid and subsisting in 1724. He stated:

> The very most that can be contended for by the claimant on the evidence is that the rights of Bartolome Sanchez were, at the date of the treaty, still sub judice.

In closing, the government's attorney stated that he even doubted the good faith of the claimant in filing the action. He believed that the claim probably would never have been presented to the court except for the discovery of the expediente in the archives, the fortuitous coincidence of the plaintiff's having the same name as the original grantee, and his living in the locus in quo.

In its decision[12] dated October 2, 1897, the court found that a valid grant had been made to Sanchez in 1707 and that it had been revalidated and the condition of the

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[12] 3 Journal 290 (Mss., Records of the Ct. Pvt. L. Cl.).

settlement waived by the 1711 decree as long as Sanchez was in military service. Since the plaintiff had satisfactorily established the validity of the grant, the burden was then upon the defendants to show something which would defeat the claim. The court held that the efforts by the defendants to prove that the grant had been abrogated, revoked, or set aside in either 1716 or 1724, were based merely upon presumption and supposition. Therefore, it confirmed the grant in accordance with the boundaries set out and described in the grant papers. During its January term, 1898, the court reconsidered the question of boundaries, with the result that on February 16, 1898, a decree[13] was entered which materially reduced the area confirmed. The government appealed this decision to the Supreme Court, but on March 5, 1900, the appeal was dismissed[14] on the motion of the appellant.

Deputy Surveyor William McKeon was instructed to survey the grant. His instructions directed him to commence the survey:

> ...at a point where a line running from east to west through the old Pueblo of Quemado intersects the west boundary line of the Pueblo of San Juan Grant; THENCE south along the west boundary line of the Pueblo of San Juan Grant to the Rio Grande; THENCE south along the Rio Grande to the north boundary line

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[13] 3 Journal 378 (Mss., Records of the Ct. Pvt. L. Cl.).

[14] United States v. Sanchez, 20 S. Ct. 1027 (1900) (mem.).

of the Santa Clara Grant; THENCE west along the north boundary line of the Santa Clara Grant to the west boundary line of the Santa Clara Grant; THENCE north to an intersection of an east-west line through the old Pueblo of Quemado; and THENCE east to the point of beginning.

McKeon, in attempting to follow these instructions, found that the west boundary of the Pueblo of San Juan Grant did not intersect the Rio Grande. Therefore, he ran east along the southern boundary of the Pueblo of San Juan Grant from its southwest corner to the point where it intersected the river. The field notes were returned to the Surveyor General on December 19, 1901, and were subsequently approved by the court. A patent was issued on November 27, 1914, for the 4,469.828 acres described in the McKeon Survey.[15]

THE BLACK MESA GRANT

Sometime during 1743, Juan Garcia de la Mora and Diego de Medina appeared before and jointly petitioned Governor Juan Gaspar Domingo de Mendoza for a grant covering

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[15]The Bartolome Sanchez Grant, No. F-247 (Mss., Records of the S.G.N.M.).

a tract of land located on the Ojo Caliente River and containing some "patches of table land" which could be cultivated or used as pastures. They advised the governor that the lands which they sought had been granted to either Miguel Quintana or his son-in-law, Pedro Sanchez, by Governor Juan Domingo de Bustamante in about the year 1731 but the grantee had never occupied the premises as required by the Royal Ordinances. Garcia and Medina contended that they needed the land in order to support their large families and maintain their livestock. Garcia pointed out that he did not have any land of his own and was then living on borrowed money. Medina, in turn, stated that he was residing on a small strip of land which would scarcely "grow three almudes of corn". This tract had been given to his wife by her father and even half of that had been "carried away by the river". In closing, they stated that poverty had compelled them to seek the favor which they were soliciting. After carefully considering the petition, Mendoza found that the previous grant had been forfeited and the applicants' request should be vouchsafed. Therefore, by order dated October 5, 1843, he commanded Juan Jose Lovato, Alcalde of Santa Cruz, to place the two new grantees in possession of the requested lands. Ten days later, Lovato, being personally indisposed but desiring to comply promptly with the governor's decree, he delegated authority to his

lieutenant, Domingo Vigil, to verify that there were no impediments to the issuance of the grant. If Vigil found none, he was directed to survey the lands and place the grantees in possession of the grant. In obedience to the alcalde's direction's Vigil proceeded to investigate the facts surrounding the grant which previously had been made by Governor Bustamante. During his investigation, Miguel Quintana alleged that he had pastured his herds on the land for one full year and parts of the following three winters; however, Ventura Mestas, the adjoining landowner, advised Vigil that Pedro Sanchez had planted a few fields of corn and pumpkin on the grant but had abandoned them after about four months. He further stated that sometime later Sanchez had attempted to pasture sheep on the grant but that even this limited use was terminated when the "wolves bit his shepherds". Based on this evidence, Vigil concluded that notwithstanding the question over to whom the former grant had been issued to, it was clear that it had been forfeited. Whereupon, in obedience to the governor's command, he surveyed and delivered possession of the new grant to Garcia and Medina. His fieldnotes describe the grant as being bounded:

> On the north, by the lands of Antonio de Abeytia running as far as the close of the canon of the Rio Grande across the end of the Mesa or table lands; on the east, by the Sebastian Martin Grant and part of the

> land of the Indians of San Juan de los Cabelleros; on the south, by the end of the said table land, and the Chama River with the boundaries of the lands owned by the minor children of Trujillo; and on the west, by the lands of Ventura Mestas, where his boundary was declared to be.

The alcalde's proceedings were returned to Governor Mendoza, who, on October 10, 1743, approved such actions. A certified copy of the expediente was made for the grantees in 1744 by Francisco Ortiz, Alcalde of Santa Cruz.[1]

For some unexplained reason, the heirs and legal representatives of Juan Garcia de la Mora and Diego de Medina never filed their claim in the Surveyor General's Office; however, on January 6, 1892, they filed suit[2] against the United States seeking the confirmation of the grant which was known as the Black Mesa Grant. The case came up for trial on August 29, 1894, at which time the plaintiffs offered as evidence of their claim the certified copy of the expediente. The government objected to the introduction of this instrument on the grounds that it had not been archived in the proper depository and an alcalde was not authorized under Spanish law to issue certified copies. The court overruled the objection, and the trial proceeded with the plaintiffs introducing a considerable

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[1] Martinez v. United States. No. 56 (Mss., Records of the Ct. Pvt. L. Cl.).

[2] Ibid.

amount of oral testimony tending to prove their possession of the property and establish the location of the boundaries of the grant. The government, in turn, argued that the land of Ventura Mesta, which was referred to in the expediente as forming the western boundary of the grant, was not the Juan Jose Lovato Grant, as contended by the plaintiffs, but was a tract lying east of the Juan Jose Lovato Grant and a low range of foothills situated just west of the Ojo Caliente River formed the eastern boundary of the Mesta property.

The court in a decision[3] dated September 28, 1894, held that the plaintiffs were entitled to the relief they prayed for in their petition for the grant was valid and absolute; however, it sustained the government's contention pertaining to the location of the boundaries of the grant. Neither party appealed from this decision. The grant was surveyed in January, 1896, by Deputy Surveyor Sherrard Coleman and his work shows that it contains 19,171.35 acres. A patent based on this survey was issued on December 9, 1907.[4]

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[3] 2 Journal 221 (Mss., Records of the Ct. Pvt. L. Cl.).

[4] The Black Mesa Grant, No. F-226 (Mss., Records of the S.G.N.M.).

THE ANTONIO de ABEYTIA GRANT

On January 29, 1893, Maria E. Lucero and the other heirs and legal representatives of Antonio de Abeytia filed a petition[1] in the Court of Private Land Claims seeking the confirmation of the Antonio de Abeytia Grant. The petition asserted that the grant contained about 8,000 acres and was bounded:

> On the north, by the Palos Blancos; on the east, by the foot of the Mesa Prieta; on the south, by the Canada de la Cruz; and on the west, by the Lomas.

It also alleged that a grant had been made sometime before 1704 to Captain Antonio de Abeytia from whom it descended to his son, Miguel Abeytia. In about 1780 Miguel was driven off the grant by the Indians. Later Baltazar Cisneros and the other heirs and descendants of Miguel Abeytia petitioned Governor Fernando Chacon for a revalidation of the grant. On the same day Chacon referred the petition to the Alcalde of Rio Arriba, Manuel Garcia de la Mora, for an investigation into the merits of the request. Garcia further advised the governor that since the premises had never been reoccupied, the resettlement of the grant would not adversely affect the rights of any third parties, but,

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[1] Lucero v. United States, No. 68 (Mss., Records of the Ct. Pvt. L. Cl.).

on the contrary, would help guard and protect the inhabitants of Ojo Caliente from the hostile Indians. After studying the alcalde's report, Chacon issued a decree wherein he conceded the lands to the petitioners but made it clear that it was a new grant and not a revalidation of the old grant "on account of their heirship to the former owners, for they had lost their rights the very moment they abandoned it." The grant was made by the governor upon the condition that the grantees "keep the grant for themselves, their children and heirs and in no manner whatever abandon it or transfer it to any stranger and that anyone abandoning his interest therein shall lose it altogether." On February 28, 1809, Garcia surveyed the grant and delivered formal possession thereof to the grantees. The grantees promptly moved to the grant; however, each of them, except Baltazar Cisneros soon abandoned the project. Thereafter, up to and including the date of the filing of their suit, Baltazar Cisneros or his heirs and legal representatives had exclusive possession of the grant.

On August 28, 1894, the day the case was set for trial, the plaintiffs, with leave of court, filed an amended petition claiming the Rio Grande as the eastern boundary of the grant. Thus, the claim was extended to include an additional 12,000 acres. At the trial, the

plaintiffs offered an instrument which purported to be a copy of the Revalidation Proceedings of 1809, which was supposedly filed in the Archives of the Pueblo of San Juan. The government objected to the introduction of this instrument on the grounds that it was not certified to be true and correct by the custodian of the Archives of the Pueblo of San Juan. The court sustained the objection. Next, the plaintiffs introduced a copy of the grant papers to the Black Mesa Grant for the purpose of showing that the two grants adjoined one another and that Governor G Gervacio Cruzato y Gonzora had recognized the validity of the Antonio de Abeytia when he made the Black Mesa Grant. In this instrument it was stated that the Antonio de Abeytia Grant ran to the bottoms of the Rio Grande near the point of the Mesa. It was based on this reference that the plaintiffs claimed that the grant was valid and the Rio Grande was its eastern boundary. The government did not object to the introduction of this document as substantiation of the validity of the Antonio de Abeytia Grant.[2] However, the government in turn offered the Revalidation Proceedings for the purpose of showing the

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[2]The United States Supreme Court in Peabody v. United States, 175 U.S. 546 (1899), indicates that reference in a land grant to another grant as a boundary is inadequate as proof of the legal existence of the latter grant.

extent of the claim, which it contended extended only to the first row of hills on each side of the valley. They were received by the court for that limited purpose. The court handed down its opinion[3] on the case on September 28, 1894. In this opinion, the court found the grant to be good and valid and, therefore, it was confirmed to the heirs of Antonio de Abeytia, subject to the following boundaries:

> On the north, the south boundary of the Ojo Caliente Grant as established in Cause No. 88; on the east, the Ojo Caliente River; on the south, the Canada de la Cruz; and on the west, by the east boundary of the Ventura Mestas lands which is the Lomas on the west of the Ojo Caliente River.

The plaintiffs contended that the western boundary of the grant, as confirmed, should have been on a common line with the eastern boundary of the Juan Jose Lovato Grant for the reference to the Ventura Mestas lands was to the lands within the Juan Jose Lovato Grant which were conveyed by Lovato to Mestas by deed dated November 3, 1747. Notwithstanding this call for adjoinder, the Surveyor General's Office held the west line of the Antonio de Abeytia Grant to be the low foothills lying just west of the river.

The grant,was surveyed by Deputy Surveyor Sherrard Coleman during the summer of 1895. His survey showed the grant contained a total of 721.42 acres. The grant was patented on September 15, 1910.[4]

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[3] 2 Journal 225-227 (Mss., Records of the Ct. Pvt. L. Cl.).

[4] The Antonio de Abeytia Grant, No. F-223 (Mss., Records of the S.G.N.M.).

THE JOSE IGNACIO ALARI GRANT

On March 3, 1893, Juan Antonio Quintana filed suit[1] against the United States in the Court of Private Land Claims seeking the confirmation of a tract of land estimated to contain 1,000 acres located on the Ojo Caliente River. Quintana claimed an interest in the tract by inheritance from Gabriel Quintana, one of the original grantees of the Jose Ignacio Alari Grant. His claim was based on an old Spanish archive.[2] This document consists of three instruments, a petition, a grant decree and an act of possession. In the petition, Jose Ignacio Alari and Gavriel Quintana, residents of Ojo Caliente, request Governor Pedro Fermin de Mendinueta to give them a grant covering the house and lands which formerly had been owned by Geronima Pacheco, a widow, and her son, Jose Martin. The petitions asserted that the tract had been allotted to Pacheco and her son as original colonists of Ojo Caliente but had forfeited their rights to the land by moving to the Town of Abiquiu permanently.

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[1]Quintana v. United States, No. 227 (Mss., Records of the Ct. Pvt. L. Cl.).

[2]Archive No. 43 (Mss., Records of the A.N.M.).

The petitioners further stated that while they each had a small tract of land at Ojo Caliente, which had been given to them by their respective fathers-in-law, such lands were not sufficient and they "registered" the tract in question in order to support their large families. The second instrument is dated March 21, 1768, and recited that after having examined the petition and being familiar with the facts Meninueta found the land in question to be "Crown Lands." It seems that on December 6, 1767, Meninueta had issued a proclamation which permitted anyone who had abandoned his lands at Ojo Caliente the right to renew his grant by resettling thereupon, but no one had timely exercised such privilege. Thereafter, all such abandoned lands had been forfeited and were open for reappropriation by bona fide settlers. Finding no impediments to the request, Mendinueta regranted such lands and house to the two petitioners upon the condition that they settle upon this grant within the time prescribed by law. The decree also ordered the Alcalde of Santa Cruz to place the new grantees in royal possession of the grant, which was to have the same boundaries as those owned by the original grantees. The final instrument is an act of possession which evidences that on March 24, 1768, Alcalde Antonio Jose Ortiz accompanied by the adjoining landowners, Joseph Baca and Manuel Lucero, performed the customary

ceremony necessary to place the two grantees in royal possession of the new grant and pointed out their boundaries, which were:

> On the north, the lands of Manuel Lucero; on the south, the lands of Joseph Baca; and on the east and west, the same boundaries which the first owners had under their grant.

The plaintiff, in conjunction with his petition, filed a crude sketch map of the grant which did not appear to be to scale or tie the grant into the public land system. Therefore, it did not afford the government any information as to the location or extent of the grant. On October 20, 1896, the government filed a motion asking the court to require Quintana to make the owners of the Ojo Caliente Grant parties defendants since they claimed an adverse interest in the land. The government filed an answer containing a general denial on December 29, 1896, putting all of the plaintiff's allegations into issue. A motion seeking a more specific sketch map was filed by the government on October 5, 1898.

No further proceedings were filed in the case until May 5, 1900, when the case came up for trial. At that time, the plaintiff recognized that the court, under the doctrine of the Conway case,[3] had no authority to act upon this grant

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[3]United States v. Conway, 175 U.S. 60 (1899). This case held that the Court of Private Land Claims did not have jurisdiction over lands which were covered by a patented, conflicting private land claim.

since it was located wholly within the Ojo Caliente Grant[4], which had previously been confirmed. Therefore, he announced that he no longer wished to prosecute his claim. In response to his motion, the court entered a decree[5] dismissing the plaintiff's petition and rejecting the claim.

THE OJO CALIENTE GRANT

In 1790 eighteen residents of Bernalillo received permission from Governor Fernando de la Concha to settle upon the site of the abandoned Pueblo of Ojo Caliente provided they formed "a well ordered and regular settlement on the outskirts of the Canada de las Commanches." It was to be heavily fortified, otherwise it could not hope to prevail against the forays of the hostile Indians. Three years later Luis Duran and fifty-two other colonists, who had united in the establishment of the new Town of Ojo

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[4]The title papers to the Ojo Caliente Grant shows that each of the 53 original grantees, one of whom was Jose Martin, were allotted individual farm tracts measuring 150 varas in width on both sides of the Ojo Caliente River. The southern boundary of this grant was located at a holy cross made of cedar just below the tower of Jose Baca. The Ojo Caliente Grant, No. 77 (Mss., Records of the S.G.N.M.). Thus, it would appear that the Jose Ignacio Alari Grant was a very small tract located from 150 to 300 varas north of the southern boundary of the Ojo Caliente Grant.

[5]4 Journal 162 (Mss., Records of the Ct. Pvt. L. Cl.).

Caliente, petitioned the governor for a grant covering the lands upon which they had settled. On September 11, 1793, Concha granted the request and directed the Alcalde of the Pueblo of Santa Cruz to survey and deliver possession of the premises to the fifty-three grantees. The alcalde was also ordered to return a full report of his proceedings to the governor in order that the expediente might be filed in the archives as perpetual evidence of the grantees' title. In compliance with the governor's decree, Alcalde Manuel Garcia de la Mora, with his assistants and witnesses, proceeded to Ojo Caliente on October 5, 1793, where he designated and surveyed the following as the boundaries of the grant:

> On the north, the Canada de los Comanches; on the east, the foot of the hills; on the south, a monument constructed of stone and mortar with a holy cross made of cedar placed in the center, just below the tower of Jose Baca; and on the west, the foot of the other hills on the opposite side of the river.

After the survey of exterior boundaries of the grant was completed, Garcia distributed individual farm tracts, each measuring 150 varas in width and fronting upon both sides of the Ojo Caliente River, among the fifty-three grantees. Next, he delivered royal possession of the grant and lots in accordance with the formalities required by law. An expediente was then forwarded to the governor, who on October 8, 1793, approved the alcalde's actions and ordered

the instrument filed among the Archives of New Mexico and directed that a copy or testimonio thereof be given to the grantees for their protection and security.[1]

The hearty colonists were able to successfully overcome the adversities presented by the harsh life on the remote frontier and form a permanent settlement. Major Zebulon M. Pike, after his arrest by the Spaniards near Taos, passed through Ojo Caliente, which he describes thus:

> The difference of climate was astonishing; after we left the hills and deep snows, we found outselves on plains where there was no snow and where vegetation was sprouting.
>
> The village of Warm Springs or Agua Caliente (in their language) is situated on the eastern branch of a creek of that name, at a distance, and presents to the eye a square enclosure of mud walls, the houses forming the wall. They are flat on top, or with extremely little ascent on one side, where there are spouts to carry off the water of the melting snow and rain when it falls, which we are informed, has been but once in two years previous to our entering the country.
>
> Inside of the enclosure were the different streets of houses of the same fashion, all of one story; the doors were narrow, the windows small, and in one or two houses there were talc lights. This village had a mill near it, situated on the little creek, which made very good flour.
>
> The population consists of civilized Indians, but much mixed blood.... This village may contain 500 souls. The greatest natural curiosity is the warm springs, which are two in number, about ten yards apart, and each affords sufficient water for a mill seat. They appear to be impregnated with copper, and were more than 33° above blood heat.[2]

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[1]Archive No. 664 (Mss., Records of the A.N.M.).

[2]Pike, An Account of Expeditions to the Sources of the Mississippi, 206-207 (1810).

Felis Galbis, one of the inhabitants of the grant for himself and in behalf of all other owners, petitioned[3] Surveyor General James K. Proudfit on February 28, 1873, seeking the confirmation of the premises as a community grant. A hearing was held on the petition on February 28, 1873, at which time the testimony of two witnesses for the claimants was presented. Dionisio Vargas testified that the grant extended about seven or eight miles from north to south and approximately twenty miles from east to west. Vargas further testified:

> I do not know of any coal or mineral substance on the tract, unless the latter be found in the hot springs, which are said to have mineral quantities in the water they furnish, which is quite hot in temperature. The river bottom is cultivated annually; the balance of the land is pasture, with timber. The land is held by many peoples as a community grant.

The plat attached to the petition indicated that the grant contained 92,160 acres. Based upon the evidence before him, Proudfit issued an opinion[4] dated January 2, 1874, in which he held that the "record is full and fair, the continued possession undoubted, and I recommend the Congress do confirm the title to the legal representatives of the fifty-three original grantees named in the papers, and according to the boundaries set forth in the Act of

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[3]The Town of Ojo Caliente Grant, No. 77 (Mss., Records of the S.G.N.M.).

[4]H. R. Exec. Doc. No. 148, 43d Cong., 1st Sess., 4-8 (1874).

Possession". A preliminary survey of the grant was made by Deputy Surveyors Griffin & McMullen in September and October, 1877, which showed that it contained 38,490.20 acres. On July 20, 1878, Antonio Joseph, who claimed to have purchased the interest of most of the original grantees, protested the approval of the survey on the grounds that the west boundary of the survey was located about six miles too far east. He claimed that the surveyors had located the west boundary at the foothills just west of the river instead of along the summit of the Cuchilla Parda, which was a ridge running north and south about seven miles west of the Ojo Caliente River. The Cuchilla Parda forms the watershed or divide between the Ojo Caliente and Colorado River valleys. It also formed the east boundary of the Juan Jose Lovato Grant, which in at least one of its title documents called to adjoin the Ojo Caliente Grant.[5] No further action was taken by the Surveyor General or Congress concerning the grant.

Two suits were filed in the Court of Private Land Claims seeking the recognition of the grant. The first was filed[6] on February 14, 1893, by Jesus Maria Olgyin, who had inherited an interest in the grant from his

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[5]The Town of Ojo Caliente Grant, No. 77 (Mss., Records of the S.G.N.M.).

[6]Olgyin v. United States, No. 88 (Mss., Records of the Ct. Pvt. L. Cl.).

grandfather, Juan Olgvin, one of the original settlers. The second suit was instituted[7] three days later by Antonio Joseph, for himself and on behalf of the heirs, legal representatives and successors of the other original grantees. The two cases were consolidated by order of the court[8] and tried under Cause No. 94. At the hearing, the government conceded that the title papers were genuine and that the use and occupancy of the premises had been continuous, open and notorious since the date of its issuance. However, it contended that the true east boundary of the grant should be located about eight miles west of the location established therefore by the Griffin and McMullen Survey. This would fix the east boundary at the foot of a low range of foothills situated just east of the river. After considering all the evidence, the court, on April 28, 1894, confirmed[9] the grant but found from a preponderance of the evidence that both its eastern and western boundaries were located at the foot of the first row of hills located on each side of the Ojo Caliente River. Neither party appealed from this decision and a resurvey of the grant was made in September, 1894, by Deputy Surveyor Sherrard Coleman. The

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[7]Joseph v. United States, No. 94 (Mss., Records of the Ct. Pvt. L. Cl.).

[8]2 Journal 69-70 (Mss., Records of the Ct. Pvt. L. Cl.).

[9]2 Journal 130-135 (Mss., Records of the Ct. Pvt. L. Cl.).

survey depicted the grant as containing 2,244.98 acres. A patent for this amount of land was issued on November 2, 1894.[10]

THE LA NASA GRANT

On March 3, 1893, Albino Lopez filed suit[1] against the United States in the Court of Private Land Claims to secure the confirmation of "two strips of river bank land facing one another on both sides of the river, commonly known as La Nasa," which had been granted to Manuel Lucero in 1810, for agricultural purposes. Possession of the grant was delivered by the Alcalde of Santa Cruz, Manuel Garcia, on June 20, 1810, based upon a "verbal order," by the major of the military post of Santa Cruz. The Act of Possession stated:

> I went and gave royal possession and personal ownership using as boundaries the fences that I built placing at each angle a monument and by the other two sides the lands called El Barrado and the two limits of the Mesas.

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[10]The Town of Ojo Caliente Grant, No. 77 (Mss., Records of the S.G.N.M.).

[1]Lopez v. United States, No. 238 (Mss., Records of the Ct. Pvt. L. Cl.).

In support of his claim, Lopez referred to a copy of the Act of Possession which he had filed in the Surveyor General's Office on May 10, 1881.[2] The grant was described in the petition as being bounded:

> On the north, an Arroyo; on the east, the tops of the bluffs on the east side of the Rio Grande River; on the south, the Sebastian Martinez (Martin) Grant; and on the west, the tops of the bluffs on the west side of the Rio Grande River.

It was estimated to contain 2,000 acres of land. The government filed a general denial on December 29, 1896, and two years later filed a motion requesting that the owners of the Embudo Grant be made parties defendants since the grant appeared to conflict with the Embudo Grant.

Since the documentary evidence concerning the grant was not only vague and incomplete, but had been made by the Commanding Officer of the Presidio of Santa Cruz[3] instead of the governor, Lopez realized that he could not sustain the burden of proving the validity of his claim. Therefore, on May 17, 1897, he requested the dismissal of his suit, which promptly was granted.[4]

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[2]The La Nasa Grant, No. F-186 (Mss., Records of the S.G.N.M.).

[3]On October 22, 1791, the Commandant General of the Interior Provinces, Pedro de Nava, with the approval of the Viceroy, promulgated what is known as the "Order of Pedro de Nava," which provided for the allotment of lands by the Captains and Commandanders of Presidios. The "Order of Pedro de Nava" was revoked on January 19, 1793. Reynolds, Spanish and Mexican Land Laws, 29 (1895).

[4]3 Journal 206 (Mss., Records of the Ct. Pvt. L. Cl.).

THE EMBUDO GRANT

Juan Marquis, Francisco Martin, and Lozaro de Cordova had an audience with Governor Juan Domingo de Bustamante on July 17, 1725 during which they presented their petition for a grant covering a triangular tract of land at Embudo de Picuris. In this petition, the petitioners stated that they were poor and needed the land to meet their obligations to their families. The tract which they requested was described as being situated about three leagues west of the Pueblo of Picuris and bounded:

> On the east, by a dry arroya; on the south, by the Sebastian Martin Grant, and on the northwest, by the Rio Bravo del Norte.

Bustamante, being sympathetic to the plight of the applicants, granted their request and directed the Alcalde of Santa Fe to examine the land and if the grant would not prejudice the rights of any third party to deliver royal possession of the premises to the grantees. In obedience to the governor's order, Alcalde Jose Miguel de la Vega y Coca met with the grantees and the representatives of the Indians of the Pueblo of Picuris on July 19, 1725. The Indians protested the issuance of the grant on the grounds that they used the lands as a pasturage for their horses and had cultivated

a portion of the grant. After carefully examining the grant, Vega held that the protest was not supported by the evidence. Whereupon, the Indians became very arrogant and clearly manifested that the protest had not been made in good faith but merely to prevent the settlement of the lands by Spaniards. Having overruled the protest, Vega proceeded to place the grantees in legal possession of the grant. They promptly settled upon the grant, formed the settlement of Embudo, and constructed round watch towers at the corners of the settlement to prevent surprise Indian attacks.

The heirs of Francisco Martin appeared before Jose Campo Redondo, Alcalde of Santa Cruz, on May 2, 1786 and requested him to give them a certified copy of their titulo since the original had become torn and dilapidated through the ravages of time and ill use. In accordance with the custom of the time, Alcalde Redondo unhesitatingly complied with the request. This instrument was filed[1] in the Surveyor General's Office on May 5, 1863, but for some unexplained reason, the owners of the grant did not request an investigation into the validity of the claim at that time.

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[1]The Embudo Grant, No. F-91 (Mss., Records of the S.G.N.M.).

Antonio Griego, on behalf of himself and the other claimants of the grant, filed suit[2] in the Court of Private Land Claims against the United States on March 2, 1893, for the recognition of their title to the estimated 25,000 acres covered by the grant. The United States raised no special defenses and, in its answer, merely put the allegations contained in the petition into issue. The case came up for trial on June 10, 1898, at which time Griego offered the certified copy of the titulo in evidence. The government's attorney objected on the grounds that an alcalde had no authority to "perpetuate evidence against the crown." The court permitted the introduction of the instrument subject to the government's objection. Griego then offered oral evidence pertaining to the location of the boundaries of the grant and the continuous occupation of the settlement of Embudo for over a century.

On July 5, 1898, the court in its majority opinion[3] held that the plaintiff's muniment of title was regular in form and, if admissible in evdence would form the basis of a claim which it would confirm. However, since an alcalde was not the legal custodian of the archives in which expedientes were usually deposited, he had no power to perpetuate evidence of title nor was such a certified copy evidence that a valid

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[2]Griego v. United States, No. 173 (Mss., Records of the Ct. Pvt. L. Cl.).

[3]4 Journal 14 (Mss., Records of the Ct. Pvt. L. Cl.).

grant had in fact been made. While recognizing that it was a common practice in New Mexico for alcaldes to make copies of old legal instruments, the court held that such instruments were not admissible as evidence. In closing, the court stated that since the plaintiffs had failed to produce either the expediente or testimonio of the grant, it was obligated, under the doctrine of the Hayes case[4] to reject the claim. Chief Justice Joseph R. Reed and Judge Wilbur F. Stone dissented on the grounds that the court had confirmed the Town of Bernalillo Grant on "substantially the same character of evidence which the court now rejects."

Griego appealed the decision to the Supreme Court which dismissed[5] it on March 19, 1900 because he had failed to have the cause docketed in conformity with the rules of the court.

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[4]Hayes v. United States, 170 U.S. 637 (1898). This case held that the act creating the Court of Private Land Claims prohibited the court from allowing any claim which did not "appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico...." This manifest limitation upon the power of the court in passing upon the validity of an alleged complete grant requires that the court shall not adjudge in favor of validity unless satisfied from the inherent evidence contained in the grant, or otherwise, of an essential prerequisite of validity, viz., that the authority of the granting officer or body to convey the public domain.

[5]Griego v. United States, 20 S. Ct. 1027; 44 L. Ed. 1221 (1900) (mem.).

THE SEBASTIAN MARTIN GRANT

Sometime prior to 1703 a tract of land located northeast of the Pueblo of San Juan was granted to Joseph Garcia Jurado, Sebastian de Vargas, and Sebastian de Polonia. However, when they failed to occupy the grant within the time prescribed by law, Sebastian Martin and his brother, Antonio Martin, appeared before the Governor of New Mexico, Diego de Vargas, and requested him to forfeit the former concession and to grant the lands covered thereby to them. In response to this request, Vargas, in 1703, found the former grantees, in fact had abandoned the grant and were without any rights. Therefore, he re-granted the lands to the petitioners and ordered the former owners never to lay claim to the premises. In 1705 Governor Francisco Cuervo y Valdes ordered Sergeant Major Juan de Ulibarri, the Alcalde of Santa Cruz, to place the new grantees in royal possession of the grant. In compliance with the governor's order, Lieutenant General Juan Paez Hurtado went to the grant and designated the following natural objects as boundaries to the grant:

> On the north, a cross which was erected on the Canon which ran to El Embudo; on the east, the river which ran between Chimayo and the Pueblo of Picuris; on

> the south, the north line of the Pueblo of San Juan Grant; and on the west, the table lands on the west side of the Rio Grande.

Following the completion of his survey, Ulibarri delivered possession of the premises to the grantees.[1]

Sebastian and Antonio Martin, together with three of their brothers, moved to the grant and immediately started improving and developing the property. A number of fields were opened for cultivation, an irrigation system was constructed, and a large four-room house with two strong towers was built to protect its inhabitants from the hostile Indians.

Meanwhile, Sebastian Martin acquired his brother's interest in the grant but lost the testimonio and deed evidencing his title to the grant. Therefore, in 1712, he petitioned Governor Jose Chacon Medina Salazar y Villaseno requesting the confirmation of his title. On May 23, 1712, Chacon investigated the application and concluded that Martin should be protected since he had persistently occupied the premises since 1703, notwithstanding the imminent risk he had taken of losing his life at the hands of the Indians. The governor, therefore, confirmed the grant, declared all other instruments null and void upon which an adverse claim could possibly be established against him and directed the

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[1] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 134-135 (1860).

Secretary of the Province, Cristobal de Gongora, to assign to the grant the boundaries which had been requested and to redeliver legal possession thereof to its proprietor.[2]

In order to insure the formation of a new settlement just east of the grant, Sebastian Martin, on July 1, 1751, deeded a strip of land one thousand six hundred and forty varas wide, off the east side of the grant to the twelve colonists who had proposed the establishment of the Town of Las Trampas. The town was created fifteen days later and received from the governor a grant covering sufficient additional lands to guarantee its success.[3]

Except for the portion of the grant conveyed to the founders of the Town of Las Trampas, Sebastian Martin and his heirs claimed and possessed all of the lands from the date of the delivery of possession down to and including the year 1859. Mariano Sanchez, the sole heir of Sebastian Martin, and owner of the grant, petitioned[4] Surveyor General William Pelham for the confirmation of the grant on June 16, 1859. After he had completed his investigation of the claim, Surveyor General Pelham issued a report[5] on July 25, 1859. In this report, Pelham found the grant papers which

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[2] Ibid., 135-136.

[3] Ibid., 137

[4] The Sebastian Martin Grant, No. 28 (Mss., Records of the S.G.N.M.).

[5] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 137 (1860).

had been filed by Sanchez to be genuine and the grant to be good and perfect. He also found that the claimant and his predecessors had enjoyed uninterrupted possession of the grant "beyond the point whereof the memory of man runneth not to the contrary." Therefore, he recommended the confirmation of the grant to the legal representatives of Sebastian Martin, deceased, to the full extent of the boundaries set forth in the testimonio except for the portion previously donated to the Town of Las Trampas. The grant was confirmed by Act[6] approved on June 21, 1860.

The lands were surveyed in June, 1876, by Deputy Surveyors Sawyer & McBroom. The survey showed that the grant contained 51,387.20 acres. A patent for that amount of land was finally issued on February 10, 1893.[7]

THE FRANCISCO MONTES VIGIL GRANT

Noting that his herds were gradually diminishing due to inadequate pasturage, Francisco Montes Vigil, a resident

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[6]An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat., 71 (1860).

[7]The Sebastian Martin Grant, No. 28 (Mss., Records of the S.G.N.M.).

of the Villa of Santa Cruz, commenced looking for a more suitable site for his ranching activities. Upon finding an attractive piece of vacant land situated on the north bank of the Truchas River between the settlements of Nuestra Senora del Rosario, San Fernando y Santiago and Santo Tomas del Rio de las Trampas, he decided to seek a royal grant covering that tract. Sometime during the latter part of April, 1754, Vigil petitioned Governor Tomas Velez Cachupin for a grant covering those premises, which he described as being bounded:

> On the north, by the Cuchilla del Ojo Sarco; on the east, by the Cienega Grande; on the south, by the Truchas River; and on the west, by the road leading to the Town of Picuris.

In response to the petition, Cachupin, on April 27, 1754, directed the Alcalde of Santa Cruz to report to him concerning the merits of the petition. He particularly requested information on the nature of the land, the location of the natural objects referred to in Vigil's description of the tract, the distances between such objects, whether or not the land was a portion of the royal domain, and if the issuance of the requested grant would be prejudicial to the new settlement of Nuestra Senora del Rosario, San Fernando y Santiago. Two days later, Alcalde Juan Jose Lovato advised the governor that the tract consisted primarily of grazing land but there a few pieces of

agricultural land within its boundaries which would be sufficient to support Vigil and his herders. He stated that the tract was unoccupied and the issuance of the proposed grant would not prejudice the rights of either of the adjacent settlements or any third party. In closing his report, Lovato recommended that the grant be made. No mention was made pertaining to the size of the tract or the distances between the boundaries. Attentive to the King's wishes that the royal domain on the frontiers be settled, Cachupin, on May 16, 1754, granted Vigil's request and directed Lovato to place him in royal possession of the concession. Acting upon the governor's decree, Lovato met Vigil and representatives from the adjoining settlements at Cienega Grande and proceeded to survey the grant. To the surprise of everyone, it was discovered that the grant, which was thought to be square was approximately triangular. Since the boundaries of the adjoining grants restricted the length of the eastern boundary to approximately 500 varas instead of 5,000 varas, the northern and southern boundaries were extended to compensate therefor some 2,000 varas, or a total distance of 7,000 varas to a point on the eastern edge of the Cienega Grande. Following the completion of the survey, legal possession of the grant was given to Vigil without protest from any of the adjoining landowners.[1]

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[1]Archive No. 1053 (Mss., Records of the A.N.M.).

Vigil, together with his family, servants, and herders, moved to the grant where he built a fine residence and a number of outbuildings in a beautiful valley near its center. He opened a number of fields near his home and pastured his herds and flocks on the surrounding hills. His descendants and successors were still occupying and using the land when the United States acquired New Mexico in 1848. On September 24, 1881, the owners of the grant petitioned[2] the Surveyor General, seeking the confirmation of their title to the grant. In an opinion[3] dated May 6, 1882, Surveyor General Henry M. Atkinson found that the grant papers, which were found among the archives turned over to the United States following the conquest of the territory, were undoubtedly genuine and Cachupin had the power and authority to issue the concession. He further noted that there was no question of the bona fides of the peaceful occupation by the claimants and their predecessors. Based on these findings, Atkinson recommended that the grant be confirmed in favor of the heirs and assigns of the original grantee in accordance with the boundaries set forth in the Act of Possession. The grant was re-examined on September

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[2]The Francisco Montes Vigil Grant, No. 128 (Mss., Records of the S.G.N.M.).

[3]Ibid.

22, 1886, by Surveyor General George W. Julian and was again recommended for confirmation.[4]

Meanwhile, a preliminary survey of the grant was made on July, 1882, by Deputy Surveyor John Shaw which showed that the grant covered 10,314.65 acres. The claimants protested the approval of the survey on the grounds the eastern boundary had been located too far west, and thus, failed to include all of the Cieneqa Grande and the southern boundary was located too far north, since it should have been located along the north bank of the Truchas River. They contended that the grant actually contained about 35,000 acres. The owners of the Town of Las Trampas Grant also protested on the grounds that the north line of the survey overlapped their grant, creating a conflict measuring 1,300 varas wide and about three miles long.

The claim was never acted upon by Congress and was still pending when the Court of Private Land Claims was established in 1891. Salvador Romero and four other claimants, for themselves and the other owners of the grant, filed suit[5] on June 11, 1892, in that court in order to secure the recognition of the claim. The United States offered no special defenses at the trial of the case and

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[4] Ibid.

[5] Romero v. United States, No. 14 (Mss., Records of the Ct. Pvt. L. Cl.).

merely put the plaintiff's allegations into issue. By decision[6] dated August 30, 1892, the court held that the plaintiffs were entitled to other relief sought and, therefore, confirmed the grant. The grant was resurveyed in 1894 by Deputy Surveyor Sherrard Coleman and his survey showed that the grant contained only 8,253.74 acres. A patent for that amount of land was issued on May 2, 1899, to Francisco Montes Vigil, his heirs, assigns and successors in interest.[7]

THE NUESTRA SENORA del ROSARIO, SAN FERNANDO, y SANTIAGO GRANT

Armed with Archive No. 771[1], Pedro Jose Gallegos, for himself, and in behalf of the other claimants of the Nuestra Senora del Rosario, San Fernando, Santiago Grant, filed suit[2] in the Court of Private Land Claims on August

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[6] 1 Journal 52-53 (Mss., Records of the Ct. Pvt. L. Cl.).

[7] The Francisco Montes Vigil Grant, No. 128 (Mss., Records of the S.G.N.M.).

[1] Archive No. 771 (Mss., Records of the A.N.M.).

[2] Gallegos v. United States, No. 28 (Mss., Records of the Ct. Pvt. L. Cl.). Isabel Jaramillo de Romero filed suit on March 3, 1893, against the United States in the Court of Private Land Claims, seeking the approval of the

13, 1892, seeking the confirmation of their interest. Archive No. 771 consisted of the five ancient documents which formed the expediente of the grant. The first is an instrument dated March 3, 1754, wherein Nicolas Romero and ten other residents of the town of Chimayo petitioned Governor Tomas Velez Cachupin for a grant covering the tract of land situated on the Rio de las Truchas, upon which they previously had settled and improved. The tract was described as being bounded:

> On the north by the ridges which formed the southern boundary of the Las Trampas Grant; on the east, by Oso Mountain; on the south, by the boundaries of the Pueblo of Quemado Grant and the lands owned by Jose Manuel Gonzales; and on the west, by the main road which leads to Picuris.

The second document is a decree by Cachupin dated two days later ordering the Alcalde of Santa Cruz, Juan Jose Lovato,

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Rancho de Las Truchas Grant, which had been made to Juan de Dios Romero and ten others on March 18, 1854, by Governor Tomas Velez Cachupin. Possession was delivered to the grantees six days later covering a tract bounded on the north by the Cuchilla of the Truchas River; on the east by an acequia and Sierra del Oso; on the south by the Alto between the Pueblo of Quemado and ___(torn)___; and on the west by the road to the Pueblo of Picuris. In support of her allegations, Jaramillo filed a copy of Archives 1136 and 771. Jaramillo v. United States, No. 225 (Mss., Records of the Ct. Pvt. L. Cl.). The government, in its answer dated December 29, 1896, pointed out that this obviously was an additional claim of the Nuestra Senora del Rosario, San Fernando, y Santiago Grant, which previously had been confirmed by the court. The government asserted that such confirmation was a bar to the further prosecution of the plaintiff's claims, and prayed for a dismissal of her suit. On May 12, 1897, Jaramillo announced that she no longer wished to prosecute the action, whereupon, the court dismissed her petition and rejected the claim. 3 Journal, 197 (Mss., Records of the Ct. Pvt. L. Cl.).

to report on the merits of the request. The third document is a report by Lovato. In this instrument, which is dated March 6, 1754, Lovato advised the governor that the applicants had cultivated a small portion of the lands described in the petition for a period of two years with the government's consent and that the tract contained sufficient land to adequately support them. In closing, Lovato recommended the issuance of the concession since a settlement on the tract would "impede the hostile enemy who continuously harrassed the town of Santa Cruz." The next document was a decree by Cachupin dated March 15, 1754, granting the requested lands to the applicants subject to their establishing a fortified settlement on the tract to be known as "Nuestra Senora del Rosario San Fernando y Santiago" and directing Lovato to deliver royal possession of the premises to the grantees. Lovato was also instructed to allot each of the colonists an individual farm tract and a residential lot subject to the condition that they could not be sold or incumbered for a period of four years. The next instrument is an Act of Possession which states that on April 24, 1754, Lovato, pursuant to the governor's decree, placed the grantees in possession of the grant and distributed farm tracts, most of which measured 150 varas each to the grantees. Alcalde Lovato first set aside a square or plaza measuring 70 varas on each side and laid out four roads

measuring six varas in width for ingress and egress. He then proceeded to survey the individual farm tracts. In conclusion, the alcalde noted that he had permitted two families headed by Jose Manuel Gonzales and Juan Luis Romero to join the colony and placed each of them in possession of a tract of land located along the south side of the grant. The final folio is a decree by Cachupin dated May 29, 1754, wherein he approved and confirmed the Act of Possession, except insofar as it pertained to the tracts allotted to Gonzales and Romero. In connection with those tracts, the governor held the alcalde's actions to be null and void since they were among the four families who had been granted land up the river from the grant in 1751, but had forfeited their rights due to their failure to occupy such lands within the specified time limits.

In his petition, Gallegos alleged that the grant was a valid Royal Spanish Grant made for the purpose of settlement and cultivation. He pointed out the claim had never been presented to the Surveyor General's Office for investigation but it had been continuously occupied by the original parties and their lineal descendants since the date of its issuance. No explanation was offered for the delay in the prosecution of the claim which was asserted to contain approximately 20,000 acres.[3]

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[3] Ibid.

When the case came up for trial, the government offered no special defenses but merely put the plaintiff to his proof. The testimony introduced by the plaintiff at the trial showed that the expediente was genuine and there was no question as to the bona fides of the possession held by the more than fifty families who then resided upon the grant. Therefore, the court had no alternative but to approve the grant. Pursuant to the court's decree[4] of December 10, 1892, the grant was surveyed by Deputy Surveyor Albert F. Easley. The survey shows that the grant contained 14,786.58 acres. A patent, based on the Easley Survey, was issued to the original grantees and their heirs and assigns on May 5, 1905.[5]

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[4] 1 Journal 75-78 (Mss., Records of the Ct. Pvt. L. Cl.).

[5] The Nuestra Senora del Rosario, San Francisco, y Santiago Grant, M.C.D. 28 (Mss., Records of the S.G.N.M.).