Land & Water Law Review

Volume 8 | Issue 2 Article 3

1973

Spanish and Mexican Land Grants in the Southwest

J. J. Bowden

University of Wyoming
College of Law

LAND AND WATER
LAW REVIEW

VOL. VIII 1973 NUMBER 2

As a result of the Mexican War the United States acquired over five hundred thousand square miles of land. Although the United States was obligated by principles of international law and the Treaty of Guadalupe Hidalgo to recognize all valid land grants made by Spain and Mexico, it was over fifty years before this obligation was completely fulfilled. In this article Mr. Bowden traces the history of the United States' efforts to solve the land grant problem.

SPANISH AND MEXICAN LAND GRANTS IN THE SOUTHWEST

*J. J. Bowden**

INTRODUCTION

CONTRARY to the avowed policy[1] of the United States not to prosecute a war for the purpose of securing additional territory, President James K. Polk, following the outbreak of hostilities with Mexico, formulated a plan for the speedy military conquest and possession of New Mexico and California in order to insure their acquisition by the United States when peace was made.[2] To implement Polk's plan, Colonel Stephen Watts Kearny, Commander of the Army of the West, was ordered to seize Santa Fe and thereafter proceed to the coast to assist in the conquest of California. By confidential orders dated June 3, 1846,[3] Secretary of War, W. L.

*Counsel, Continental Oil Company; B.A., 1948, Texas College of Mines and Metallurgy; M.A., 1952, Texas Western College; J.D., 1951, University of Texas; L.L.M., 1969, Southern Methodist University; Member of Phi Alpha Delta Legal Fraternity; Member of the Texas Bar Association. The author has written several books on land claims in the Southwest including a six volume work, *Private Land Claims in the Southwest*, published in 1969.

1. Fleming v. Page, 50 U.S. (9 How.) 601 (1850).
2. NEVINS, POLK, THE DIARY OF A PRESIDENT 106 (1929).
3. H. R. Doc. No. 60, 30th Cong., 1st Sess. 153-55 (1848).

Marcy, instructed Kearny to establish temporary civil governments in New Mexico and California and assure their inhabitants that they would have the same rights as the citizens of the other territories of the United States. When Kearny's small force arrived at Santa Fe on August 18, 1846, the New Mexican officials peacefully surrendered. Four days later, Kearny issued a proclamation[4] in which he promised to protect the New Mexicans in their "person, lives and property."

On September 22, 1846, he established a civil government for the conquered territory and promulgated a code for its management. The Kearny Code, among other things, created the office of Register of Lands and directed every person claiming land by virtue of a Spanish or Mexican grant to file his papers in that office. Persons who had no written evidence of title were to submit an affidavit within five years under penalty of forfeiture, showing the extent of the claim, how much land was under actual cultivation and habitation by the claimant, and the length of time the land had been held. The Register, in turn, was to submit an abstract of the claims to the Commissioner of the General Land Office once a year commencing January 1, 1848.

Two years later, hostilities terminated with the signing of the treaty of Guadalupe Hidalgo.[5] The treaty ceded to the United States 529,189 square miles of land, which included all the present states of California, Nevada, and Utah, and part of Arizona, New Mexico, Colorado, and Wyoming. Article V of the treaty provided that the international boundary between the United States and Mexico should:

> [C]ommence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of

4. *Id.* at 170-71.
5. Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, 9 Stat. 922 (1848), T.S. No. 207.

> New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to its western termination; thence northward, along the western line of New Mexico, until it intersects the first branch of the River Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California to the Pacific Ocean.[6]

Since there were numerous valid land grants located within the ceded area, Mexico insisted upon the insertion of two provisions in the treaty to protect these property rights. Article VIII granted all Mexicans residing in the ceded territory the right to retain their Mexican citizenship. Mexican citizens could either remain in the ceded area or emigrate at any time to Mexico. The property rights of Mexicans not establised in the ceded area were to be "inviolably respected," while the property rights of Mexicans who remained in the affected area, whether or not they elected to retain their Mexican citizenship, were to be protected to the same extent as those of citizens of the United States. Article X was designed to protect a number of inchoate grants located within the ceded area and Texas. These grants had been made by Mexico in due course, but, as a result of the outbreak of the Texas Revolution, the grantees had been prevented from timely performing the conditions precedent to which they had been made. This article required recognition of such grants to the same extent as if the territory within which they were located had remained in Mexico. It also provided that the time for the performance of such conditions should commence on the date of the exchange of ratifications of the treaty.

President Polk, in his message transmitting the treaty to the Senate, objected to the provisions of the tenth article and stated:

6. *Id.* art. V, at 926.

> The public lands within the limits of Texas belong to that State, and the government has no power to dispose of them or to change the conditions of grants already made. All valid titles to land within the other territories ceded to the United States will remain unaffected by the change of sovereignty; and I therefore submit that this article should not be ratified as a part of the treaty.[7]

The Senate, by a vote of 38 to 14, ratified the treaty on March 10, 1848, with a minimum of changes. The principal changes were the deletion of Article X in its entirety and the striking of the portions of Article IX which gave special security to the property of the Catholic Church in the ceded territory. The modified treaty was then transmitted to Mexico for its approval.

The deletion of Article X from the treaty naturally aroused the suspicions of the Mexican government. Notwithstanding its desperate situation, of being exhausted by war and having a foreign and hostile flag flying over its capitol, Mexico insisted upon solemn assurances from the American Commissioners that vested private land claims of her citizens in the ceded territory would be recognized and protected by the United States. As a result of this firm stand, a supplemental document called the "Protocol" was entered into by and between the two countries which, for all intents and purposes, became a part of the treaty. In the Protocol, the United States Commissioners stated:

> The American government, by suppressing the Xth Article of the Treaty of Guadalupe, did not in any way intend to annul the grants of land made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the Article of the treaty, preserve the legal value which they may possess, and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.
>
> Conformably to the law of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican laws in California and New Mexico up to the 13th of

7. S. EXEC. DOC. No. 52, 30th Cong., 1st Sess. 17 (1848).

> of May, 1846, and in Texas up to the 2nd of March, 1836.[8]

These assurances and explanations satisifed the Minister of Foreign Affairs of the Mexican Republic, and he submitted the treaty to the Mexican Congress for ratification. After lengthy debates on the changes made by the United States Senate, the Mexican Congress ratified the treaty. On May 30, 1848, nearly four months after its execution, ratifications of the treaty were formally exchanged by and between the two sister republics. Thus, peace was restored between the two neighbors—peace, which in the words of President Polk, has been described as being "concluded on terms most liberal and magnanimous to Mexico."[9]

A serious controversy arose when the International Boundary Commission attempted to locate the southern boundary of New Mexico west of the Rio Grande. Article V provided that this portion of the boundary was to be located as laid down on a map which had been attached to the treaty. However, the Commission discovered several errors on the map which permitted differences of opinion as to the true location of the boundary. In order to settle the boundary dispute, the United States and Mexico entered into the Gadsden Treaty[10] on December 30, 1853, which ceded to the United States a 45,535 square mile strip of land lying south of the Gila River.

Article I of the Gadsden Treaty fixed the boundary between the United States and Mexico as a line:

> Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the 5th Article of the treaty of Guadalupe Hidalgo; thence, as defined in said article, up the middle of the river to the point where the parallel of 31° 47′ north latitude crosses the same; thence due west one hundred miles; thence south to the parallel of 31° 20′ north latitude; thence along said parallel of 31° 20′ to the 111th meridian of longitude west of

8. 5 MILLER, TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA 380-82 (1937).
8. H. EXEC. DOC. No. 69, 30th Cong., 1st Sess. 3 (1848).
10. Boundary Treaty with Mexico, Dec. 30, 1853, 10 Stat. 1031 (1853), T.S. No. 208.

> Greenwich; thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado Rivers; thence up the middle of said river Colorado, until it intersects the present line between the United States and Mexico.[11]

Touching upon the question of private land claims within the ceded area, Article VI of the treaty provided:

> No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the day—twenty-fifth of September—when the minister and subscriber to this treaty on the part of the United States, proposed to the Government of Mexico to terminate the question of boundary, will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.[12]

In the meantime, the United States admitted California as a state and made New Mexico a territory. Texas' claim to the area north of the thirty second degree of north latitude and west of the one hundred and third degree of longitude had been settled and the area annexed to New Mexico.

With the discovery of gold, land values and population in California skyrocketed. Therefore, steps were taken promptly to adjudicate the validity of private land claims in that state. However, the history of the effort to solve the land grant problem in the balance of the area ceded to the United States by Mexico—the "Southwest"[13]—is one filled with disinterest, indecision and delay.

There were a total of three hundred and three Spanish or Mexican land grants in the Southwest covering a claimed area of approximately 35.85 million acres.[14] Most of these

11. *Id.* art. I, at 1032.
12. *Id.* art. VI, at 1035.
13. The Southwest is composed of all or parts of the present states of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming.
14. The claimed area does not include the approximately forty-five million acres in the Arkansas Grant, which was an empresario grant located partly in Texas. For a detailed analysis of each of these grants see 1-6 BOWDEN, PRIVATE LAND CLAIMS IN THE SOUTHWEST (1969). (hereinafter cited as BOWDEN).

grants were located in New Mexico in the valleys of the Rio Grande and its tributaries. However, there were four[15] grants in southeast Colorado and nineteen[16] in the southeastern portion of Arizona. These grants fell into three distinct categories—individual, community, and empresario. The United States was obligated under the universally accepted principles of international law, as well as specific provisions of the Treaty of Guadalupe Hidalgo and the Gadsden Treaty to recognize the valid land grants made by Spain and Mexico prior to the changes in sovereignty.

PERIOD OF CONGRESSIONAL CONFIRMATION

After the territory of New Mexico was established, it was generally believed that Congress would recognize the private land claims which had been filed with the Register of Land which had been created under the Kearny Code since the confirmation of land titles was customarily one of the first concerns of any government acquiring ownership of territory from another nation. However, hope for such a quick and simple solution of the problem was dashed when the New Mexico legislature repudiated the land registration portion of the Kearny Code and Congress passed the Act of July 22, 1854,[17] which charged the Surveyor General's office with responsibility of examining the claims in order to enable Congress to perform its treaty obligations. One of his duties was to ascertain the origin, nature, character and extent of each Spanish and Mexican grant filed in his office for investigation. To accomplish this end, the Surveyor General was authorized to issue notices, summon witnesses, administer oaths, and do all other necessary acts. A full report of his investigation, together with an opinion concerning the validity of each grant, was to be forwarded by the Surveyor General to the Secretary of Interior. The Secretary of Interior, in turn, was to transmit each report and opinion to Congress for such action thereon as it might deem just and proper, with a view of confirming all bona fide grants originating before

15. In addition to the four Colorado grants there are four New Mexico grants which are partially in Colorado.
16. In addition to the nineteeen Arizona grants there is one New Mexico grant which is partially in Arizona.
17. Act of July 22, 1854, ch. 103, 10 Stat. 308.

the cession of the New Mexican territory to the United States. The lands contained in each grant investigated by the Surveyor General were to be reserved from sale or other disposition, pending final action by Congress. No provision was made for an appeal from the proceedings before the Surveyor General. Thus, the primary responsibility for the adjustment of private land claims in New Mexico was vested in the Surveyor General. The principal defects in this procedure were that the Act did not require the claimants of a grant to present their claims within any specified time, nor did it require the surveying of a grant once it had been filed for investigation, in order to determine its true boundaries. Also, it shifted the burden of proof to the claimants, rather than forcing the United States to contest their claims. These claims presented intricate fact issues and complicated questions of law concerning authority to issue a valid grant and the procedure to be followed in acquiring a concession under the Spanish and Mexican land systems, which the Surveyor Generals—most of whom were not legally trained—were ill equipped to solve. As a result of this unsatisfactory system, it was impossible to determine which lands were subject to appropriation. Therefore, development of the Southwest was greatly retarded.[18]

William Pelham was appointed as the first Surveyor General of New Mexico by President Franklin Pierce on August 1, 1854, and arrived for duty at Santa Fe, New Mexico on December 28, 1854. He promptly requested Governor David Meriwether to turn over the portion of the New Mexico archives relating to 197 land grants. His next step was to issue an order on February 1855, directing the inhabitants of New Mexico to file their claims for investigation under the provision of the Act of July 22, 1854. At first, the owners of private land claims were reluctant to file their title documents, but later Pelham and his successors struggled against a flood of land claims. Between 1854 and 1891 there were two hundred and forty-one land claims filed in the offices

18. 1876 REPORT OF THE COMMISSIONER OF GENERAL LAND OFFICE 27.

of the Surveyors General of Arizona,[19] Colorado,[20] and New Mexico. The sole claim[21] filed with the Surveyors General of Colorado was recommended for rejection, but no action was taken thereon by Congress. The Surveyors General of Arizona reported on fifteen[22] of the seventeen[23] claims filed in their offices. All, except two,[24] of the reported Arizona claims were recommended to Congress for confirmation, but no action was taken by Congress on the recommendations of the Surveyors General of Arizona. Most of these claims had been sold to the grantees under the Act of May 20, 1825.[25] The two Arizona grants which they recommended for rejection had been found spurious. In New Mexico, 200 private land claims and 21 pueblo claims were filed. Of these, 153 private land claims and 21 pueblo land claims had been examined and reported to Congress, and 47 were pending in the Surveyor General's office in 1891. Congress acted upon only 65 of the claims which had been referred to it for its "further pleasure." Between December 22, 1858, and January 28, 1879, Congress passed eight acts[26] which confirmed 18 pueblo claims[27] and 46 private claims. These 64 confirmed claims

19. Arizona was organized as a territory by the Act of Feb. 24, 1863, ch. 56, 12 Stat. 664, from the western part of the territory of New Mexico. This Act created a separate Surveyor General for Arizona. *Id.* § 2.
20. Colorado was organized as a territory on February 28, 1861, from parts of the territories of Utah, New Mexico, Kansas, and Nebraska. Act of Feb. 28, 1861, ch. 59, 12 Stat. 172 (1861). This act created a separate Surveyor General for Colorado. *Id.* § 17.
21. This was the Medano Spring and Zapato Grant. Two claims which are now wholly located in Colorado were filed in the office of the Surveyor General of New Mexico prior to the creation of the territory of Colorado. One (the Las Animas Grant) was confirmed before, and one (Rio Don Carlos or Nolan Grant) after the creation of Colorado. Several New Mexico grants (Tierra Amarillo, Sangre de Cristo, and Maxwell Grants) were located partially within Colorado but were handled solely by the Surveyor General of New Mexico. Records of the Bureau of Land Management, Santa Fe, New Mexico. (hereinafter cited as BLM Records, Santa Fe).
22. San Rafael de la Zanja, Buena Vista, Tumacacari and Calabazos, Rancho los Nogales de Elias, Rancho de Ortero, San Jose de Sonoita, San Ignacio de Babocomari, Tres Alamos, San Juan de las Boquilla y Nogales, San Rafael del Valle, Aribac, San Ignacio de Canoa, Sopori, Nicolas Martinez, and El Paso de los Algodones Grants. Records of the Bureau of Land Management, Phoenix, Arizona. (Hereinafter cited as BLM Records, Phoenix).
23. The two claims which were not reported on by the Surveyor Generals of Arizona were the Agua Prieta and San Pedro Grants. *Id.*
24. Sopori and El Paso de los Algodones Grants. *Id.*
25. REYNOLDS, SPANISH AND MEXICAN LAND LAWS 129 (1895).
26. Ch. 5, 11 Stat. 374 (1858); ch. 167, 12 Stat. 71 (1860); ch. 66, 12 Stat. 887 (1861); ch. 118, 14 Stat. 588 (1866); ch. 152, 15 Stat. 342 (1869); ch. 26, 15 Stat. 438 (1869); ch. 202, 16 Stat. 646 (1870); ch. 31, 20 Stat. 592 (1879).

cover approximately nine and one-half million acres of land located in New Mexico and Colorado. One private land claim was referred by Congress to the New Mexico Territorial Courts for adjudication.[28] Sixteen of the confirmed private land claims[29] were classified as town or community grants. The confirmation of pueblo and community grants resulted primarily from the instructions to the Surveyor General's office dated August 21, 1854,[30] which stated that the existence of a city, town or village at the time the United States took possession of New Mexico was to be considered as prima facie evidence of a grant to such town. At this time it generally

27. The claims of twelve pueblos, Jemes, Acoma, San Juan, Picuries, San Felipe, Pecos, Cochiti, Santo Domingo, Zia, Languna San Cristobal, and Zuni) were based upon alleged grants by Governor Domingo Jironza Petriz de Cruzate in 1689. Congress confirmed each of these claims, except those of Laguna, San Cristobal, and Zuni, on December 22, 1858. Although these grants were later found to be spurious, it is generally believed that had Congress been aware of this fact in 1858, it still would have confirmed them, but based their confirmation on the Cedula of June 4, 1687. Eight pueblos (Taos, Santa Clara, Nambe, Tesuque, San Ildefonso, Pojoaque, Isleta, and Santa Ana) had no grant papers. Their claims were based upon a tradition that they had each received a concession but had lost their grant papers. The claims were all confirmed by Congress. Only one confirmed pueblo grant (Sandia) was supported with grant papers now believed to be genuine. Two pueblo claims (San Cristobal and Zuni) were abandoned prior to 1848 and their lands regranted to others. The claimants of these did not press their claim. Although Zuni's claim was never passed upon, the pueblo received a reservation covering an area larger than that claimed under its grant. The Pueblo of Laguna's claim, notwithstanding the discovery that its title papers were spurious, was confirmed by the Court of Private Land Claims to the extent of four square leagues. Since these pueblo lands are under the supervision of the government, they are, in effect, little more than reservations, and thus usual legal concepts concerning private land claims are not applicable to them. BLM Records, Santa Fe.

28. The Jornada del Muerto Grant. It was rejected in United States v. Vigil 80 U.S. (13 Wall.) 449 (1871) on the ground the grantee had failed to perform the conditions upon which it had been made. This case is extremely important, for it marked a new trend in the adjudication of land grants in that it, in effect, reversed the "presumption of authorities" rule of United States v. Peralta, 60 U.S. (19 How.) 343 (1856), and strict proof of power in the granting authority to issue a concession was required notwithstanding local usage and custom.

29. These sixteen grants were: Town of Tome Grant, Town of Casa Colorado Grant, Town of Belen Grant, Town of Manzano Grant, Town of Torreon Grant, Town of Tajique Grant, Town of Anton Chico Grant, Town of Tecolote Grant, Town of Las Vegas Grant, Town of Chilili Grant, Town of Mora Grant, Town of Trampas Grant, Town of Chamita Grant, Town of San Isidoro Grant, Town of Tejon Grant and Town of Cañon de San Diego Grant. BLM Records, Santa Fe. An analysis of each of these grants shows that it is difficult to determine whether it is a private grant to the founding settlers covering only their individual allotment or is a community grant covering all the lands described in the concession. Most of these Town or Community grants probably would not have been confirmed if adjudicated by the Court of Private Land Claims or, if confirmed, would have been limited to the lands actually allotted and occupied by their inhabitants. For a more detailed discussion of the problems presented by these grants see 1 BOWDEN 251-54.

30. S. MISC. DOC. No. 12, 42d Cong., 2d Sess. 5 (1871).

was accepted[31] that Spanish and Mexican towns, *proprio vigore,* were entitled to four square leagues of land. Therefore, the examinations conducted by the Surveyor General inquired into the genuineness of the grant papers for the purpose of establishing the extent of the grant. Little, if any, attention was paid to the authority of the granting official to make the concession. The remaining thirty private land claims[32] were confirmed as a result of the government's liberal policy of presuming when the claim was supported with genuine title papers that the granting officer, by issuing the concession, had authority to make a valid grant. Since only a small portion of New Mexico had been surveyed prior to 1869 and the claims could not be officially surveyed prior to their confirmation, the Surveyors General in conducting their investigations could do little more than verify that the claim covered the lands described in the grant papers. In several instances the original grantee requested and received grants covering a parcel of land sufficient to plant a certain number of *fanegos* of corn but was placed in possession of a tract of land described as being bounded on each of its four sides by a specific natural object. However, the Surveyor General had no way of determining the location of these natural objects short of an actual survey. Also, little reliance could be placed upon the "guesstimations" offered by the old and illiterate witnesses, who were called by claimants to give testimony in support of their claims. Such witnesses all too frequently had no concept of area or distances. The Committee on Private Land Claims of the House of Representatives freely confessed[33] that it did not have time to

31. Welch v. Sullivan, 8 Cal. 165 (1857).

32. These thirty private land claims were: Preston Beck Grant, Tierra Amarilla Grant, Sangre de Cristo Grant, Brazito Grant, Los Trigos Grant, San Cristobal Grant, Nuestra Señora de la Luz Grant, John Scolly Grant, Agua Negra Grant, San Pedro Grant, Maxwell Grant, José Leandro Grant, Las Animas Grant, Cañon de Pecos Grant, Luis Maria Cabeza de Baca Grant, Sebastion Martin Grant, Laguna Purchases, Gaspar Ortiz Grant, Pedro Armendaris Grant No. 33, Pedro Armendaris Grant No. 34, Bosque del Apache Grant, Ramon Vigil Grant, Ortiz Mine Grant, Cañon del Agua Grant, Antonio Ortiz Grant, Ojo del Epsiritu Santo Grant, Antoine Leroux Grant, Mesita de Juana Lopez Grant, Rio Don Carlos Grant and Pablo Montoya Grant. BLM Records, Santa Fe. An analysis of these private land claims shows that many probably would not have been confirmed if presented to the Court of Private Land Claims because the granting official lacked authority to make a valid concession. For a more detailed discussion of this theory see 1 BOWDEN 255-58.

33. H. R. REP. No. 321, 35th Cong., 1st Sess. 1-2 (1860).

examine the claims fully and admitted its ignorance of the amount of land covered by most of them. Congress, upon discovering that the Las Animas and Rio Don Carlos grants covered immense tracts of land, limited their confirmation[34] to the legal maximum which was permitted under the Colonization Law of August 18, 1824;[35] but, for some unknown reason, it failed to impose this restriction upon the confirmation of any other Mexican grants.

Once conditions had stabilized in New Mexico following the end of the Civil War, the owner of a portion of the Sangre de Cristo Grant brought suit to eject a homesteader, John Tameling, from his land and, thereby, determine the effect of the confirmation of the grant. Tameling contended the act merely confirmed title to a "floating" grant of eleven square leagues to each of the grantees, which were to be located anywhere within the exterior boundaries of the tract described in the grant papers. The Supreme Court held[36] that the congressional confirmation was, in effect, a grant de novo to the full extent of the claim. Later a group of squatters and miners sought to have the patent to the 1,714,764.09-acre Maxwell Grant set aside on the ground that it was based upon a fraudulent survey. The Supreme Court held: (1) although the Colonization Law of August 18, 1824, limited the maximum amount of land which could be granted to 22 leagues, the Act of June 21, 1860, was a grant de novo of all the land embraced within the exterior boundaries described in the grant papers; (2) the government had not shown that the survey was incorrect in any essential particular; and (3) there was no evidence of fraud in connection with the procuring of the survey of the grant.[37]

34. Ch. 167, § 1, 12 Stat. 71 (1860) (The Las Animas grant was issued to Cornilio Vigil and Coran St. Vrain); ch. 202, § 1, 16 Stat. 646 (1870) (The Rio Don Carlos was issued to Gervacio Nolan).
35. A copy of this law is contained in REYNOLDS, SPANISH AND MEXICAN LAND LAWS 121 (1895).
36. Tameling v. United States Freehold & Emigration Co., 93 U.S. (3 Otto.) 644 (1877).
37. United States v. Maxwell Land Grant & Ry. Co., 121 U.S. 325 (1887). The government filed a petition for rehearing on the ground the Court had wrongly interpreted the case. After considering the petition, the Court refused. *Id.* at 122 U.S. 365 (1887). Notwithstanding the clean bill of health given the grant by the highest court in the land, this grant repeatedly has been pointed out as being the prime example of a fraudulent land grant and that fraud has been utilized in the extensive piracy of the public domain in New Mexico. For instance, Professor Harold H. Dunham has asserted

A review of the private land claims which had been confirmed by Congress shows that, while most were not "complete and perfect," they had been made under the "usages and customs" in existence at the time of their issuance, and therefore were equitable claims. Since all just claims were to be respected as though sovereignty had not changed and should not be subjected to stringent rules of construction, the United States was obligated to provide prompt and reasonable means for their adjudication. The shortcomings under the procedure established by the Act of July 22, 1854, were: (1) Congress' failure to act on the claims reported to it,[38] (2) the Surveyor General's lack of information concerning the location of the natural objects called for in the grants; and (3) an absence of control over surveying operations created by the contract system, which tended to promote the personal financial interests of the deputy surveyors at the expense of the public domain. In connection with shortcomings 2 and 3 mentioned above, experience had shown that the Surveyors General usually took the position that the government was not an actively interested party in a land

---

the Maxwell Grant possesses a record as "discreditable as any in American History." DUNHAM, GOVERNMENT HANDOUT 214 (1941). Gustavus Myers has made the following reckless statement:

> The frauds in the settlement of private land claims on alleged grants by Spain and New Mexico were colossal. Vast estates in California, New Mexico, Arizona, Colorado and other states were obtained by collusion with the government administrative officials and Congress. These were secured upon the strength of either forged documents purporting to be grants from the Spanish or Mexican authorities, or by means of fraudulent surveys.

MYERS, HISTORY OF GREAT AMERICAN FORTUNES 263 (1937). Continuing, he states:

> Beginning by about the year 1860, Congress was 'induced' to confirm one private land claim after another. The reports of a number of the Congressional Committees on Private Land Claims strongly suggest bribery, but no positive, specific proof appears. . . After the passage of these acts by Congress, the next step was to have a fraudulent survey of the alleged grants made by land office officials.

Id. at 651.

38. Surveyor General George W. Julian, who perhaps was the harshest critic of Spanish and Mexican land grants, recognized:

> This legislation would have proved wise and salutary if the Surveyors General had been first rate lawyers, incorruptible men, and diligent in their work, and if Congress had promptly acted upon the cases reported to it for final decision. But the reverse of all this has happened. Competent and fit men for so impartial a service would not accept it for the meager salary provided by law. . . . Their duties presupposed judicial training and an adequate knowledge of both Spanish and American law; but with one or two exceptions they were not lawyers at all. . . .

Julian, *Land Stealing in New Mexico*, 145 NORTH AM. REV. 2, 18 (1887).

grant investigation. With this attitude, the investigation almost invariably degenerated into an *ex parte* hearing, wherein the claimant was allowed and expected to establish the validity of his grant without any opposition or resistance from the government. The preliminary survey of each claim, which was made in order to segregate the lands covered thereby from the public domain, often were made hurriedly and in an unscientific manner which frequently resulted in greatly extending its true boundaries. Since the boundaries described in the grant papers were usually vague and indefinite, the Deputy Surveyor had to rely upon unauthenticated evidence gathered in the field; such evidence being generally obtained from the interested parties. Thus, whenever a mountain, a stream, or similar natural object was called for as a boundary, and if there were more than one in the area which would meet the description, the one which was furthest away would almost invariably be pointed out to the Deputy Surveyor as the one called for in the grant. The Deputy Surveyor, nominally an official of the government, was in fact an independent contractor. He was paid from the deposit made by the grant owner, and therefore, his sympathies were usually with the claimant. Since his fee was based on the number of miles of survey line run, his personal interests favored the extension of the boundaries of the grant whenever possible.[39] When the Deputy Surveyor returned his field notes and plat, the Surveyor General usually approved them blindly, since he had no way of checking the location of the natural objects called for in the grant papers. Once Congress had confirmed a grant and it was patented according to the preliminary survey, the patent could not be cancelled or set aside in the absence of a showing that it had been obtained through fraud or mistake. The Supreme Court held[40] that once the surveys had been approved by the Surveyor General and Land Department, it would not substitute its judgment for theirs. This decision highlights the astonishing fact that instead of endeavoring to meet its public land

39. 1876 REPORT OF THE COMMISSIONER OF GENERAL LAND OFFICE 26; 1 REPORT OF THE SECRETARY OF INTERIOR FOR THE FISCAL YEAR ENDING JUNE 30, 1887, at 21 (1887); Julian, *supra* note 35, at 19-20.

40. United States v. Maxwell Land Grant & Ry. Co., 121 U.S. 325 (1887).

problems, the federal government persistently chose to ignore them.

The acknowledged inability of the Surveyor General to adjudicate the validity or extent of the Southwestern private land claims effectively, coupled with the storm of criticism over the previous confirmation and patenting of the Maxwell, Sangre de Cristo, and Canon del Agua Grants, caused Congress to lose faith in the procedure and blocked all further action by Congress on pending claims after 1879. By the end of 1885, the Surveyor General of New Mexico had examined and reported upon 139 private land claims. Of these, only six,[41] were recommended for rejection.

The election of President Grover Cleveland in 1884 upset the rule of the Republican Party, which had been in power since before the Civil War. As a result of this long tenure, the Republican leaders in New Mexico, where were called the "Santa Fe Ring," controlled appointments, elections, and the Territorial legislature.[42] As a result of their abiilty and influence, the two principal leaders of the Santa Fe Ring, Tom B. Catron and Stephen B. Elkins, who were law partners, represented a great many claimants. Therefore, they were the recipients of much of the criticism out of which grew Cleveland's radical land reform movement.

It had been charged that the General Land Office, under previous administrations, had permitted the most desirable portions of the public domain to fall into the hands of speculators. Therefore, Cleveland appointed Lucius Q. C. Lamar, as Secretary of Interior, and William A. J. Sparks, as Commissioner of the General Land Office. One of Lamar's first acts was to instruct Sparks to correct the evils and recover as much of the fraudulently appropriated public lands as pos-

41. These six private land claims were: The Jornada del Muerto Grant (subsequently rejected by U.S.S.Ct., United States v. Vigil, 80 U.S. (13 Wall.) 449 (1872)), Town of Galisteo Grant (partially confirmed by Ct. Pvt. L. Cl.), Ojo del Apache Grant (rejected by Ct. Pvt. L. Cl.), San Cristoval Grant (claim abandoned), Bartolome Baca Grant (rejected by Ct. Pvt. L. Cl.), and Sebastion de Vargas Grant (partially confirmed by Ct. Pvt. L. Cl.). BLM Records, Santa Fe. In each instance, the Surveyor General's recommendation was based on either a lack of evidence that a valid grant had been made or a lack of authority in the granting official.

42. For a discussion on the Santa Fe Ring see LAMAR, THE FAR SOUTHWEST, 1846-1912, at 136-84 (1966).

sible.[43] George W. Julian was appointed by Cleveland to the position of Surveyor General of New Mexico in May, 1885; however, he was not confirmed by the Senate until February 28, 1887. Julian, according to his own account, proceeded to correct the "blunders and mistakes"[44] of his predecessors and strip the land grant claimants of their "ill gotten gains."[45] After charging that ninety percent of all land entries in the territory were fraudulent, he proceeded to re-examine many of the grants which had been recommended for confirmation during the previous thirty years. Based upon *ex parte* investigations of 35 grants,[46] he wrote supplemental reports in which he reached a conclusion contrary to that of his predecessor concerning the validity or extent of each of the claims in question. The unrest and reaction to the radical Democratic land reform movement finally forced Cleveland to ask for and receive Spark's resignation on November 15, 1887. Shortly thereafter, Lamar was elevated to the Supreme Court.

Meanwhile, Julian, not content with the mischief he had caused by his supplemental reports, published an inflamatory article in which he charged that the Surveyors General of New Mexico criminally had permitted the "wholesale plunder of the public domain."[47] After attacking a number of confirmed and unconfirmed grants, he recommended the institution of suit by the government to set aside the patents which he alleged had been procured by fraud and the speedy and final adjudication of the "pretended title" of the "land sharks" by the Commissioner of the General Land Office

43. CATE, LUCIUS Q. C. LAMAR 427 (1935).
44. Journal of George W. Julian, Oct. 11, 1885 (Mss., Julian Papers, Indiana State Library, Indianapolis, Ind.).
45. *Id.* Dec. 7, 1866.
46. These thirty five grants were: José Sutton Grant, Barnabe M. Montaño Grant, Cañada de los Apaches Grant, Nerio Antonio Montoya Grant, Town of Cieneguilla Grant, San Joaquin del Nacimiento Grant, San Clemente Grant, Luis de Armenta Grant, Estancia Grant, Cañon de Chama Grant, Sierra Mosca San Antonio del Rio Colorado Grant, Arroyo de San Lorenzo Grant, Cañada Ancha Grant, Gaspar Ortiz Grant, Town of Alameda Grant, Cañon del Rio Colorado Grant, Chaca Mesa Grant, Cañada de las Alamas Grant, Felipe Tafoya Grant, Agua Salada Grant, Petaca Grant, Ojo de la Cabra Grant, Town of Socorro Grant, Vallecito de Lovato Grant, Santa Teresa Grant, Juan Bautista Valdez Grant, Francisco de Anaya Almazan Grant, Antonio de Salazar Grant, Cañada de Cochiti Grant, Sebastian de Vargas Grant, Cañada de Santa Clara Grant, and Santo Tomas de Yturbide Grant. BLM Records, Santa Fe. For an analysis of each of these adverse reports see 1 BOWDEN 266-70.
47. Julian, *supra* note 35.

with a right of appeal to the Secretary of the Interior. Julian soon had the entire territory in an uproar and petitions soon started pouring into Washington, D. C. demanding his dismissal. The hostile *Santa Fe Daily New Mexican* recommended[48] he be appointed Ambassador to Tierra del Fuego. Antonio Joseph, the Democratic delegate to Congress, believed[49] that if Cleveland's land reform program was carried out, it would "prove ruinous" to New Mexico. Julian soon had a falling out with the Democratic Governor of New Mexico, Edmund G. Ross, when Julian accused Ross of joining the Santa Fe Ring. Thus, by the end of 1887, Julian had dashed all hope for the speedy solution of the Southwestern private land claims problem and threatened to jeopardize party harmony.

Since most Southwesterners were willing to accept a certain amount of fraud in order to "get things done," Cleveland was forced to adopt a more conservative approach to land reform. The appointment of William F. Vilas, as Lamar's successor, reflected Cleveland's recognition of the geographical realities of the Southwest and desire to play down land frauds. However, the reaction of his reform crusade caused his defeat in the election of 1888 and left Julian heartsick and potentially unemployed. The *Daily New Mexican,* jubilant over the results of the election stated: "Title-tortured New Mexico will soon be rid of a man who has done more than all others combined to cloud land titles and related the progress of our young commonwealth."[50] On August 6, 1889, the Santa Fe paper reported: "Everybody wore a smile this morning. The sky, the lawyers and every good citizen. And all on account of the news of Julian's removal."[51] On the other hand, Julian, in reflecting upon his achievements, wrote:

> I look back over my work here during the past four years with the most unqualified satisfaction. I can say truly that I have no fault to find with it. If what I have set on foot should be carried out it will

48. Daily New Mexican, March 12, 1889.
49. Letter from Antonio Joseph to William C. Whitney, March 10, 1885 (Mss., Whitney Papers, Library of Congress, Washington, D.C.).
50. Daily New Mexican, February 9, 1889.
51. *Id.* August 6, 1889.

> work out the regeneration of New Mexico. If not, the credit of having attempted it will be my sufficient honor and reward. My record as Surveyor General ought to be, and I believe it will be, historic. It is conspicuously and honorably in contrast with that of every one of my predecessors.[52]

THE COURT OF PRIVATE LAND CLAIMS

By 1889 the Indian and transportation problems, which had troubled the Southwest for centuries, had been solved and its population commenced growing at an accelerated rate. Since the unsolved private land claims problem was retarding development, all concerned recognized that the speedy and equitable settlement of the government's treaty obligations was desirable. Therefore, President Benjamin Harrison, in his Annual Message[53] for 1889 called attention to the need for additional legislation to adjudicate the validity of the Spanish and Mexican grants. By 1890, there were 116 New Mexico grants, 17 Arizona grants, and 1 Colorado grant covering a total area of 7,128,586.69 acres awaiting Congressional action.[54] Almost daily the General Land Office received letters bitterly complaining of the hardships resulting from this defective system. Local pressure coupled with presidential concern over the growing problem finally forced Congress to abandon its policy of neglect. The House of Representatives passed a bill which would create a commission similar to the one which had been established in California, to pass upon such claims, only to have it rejected by the Senate. The Senate, in turn, passed a bill which would authorize the claimants to file suit against the United States in the District Court of the territory in which the land was situated for adjudication of their titles. The House objected to this scheme. Since there was a stalemate in Congress, President Benjamin Harrison had no alternative but to break the deadlock. By a special message to Congress, dated July 1, 1890, he declared

52. Journal of George W. Julian, *supra* note 41, at Aug. 18, 1889. See also Williams, *George W. Julian and Land Reform in New Mexico, 1885-1889*, 41 AGRICULTURAL HISTORY 71 (1967).
53. 12 RICHARDSON, A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 5467, 5484 (1897). Henry J. Siever's failure to mention the land grant problem or the creation of the Court of Private Land Claims in his biography of President Harrison is disappointing. SIEVERS, BENJAMIN HARRISON, HOOSIER PRESIDENT (1968).
54. S. EXEC. DOC. NO. 170, 51st Cong., 1st Sess. 20-22 (1890).

that the United States owed a duty to Mexico to confirm all valid land grants which were protected by treaty, and expressed the hope that relief would be given immediately.[55] In response to the President's urgent plea, Congress passed an Act on March 3, 1891,[56] which created the Court of Private Land Claims. The act was approved by the President on the following day.

This act established a special five-man court for the adjustment of valid and perfect land claims located in all of the territory, except California, ceded to the United States by Mexico, which had not been previously adjudicated. Its life was originally limited to five years, but through necessity its term was extended from time to time to June 30, 1904. All petitions seeking the recognition of incomplete land claims which had not been filed by March 3, 1893, were to be forever barred. By confirming a grant, the United States merely quitclaimed its interest in the surface estate only, and such decision was not to be construed as conveying any interest in minerals or as adversely affecting the vested or conflicting rights of third parties. The court could not confirm an imperfect claim in excess of eleven square leagues of land. Appeals from the court's decisions were permitted directly to the United States Supreme Court. Upon the rendition of a final favorable decision in a case, it became the duty of the Commissioner of the General Land Office to have a survey made of the grant and returned to the court for approval. Once the survey was approved, the Commissioner was to issue a patent covering the confirmed area.

In May, 1891, President Harrison appointed Joseph R. Reed as Chief Justice; and Thomas C. Fuller, William M. Murray, Wilbur F. Stone and Henry C. Sluss as Associate Justices of the Court of Private Land Claims. Matthew G. Reynolds was appointed United States Attorney for the court. In ability and judicial experience, these men were well qualified for their duties.[57]

55. RICHARDSON, *supra* note 49, at 5510.
56. Act of March 3, 1891, ch. 539, 26 Stat. 854.
57. Stone, *Brief History of the Court of Private Land Claims*, 1904 NEW MEXICO BAR ASSOCIATION PROCEEDINGS 10-11.

In his second annual report[58] the United States Attorney, Matthew G. Reynolds, reported that up to October 15, 1892, forty cases had been filed in the court and eight cases[59] had been tried. The plaintiffs won seven of these cases and a rehearing in the eighth. The government appealed two of the cases and was successful in one.

The Attorney General, in his annual report[60] for 1893, reported that by November 6, 1893 a total of 281 cases had been filed, but the large increase in this number of cases should not be taken as indicating a proportionate increase in the number of serious cases before the court, since many had been filed shortly before the deadline to protect some possible rights, but probably would not be brought to trial. Reynolds noted[61] that the total number of cases would probably be reduced by about 31 when suits covering the same grants were consolidated. He reported that out of 25 cases tried in 1893, the Court of Private Land Claims rejected only six.[62] In regard to the 19 grants[63] confirmed by the

58. 1892 ATT'Y GEN. ANN. REP. 3-5.
59. These eight cases involved the Town of Cubero Grant (aff'd United States v. Chaves, 159, U.S. 452 (1895)), Barnabe Montaño Grant, Albuquerque Grant, (Reversed by U.S.S.Ct. on ground Spanish city not entitled to four square leagues by operation of law, United States v. City of Albuquerque, 171 U.S. 685 (1898)), Rancho del Rio Grande Grant, Socorro Grant, Francisco Montes Vigil Grant, Cristobal de la Serna Grant, and El Paso de los Algodones Grant (originally rejected by Ct. Pvt. L. Cl. on ground title papers forged). On rehearing, the grant was approved. On appeal, Ct. Pvt. L. Cl. was reversed on ground Sonora had no power to make a valid sale unless approved by national government, United States v. Coe., 174 U.S. 578 (1899). BLM Records, Santa Fe and Phoenix.
60. 1893 ATT'Y GEN. ANN. REP. IX.
61. *Id.* at 4-5.
62. The court rejected (a) The San Antonio del Rio Colorado Grant, *appeal dismissed mem.* Montoya v. United States, 18 S. Ct. 944, 42 L. Ed. 1213 (1897); (b) The Jose Duran Grant, *appeal dismissed mem.* Irvine v. United States, 19 S. Ct. 877, 43 L. Ed. 1179 (1898); (c) The Rancho de Santisima Trinidad Grant, *appeal dismissed mem.* Sandoval v. United States, 18 S. Ct. 946, 42 L. Ed. 1210 (1897); (d) The San Antonito Grant, *appeal aff'd* Crespin v. United States, 168 U.S. 208 (1897); (e) Pueblos of Zia, Santa Ana, and Jemez Grant, *appeal aff'd* Pueblos of Zia, Santa Ana, and Jemez v. United States, 168 U.S. 198 (1898); (f) Canon de San Diego Grant, *appeal aff'd* Chaves v. United States, 165 U.S. 177 (1897). The San Antonio del Rio Colorado and San Antonito Grants were rejected on the ground a Prefect had no authority to issue a valid grant. The Jose Duran Grant was rejected since it had not been proven that the conditions of occupation and settlement had been performed. The Rancho de la Santisima Trinidad Grant was rejected on the ground that plaintiff had failed to connect himself with the original grantee. The Pueblo of Zia, Santa Ana and Jemez Grant was rejected on the ground it was a mere license, which terminated when the United States acquired New Mexico. The Canon de San Diego Grant was rejected on the ground the court had no jurisdiction over lands previously confirmed. BLM Records, Santa Fe.
63. These nineteen confirmed grants were: Arroyo Hondo Grant, Sebastian de Vargas Grant, Godoy Grant, Town of Alameda Grant, Cañada de los

Court of Private Land Claims in 1893, Reynolds pointed out that they were "earlier cases," and were of a better character. He acknowledged that their title papers had been produced and proven genuine, and that they were supported with continuous possession. Continuing, he stated:

> The trial of the New Mexico cases has not been rapid, as the rush necessitated our going slow, for many of the claims conflict as to boundaries, and in a great many there are adverse claimants and possessors, who, under the law, are necessary parties to the suits.
>
> The plaintiffs have been adverse to allege conflicts and adverse claims and possessions, thus forcing upon me the duty of investigating and showing the same in order that all necessary grants might be in court and the Government given their aid in defeating the claimants, as was contemplated and intended by the law.
>
> . . . .
>
> The Cases are now fairly well in hand and are being investigated as rapidly as the interest of the Government will permit, bearing in mind that the investigation of the mutilated and badly arranged archives and the running down of the history of each (which in most instances is necessarily gathered promiscuously) must be slowly done to be done well.
>
> . . .
>
> . . . .
>
> I am not disposed to flood the Supreme Court with appeals in cases where the equities in favor of plaintiffs are very strong, although in some instances doubting the soundness of the judgment of the court on disputed facts.[64]

Reynolds' report[65] for the year 1894 shows that between November 6, 1893, and September 30, 1894, the Court had

Apaches Grant, Gijosa Grant, Pacheco Grant, Cristobal de la Serna Grant, Pueblo of San Marcos Grant, Nuestra Señora del Rosario Grant, Piedra Lumbre Grant, Luis Jaramillo Grant, Town of Jacona Grant, Caja del Rio Grant, Polvadera Grant, Domingo Valdez Grant, Luis Marquiz Grant, Nicolas Duran de Chaves Grant, and El Paso de los Algondones Grant (Rev'd on ground Sonora had no power to make valid sale without approval of national government, United States v. Coe, 174 U.S. 578 (1899)). BLM Records, Santa Fe and Phoenix.

64. 1893 ATT'Y GEN. ANN. REP. 4-5.
65. 1894 ATT'Y GEN. ANN. REP. 5.

confirmed, either wholly or partially, 30 grants.[66] The Supreme Court reviewed only five of these decisions.[67] It reversed the Court of Private Land Claims in each instance. The reversal of the Court of Private Land Claims' decision in the San Miguel del Vado Grant was one of the most important and far reaching decisions of the Supreme Court regarding Southwestern Spanish and Mexican land grants. During this same period, the Court of Private Land Claims rejected 19 grants.[68] Six cases[69] were dismissed by the plain-

66. These thirty grants were: Plaza Colorado Grant, San Miguel del Vado Grant (Rev'd on ground town grants limited to land occupied under individual allotments, United States v. Sandoval, 167 U.S. 278 (1897)), Plaza Blanca Grant, Elena Gallegos Grant, Town of Abiqui Grant, Bartolome Fernandez Grant, City of Santa Fé Grant (Rev'd on ground Spanish towns not entitled to four square leagues by operation of law, United States v. Santa Fé, 165 U.S. 675 (1897)), Juan de Gabaldon Grant, Ojo Caliente Grant, Talaya Hill Grant, Juan José Lobato Grant, Cañada de Santa Clara Grant, Miera and Padilla Grant, Town of Atrisco Grant, Cañon de Carnue Grant, Los Cerrillos Grant, Sitio de los Cerrillos Grant, Sitio de Junan Lopez Grant, Cañon de Chama Grant (Rev'd on ground that confirmation of similar grant by Congress does not authorize Ct. Pvt. L. Cl. to confirm grant which does not fall in its jurisdiction, Rio Arriba Land and Cattle Co. v. United States, 167 U.S. 298 (1897)), Galisteo Grant, Bartolome Baca Grant (Rev'd on ground it was an imperfect grant, Bergere v. United States, 168 U.S. 66 (1897)), Black Mesa Grant, Antonio Abeita Grant, Pajarito Grant, Majada Grant, Ojo del Borrego Grant, Ojo de San Jose Grant, Cañada de Cochiti Grant (Rev'd on ground where description is ambiguous and there are two natural objects which could be the one described in grant papers, the one which limits size of grant is to control, Whitney v. United States, 167 U.S. 529 (1897)), Santa Barbara Grant, and Cevilleta Grant. BLM Records, Santa Fe.

67. See *Id.*

68. Joaquin Mestas Grant (rejected—plaintiff failed to connect himself to original gantee), Gervacio Nolan Grant (rejected—a previous confirmation satisfied claim), Arroyo de San Lorenzo Grant (rejected for lack of authority in granting official. Aff'd on ground Ct. Pvt. L. Cl. had no authority to confirm equitable claim, Hayes v. United States, 170 U.S. 637 (1898)), Corpus Christi Grant (rejected—title papers forged), Bosque Grande Grant (rejected—deed connecting plaintiff to original grantee was spurious. This grant was approved in a subsequent case), Arroyo de los Chamisos Grant (rejected—located within a confirmed grant), Cañada de San Francisco Grant (rejected—a prefect lacks authority to make grant), Juan Cayetaño Grant (rejected—located within a confirmed grant), Antonio Dominguez Grant (rejected—located within a confirmed grant), Roque Lobato Grant (rejected—forged deed), Rio del Picuris Grant (rejected—Territorial Deputation lacks authority to make grant), Lo de Padilla Grant (rejected—grant covered different land than that claimed), Rancho de Ysleta Grant (rejected—located in area ceded by Texas), Rito de los Frijoles Grant (rejected—claim merely a license), Peralta Grant (rejected—certified copy by J.P. not sufficient evidence of grant), San José de Sonoita Grant (rejected—lack of authority in granting officer. Grant partially confirmed for amount of land bought by original grantee, Ely's Adm'r. v. United States, 171 U.S. 220 (1898)), Ignacio de Babocomari Grant (rejected—lack of authority in granting officer. Grant partially confirmed for amount of land bought by original grantee, Perrin v. United States, 171 U.S. 292 (1898)), San Rafael del Valle Grant (rejected—state officials lacked authority to make grant. Grant confirmed because Act of August 4, 1824 gave revenue from sales to states, Camou v. United States, 171 U.S. 277 (1898)), and Los Nogales de Elias Grant (rejected—since grant was one of quantity and no land covered thereby was located in the United

tiffs. The area claimed under grants finally disposed of during this period covered 2,573,005 acres, of which 261,250 acres, or approximately ten percent, were confirmed. Reynolds also pointed out that a number of the surveys which had been returned to the court under the tenth section of the Act of March 3, 1891[70] were:

> flagrant violations of the terms of the decree.... As these surveys must be approved in open court, leaving the United States an opportunity to object thereto, I will be compelled to file objection on behalf of the Government and try the question of the correctness of said surveys.[71]

Thus began one of the most important and fruitful functions of the government's attorney.

Reynolds' next report[72] shows that the period between November 3, 1894 and June 30, 1895 was occupied primarily with the preparation and trial of the Peralta-Reavis case.[73] As a result of the experience obtained from the extensive examination in this case, he stated that he was satisfied that no fraudulent grant could get through without being exposed. His schedule of the cases tried shows that four additional grants[74] had been confirmed, partially or totally. Four other grants were rejected.[75] Four cases were dismissed upon the motion of their plaintiffs.[76]

States. Aff'd Ainsa v. United States, 161 U.S. 208 (1896)). BLM Records, Santa Fe and Phoenix.

69. These were (a) a companion case concerning the Canon de Chama Grant, (b) the Rancho de los Comanches Grant, (c) the Rancho de Corrales Grant, (d) the Rancho de Gallina Grant, (e) the Rancho El Rito Grant, and (f) the Rancho de Abequiu Grant, BLM Records, Santa Fe. These grants obviously were filed merely to protect a possible claim from being barred by the statute of limitation.
70. 26 Stat. 858-59 (1891).
71. 1894 ATT'Y GEN. ANN. REP. 5.
72. 1895 ATT'Y GEN. ANN. REP. 55-57.
73. Peralta—Reavis v. United States, No. 110 (Ct. Pvt. L. Cl. 1895), BLM Records, Santa Fe.
74. These four cases involved the Ignacio Chaves, Felipe Tafoya, Antonio Baca and San Mateo Spring Grants. BLM Records, Santa Fe.
75. The four rejected grants were: Gotera Grant (rejected—Territorial Deputation lacked authority to make grant), Peralta Grant (rejected—on grounds of fraud), John Heath Grant (rejected—Ayuntamiento lacked authority to make grant. Aff'd, Cessna v. United States, 169 U.S. 165 (1898)), and Tumacacori, Calabozos and Huebabi Grant (rejected—Departmental Treasurer acting alone lacked authority to make grant. Aff'd Faxon v. United States, 171 U.S. 244 (1898)). BLM Records, Santa Fe and Phoenix.
76. These four cases involved the following grants: Santiago Bone Grant, San Acacio Grant, Rancho del Rio Arriba Grant, and Rancho los Rincones Grant. BLM Records, Santa Fe.

The following year was a slow one, and only 14 cases were tried by the court. Seven grants[77] were confirmed and seven[78] were rejected. Only three, the Dona Ana Bend Colony, San Ignacio de la Canoa, and Cuyamungue grants, were confirmed for the total amount of land claimed. Reynolds, in his report dated September 15, 1896, stated:

> Since my last report the number of cases disposed of has not been as great as I had anticipated, but the result of the work done upon those remaining on the docket will enable the work to be rapidly completed, provided the claimants can be forced to trial. During the last term of court, which has just adjourned, sixty-five cases were on the trial docket, and after preparing them all, a large number of them were compelled to be continued under a ruling of the court construing the sixth section of the act, which required that a copy of the petition, together with citation, be served upon any adverse possessor or claimant of the property for which confirmation of title is sought. . . Some delay in the early part of the year was occasioned by the court expecting that the Supreme Court would advance some of the cases from this Territory, and by waiting for the same a large number of appeals could be avoided and the work very much more rapidly done. However, the business of the office is in very good shape, and these delays have not delayed the office in the preparation of the cases, and, so far as the preparation for trial

77. The seven confirmed grants were: Doña Ana Colony Grant, San Clemente Grant, Alamitos Grant, Petaca Grant (Rev'd on ground confirmation should be limited to individual allotments, United States v. Peña, 175 U.S. 500 (1899)) Cebolla Grant (rev'd on ground that concession was a mere license which terminated upon cession of territory to United States, United States v. Elder, 177 U.S. 104 (1900)), Cayamungue Grant (rev'd on ground that land within grant previously confirmed by Congress should have been excepted even though previously confirmed grant was void, United States v. Conway, 175 U.S. 60 (1899), and San Ignacio de la Canoa Grant (Rev'd on ground confirmation should have been limited to amount of land sold by former sovereign, United States v. Maish, 171 U.S. 242 (1898)). BLM Records, Santa Fe and Phoenix.

78. The seven rejected grants were: Nario Antonio Montoya Grant (rejected—Territorial Deputation lacked authority to make grant. Aff'd, Chavez v. United States, 175 U.S. 52 (1899)), Baird's Ranch Grant (rejected—no evidence of grant), Town of Cieneguilla Grant (rejected—no evidence of grant), Barranca Grant (rejected grant had been revoked by former sovereign), Nuestra Señora de los Dolores Mine (rejected—Judge lacked authority to grant minerals, San Bernardino Grant (rejected originally because not recorded in Mexican Archives as required by Gadsden Treaty. On rehearing in 1900, Plaintiff introduced index from Archives listing grant and Ct. Pvt. L. Cl. confirmed a small portion lying within the United States), and Sopori Grant (rejected—fraudulent). BLM Records, Santa Fe and Phoenix.

of cases is concerned, this office is very much ahead of the other work of the court.[79]

Reynolds, in his annual report[80] for 1897, was pleased to report that between September 5, 1896, and October 5, 1897, considerable progress had been made in disposing of the cases yet remaining on the docket. He pointed out that 57 cases involving 48 different grants had been tried. Eighteen of these grants[81] were confirmed, either wholly or partially, and the balance[82] were rejected. Twenty of the grants were

79. 1896 ATT'Y GEN. ANN. REP. 25-27.
80. 1897 ATT'Y GEN. ANN. REP. 10-15.
81. These eighteen grants were: Lo de Padilla Grant (this suit filed after the rejection of a different claim to the same land), Manual and Santiago Montoya Grant, Sierra Mosca Grant (rev'd, United States v. Ortiz, 176 U.S. 422 (1900), on ground plaintiff had failed to tender proof of existence, regularity and archival record of the grant. He also failed to connect himself with grantee.) Antonio Gutierrez Grant (aff'd on grounds long and uninterrupted possession raises a presumption that formal instrument or record of title once existed, United States v. Chaves, 175 U.S. 509 (1899)), Joaquin Sedillo Grant, Rio Tesuque Grant (rejected in 1898 on rehearing), José Garcia Grant (rejected in 1898 on rehearing), Ranchito Grant, Town of Bernallillo Grant, Angostura Grant, Santiago Ramirez Grant, San José del Encinal Grant (rev'd on ground that confirmation of a grant located within a previously confirmed grant was forbidden under the Court of Private Land Claims Act, United States v. Baca, 184 U.S. 653 (1902)), Salvador Gonzales Grant, San Antonio de las Huertas Grant, Pueblo of Laguna Grant, Don Fernando de Taos Grant, Francisco de Anaya Grant, and Bartolome Sanchez Grant. BLM Records, Santa Fe.
82. The thirty rejected grants were: Ojo del Apache Grant (rejected—Alcalde lacked authority to make grant. Aff'd, Hays v. United States, 175 U.S. 248 (1899)), Ojo del Cabra Grant (rejected—Territorial Deputation lacked authority to make grant), Cañon del Rio Colorado (rejected—Prefect lacked authority to make grant), Orejas del Llano de las Aguages Grant (rejected —Governor lacked authority to make grant in 1826), Cañada de las Mestenas Grant (rejected—Alcalde lacked authority to make grant), Bernal Spring Grant (rejected—Insufficient documentation), Town of Bernallillo Grant (rejected—on motion to dismiss (hereinafter abbreviated M.T.D.), grant confirmed in companion case), José Trijillo Grant (rejected —on M.T.D. Conflicted with confirmed grant), Arroyo Seco Grant (rejected on M.T.D. Description to vague to locate), Ojito de Galisteo Grant (rejected—on M.T.D. Grant papers forged), Guadalupita Grant (rejected —on M.T.D. Grant made by Alcalde), Town of Real de Dolores Grant (rejected—located within confirmed grant. Aff'd, Town of Real de Dolores del Oro v. United States, 175 U.S. 71 (1899)), Rancho del Rio Puerco Grant rejected on M.T.D. Fanciful claim), Rancho de Las Truchas Grant (rejected—for failure to prosecute (hereinafter abbreviated F.T.P.) Grant located within confirmed grant), Rancho Grant (rejected—on M.T.D. Fanciful claim), The Rancho Grant (rejected—on M.T.D. Fanciful claim), Arroyo Hondo Grant (rejected—on M.T.D. Grant by Ayuntamiento and was an allotment under another grant), Tacubaya Grant (rejected for F.T.P. Grant by Ayuntamiento and located in confirmed grant), Nasa Grant (rejected—on M.T.D. Grant by Commander of Presidio), Paraje del Panche Grant (rejected—on M.T.D. Insufficient documentation), Rio del Oso Grant (rejected—on M.T.D. Insufficient documentation), Mesita Blanca Grant (rejected—on M.T.D. Grant by Ayuntamiento), Luis Garcia Grant (rejected—On M.T.D. Companion case to confirmed Town of Bernallillo Grant), Francisco Garcia Grant (rejected—on M.T.D. Companion case to confirmed Town of Albuquerque Grant), Hacienda del Alamo Grant (rejected—F.T.P. Insufficient documentation. Based on recitals in other grants), Ojito de las Medanos Grant (rejected—no evidence of delivery or legal possession), Rancho El Rito Grant (rejected—description too vague to

rejected at the plaintiff's request or as a result of his failure to appear and prosecute. No Arizona case was tried, since the remaining claims were all controlled by decisions on appeal to the Supreme Court. Notwithstanding this concerted effort, there were still many important cases to be tried. There were 85 cases covering 75 grants to be tried in the New Mexico district and 7 cases covering 7 grants to be adjudicated in the Arizona district. In addition to the trial of the cases, the court had to make a careful investigation of each survey made under Section 10 of the Act of March 3, 1891, in order to hold them to the limitations imposed by the confirmation decree. Reynolds noted that the hearings conducted in connection with the approval of the survey often required more time than that taken for the original trial of the case.

On October 6, 1898, Reynolds reported[83] that during the previous year 56 cases covering 51 grants located in New Mexico and Colorado had been tried. Of these, 3 were confirmed[84] and 48 were rejected.[85] Forty-one of the rejected

locate), Callecito de San Antonio Grant (rejected—F.T.P. Claim based on a *hijuela* and located within confirmed grant), and Town of Vallecito de Lobato Grant (rejected—Governor lacked authority to make grant in February, 1824. Aff'd Peabdy v. United States, 175 U.S. 546 (1899)). BLM Records, Santa Fe.

83. 1898 ATT'Y GEN. ANN. REP. 10-19.

84. The three confirmed grants were: Santo Domingo and San Felipe Grant, Juan Bautista, Valdez Grant, and Santa Rose de Cubera Grant. BLM Records, Santa Fe.

85. The rejected grants were: Las Animas (rejected—it previously had been confirmed partially by Congress. Aff'd, Las Animas Land Grant Co. v. United States, 179 U.S. 201 (1900)), Pino Grant (rejected —F.T.P. Was an allotment under Pueblo of Quemado Grant), Salvador Lobato Grant (rejected—F.T.P. Insufficient documentation), Antonio Armijo Grant (rejected—F.T.P. In Santa Fe Grant), Archuleta and Gonzales Grant (rejected—F.T.P. In Santa Fe Grant), Chupaderos de la Lagunita Grant (rejected—Alcalde lacked authority to make grant), José Antonio Lucero Grant (rejected—F.T.P. In Santa Fé Grant), Catarino Maese Grant (rejected—F.T.P. In Santa Fé Grant), Juan Felipe Rodriguez Grant (rejected—for F.T.P. In Santa Fé Grant), José Romulo de Vera Grant (rejected—F.T.P. In Santa Fé Grant, Juan José Archuleta Grant (rejected —F.T.P. In Santa Fé Grant), Juan Antonio Flores Grant (rejected—F.T.P. In Santa Fé Grant), Guadalupe Miranda Grant (rejected—F.T.P. Grant had not been approved by Governor and Director and Secretary to Topographical Corps as required by law), Arquito Grant (rejected—either void because made by Alcalde or was merely an allotment), Ancon Colorado Grant (rejected—F.T.P. located in Canon de San Diego Grant), Sanjuijuela Grant (rejected—located in Las Vegas Grant), Pueblo of Quemado Grant (rejected—F.T.P. Insufficient documantation), Pueblo of Cochiti Pasture Grant and Juana Baca Grant (rejected—plaintiff failed to amend to sever two claims. First was a mere license and second had insufficient documentation), Embudo Grant (rejected—certified copy of grant papers was insufficient documentation), José Ignaco Martin Grant (rejected—on M.T.D. Companion to suit for Arroyo Hondo Grant, Felipe Medina Grant (re-

grants were dismissed at the plaintiff's request, or as a result of his failure to appear and prosecute his claim. The Court did not hold a term of court in Arizona during this period. However, Reynolds noted that this was due to the fact that the four cases on appeal had not been decided until May, 1898, and they had "done much to clear up the law."[86] The case involving the Jose Garcia Grant, which was rejected in toto by the Court of Private Land Claims, was described by Reynolds as involving a "most important principle."[87] The grant was supported by recitals in grants adjacent to the grant of Jose Garcia. The Court held that

> the claimants must prove not only that their predecessors in interest had a grant, but also the character of the grant; that until this is done the court cannot know whether it is of the class of titles cognizable under the Act of March 3, 1891, and that until such proof is furnished a confirmation cannot be secured.[88]

He was especially pleased that the court finally had recognized that its jurisdiction was limited, and that until the claimants, by full legal proof, brought themselves within its jurisdictional limits, there could be no confirmation. In other words, the court had no power to presume a grant, and the claimants must prove they have a grant, and that the character of the grant is such as falls with in the court's jurisdiction. Continuing, he stated:

---

jected—on M.T.D. Companion to suit for Arroyo Hondo Grant), Manuel Fernandez Grant (rejected—on M.T.D. Companion to suit for Arroyo Hondo Grant), Santa Cruz Grant (repected—F.T.P. Insufficient documentation), Felipe Tafoya Grant (rejected—F.T.P. In Santa Fé Grant), Manuel Tenorio Grant (rejected—F.T.P. In Santa Fé Grant), Diego Arias de Quiros Grant (rejected—F.T.P. In Santa Fé Grant), Alfonso Rael de Aguilar Grant (rejected—F.T.P. In Santa Fé Grant), Felipe Pacheco Grant (rejected—F.T.P. In Santa Fé Grant), Badito Grant (rejected—made by Alcalde), Santa Fé Cañon Grant (rejected— F.T.P. Insufficient documentation), Alamo Grant (rejected—F.T.P. Insufficient documentation), Rancho El Rito Grant (rejected—F.T.P. Insufficient documentation), Ocate Grant (rejected—F.T.P. Genuineness of papers questionable), Cristoval Crespin Grant (rejected—F.T.P. In Bartolome Sanchez Grant), Alfonso Rael de Aguilar Grant (rejected—F.T.P. In Pueblo of Pojoaque Grant), Antonio de Salazar Grant (rejected—F.T.P. In Pueblo of Pojoaque Grant), Las Manuelitas Grant (rejected—F.T.P. Grant by Departmental Assembly), Rancho de Cayote Grant (rejected—F.T.P. Insufficient documentation), and Manuel Garcia de las Ribas Grant (rejected—F.T.P. Grant revoked by prior sovereign). BLM Records, Santa Fe.

86. 1898 ATT'Y GEN. ANN. REP. 12.

87. *Id.* at 11.

88. *Id.*

> In most of these appeals, however, the cases were remanded for further proceedings by the Court of Private Land Claims, and it is believed that there will be very serious controversies of fact between the parties of these further hearings. The result is that the Arizona docket must practically be tried *de novo,* the only issues eliminated being those of law settled by the decisions.[89]

During the next year (Oct. 5, 1898—Oct. 5, 1899) the Court tried 20 cases involving 18 grants.[90] Nine were wholly or partially confirmed,[91] and an equal number were rejected.[92] Reynolds reported that there were only 19 cases involving 13 grants remaining on the court's docket for trial. He noted that as the number of cases remaining to be tried declined, an increasing portion of his time was involved in trying cases on appeals and holding hearings in connection with the approval of surveys. He considered the latter to be one of his most important duties and was proud of the fact that, as a result of his careful scrutiny, the accuracy of the surveys had improved to the point that he was not required to protest the approval of any survey filed between October 5, 1898—October 5, 1899.

The court's docket was increased slightly between October 5, 1899 and October 5, 1900 as a result of several cases being remanded by the Supreme Court and the filing of two

89. *Id.* at 12-13.
90. *See* 1899 ATT'Y GEN. ANN. REP. 63-69.
91. These nine confirmed grants were: Santo Tomas de Iturbide Grant, José Manuel Sanchez Baca Grant, Don Fernando de Taos Grant, Refugio Colony Grant, Mesilla Colony Grant, Santa Cruz Grant, San Rafael del Valle Grand (confirmed following remand, Camou v. United States, 171 U.S. 277 (1898). Aff'd on second appeal, *Id.* at 184 U.S. 572 (1901)), San Ignacio de la Canoa Grant (confirmed following remand, United States v. Maish, 171 U.S. 242 (1898)), and San Juan de las Boquillas y Nogales Grant. BLM Records, Santa Fe and Phoenix.
92. The nine rejected grants were: Tres Alamos Grant (rejected—conditions not performed prior to change of sovereignty), Town of Socorro Grant (rejected—title papers forged and lack of authority of Mexican governor to validate Spanish Grant), Reyes Pacheco Grant (rejected—Presidial Commander lacked authority to make grant and no record in Archives as required by Gadsden Treaty), José Sutton Grant (rejected—conditions not performed prior to change of sovereignty), Estancia Grant (rejected—Governor lacked authority to make gratuitous grant after 1837), Aff'd, Whitney v. United States, 181 U.S. 104 (1901)), Nuestra Señora de Guadalupe Mine Grant (rejected—Alcalde lacked authority to make mining grants), Lo de Bosquez Grant (rejected—F.T.P. Grant revoked prior to change of sovereignty), Diego de Belasco Grant (rejected—F.T.P. No evidence legal possession delivered.), and Santo Toribio Grant (rejected—on M.T.D. In Ojo de San José Grant). BLM Records, Santa Fe and Phoenix.

cases seeking money judgments due to the federal government's having disposed of land within perfect grants.[93] During the period the court tried 30 cases involving 25 grants. Of these, nine were confirmed in whole or in part,[94] and 16 were rejected.[95] Reynolds happily reported that there were only five cases remaining on the court's docket awaiting a preliminary trial. In regard to the claim which had been filed by the owners of the Juan Jose Lobato Grant under Section 14 of the Act of March 3, 1891, seeking money judgments, the Court of Private Land Claims awarded them $2,320.91; however, the decision was reversed by the Supreme Court on the ground that the plaintiffs, by waiting four years after the confirmation of the grant to bring this suit, were barred from recovering a money judgment for the lands within the grant which had been disposed of by the government.[96]

93. 1900 ATT'Y GEN. ANN. REP. 59-65.
94. The nine confirmed grants were: Petaca (following remand, United States v. Pena, 175 U.S. 500 (1899), with directions to limit to allotted lands), Cuyamangue Grant (following remand, United States v. Conway, 175 U.S. 60 (1899), with instruction to except lands previously confirmed), Santa Teresa Grant (aff'd, United States v. Pendell, 185 U.S. 189 (1902)), Joaquin Mestas Grant, San Bernardino Grant, San Rafael de la Zanja Grant (aff'd, United States v .Green, 185 U.S. 256 (1902)), Ignacio del Babocomari Grant (following remand, Perrin v. United States, 171 U.S. 292 (1898), with directions to allow plaintiff to identify boundaries), Buena Vista Grant, and San José de Sonoita Grant (following remand, Ainsa v. United States, 161 U.S. 208 (1895), with directions to allow plaintiff to identify boundaries). BLM Records, Santa Fe and Phoenix.
95. The sixteen rejected grants were: Sierra Mosca Grant (remanded United States v. Ortiz, 176 U.S. 422 (1900), with instructions to reject the claim due to insufficient documentation), Town of Cebolla Grant (rejected on mandate from S. Ct. which held endorsement by governor directing Prefect to investigate and place applicant in possession amounted to a mere license, United States v. Elder, 177 U.S. 104 (1900)), Conejos Grant (rejected—Prefect lacked authority to make grant and conditions not performed), San José del Encinal Grant (Ct. Pvt. L. Cl. held grant valid but rejected it because it las located in confirmed grant. On appeal S.Ct. remanded with directions to dismiss, stating once the court discovered it had no jurisdiction it was prohibited to pass on claim, United States v. Baca, 184 U.S. 653 (1902)), San Pablo y Nacimiento Grant (rejected—community grant but no allotments made), San Joaquin del Nacimiento Grant (rejected—denounced by Spain prior to change of sovereignty), Pueblo de Quemado Grant (rejected—F.T.P. Insufficient documentation), Bishop's Ranch Grant (rejected—on M.T.D. was an allotment under Rio Tesuque Grant), José Ignasio Alari Grant (rejected—F.T.P. Located in Ojo Caliente Grant), Roque Jacinto Jaramillo Grant (rejected—located in Juan Jose Lobato Grant), Bartolome Trujillo Grant (rejected in Juan Jose Lobato Grant), Juan José Moreno Grant (rejected—located in Caja del Rio Grant), Joséde Leyba Grant (rejected—imperfect grant and filed after deadline. Aff'd, Sena v. United States, 189 U.S. 233 (1903)), Agua Prieta Grant rejected—land bought and paid for by grantee located in Mexico. Aff'd, Ainsa v. United States, 184 U.S. 639 (1902)), Aribac Grant (rejected—impossible to locate. Aff'd, Arivaca Land and Cattle Co. v. United States, 184 U.S. 649 (1902)), and San Pedro Grant (rejected—land bought and paid for by grantee located in Mexico. Aff'd Reloj Cattle Co. v. United States, 184 U.S. 624 (1902)).
96. United States v. Martinez, 184 U.S. 441 (1902).

It was during the period October 5, 1900 to October 1, 1901 that the court cleared its docket of cases for preliminary trial.[97] During this period the eight cases involving seven remaining grants were either tried or dismissed. Of these, four[98] were either wholly or partially confirmed, and three[99] were rejected. Since many of the claims were still pending on appeal to the Supreme Court and many surveys had not been completed, Reynolds was confident that the life of the court would be extended beyond June 30, 1902.

On October 1, 1902, Reynolds reported[100] that during the previous year new suits had been filed, seeking the confirmation of claims alleged to be perfect, and thus exempt from the two-year limitation imposed by Section 12 of the Act of March 3, 1891. Two other suits were instituted, seeking money judgments for land within confirmed grants which previously had been sold by the United States.[101] One grant[102] was rejected, the money judgment in connection with the Juan Jose Lobato Grant was dismissed upon mandate from the Supreme Court, and the suit for a money judgment in connection with the Sebastian de Vargas Grant was disallowed.[103]

In his annual report[104] for 1903, Reynolds showed that three grants[105] had been rejected. He also stated that a large portion of the unfinished business pending before the court had been disposed of and considerable progress had been made toward winding up the business remaining on the court's docket. In conclusion, he wrote:

97. 1901 ATT'Y GEN. ANN. REP. 59-63.
98. These grants were: San Miguel del Vado Grant, Cañon de Chama Grant, Refugio Colony Grant, and Santo Domingo de Cundiyo Grant. BLM Records, Santa Fe.
99. These grants were: Town of Albuquerque Grant, (subsequently confirmed by Act of Feb. 18, 1901, ch. 380, 31 Stat. 796), Francisco Xavier Romero Grant (rejected—F.T.P. Insufficient documentation. Was an allotment in Santa Cruz Grant), and Vertientes de Navajo Grant (rejected—Insufficient documentation and located in Town of Cebolleta Grant). BLM Records, Santa Fe.
100. 1902 ATT'Y GEN. ANN. REP. 14-17.
101. *Id.*
102. The Joaquin Mestas Grant. (Rejected on hearing when plaintiff failed to make numerous parties occupying the land parties defendant).
103. This claim was rejected because plaintiff failed to make patentees parties defendant.
104. 1903 ATT'Y GEN. ANN. REP. 32-34.
105. These grants were: Juan José Sanchez Grant (rejected—Commissioner of Emigration lacked authority to make grant to individual), Romulo Barela Grant (rejected—Commissioner of Emigration lacked authority to make grant to individual), and Rancho de la Santisima Trinidad Grant (rejected —F.T.P.) Act of possession forged). BLM Record, Santa Fe.

> [I] beg to say that the work of this office is up to date, and that every effort consistent with the interest of the Government will be made by this office to facilitate and hasten a final disposition of the remaining business now pending before the court.[106]

In his final report[107] dated June 30, 1904, Reynolds was happy to report that after more than thirteen years of toil the Court of Private Land Claims finally had disposed of all litigation and business that had been brought before it. During the existence of the court title to 35,491,020 acres covering 250 grants had been adjudicated in 289 cases. The court confirmed title to 2,051,526 acres and rejected the balance. Only one money judgment for $512.62 had been paid by the government under Section 13 of the Act of March 3, 1891. Continuing he stated:

> Serious contentions and feuds between settlers and claimants over the possession of these lands were encountered by me immediately upon taking charge of the litigation, and lasted until final decrees were entered. The peaceful conditions since and the prosperity of New Mexico and Arizona as this tribunal passes out are sufficiently important and gratifying to be noted.[108]

In closing, Reynolds praised the individual members of his staff, upon whom he had relied and had trusted at all times, and none of whom were ever found unworthy or negligent of the trust and confidence reposed in them. To each, he accorded a measure of the credit for settling "land titles in the territory acquired from Mexico in 1848 and 1853."[109]

In settling of the Southwestern private land claims problem, the Court of Private Land Claims passed upon a variety of different types of claims. Most of the grants were based upon an *expediente* found in the proper archives, or the *testimonio* given to the original grantee.[110]

---

106. 1903 ATT'Y GEN. ANN. REP. 33.
107. 1904 ATT'Y GEN. ANN. REP. 95-109.
108. *Id.* at 97-98.
109. *Id.* at 98.
110. An *expediente* was the original copy of all the proceedings in connection with the issuance of a grant and ordinarily was retained in the Archives of the granting authority. A *testimonio* was a second copy of such proceedings which was delivered to the grantee for his protection.

These papers show that the general procedure for securing a grant consisted of the following steps:

(a) The submission of a petition to the Governor of New Mexico, either directly or indirectly, describing a tract of vacant land.

(b) An order by the Governor directing the Alcalde, under whose jurisdiction the land was located, to investigate and report on the merits of the petition.

(c) The giving of proper notice by the Alcalde to the adjoining land owners of his intention to conduct an on the ground examination of the requested land.

(d) A written report by the Alcalde to the Governor.

(e) The granting or rejection of the petition by the Governor.

(f) The formal placing of the grantee in possession of the concession.

(g) Report of the Alcalde to the Governor on the proceedings pertaining to the delivery of possession.

(h) Approval by the New Mexican Assembly.

(i) Report by the grantee on the performance of the conditions of settlement and use of the grant.

(j) Issuance of final grant papers.

A few of the claims were founded on presumed grants based on long possession of the land. The Act of March 3, 1891, recognized two classes of grants. The first were perfect and complete grants,[111] and the seceond were incomplete grants.[112] Suits seeking the confirmation of incomplete grants had to be filed for adjudication by March 3, 1893, and could not be confirmed for more than eleven square leagues.[113] However, the court had no equity jurisdiction, and all claims, in order to be confirmed, had to be based upon "a title lawfully and regularly derived from the Government of Spain

111. Act of March 3, 1891, ch. 539, § 8, 26 Stat. 857.
112. *Id.* § 6, at 856.
113. *Id.* §§ 12-13, at 859-60.

or Mexico, or from any of the States of the Republic of Mexico."[114] The Act defined this provision as meaning that, if the grant was not complete and perfect at the time the United States acquired the territory, the claimant would have to have had a lawful right to make it perfect had the sovereignty not changed. Therefore, the court was greatly restricted in the type of claims which it could confirm. Several grants which were similar to ones confirmed by Congress were rejected. The court also rejected many grants on the ground that the granting officials had no authority to issue a valid concession, even though they had been made under the "usage and customs" prevailing at the time of their issuance, and their claimants had strong equities. Grants made by authorities other than the governer were consistently rejected by the Court. It also held that grants after 1837 were imperfect unless approved by the Departmental Assembly or the Supreme Executive. Cases held that grants of public land by Alcaldes,[115] Prefects,[116] Ayuntamientos[117] and the Departmental or Territorial Assembly[118] are void.[119] Such grants frequently were made in good faith by

114. *Id.* § 13(1), at 860.

115. Although there were at least six distinct alcalde offices in New Mexico (alcalde mayor, alcalde ordinaris, tiniente alcalde, alcalde constitutional, alcalde de barrio, and alcalde de agua), only two—alcalde mayor and alcalde constitutional—had authority to investigate application for grants and deliver possession of land. Perhaps, a tiniente alcalde could perform these functions when the alcalde mayor was disqualified or unable to act. Prior to 1812, New Mexico was divided into eight subordinate districts known as *alcaldias*, each of which was administered by an alcalde mayor. Taos, Santa Cruz de Cañada, Santa Fe, Alameda, Albuquerque, Jemez, Belen and El Paso del Norte were the seats of these *alcaldias*. Bloom, *New Mexico Under the Mexican Administration*, 1 OLD SANTA FE 44-45 (1913). Towns within such districts, which were not the residence of the alcalde mayor, were under the jurisdiction of a tiniente alcalde. Recopilacion de leyes de Indias, Lib. v. titl. 1, ley 1 (1843). The Spanish Constitution of 1812 replaced the alcalde mayor with an alcalde constitutional. Herein, unless otherwise indicated, the term "alcalde" refers to an alcalde mayor or alcalde constitutional, depending on the date. For a detailed discussion of the duties of an alcalde mayor, see SIMMONS, SPANISH GOVERNMENT IN NEW MEXICO 159-192 (1968).

116. In 1844, New Mexico was divided into three districts or prefecturas, each under the jurisdiction of a prefect. BANCROFT, HISTORY OF ARIZONA AND NEW MEXICO 311 (1889).

117. In New Mexico, only El Paso del Norte, Albuquerque, Santa Fe, Santa Cruz de Cañada and Taos had ayunamientos. *Id.*

118. After the enactment of the Constitution of 1824, New Mexico had a limited legislature of executive council or from four to six members. It was known as the Provincial or Territorial Deputation up to 1837, Junta Departmental between 1837 and 1844, and Assemblia until the United States conquered the area. *Id.*

119. It had been shown that: (1) Neither an Alcalde nor Prefect had authority to make a valid grant (United States v. Pena, 175 U.S. 500 (1899)); (2)

officials who assumed they had authority which they did not possess.[120] This arose chiefly from the frequent changes in the constitution and legislation of the central government[121] and the great distances of the frontier provinces and territories from the seat of goverment.[122] Thus, a governor might exercise his functions for months, or even a year, before he learned of a change in his authority.[123] Under such conditions, many grants that had been made perhaps a century before the establishment of the court and had existed without their titles being disputed by the Spanish or Mexican governments or the local citizens and which, in strict equity, were entitled to be held good, had to be rejected by the court under the limiting provisions of Section 13(1)[124] of the Act of March 3, 1891, which required proof of strict legal authority in the granting power and a rigid compliance with law in the form and manner of its execution. Otherwise, the claim would be held to be a mere license which expired when the United States acquired jurisdiction over the area.[125]

The Departmental Assembly and Territorial Deputation had no power to make land grants (Shavez v. United States, 175 U.S. 552 (1899)); and (3) An Ayuntamiento could not make grants outside the limits of the town grant (Cessna v. United States, 169 U.S. 165 (1898)); and (4) The Board of Sales had no power to sell public land after 1836 without the approval of the general government of Mexico (United States v. Coe, 174 U.S. 578 (1899)).

120. The classic example of this was the Heath Grant (Cessna v. United States, 169 U.S. 165 (1898)). Even though the granting officer may not have had authority to make a valid concession, or if there was not sufficient evidence to establish the issuance of a grant, forty years' continuous adverse possession of a tract would raise a presumption that a valid concession had been issued. However, Section 13(1) of the Act of March 3, 1891 would limit its confirmation to 11 square leagues. Huning v. United States, No. 15 (Ct. Pvt. L. Cl. 1892), BLM Records, Santa Fe. The Supreme Court subsequently reduced the period necessary to raise such a presumption from 40 to 20 years. Chaves v. United States, 159 U.S. 452 (1895). In Hays v. United States, 175 U.S. 248 (1899), the Supreme Court held that 6 or 7 years' adverse possession would not raise such a presumption.

121. One of the greatest difficulties the court encountered was determining whether a particular Spanish or Mexican land law was applicable in the Southwest at a given time.

122. Laws had to be "promulgated" in the Territory of New Mexico before they would become effective. However, in the absence of proof to the contrary, a "legal presumption" arose, after a reasonable time following its issuance, that a law had been promulgated. Hayes v. United States, 170 U.S. 637 (1898).

123. The Spanish Intendant of Sonora retained his office and authority under the Mexican government until 1824. Ely's Adm'r. v. United States, 171 U.S. 220 (1898).

124. 26 Stat. 860 (1891).

125. Gwyn v. United States, No. 209 (Ct. Pvt. L .Cl. 1897), BLM Records, Santa Fe.

In Arizona, the only provision made for disposing of public land was by sale at public auction by the Board of Sales.

Valid mineral grants in the Southwest could be made only by the local Mineral Deputation under the Royal Ordinance of 1783. The Act of March 3, 1891 expressly excepted certain hard minerals from any confirmation unless the minerals had expressly been granted.[126]

The court strictly construed the Acts under which grants had been made. A majority of the recognized grants were made under the following laws:

(a) Pueblo grants under the Cedula of June 4, 1687.

(b) Spanish grants under the Cedulas of October 15, 1754 and January 4, 1813.

(c) Colonization grants under the Iturbide Colonization Law of January 4, 1823.

(d) Colonization grants under the Colonization Law of August 18, 1824, and the Regulations of November 21, 1828.

(e) Sales in Sonora and Sinaloa by the Board of Sales under the Law of March 20, 1825.

(f) Colonization grants under the Colonization Law of January 15, 1849 and Regulations of May 22, 1851.

Since many of the Spanish and Mexican laws affecting Southwestern private land claims were not readily available, Reynolds, to assist the bench and bar, published a compilation of such laws in 1895.[127] The strict construction of such laws resulted in the rejection of many grants which probably would have been recognized by Mexico had sovereignty not changed, or by Congress if presented prior to 1860.

As a general rule, the court had little trouble in determining whether the grant was valid or invalid. The common impression that many of the Mexican grants had been forged was proven to be incorrect. Only eleven Southwestern grants were found to be, or seriously suspected of being, spurious.[128]

126. § 13(3), 26 Stat. 860 (1891).
127. REYNOLDS, *supra* note 22.
128. These were: (1) the Peralta Grant, (2) thee Una del Gato Grant, (3) the Sopori Grant, (4) the Oreja del Llano de los Aguages Grant, (5) The Sierra Mosca Grant, (6) the Corpus Christi Grant, (7) The Pueblo of San Cristoval Grant, (8) the Medano Springs and Zapato Grant, (9) The Ojita de Galisteo Grant, (10) The El Pas de los Algodones Grant, and (11) the

Perhaps the most important phase of the court's work was the approval of surveys made under Section 10 of the Act of March 3, 1891. Questions concerning the location of the boundaries called for in the grant papers gave the court some of its most dificult problems. A survey of all confirmed grants was required under Section 10 of the Act to be made at the expense of the government, and upon completion was to be returned to the court for its approval. Where boundaries were designated by natural objects, such as a standing rock, a red hill, a saguaro, a cottonwood, or a mesita, and the area was studded with similar objects, it was difficult to determine which was the true landmark. Thus, as Stone[129] puts it:

> [I]n the unparalleled climate and under the generous sun of the Rocky Mountains, not only does vegetation thrive and grow to enormous size by irrigation, but the land grants themselves grow immensely—without irrigation.

Old ruins, Indian pueblos, picturesque rock etched with crosses or ancient heiroglyphics, and other natural objects were examined by the court. On one occasion, while sitting in Tucson, the entire court, with a party of about forty persons, went by special train some seventy miles to examine a disputed landmark near the international boundary and enjoyed a judicial picnic in mid-winter in summer garb beside an immense spring of cool water under the shade of evergreen live oaks.

Careful examinations were conducted in the field by Reynolds' office to insure that the boundaries of the grants as confirmed by the court's decree were not "stretched." This phase of Reynolds' work undoubtedly saved a great deal of land for the public domain. In his final report, Reynolds stated:

> The dangers lurking in unknown areas of land to be determined by the identification of boundaries was impressed upon the Department, and after numerous

Pueblo of Laguan Grant. The findings in connection with the Pueblo of Laguan casts doubts on the genuineness of the twelve other "Cruzate Pueblo Grants."

129. STONE, A BRIEF HISTORY OF THE COURT OF PRIVATE LAND CLAIMS 20 (1903).

> requests and reports made from time to time, the Attorney General recommended and Congress appropriated sufficient money with which to enable this office to investigate each grant and protect the Government against extravagant claims. The amount of land claimed in each of the suits filed was very often excessive; and it appears from the claims made that fully one-half or more of the total area of New Mexico was apparently clouded by these titles.[130]

One of the most interesting facets of the court's business was the historic romance which surrounded these claims. The documentary evidence was often supplemented with oral testimony by witnesses relating to occupation, Indian hostilities, and heirship. Many of these witnesses were from 75 to 100 years old, and testified to the occurrence of events related to them when mere children by their aged grandparents. They often told of the exploits of their ancestors—the conquerors and re-conquerors of New Mexico; dangerous marches northward on the *Camino Real* across the dreaded Jornada del Muerto—over drifting sand, through prickly cactus and chaparrel, under a blazing sun, to the cool pine-clad mountains and fertile valleys of the Rio Arriba; the founding of frontier settlements and the accompanying harsh frontier life in crude adobe and jacal dwellings; and the hand-to-mouth living, with frequent drouths and loss of stock to hostile Indians. Such stories were always told in order to bolster, in some way or another, a particular grant. However, in these long overlooked case files lie the foundations of the history of the Southwest. Many of the most important cases took many months to prepare for trial—especially on the part of the government. Archives had to be searched and testimony gathered from such far away places as Mexico City, Guadalajara, Chihuahua and Hermosillo in Mexico, and Madrid and Seville in Spain. In securing such evidence, one of the justices of the court had to go along in order to have it properly authenticated.

Occasionally the courtroom would be enlivened by a delegation of pueblo Indians. The delegation usually was headed by the governor of the tribe, who, although attired in

130. 1904 ATT'Y GEN. ANN. REP. 97.

his humble native costume, had fierce pride, which could not help but draw respect from all who witnessed the proceedings. The grave and imperturbable bow which the governor gave the judges in recognition of their equality with himself was enough to evoke a smile from even the most calloused observer. On one occasion, when asked for the patent to his pueblo's land, the governor rose up, and after much fumbling, produced the precious document from the hidden recesses of a back pocket in his shirt tail, and, in his aboriginal innocence, could not understand why the audience laughed so boisterously.

The court proceedings in an important case often were graced with the attendance of famous members of the bar from such far away places as New York, Chicago, Cleveland, St. Louis, Washington, D.C. and Mexico City. Their eloquent forensic arguments frequently held the audience spellbound. The trial of the Peralta case, for instance, lasted a month, and was argued by six famous lawyers for nine days.[131]

Many of the large grants which were not wholly rejected by the court were cut down in area, either by the restrictions of Section 13(7) of the Act of March 3, 1891,[132] the eleven-league limitation of the Colonization Law of August 18, 1824,[133] or as a result of the grant being found to cover less land than claimed. An example of the latter is the Canon de Chama Grant, which had been sold to an English cattle company as containing over 200,000 acres, but determined by the court[134] to cover only 1,500 acres in a narrow canyon.

When official term of the Court of Private Land Claims finally expired on June 30, 1904, the United States could, for the first time in half a century, relax, for it had adjudicated title to all the Spanish and Mexican land grants in the Southwest and ostensively had fulfilled its treaty obligations respecting the recognition of such claims.[135]

131. Peralta Reavis v. United States, No. 110 (Ct. Pvt. L. Cl. 1895), BLM Records, Santa Fe.
132. 26 Stat. 860-61 (1891).
133. REYNOLDS, *supra* note 22, at 121.
134. Rio Arriba Land and Cattle Company v. United States, No. 107 (Ct. Pvt. L. Cl. 1894), BLM Records, Santa Fe.
135. For general discussions of Private Land Claims in the Southwest, see: 2 TWITCHELL, LEADING FACTS OF NEW MEXICAN HISTORY 451-472 (1912); 1 COAN, A HISTORY OF NEW MEXICO 474-483 (1925); 1 ANDERSON, HISTORY OF

COLLATERAL PROBLEMS

Although the Court of Private Land Claims solved most of the Southwestern land grant controversies, a number of collateral problems have arisen since 1904. The first of these problems grew out of the encroachment of the white man upon the pueblo grants. These grants, which covered some of the choicest lands in New Mexico, had attracted many non-Indians who, from time-to-time, had induced the pueblo Indians to sell or relinquish parts of their communal "inheritance." From the time Mexico gained its independence from Spain in 1821, it generally was conceded that the pueblo Indians were citizens and could dispose of their lands.[136] However, the United States Supreme Court, in a case[137] involving the sale of liquor on pueblo land, held that the pueblo Indians had come into the United States in a condition of tutelage and had remained in that condition. This decision caused great surprise to the New Mexican courts and lawyers and challenged approximately 4,500 non-Indian titles located within the boundaries of the pueblo grants. Since the statute of limitations would not help the numerous innocent purchasers who for many years had held and improved such lands and appurtenant water rights, Congress, on June 7, 1924, passed the Pueblo Lands Act[138] which provided for the establishment of a procedure under which these equitable claims could be recognized and the Indians fairly compensated for the extinguishment of their rights. Section 4[139] provided that non-Indian claimants, in order to sustain their claims, must show either (a) continuous adverse possession under color of title since January 6, 1902, supported by payment of taxes on the land or (b) continuous adverse possession since March 16, 1889, supported by payment of taxes but without color of title. Unsuccessful claimants were

NEW MEXICO 170-209 (1907); Paulus, Problem of the Private Land Grant of New Mexico, 1933 (unpublished thesis, University of Pittsburgh); Harris, Arizona Land Grants, 1961 (unpublished thesis, San Diego State College); and Espinosa, *New Mexico Land Grants*, THE STATE BAR OF NEW MEXICO, 1962 JOURNAL 3-13 (1962).

136. United States v. Lucero, 1 N.M. 422 (1869); United States v. Joseph, 94 U.S. 614 (1876).

137. United States v. Sandoval, 213 U.S. 28 (1913).

138. Act of June 7, 1924, ch. 331, 43 Stat. 636.

139. *Id.* § 4, at 637.

compenated for the improvements made by them in good faith.[140]

The board created by this Act began operations at Santa Fe, New Mexico in 1925 and struggled with the problem for the next thirteen years. Hearings were held at each of the twenty New Mexican pueblos. The Indians' title to more than 3,600 tracts covering a total area in excess of 120,000 acres was extinguished. Appeals from the actions of the board were heard de novo by the Federal District of New Mexico. Very few of the district court's decisions were appealed and most of those involved technical questions as to whether or not taxes had been paid by the claimant in a manner which would satisfy the requirements of the Act.[141] After the non-Indian owners of all rejected claims had been paid for their improvements, the special attorney for the pueblos proceeded with the tedious task of ejecting them from the pueblo lands. Since 1938 there have been few controversies involving the pueblo lands which are managed by the government on the same basis as the other American Indian tribes.

Since about ninety-five percent of the public domain had been acquired from the American Indians under all sorts of agreements, it was only natural that a great number of controversies would arise between the United States and its Indian wards, who were denied free and equal access to the courts. The Indian Claims Commission was created[142] by Congress on August 13, 1946, to adjudicate all possible Indian grievances against the Indians' guardian. The American Indians filed 852 separate claims under this act. A large portion of these were claims in which the Indians sought a total of approximately ten billion dollars as compensation for the taking of their alleged lands, which covered about seventy percent of the United States.

One of the Commission's five areas of jurisdiction was the adjudication of "claims based upon fair and honorable

140. *See* 47 Stat. 96 (1932).
141. United States v. Wooten, 40 F.2d 882 (1930); Pueblo de Taos v. Gusdorf, 50 F.2d 721 (1931); and United States v. Algodones Land Company, 52 F.2d 359 (1931).
142. Act of Aug. 13, 1946, ch. 959, 60 Stat. 1049 (codified at 25 U.S.C. §§ 70-70w (1970)).

dealings that are not recognized by any existing rule of law or equity."[143] This section permits the Indians to present for adjudication their damage claims for the taking of their aboriginal or Indian titles. Such titles were based upon their exclusive possession, occupancy, and use of such lands from time immemorial even though they previouly had not been recognized by either Spain, Mexico, or the United States. Many of the Southwestern tribes have filed extensive claims under this section. Several of the pueblo tribes have obtained decisions holding that the government took or permitted the taking of the lands covered by their spacious aboriginal titles.[144]

As might be expected, the liberal awards made by the Indian Claims Commission prompted the other principal minority group in the Southwest—the Latin Americans—to agitate for the redress of their grievances, both real and imaginary. They pointed out that a majority of the Latin Americans in North Central New Mexico and Southern Colorado were illiterate, unfamiliar with the technicalities of American law, and had an ethnical background similar to that of the Pueblo Indians. Continuing, they allege that, although the United States was obligated, under the terms of the Treaty of Guadalupe Hidalgo, to protect their property rights, it had permitted them to be stripped of their land and reduced them to a condition of extreme poverty. They contend[145] that their plight had been caused by:

(1) Congress having placed such rigorous requirements in the Court of Private Land Claims Act[146] that at least two-

143. *Id.* § 70a(5).

144. Pueblos of Zia, Jemez, and Santa Ana v. United States, 165 Ct. Cl. 501 (1964); Pueblo of Laguna v. United States, 17 Ind. Cl. Comm. 615 (1967); and Pueblo of Acoma v. United States, 18 Ind. Cl. Comm. 154 (1967). However, the Pueblos of Cochiti and Isleta unsuccessfully sought damages on the grounds that the Court of Private Land Claims had approved title to Mexican grants within their aboriginal lands, and, therefore, the government had failed to protect their interests. The Court of Claims held that since the conflicting Mexican Grants were privately owned before the signing of the Treaty of Guadalupe Hidalgo the United States could not have "permitted their taking" or "failed to protect the Indians' rights." Pueblo of Isleta v. United States, 152 Ct. Cl. 866 (1961). In the same decision the Court of Claims held that the Indians were bound by the decisions of the Pueblo Lands Board and were fully protected in the proceedings before that body.

145. Knowlton, *Causes of Land Loss Among the Spanish Americans in Northern New Mexico*, 1 ROCKY MOUNTAIN SOCIAL SCIENCE JOURNAL 201-211 (1966).

146. Act of March 3, 1891, ch. 539, 26 Stat. 854. It generally is recognized that the Court of Private Land Claims did an excellent job of adjudicating title

thirds of all Spanish and Mexican land claims in the Southwest were rejected on the pretext of imperfect titles.

(2) Court findings that grants which the Latin Americans believed to be community grants were individual grants.[147]

(3) Failure to protect them from the sharp practices of lawyers and ranchers.

(4) Permitting the sale of the *ejidos* by the trustees of the community grants.

(5) Subjecting their lands to unfamiliar property law such as: recordation statutes, probate laws, laws on descent and distribution, and ad valorem taxation.

(6) Permitting their traditional grazing lands to be placed in national forests and other reserves which were subsequently closed to their use.

(7) Restriction of their lands by applying strictly American survey rules and concepts.

Since the Latin Americans were primarily sedentary in their ways and sheep raising was the mainstay of their economy, they tended to withdraw from the Anglo-American culture. They were relatively isolated and independent as long as they were permitted the free and unrestricted use of their

to the Southwestern Spanish and Mexican Land Grants notwithstanding the strict jurisdictional limitations imposed upon it by the act. The legislative history of the act and the decisions interpreting it, clearly show that these limitations were imposed only upon the confirmation of grants which were not complete and perfect at the time of the United States acquiring the territory from Mexico.

147. There were three basic types of land grants made in connection with the settlement of New Mexico. The first and most important was the community grant which was issued in connection with the formation of a new town. Provisions were made in the grant for (1) the establishment of a plaza and setting aside sites for a church and other government buildings, (2) the allotment of individual house and farm lots to the inhabitants and (3) the designation of the balance of the grant as *ejidos* or common pasture lands. The second was the granting of lands to an individual in response to his petition for grant for the purpose of forming a new settlement. The third was a grant to an individual which gradually developed into a settlement. Land lawyers and the courts frequently disagree as to whether the second of the above types was an individual or community grant. Also, Congress, and the Court of Private Land Claims, in confirming the second and third types of grants, have been inconsistent. Sometimes they were confirmed as community grants and other times as individual grants. The result, to a considerable degree depended on how the petition for confirmation was worded. A classic example of this problem is the Tierra Amarilla Grant.

traditional land areas. However, as legal title to their lands was stripped from them by one or more of the methods mentioned above and fenced by innocent purchasers, they tended to sink deeper into poverty and become increasingly hostile towards such "foreign intruders". This feeling of frustration prompted the Latin Americans to form militant societies such as the *Mano Negro* and *Alianza* to seek redress for their grievances. These societies often resorted to violence in an effort to force the Anglos who had acquired interests in the grants to leave, and thereby restore the free use of their traditional pastures. They also hoped to obtain enough publicity about their problem to pressure Congress into passing an act creating a forum in which they could seek the restoration of or restitution for the approximately thirty-three million acres of land or seventy percent of their total "inheritance" which allegedly had been lost as a result of the Government's breach of its duty to protect their rights.[148]

More recently, serious title and conveyancing problems have arisen in connection with the community grants as a result of changing economic and social conditions in the Southwest. For years the local custom was for the father to give a small plot of land to each of his children. During the intervening seven or eight generations, the *suertes* or allotments of the original grantees frequently were subdivided into a large number of long narrow slivers of land, some measuring only a few *varas* in width. So long as the families were stable and land values were low there was little need to incur the expense of complying with the expensive procedure of perfecting land titles. However, as the grants began to develop commercially and land values rose, the more affluent Latin Americans became interested in selling their lands.

In an effort to relieve these hardships, Governor Bruce King has caused a land study to be made. This study[149] identi-

148. GARDNER, GRITO 63, 115 (1970). This reasoning probably would be unexceptable to the vast majority of the citizens of New Mexico of Mexican descent who have worked diligently over the years to improve their lot and, therefore, would be unwilling to relegate themselves to the tutelage position occupied by the Pueblo Indians.

149. WHITE, KOCH, KELLY & MCCARTHY, LAND TITLE STUDY 211 (1971). This study is very comprehensive and discusses a number of alternative ways of solving these problems. However, one alternative not mentioned is for the Property Appraisal Dept. to abstract and survey each tract for tax roll

fies the following as problems in connection with lands located within community grants:

1. Lack of marketable title due to the failure of landowners and their predecessors to record title documents and pay ad valorem taxes.

2. Lack of marketable title due to the failure of landowners and their predecessors to probate estates.

3. High cost of obtaining a survey which is necessary to properly identify a landowner's property.

4. High cost of obtaining abstracts and curing title by quiet title proceedings which are necessary to perfect marketable title.

The report showed that in many instances the cost of an abstract, a survey, and a quiet title proceeding to cure title defects—all of which are necessary to convey marketable title or obtain a loan—exceeded the fair market value of the property. To solve these problems, it recommended the passage of legislation to establish a title clearance program. Under this program a network of primary monuments would be established within the grant by the United States and/or New Mexico to reduce surveying costs. Legal Aid Offices would be established to quiet land titles and educate landowners in connection with the necessities of recording their deeds, probating estates, and paying ad valorem taxes. The Legal Aid attorney could reduce materially abstract costs by utilizing base abstracts and/or personally checking county records.

Changes were recommended in: (a) the Quiet Title Statutes to make quiet title decrees conclusive, (b) the statutes of limitation to provide a legal foundation for possessory rights; and (c) the recordation statutes in order that the county clerks might reject improperly prepared title documents. Finally, a Land Title Clearance Commission would be formed to oversee and coordinate efforts to achieve the goals of the program. This study shows that the complete settle-

purposes. Once such a project was completed these records could be used for conveyancing purposes. This procedure was adopted in El Paso County, Texas in connection with the Spanish and Mexican Grants in that area.

ment of Southwestern land title problem is neither an anachronism nor an impossibiliy.

CONCLUSION

Defective land titles have been a curse and plague in the Southwest ever since the United States acquired the area from Mexico. As shown in this article, efforts by the federal and state governments to meet the needs of the Southwestern Latin Americans have lagged far behind the rapidly changing social conditions. It is universally recognized in the United States that everyone is entitled to justice under the law. Vice President Spiro Agnew in an address to the Texas Bar Association on July 7, 1972, was "very much in favor of providing legal services to the poor" and that the "inability to afford counsel should not and must not affect one's right to justice." Continuing, Agnew stated that the Nixon Administration was "committed to furthering economic opportunity and guaranteeing justice for all."[150]

One should recognize the special relationship between the poor uneducated Latin American of the rural areas of the Southwest and his small plot of land. The strange property laws imposed upon him by his government should not deprive him of his most prized possession—the land he and his ancestors have possessed since a time when "the memory of man runneth not"—without fair compensation, and even more so, since almost any land—even that which just "holds the world together"—has some value. So the question now involved is: Why should these depressed people be forced into a position where the cost of perfecting their titles exceed its fair market value? Such a land system is equitably wrong. Roscoe Pound in discussing this type of problem[151] noted:

> When the community is divided and diversified, and groups and classes and interests, understanding each other none too well, have conflicting ideas of justice, the task is extremely difficult. . . .
>
> . . . .

150. Address by Spiro Agnew, Vice President of the United States, Texas Bar Association Convention, Houston, Texas, July 7, 1972.
151. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 35 F.R.D. 273, 276 (1964).

> . . . But too much of the current dissatisfaction has a just origin in our judicial organization and procedure. The causes that lie here must be heeded. Our administration of justice is not decadent. It is simply behind the times.[152]

Thus, it would appear that the time now has arrived to take the final steps necessary to clear up the few remaining problems in connection with our historic Spanish and Mexican land grants in the Southwest. However, there is a serious question as to whether the necessary legal services should be provided the poor by the federal and state governments or by the State Bar. Many lawyers feel that the legal services provided by government tend to destroy the traditional attorney-client relationship. To preserve such relationship, those lawyers would argue that the poor man should be entitled to choose his own lawyer and payment should be made under a form of Judi-Care program.

152. *Id.* at 290.