

ANTONIO DE SALAZAR LAND CLAIM.

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LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

*Report of the surveyor-general of New Mexico in the case of the New Mexico private land claim No. 132—Antonio De Salazar.*

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DECEMBER 8, 1884—Referred to the Committee on Private Land Claims and ordered to be printed.

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DEPARTMENT OF THE INTERIOR,  
*Washington, December 4, 1884.*

SIR: Pursuant to the requirement of the eighth section of the act of July 22, 1854 (10 Stat., 308), I have the honor to transmit herewith the report of the surveyor-general of New Mexico in the case of the New Mexico private land claim No. 132—Antonio de Salazar.

I also transmit copy of letter of the Commissioner of the General Land Office forwarding said report to me.

Very respectfully,

H. M. TELLER,  
*Secretary.*

The Hon. the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., December 1, 1884.*

SIR: I have the honor to forward herewith the report of the United States surveyor-general for New Mexico, in duplicate, in the case of the private land claim "Antonio de Salazar," being No. 132 of New Mexico private claims, to be transmitted to Congress for its action thereon.

Very respectfully, your obedient servant,

N. C. McFARLAND,  
*Commissioner.*

Hon. H. M. TELLER,  
*Secretary of the Interior.*

ANTONIO DE SALAZAR, No. 132.

UNITED STATES SURVEYOR-GENERAL'S OFFICE,  
*Santa Fé, N. Mex., October 31, 1884.*

I, Clarence Pullen, surveyor-general of the United States land office of New Mexico, do hereby certify the annexed copies of the following described papers are true and literal exemplifications from original papers on file in this office, viz:

No. 1.—Claimant's petition.

Exhibit A.—Originals in Spanish.

Exhibit B.—Official translation.

Exhibit C.—Sketch map.

No. 2.—Testimony of witnesses.

No. 3.—Brief of claimants.

No. 4.—Opinion of H. M. Atkinson, surveyor-general.

In witness whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Santa Fé, on the day, month, and year above written.

[SEAL.]

CLARENCE PULLEN,  
*Surveyor-General.*ANTONIO DE SALAZAR—*File 191—Reported No. 132.*

## CLAIMANT'S PETITION.

Hon. HENRY M. ATKINSON,

*United States Surveyor-General, New Mexico:*

Your petitioners, citizens of the United States, the heirs and legal representatives of Antonio de Salazar, deceased, owners and claimants of a certain tract of land lying and being situate in the County of Rio Arriba, and Territory of New Mexico, respectfully represent that the said land was granted to the said Antonio de Salazar by the governor and captain-general of New Mexico, then a province of Spain in Mexico, on the 25th day of August, 1714, on his petition praying for the same, with the following boundaries: On the north, the junction of the Chama and the Del Norte Rivers, and a line thence west to the hills; on the south, the boundary of the grant to the Indian Pueblo of Santa Clara; on the east the Del Norte River, and on the west the hills, as will appear from the old Spanish muniments of grants now among the Spanish and Mexican archives in your office, marked as file No. 829, and hereinafter described and referred to.

Your petitioners further represent that the said paper, file 829, was among the archives of the Mexican Government at Santa Fé, at the time of the cession of New Mexico to the United States by Mexico, and was thereupon transferred to your office, and has remained therein to the present time, among and as of said Spanish and Mexican archives, and your petitioners pray that the said paper 829 be taken therefrom and placed with this their said claim and made a part thereof.

Your petitioners further represent that the said paper 829 is the original and a genuine paper, and the same consists of a single document, which they designate and request be marked A and be accompanied with a translation thereof in English, herewith filed, marked B, and which shows, first, the original petition of the said Antonio de Salazar to the said governor and captain-general for the said land and the entry of the filing of said petition on August 25, 1714; second, the original decree or grant made as aforesaid to the said Antonio de Salazar, and commanding that he be placed in royal possession of said granted premises, dated August 25, 1714; third, the original act of possession of the chief alcalde and war captain, dated August 31, 1714, certifying the due execution of the said granting decree, by placing the said Antonio de Salazar in royal possession of the land; and fourth, the original certificate, dated November 14, 1716, given by the visitor general, approving and confirming the said grant to the said Antonio de Salazar.

Your petitioners further represent that the boundaries aforesaid of the said granted premises are clear and explicit, well known, and easily identified, and your petitioners herewith present a sketch plat, marked C, showing the locality and the size of the said tract, with all the accuracy available, where a prior survey has not been had.

Your petitioners further represent that the said grantee, Antonio de Salazar, and his successors, have always been in the uninterrupted possession and enjoyment of the said land from the time it was granted as aforesaid to the present time, and are now in possession and enjoyment of the same, and that they have never known and do not now know of any claim thereto adverse to their own.

Your petitioners pray that their said claim be investigated and passed upon by your honor at an early day, under the treaty of Guadalupe Hidalgo with Mexico

and the law of Congress establishing your office, and providing for the adjustment of Spanish and Mexican grants for land in New Mexico, and that the land claimed by your petitioners under said grant be surveyed and set apart to your petitioners at the expense of the Government.

RAMON SALAZAR,  
For himself and the other claimants,  
By SAMUEL ELLISON,  
Attorney.

A.—File 829.

En esta V<sup>a</sup> de S<sup>ta</sup> Fee de la N<sup>a</sup> Mex<sup>co</sup> en 25 de Agosto de 1714 la pres<sup>to</sup> el contenido ante el S<sup>or</sup> Gov<sup>or</sup> y Cap<sup>n</sup> Grál.—No. 385.

*Sor Governor y Capita. Genl. :*

Antonio de Salazar, vezino de la Jurisdiccion de la Cañada y Villa de Nueva de Santa Cruz, pareco ante V. S. en la mejor forma q<sup>e</sup> aya lugar y al mio combenga y digo que esta un sitio de tierras en la otra vanda del Rio del Norte que antiguamente era y poseya mi abuelo, el Capit<sup>n</sup> Alonso Martin Barba, y aora esta yermo y despoblado, y representando derecho por mi parte en el parentesco que refiero lo registro para gosarlo Y y dar les parte a mis hermanos Ygualm<sup>to</sup> cuyos linderos son de la parte del Norte unos corrales de piedra q<sup>e</sup> pueden sevir de mojoneras, por la del poniente donde se reconocieren los linderos del Alferes Salvador de Santiesteban, por la del sur los q<sup>e</sup> se reconocieren de las tierras del Dapit<sup>n</sup> Joseph Naranjo, y por la del oriente con el Rio del Norte, la quales dhas. tierras pido y sup<sup>co</sup> a V. S. nos las adjudique con sus entradas y salidas para lavores como antiguamente las tenia y gosava dho. mi abuelo portanto.

A V. S. pido y sup<sup>co</sup> sea servido de azernos dha. mersed, y q<sup>e</sup> senos de de ellas la real possession. Juro en forma de derecho no ser de malisia este pedim<sup>to</sup> y en lo nesario &a.

ANTONIO DE SALAZAR. [Rubric.]

Y vista por mi, D<sup>n</sup> Ju. Ygnazio Florez Mogollon, Gov<sup>or</sup> y Cap<sup>n</sup> Grál deste Reino y Provinz<sup>as</sup> de la N<sup>a</sup> Mexico por S. M., Laube por presentada en su real nombre por el pres<sup>to</sup> leago la m<sup>rd</sup>z de dho. sitio de tierras sin perjuizio de tercero de mejor derlcho, y que este auto le sirva de bastante titulo en forma, p<sup>ra</sup> que las gozen por iguales partes; el dho. i sus hermanos; y mando al Alcalde maior de la Villa nueva de Santa Cruz Cap<sup>n</sup> Sevastian Martin le de aesta parte y sus her<sup>nos</sup> la posesion real expresando los linderos asi lo provei, mande y firme con mi Sec<sup>o</sup> de G<sup>on</sup> y Grta q<sup>n</sup> tomara la razon en el libro de su cargo que es fecho en esta V<sup>a</sup> de S<sup>ta</sup> Fee de la Nueva Mex<sup>co</sup> en veinte y sinco de Agosto de mill setez<sup>os</sup> y catorze a<sup>s</sup>. Y se entiende averlo depoblar en el termino de seis meses, como S. M. manda, y de otra forma no balga esta m<sup>rd</sup>z.

DON JUAN INACIO FLOREZ MOGOLLON. [Rubric.]

Por m<sup>do</sup> del S<sup>or</sup> Gov<sup>or</sup> y Cap<sup>n</sup> Grál.

ROQUE DE PINTTO. [Rubric.]

*Secro. de Gon. y Guerra.*

En dho. dia Thome la Razon. [Pintto's Rubric.]

En este Puesto de la Junta de el Rio de Chama con el del Norte, en treinta y un dias de el mes de agosto de este año de mill cetez<sup>os</sup> y catorze, yo, el Capp<sup>n</sup> Sevastian Martin, Alcalde mayor y Capp<sup>n</sup> a Guerra de la Villa Nu<sup>a</sup> de S<sup>ta</sup> Cruze y su Jurisdiccion, en virtud de el auto proveido p<sup>r</sup> el S<sup>r</sup> Gov<sup>or</sup> y Capp<sup>n</sup> Grál de este R<sup>no</sup> Paze a al reconocim<sup>to</sup> de el sitio rexistrado por el contenido y aviendolo echo le di la pozezion r<sup>l</sup> en nombre de su Mg<sup>a</sup> a Antto de Zalazar, presediendo las deligencias que el derecho dispone tiro piedras a ranco sacate y dio voses como suyo proprio y aviendole paseado por dho. sitio, yo, dho. Alcalde mayor, le señale por linderos por la parte de el norte La Junta de los Rios el de Chama con el de el norte corriendo este lindero derecho desde dha. Junta al poniente, por la parte de el sur asta el lindero de el Pueblo de S<sup>ta</sup> Clara, por el oriente el Rio de el Norte, por el poniente las lomas; y para que conste de esta deligencia le di la presente de que doi fee; y aviendo paresido ante mi, dho. Alcalde mayor Juan de Atienza, con la mrd. que gosa como su padre y hermano dixo que si esta parte le per Judicara en dho. sitio como constava de informasion no podia perder el derecho y que sino gozase dho. Antt<sup>o</sup> de Slaazar, y a este dho se combino el dho. Antt<sup>o</sup> de Salazar, y dixo que de tener derecho dho. Ju. de Atienza alguna parte de las Registradas se las dexaria libre gozandolo de mas que de dho. Registro tiene mrrd., y en esta conformidad lo firme ante mi, como Juez Receptor, con los testigos de mi Asist<sup>ta</sup> en dho. dia. Ut supra.

A ruego de Diego de Sebastian Martin Archuleta. [Rubric.]

FRANCO. DE LA MORA. [Rubric.]

*Testto. de Asistta. :*

MIGUEL DE QUINTANA. [Rubric.]

Villa nueva de Santa Cruz y nobienbre catorze de mill setesientos y deis y sies años se presento por el contenido ante mi el General Juan Paes Hurtado en la Visita Jurídica que Vista por mi mando se acomule a las otras que de orden del señor Gov<sup>or</sup> se recopieron y en vista de todas se determinara en Justizia y se la dara el lugar que com venga v para que conste lo firme con el secretario de Gov<sup>on</sup> y Guerra en dho. día.

JU. PAEZ HURTADO. [Rubric.]

*Visitor. Genl.*

Ante mi:

MIGUEL THENORIO DE ALBA. [Rubric.]

*Srio. de Govor. y Guerra.*

B.—File 191.

*His Excellency the Governor and Captain-General :*

I, Antonio de Salazar, resident of the jurisdiction of the cañada and new village of Santa Cruz, appear before your excellency in due legal form, and state that there is a tract of land on the other side of the Rio del Norte, which was formerly [of] and was possessed by my grandfather, Captain Alonzo Martin Barba, and which is now waste and unsettled, and I, representing a right on my part in the ancestry I refer to, do register the same to enjoy it myself and give a portion to my brothers equally; and whose boundaries are on the north side some rock corrals, which may serve as landmarks, on that of the west where the boundaries of Ensign Salvador de Santiesteban shall be ascertained, on that of the south those which shall be ascertained as those of the lands of Captain Joseph Naranjo, and on that of the east the Rio del Norte, which said lands I ask and pray your excellency to adjudge to us, with their entrances and exits for fields, and as they were formerly held and enjoyed by him, my said grandfather.

Therefore I ask and pray your excellency to be pleased to make to us said grant, and that we be given royal possession thereof. I declare in legal form that this petition is not through dissimulation and as may be necessary, &c.

ANTONIO DE SALAZAR.

At this village of Santa Fé, N. Mex., on the 25th of August, 1714, the petitioner presented this before his excellency the governor and captain-general.

And examined by me, Don Juan Ignacio Flores Mogollon, governor and captain-general of this kingdom and provinces of New Mexico for His Majesty, I treated the petition as presented in his royal name. I do hereby make the grant to him of said tract of lands without prejudice to any third party with a better right, and that this decree shall serve him as a sufficient title in form, so that the aforesaid and his brothers may enjoy the same in equal parts, and I command the chief alcalde of the new village of Santa Cruz, Captain Sebastian Martin, to deliver to this party and his brothers the royal possession setting forth the boundaries.

Thus I provided, commanded, and signed, with my secretary of government and war, who will make the entry in the book under his charge. And this is done at this village of Santa Fé, of New Mexico, on the twenty-fifth of August, year one thousand seven hundred and fourteen.

And it is understood that he has to settle the same within the term of six months, as His Majesty commands, and if otherwise let this grant not hold.

DON JUAN IGNACIO FLORES MOGOLLON.

By command of his excellency the governor and captain-general.

ROQUE DE PINTTO,  
*Secretary of Government and War.*

On said day I made the entry [de Pinto's Rubric].

At this place, the junction of the Chama River with that of the del Norte, on the thirty-first day of the month of August, of this year one thousand seven hundred and fourteen, I, Captain Sebastian Martin, chief alcalde and war captain of the new village of Santa Cruz and its jurisdiction, in virtue of the decree made by his excellency the governor and captain-general of this kingdom, proceeded to the examination of the tract of land registered by the petitioner; and having done so, I gave the royal possession in the name of His Majesty to Antonio de Salazar, prior the proceedings which the law directs; he cast stones, plucked up grass, and shouted as being his own, and having conducted him over said tract, I, said chief alcalde, pointed out to him as boundaries on the north side the junction of the rivers, that of Chama with that of the del Norte, this boundary running direct from said junction to the west, on the south side to the boundary of the pueblo of Santa Clara, on the east the river del Norte, on the west the hills; and that it may so appear of this proceeding, I gave him the present to which I certify; and Juan de Atienza, having appeared before me, said chief alcalde, with the grant which he enjoys like his father and brother, declared that if this party should prejudice him in said tract, as appears from informa-

tion, he could not lose the right; and if not, the said Antonio de Salazar might enjoy it, and to this declaration the said Antonio de Salazar agreed. And he stated that if the said Juan de Atienza had a right in any part of the lands registered, he would leave them free, enjoying the remainder to which of said registry he has a grant; and with this understanding I signed this before myself, as special justice, with the witnesses of my attendance on said day. Ut supra.

SEBASTIAN MARTIN.

At the request of Diego de Archuleta.

FRAN'CO DE LA MORÁ.

Attending witness:

MIGUEL DE QUINTANA.

New village of Santa Cruz, November 14, 1716, this was presented to me, General Juan Paez Hurtado, by the petitioner, on my judicial visit, and being examined by me I commanded that it be attached to the others, which, by order of his excellency the governor, were collected, and in view of all it will be determined in justice, and to it will be given the proper place; and that it may so appear, I signed this, with the Secretary of Government and War, on said day.

JUAN PAEZ HURTADO,  
*Visitor-General.*

Before me—

MIGUEL THENORIO DE ALBA,  
*Secretary of Government and War.*

The foregoing translation made by me is, to the best of my knowledge and belief, a correct translation of the original in Spanish.

SAM'L ELLISON.

SURVEYOR-GENERAL'S OFFICE,  
*Santa Fé, N. Mex., January 8, 1883.*

The forgoing translation, having been by me compared with its original in Spanish and found correct, is hereby adopted for the official translation.

DAV. J. MILLER,  
*Translator.*

#### TESTIMONY OF WITNESSES.

In the matter of the investigation of private land claim, file No. 191, grant to Antonio de Salazar, in Rio Arriba County, investigation commenced September 12, 1882.

Present, Henry M. Atkinson, surveyor-general; David J. Miller, translator; Samuel Ellison, attorney for claimants.

CANDELARIO SANDOVAL, having been first duly sworn, deposed and saith:

By Mr. ELLISON:

Question. State your name, age, occupation, and place of residence.—Answer. My name is Candelario Sandoval; my age is 67 years; my occupation is a laborer; and my residence is here, at Santa Fé.

Q. How long have you lived at your present place of residence?—A. About ten years.

Q. Where did you live before you came to Santa Fé?—A. In Rio Arriba County.

Q. Are you acquainted with a grant commonly known as and called the Salazar grant?—A. I do know such a tract.

Q. Where is it situated?—A. In Rio Arriba County and in New Mexico.

Q. State, if you know them, the boundaries of the grant in question.—A. On the north, the junction of the rivers del Norte and Chama; on the south, the line of the Indians of the Indian pueblo of Santa Clara; on the east, the Rio del Norte; and on the west the high hills.

Q. What is the distance between the said junction of rivers to the said line of the Indian pueblo?—A. About three leagues and a half, somewhat more or less.

Q. What is the distance between the said Rio del Norte and said sierras altas or high hills?—A. Four leagues, somewhat more or less.

Q. How do you know the boundaries you have stated are the boundaries of the grant in question?—A. I was for ten years a peon of the Salazars, and I heard these boundaries mentioned as those of their grant in conversations among the old people.

Q. How long did you live on or near the grant?—A. I was born upon the grant, and my parents lived and had their possessions upon it. I lived also upon it until twenty-two years old, when I married, and thereafter lived thereon twenty-nine years, when my wife died, and after her death I lived thereon fifteen years as a widower.

Q. State the names of some of the settlers you first knew there.—A. The deceased, Casimiro Salazar, Luis Salazar, José Manuel Salazar, Juan Domingo de Herrera, Atanacio Serna.

Q. Has the place ever been abandoned since you have known it?—A. No; it has never been abandoned, but is in possession of the descendants of the first settlers.

Q. Are you interested in the grant in question?—A. No; I have no interest whatever in it.

By the SURVEYOR-GENERAL:

Q. Do you know of your own knowledge that there is any grant covering the tract of land you have described?—A. I do.

Q. How do you know it?—A. I know it from having lived so long upon the land and among the people living thereon, and from having so often heard the grant mentioned in conversations, though I have never seen the grant papers themselves.

Q. Then all you know about it is from what you have heard others say, is it not?—A. Only from what I heard the old people mention.

Q. How do you know that the persons occupying this land since your acquaintance with it were descendants of the original grantees?—A. From having often heard the settlers refer to their predecessors as the Salazars and as the first settlers on the land.

Q. Whom did you ever hear say anything about it?—A. I heard the grandsons and great grandsons of the Salazars say so.

Q. Who were they? Give the names of some of them.—A. They were those I have already mentioned, to wit, Casimiro Salazar, Luis Salazar, José Manuel Salazar, Juan Domingo de Herrera, Atanacio Serna, now all deceased, and others, who referred often to a grant made by the King to the Salazars. This I often heard mentioned, as I lived among the people and had ample opportunity to hear them talk.

CANDELARIO <sup>his</sup> SANDOVAL.  
mark.

Sworn to and subscribed before me this 12th day of September, 1882.

H. M. ATKINSON,  
*Surveyor-General.*

JOSÉ APOLINARIO MONTOYA, being by the surveyor-general duly sworn, on his oath declares:

By Mr. ELLISON:

Question. What is your name, age, occupation, and place of residence?—Answer. My name is José Apolinario Montoya; my age is seventy-two years; my occupation is farmer; and my residence is at Guchupangue, in the county of Rio Arriba and Territory of New Mexico.

Q. How long have you lived there?—A. I was born in Santa Cruz de la Cañada, in the same county, and have lived at Guchupangue fifty years.

Q. Are you acquainted with a grant of land reputed to be that of the Salazars? if so, state where it is situated.—A. I am. On the del Norte River, in Rio Arriba County, and Territory of New Mexico.

Q. State its boundaries, if you know them?—A. On the north the Chama River, where it joins the del Norte River; on the east the del Norte River; on the south the league of the Indian pueblo of Santa Clara; and on the west the Sierra Alta.

Q. What is the distance from the Rio del Norte to the Sierra Alta?—A. About four leagues—a little more or less.

Q. What is the distance between the junction of the Chama and del Norte Rivers to the Santa Clara grant?—A. About three leagues, somewhat more or less.

Q. Please give the names of some of the settlers upon the land when you first knew it?—A. Antonio Salazar, now dead, Luis Salazar, José Manuel Salazar, Miguel Salazar, all now deceased, and I do not recollect now any others of the old settlers.

Q. How far is it from Guchupangue, where you live, to the tract in question?—A. About half a mile, or a little more.

Q. Has the place ever been abandoned since you have known it?—A. It has not.

Q. Have you any interest in the grant in question?—A. I have not any at all.

By the SURVEYOR-GENERAL:

Q. How do you know whether there is any such grant as you have mentioned?—A. I have never seen the grant for the land, but have often heard it spoken of among the old inhabitants of the tract.

Q. To whom do you understand the grant was made?—A. To the Salazars.

Q. What relation, if any, were the Salazars you speak of as having known to the grantees?—A. They were their descendants.

Q. How long have you known this grant?—A. More than about sixty years.

JOSÉ APOLINARIO MONTOYA.

Sworn to and subscribed before me this September 12, 1882.

H. M. ATKINSON,  
*Surveyor-General*

## BRIEF OF CLAIMANTS, JANUARY 4, 1883.

In the matter of the claim of Ramon Salazar *et al.* to the grant of land made to Antonio de Salazar, on the 25th day of August, 1714.

It appears by the documents of title filed in this case that the grant was made on the 25th day of August, 1714, and the grantee placed in juridical possession thereof, in accordance with the ordinances, customs, and usages of the Government of Spain, in the Indians, regulating the disposal of the public domain.

These documents of title were found among the archives (Spanish and Mexican) in the city of Santa Fé, Territory of New Mexico, as appears by the records of the office of the surveyor-general of the said Territory (see file No. 829). The fact of their being found in the public archives is *prima facie* evidence of their genuineness and validity.

The testimony of the witnesses produced on the part of the claimants shows a peaceable and uninterrupted possession for the period of over fifty years, and having heard that their ancestors had lived there from time immemorial. From the public record of the documents of title, and a possession from time immemorial, the presumption of law, both of the civil law of Spain and Mexico, as well as the English common law, is in favor of the validity of the grant.

Under the Governments of Spain and Mexico great force was given to the fact of long possession, and the person in possession had the presumption in his favor of being the owner, and having acquired the right of proprietorship, if he had held quiet and peaceable possession for any length of time. Title was presumed, from immemorial possession, when "persons of good character depose to having seen the person in possession of the property for forty years, that they never heard anything to the contrary" (White, 1st vol., 95,349, sec. 21), and by the Royal Regulations of October 15, 1754, it was provided that "If persons have not warrants, their proof of long possession shall be held as a title by prescription." (White, 2d vol., 64, sec. 4.)

By the terms of the eighth article of the treaty of Guadalupe Hidalgo it was provided that "properties of every kind existing in the said Territories, and which now belong to the Mexicans \* \* \* shall be inviolably respected."

The title to the grant of land herein claimed was valid not only under the sovereignty of Spain, but would not have been questioned under the laws of the Republic of Mexico.

It is already proven that the claimants, or those under, by, or through those whom they deign their title, were possessed of this tract of land at the date of the said treaty.

As to the authority of the officers making the grant, the courts of the United States in giving effect to the treaties with foreign nations, and especially those whereby lands have been ceded, have established just and liberal rules, assenting to the spirit as well as the letter, for the adjudication of titles of private property, and individual claims to grants made under the former sovereignty.

In case of *Strother vs. Lucas* (12 Peters, 416) the court says, "No principle can be better established by the authority of the court than the acts of an officer to whom a public duty is assigned by his King, within the sphere of that duty are *prima facie* to be taken within his power. The principles on which it rests are believed to be too deeply founded in law and reason to be successfully assailed. He who would controvert a grant executed by the lawful authority, with all the solemnities required by law, takes on himself the burthen of showing that the officer has transcended the powers conferred upon him, or that the transaction is tainted with fraud. When the act of the officer to pass the title to land according to the Spanish law is done contrary to the written order of the King, without any explanation, it shall be presumed that the power has not been exceeded, that the act was done on the motive as set out therein, and according to some order known to the King and his officers, though not to his subjects, and courts ought to require very full proof that he had transcended his powers before they so determine it."

The force of the principle above set forth is more readily apprehended when the fact is remembered that, at the time of making this grant, New Mexico was a Spanish province, that the Government of Spain was an absolute monarchy, that its laws were not its legislative acts, "they were the will and pleasure of the monarch expressed in various ways; if it was expressed in any it was the law, there was no other law-making, law-repealing power; call it by whatever name, a royal order, an ordinance, a cedula, a decree of council or an officer. It was emphatically so in Spain and all its dominions." (*United States vs. Arredondo et al.*, 6 Peters, 715-16.)

The court further says in the case of *Strother vs. Lucas* (12 Peters, 436): "This court has also uniformly held that the term grant in a treaty comprehends not only those which are made in form, but also any concession, warrant, order, by permission to survey, possess, or settle, whether evidenced by writing or parol, or presumed from possession." See also cases cited thereon (8 Peters, 466; 9 Peters, 152-170; 10 Peters, 331-40.)

The historical fact that Juan Ygnacio Flores Mogollon, the granting officer named in said grant, was the then Spanish governor of the province of New Mexico at the date of granting the same is well established and authenticated from the Spanish archives of New Mexico, many of which are now in the custody of your office.

From these facts, then,

- (1) The documents of title being of record in the ancient public archives;
- (2) The proof of immemorial and undisturbed possession;
- (3) The proof possession at the date of making the treaty, and the continuous possession since that time;
- (4) From the well established rules of evidence, and the principles hereinbefore mentioned and set forth, and the authorities cited in support thereof the presumption of law is, that the grant of land herein claimed is valid, and that by the terms of the said treaty, by the law of nations, by virtue of your instructions from the Secretary of the Interior, given in accordance with the provisions of the law establishing the office of surveyor-general of New Mexico, the title to said grant of land should be approved and confirmed to the claimants.

SAM'L ELLISON,  
*Attorney for Claimants.*

#### OPINION OF SURVEYOR-GENERAL.

Before the United States surveyor-general for the Territory of New Mexico.

THE HEIRS, LEGAL REPRESENTATIVES, AND THEIR  
assigns, of Antonio Salazar,  
v.  
THE UNITED STATES.

This case is presented before me under the 8th section of the act of Congress approved July 22, 1854, and the treaty of Guadalupe Hidalgo.

The muniments of title consist—

First. Of a petition of Antonio de Salazar, for himself and brothers, to the governor and captain-general of this, at that time an ultra-marine, province of Spain, which was presented to the governor August 25, 1714, wherein the petitioner prays for a grant of land in what is now Rio Arriba County;

Second. A grant dated August 25, 1714, to the petitioner and his brothers, in equal parts, the land petitioned for, and directing Captain Sebastian Martin to give "this party and his brothers the royal possession, setting forth the boundaries";

Third. The act of juridical possession dated August 31, 1714, wherein the following boundaries are set forth: On the north side, the junction of the Chama River with that of the North (del Norte), this boundary running direct from said junction to the west; on the south side, to the boundary of the pueblo of Santa Clara; on the east, the Rio del Norte; on the west, the hills;

Fourth. A document dated November 14, 1716, signed by Juan Paes Hurtado, visitor-general, wherein the visitor-general directs the documents in the case to be attached together, in his judicial capacity, which is presumed to be intended as an approval of the grant.

These documents were all found among the old Spanish archives on file in this office, and are no doubt genuine.

The signature to the granting decree of Don Juan Ygnacio Flores Mogollon, the then governor and captain-general, is found to agree with the signature of that official upon other documents previously acted upon by this office, and it is undoubtedly genuine.

The evidence taken in the case shows long-continued possession by the parties holding under the grantees.

The claim is approved to the heirs, legal representatives, and their assigns, of Antonio de Salazar and his brothers, according to the boundaries set forth in the act of juridical possession. The right to the mineral is excepted from this approval, and all gold, silver, and cinnabar is reserved to the Government for its further disposition, as the right to those metals was not subject to alienation by the local granting authority.

A transcript in triplicate of all the papers in the case will be transmitted to Congress for its action.

HENRY M. ATKINSON,  
*United States Surveyor-General for New Mexico.*

UNITED STATES SURVEYOR-GENERAL'S OFFICE,  
*Santa Fé, N. Mex., January 8, 1883.*