

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Letter of the Commissioner of the General Land Office, submitting report of the surveyor-general of New Mexico on the private land claim of the town of Albuquerque, with various papers relating thereto.

JANUARY 15, 1884.—Referred to the Committee on Private Land Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 14, 1884.

SIR: Pursuant to the eighth section of the act of 22d July, 1854 (10 Stat., 308), I have the honor to transmit herewith the report of the surveyor-general of New Mexico on the private land claim of the town of Albuquerque, with various papers relating thereto, together with a copy of the letter of the Commissioner of the General Land Office, submitting the report and papers.

Very respectfully,

H. M. TELLER,
Secretary.

The PRESIDENT OF THE SENATE PRO TEMPORE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 26, 1883.

SIR: I have the honor to forward herewith, for transmission to Congress, a certified transcript of the record before the United States surveyor-general for New Mexico, in the case of the claim of the town of Albuquerque, presented under the eighth section of the act of July 22, 1854 (10 Stat., 308), and reported in pursuance thereof.

The transcript returned contains copies of the petition by Ambrosio Armijo, president, and Frank Kuning and others, commissioners, in behalf of the inhabitants of the town, presenting the claim for examination and praying its approval and recommendation for confirmation for four square leagues, the documents and testimony presented in support thereof, and the opinion of the surveyor-general recommending its confirmation, for the four square leagues claimed, to the inhabitants of the town of Albuquerque.

Appended to the transcript, as above described, are copies of a petition

by De Witt Stearns and Thomas G. Douglas to the surveyor-general for a rehearing, claiming the right of entry, under the homestead laws, upon certain of the lands embraced within the claim, as honorably discharged soldiers, and requesting the surveyor-general to recommend to this office and to Congress that the lands sought to be entered by them are public lands and subject to entry; also of appeal taken by Messrs. Stearns and Douglas to this office from the opinion and report of the surveyor-general, holding said claim to be valid and recommending it for confirmation; and of the decision of the surveyor-general denying the application aforesaid for rehearing.

Accompanying the transcript aforesaid I also send, in duplicate, copies of objections and exceptions to the report and opinion of the surveyor-general, by J. J. Johnson, esq., for Stearns and Douglas, on appeal before this office; the decision of this office upon the appeal; petition of Mr. Johnson to the Department praying for an order requiring this office to certify the proceedings in the case to the Department, and decision of the honorable Secretary of the Interior denying said petition.

Traced copies of the preliminary survey of the claim, returned to this office by the surveyor-general, also accompany the transcript.

Respectfully submitted.

Very respectfully, your obedient servant,

L. HARRISON,
Acting Commissioner.

HON. H. M. TELLER,
Secretary of the Interior.

EXHIBIT A.

TERRITORY OF NEW MEXICO,
County of Bernalillo:

This indenture, made this eleventh day of March, in the year of our Lord one thousand eight hundred and eighty, between Melquiades Chavez and Ana L. de Chavez, his wife, of Albuquerque, in the county of Bernalillo, and Territory of New Mexico, parties of the first part, and Elias S. Stover, of Albuquerque, in the county of Bernalillo, and Territory of New Mexico, party of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of two hundred dollars, lawful money of the United States, to them in hand paid by the said party of the second part, at or before the sealing or delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his executors and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, releas-ed, conveyed, and confirmed, and by these presents, do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain tract, piece, parcel or lot of land situate, lying and being in Albuquerque, in the county of Bernalillo, and Territory of New Mexico, known, bounded, and described as follows: Commencing at the northwest corner of the property hereby conveyed, and at the point where the main road leading from Albuquerque to Tijeras Cañon crosses the main acequia which runs from north to south on the east side of the cultivated lands of said town of Albuquerque, and thence running east along said Tijeras road seven hundred varas to the hills; thence south along the edge of the hills one hundred and fifty-five varas to lands of Cristoval Arminjo; thence west along the north line of said lands of Cristoval Arminjo, six hundred and forty-five varas, to east line of lands deeded by said parties of the first part to Perfecto Arminjo; thence north along said east line of land of Perfecto Arminjo, thirty-five varas to south line of property hereby conveyed; thence west along said south line thirty-five varas; thence south along west line of said property of Perfecto Arminjo, thirty-five varas, to north line of lands of Cristoval Arminjo, twenty varas, to the main acequia above mentioned; thence north along said acequia one hundred and forty-five varas to the place of beginning;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions,

remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower, or right, of dower, property, possession, claim, and demand whatsoever, both in law and in equity, of the said parties of the first part, of, in, and to the above granted premises, and every part and parcel thereof, with the appurtenances. To have and to hold the above mentioned and described premises, with the appurtenances and every part thereof, to the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 11th day of March, A. D. 1880.

MELQUIADES CHAVEZ. [SEAL.]
 her
 ANA L. DE X CHAVEZ. [SEAL.]
 mark.

WILLIAM C. HAZELDINE.
 MELCHOIR WERNER.

TERRITORY OF NEW MEXICO,
 County of Bernalillo:

On this eleventh day of March, A. D. 1880, before me, Melchoir Werner, probate clerk, county and Territory aforesaid, personally came Melquiades Chavez and Ana L. de Chavez, his wife, to us personally known to be the same persons whose names are signed to and who are parties to the foregoing deed of conveyance, and acknowledged that they signed, sealed, and executed the same, freely and voluntarily, for the purposes therein mentioned; and the said Ana L. de Chavez, being by us first informed of the contents of said deed of conveyance, confessed, on examination, separate and apart from, and independent of, her said husband, that she signed, sealed, and executed the same, freely and voluntarily, for the purposes therein mentioned, without any compulsion or the illicit influence of her said husband.

Given under my hand and official seal this 11th day of March, A. D. 1880.

[SEAL.]

MELCHOIR WERNER,
 Probate Clerk.

TERRITORY OF NEW MEXICO,
 County of Bernalillo:

I, Melchoir Werner, clerk of the probate court and ex officio recorder in and for the county of Bernalillo, in said Territory of New Mexico, certify that the foregoing deed of conveyance was filed in my office for record by Elias S. Stover, on the eleventh day of March, A. D. 1880, at 3 o'clock p. m., and that the same is duly recorded in Book J, the record of deeds of said county of Bernalillo, on pages 260, 261, 262, and 263.

In witness whereof I have hereunto set my hand and official seal this 13th day of March, A. D. 1880.

[SEAL.]

MELCHOIR WERNER,
 Clerk and ex officio Recorder, Bernalillo County, Territory of New Mexico.

TERRITORY OF NEW MEXICO,
 County of Bernalillo:

I, the undersigned, do hereby certify that the foregoing is a true and correct copy of a deed recorded in Book J, of records of deeds, pages 260, 261, 262, and 263.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of January, A. D. 1883.

[SEAL.]

MELCHOIR WERNER,
 Probate Clerk and ex officio Recorder.

(Indorsed:) Melquides Chaves and wife to E. S. Stover. Pt. of E. $\frac{1}{4}$ 20, T. 10, R. 3 E.

EXHIBIT B.

TERRITORY OF NEW MEXICO,
 County of Bernalillo, ss:

Personally appeared before me Manuel Lucerno y Ruis, a resident of old Albuquerque County and Territory aforesaid, who being first duly sworn deposes and says: That he is fifty years of age, and has resided at Albuquerque since the year A. D. 1841, that he is well acquainted with all the lands in the vicinity of Albuquerque, and particularly the body of land situate up and above the acequia to the east of said Albuquerque, known and designated on the maps of the United States as the east half of section (20) twenty, township (10) ten, range (3) three east, of the New Mexico principal meridian. That said lands, to his positive knowledge, so situate above and beyond the acequia, on the east side of Albuquerque, has never been cultivated since 1841, nor prior to that, as he has been informed, and in fact is not susceptible of cultivation, being a mass of sterile sand-hills, and to my knowledge was known as unclaimed desert land, being totally unfit for any known purpose, barren of water or

grass, even stock not living pastured thereon, and said land being regarded by the entire community as of no value for any purpose whatever.

Affiant further deposes and says that, in the year A. D. 1879, when the railroad was definitely located, known as the Atchison, Topeka and Santa Fé, that his sister, Anna Lucero y Ruis, wife of one Melquiades Chaves, owning lands below the acequia adjoining the said lands in question, by the advice of friends went on and staked lands above the acequia, as affiant has been informed by his said sister, which was the first time to affiant's knowledge that any person ever claimed land above and beyond the acequia.

MANUEL LUCERO y RUIS.

Sworn and subscribed before me this the 18th day of January, A. D. 1883, and I hereby certify that the aforesaid affiant is a citizen of Albuquerque of good reputation, and that his oath is entitled to full faith and credit.

[SEAL]

THOMAS G. DOUGLAS,
Notary Public, Bernalillo Co.

(Indorsed :) Manuel Lucero y Ruis, affiant. In reference to east hf. sec. 20, T. 10, R 3 east.

EXHIBIT C.

TERRITORY OF NEW MEXICO,
Bernalillo County, ss :

This day personally appeared John A. Hill, before me, the undersigned, who being duly sworn deposes and says that he is 54 years of age, and that he is a citizen of Albuquerque, county of Bernalillo, Territory of New Mexico, and that he has resided at Albuquerque since the year 1850, and is well acquainted with the lands, on the east side of New Albuquerque, above and beyond the acequia, which are included in the east half of section (20) twenty, town (10), range (3) three east of the New Mexico principal meridian. That the same is a tract of barren land, not capable of producing anything, and the same has never been used for agricultural purposes, nor pasturage; and was never occupied by any one until about the year 1879, at the time when the Atchison, Topeka and Santa Fé Railroad was located at this village, when persons owning and occupying lands adjoining these in question, but below the acequia, went on and staked off and took possession and occupied the said lands up as far as the foot of the hills.

Deponent says that he himself advised his kinswoman, Mrs. Annie Lucero y Ruis, wife of Melquiades Chavez, to so go on and stake off and claim and occupy the lands so adjoining what she owned below the acequia, which she did, in pursuance of his said advice, which said lands were afterwards sold by Melquiades Chaves and his said wife to E. S. Stover, and that was the first time to his knowledge that any of the said lands were so claimed and occupied above and beyond the acequia, within the limits of the said east half of section twenty, aforesaid, and that until the said year 1879 all the said lands above the acequia in section (20) twenty, aforesaid, were regarded by the entire community as utterly worthless, although many old deeds and conveyances pretended to pass title to all the lands as far back as the high mountains, ten and fifteen miles distant.

JOHN A. HILL.

Subscribed and sworn to before me this 22d day of January, A. D. 1883.

[SEAL]

THOS. G. DOUGLAS,
Notary Public.

THE INHABITANTS OF ALBUQUERQUE }
vs. }
THE UNITED STATES. }

No. 20,824. Rec'd March 7, 1883.

This case is here upon the appeal of De Witt Stearns, esq., and Thomas G. Douglass, esq., from the report of the surveyor-general of Santa Fé; also on the original petition, exhibits, and proofs, as well as the petitions of Messrs. De Witt Stearns and Thomas G. Douglass.

And now comes the respective appellants, De Witt Stearns and Thomas G. Douglass, by their attorney, John J. Johnson, and moves the Commissioner to set aside the findings and the report of the surveyor-general, and grant the prayers of the respective petitioners, De Witt Stearns and Thomas G. Douglass. In addition to the objections heretofore filed and urged by these appellants, against the opinion and report of the said surveyor-general, said appellants except to said conclusions and report as being manifestly erroneous, for the following reasons:

1. On the 25th of July, 1854, the Secretary of the Interior issued instructions to the surveyor-general of New Mexico, touching the town of Albuquerque, as follows:

"In the case of any town lot, farm lot, or pasture lots held under a grant from any corporation or town to which lands may be granted for the establishment of a town

by the Spanish or Mexican Government, or the lawful authorities thereof, or in the case of any city, town, or village lot, which city, town, or village existed at the time possession was taken of New Mexico by the authorities of the United States, the claim to the same may be presented by the corporate authorities; or where the land on which the said city, town, or village was originally granted to an individual, the claim may be presented by or in the name of such individual; and the fact being proved to the surveyor-general of the existence of such city, town, or village, at the period when the United States took possession, may be considered by you as *prima facie* evidence of a grant to such corporation or to the individuals under whom the lot-holders claim; and where any city, town, or village shall be in existence at the passage of the act of July 22, 1854, the claim for the land embraced within the limits of the same may be made and proved up before you by the corporate authority of the said city, town, or village."

2. Under the foregoing instructions, defining the duty of the surveyor-general, who are the parties claiming against the United States, and how are their claims sustained by relative evidence?

The original petitions against the United States are ten in number; the first named petitioner signs his name as president, and the other nine as commissioners, and in the stating clause of their petition they state that they and divers other parties not named as property owners at this time in the town of Albuquerque. It will therefore be seen that from that petition the original petitioners have not placed themselves within the instructions given to the surveyor-general, and therefore they can have no relief. The petitioners do not undertake to prove who their ancestors were, nor from whom and in what mode they acquired any right or title. Nor is there any proof that any town, city, village, corporate authorities, or an individual is making or asserting any interest against the United States.

3. What proofs had the surveyor-general before him that this was a town in July, 1854? Here it is: Pablo Dominguez says he is 72 years old, and thinks he has known Albuquerque since 1823, that it has been occupied as a town since 1846, '47, & '48; and James Conklin, 84 years, was born in Canada, and the first time he went to Albuquerque was about 1827; there was an old town there then. I know it from 1846 to 1848, and had about 1,200 to 1,500 inhabitants.

This is all the evidence the surveyor-general had taken, and from which the said surveyor-general considered a *prima facie* case had been established. In fact from report he does not seem to have valued this evidence as much, because he undertakes to fortify his opinion with some old papers now filed in his office. From the reading of these papers it will appear that their meaning are directly contrary to the interpretation the surveyor-general would have them construed.

4. The opinion and report is further erroneous because it is against the fact set forth by the petitioners when they say, they "cannot present to your honor any actual accession to their ancestors for said tract of land," and the only proof in the case, and upon that alone the surveyor-general must have reached the opinion he did, which is as follows: That the "petitioners believing that the original settlers of said Albuquerque were entitled to said lands."

5. The report and conclusions of said surveyor-general and further erroneous because it is against the facts and evidence as offered by said original petitions wherein they assert "they have searched for the original grant and cannot find one." and do not even offer evidence that there ever was such a grant in existence, or attempted to account for its loss or destruction. On the contrary, the very documents relied upon by the surveyor-general to sustain him in his decision show conclusively, as far back as 1715, that no community or corporation appears at that time claiming any descendable rights or title by grant. The original petitioners say: In view of the facts and circumstances that the said town of Albuquerque is not an important city, town, or village, and is without a municipal government of officials, such as is contemplated by the act of Aug. 21, 1854, that they do not apply for the confirmation of their said claim to said tract of land through any corporate authority, but they ask for such confirmation to the inhabitants of the town of Albuquerque, the heirs, successors and legal representatives of the original settlers and grantees. Without a scintilla of evidence to support even this allegation the surveyor-general says: The prayer of the petitioners that the grant be confirmed to the heirs, successors, and legal representatives of the original settlers or grantees cannot be granted, as no evidence of title appears in any specific individuals, but the inhabitants of the town are by operation of the laws and instructions cited entitled to the grant. It is quite difficult to understand what the surveyor-general does decide, as it is so vague, indefinite, and uncertain. However, whatsoever meaning he may desire to give it, nevertheless it is erroneous, because it must be admitted that it is clear that there never was a grant from the Spanish Government to the citizens of Albuquerque, nor to the citizens of the same, for four square leagues with a center at the flagstaff of old Albuquerque, or any other four-league grant. If any fact is established in this case, beyond doubt, that

fact is most indubitably established from the laws of Spain, as relied on by the surveyor-general to give color to his theory of the case.

6. Mr. Stover, one of the petitioners, in a letter to Hon. P. B. Plumb, requesting these lands to be withdrawn from market, was referred to the Commissioner of the General Land Office, and after a very elaborate opinion by the then Commissioner upon subject closes his decision as follows: "That the rights of all *bona fide* claimants in the Territory of New Mexico are amply protected, and there is no necessity for a withdrawal of the lands in the township referred to."

7. It is further insisted that the order, subsequently issued, withdrawing said lands from the market, was improvidently issued by the Department, and now the attention of the Department is brought to the former decision the same case declining to withdraw said lands from market. The Department should set aside all the proceedings, and permit Messrs. Stearns and Douglass to perfect their purchase.

8. The exceptants here protest against the ruling of said surveyor-general in denying them the right to prove that said lands were uncultivated and sterile, and uninhabited, and as part of such proof they file herewith exhibits A and B and C, and hereto attached.

9. The report is further erroneous because there is no evidence that there ever was a four league grant to any one; and the report is further erroneous because said surveyor-general had no jurisdiction to hear and determine such a case as is here presented; that is, he has no jurisdiction to hear and determine cases, unless there was a grant, and when he assumed to hear the case and decide as to whether or not, by implication or inference, a grant might have existed, he then and there exceeds his jurisdiction.

10. There is not evidence, it is submitted sufficient in this case to support an action of ejectment in behalf of the original petitioners, nor even a little in them sufficient to enable them to defend against any one else upon an adverse possession.

11. It is further erroneous because the only parties before the surveyor-general were the petitioners, by their counsel. The district attorney was not notified to be present on behalf of the United States. And further, not even the petition as filed, under which they claim, is sworn to by any one of them, or by their counsel for them, upon information and belief.

The said report is in other respects erroneous, and should be set aside and treated as null and void and of no effect.

All of which is respectfully submitted.

J. J. JOHNSON,
Atty. for Stearns & Douglass.

(Indorsed:) No. 20,824. The inhabitants of Albuquerque *vs.* The United States, on appeal of DeWitt Stearns and Thomas G. Douglass from the decision of the surveyor-general of Santa Fé, New Mexico. Objections and exceptions to said report and decisions. J. J. Johnson, Atty. for appellants.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
July 10, 1883.

HENRY M. ATKINSON, Esq.,
U. S. Surveyor-General, Santa Fé, New Mexico:

SIR: In the matter of the private land claim of the town of Albuquerque, in New Mexico, No. 130, now before me, the following proceedings are shown by the record to have been had:

On the 25th of July, 1881, Breder and Hazeldine, esq's., of Albuquerque, attorneys in behalf of Ambrosio Armijo, and nine others named and designated as "president" and "commissioners," and, as (expressed in their application), "divers other parties, not here named, as property-owners at this time in the town of Albuquerque and its vicinity," filed their petition before you, under the 8th section of the act of Congress of July 22, 1854 (10 Stat, 308), praying that the claim, consisting of four square Spanish leagues, having for its center the flagstaff and adobe monument in the middle of the plaza or public square, in the town of Albuquerque, might be investigated by you and recommended to Congress for confirmation.

Under date of Sept. 5, 1882, you made report of your examination of the case, setting forth the testimony produced, with your opinion holding the claim to be valid, and recommending its confirmation by Congress to the inhabitants of the towns.

Afterwards (the date of filing not shown), De Witt Stearns and Thomas G. Douglas, claiming to be honorably discharged soldiers of the United States, presented their petition to you, stating that they had filed their declarations with the register at Santa Fé, of their intention to enter, under the homestead laws, two specified sections (being part of the lands embraced within the limits of the private claim), which dec-

larations, they say, were rejected by the register, for the reason that the Commissioner of the General Land Office had withdrawn the land from entry, pending the adjudication of the private claim.

They state in objection to your report, in substance:

That the hearing in the case of the private claim was *ex parte*, only the petitioners therein being represented;

That there are facts relating to the private claim, in addition to those introduced, which should be brought before you, to wit:

That all or nearly all of the two quarter-sections which they sought to enter are situated above the acequias, and have never been used for cultivation or grazing, being sand-hills, not productive of anything, and up to within two years regarded as of no value;

That about two years before, when there was a prospect that said land would soon have a value, several persons who are among the petitioners for the private claim, who had never before claimed beyond the acequias, went upon the sand-hills, staked off the ground and claimed to hold it by virtue of assignments under the Spanish grant;

That there never was a grant from Spain to the town of Albuquerque of the dimensions and location set forth, as is made manifest by applying the laws of Spain relied upon by the petitioners for the private claim, for the reason that it would conflict with other towns or settlements situated less than five leagues away, and, therefore, within the prohibition contained in law VI, of Spain, cited by the original petitioners; and they specify the town of Pajarita and other settlements and grants as being within the prescribed distance;

That, as shown by the exhibits accompanying the original petition, the lands in and about Albuquerque were held by Spanish grants from the crown to individuals in severalty, and that, by the Spanish law, lands granted in severalty, when once abandoned, reverted to the crown;

That the claimants to those lands in the original petition hold by titles showing the proper metes and bounds, and such as the present laws recognize and the courts are competent to protect;

That the two quarter sections referred to were, at the date of the treaty of Guadalupe Hidalgo, unoccupied and abandoned, and became the property of the United States, and ought to be subject to the petitioners, entry;

That the prayer of the original petition is indefinite, asking for title to an indefinite number of persons, and if granted will only complicate the titles to all the lands in the tract;

And thereupon they ask that the case be reopened and reheard before you, and that it may be decided by you to disallow the petition of the original petitioners on the ground that they are sufficiently protected in their vested rights by the present laws; and that you recommend to this office and to Congress that the two quarter sections referred to are part of the public domain and subject to the claim and entry sought to be made by them.

On the 15th of Dec., 1882, you rendered your decision reviewing the several allegations and arguments advanced, and denying the prayer of the petition;

And under date of Dec. 18, 1882, Messrs. Stearns and Douglas presented to you a petition, in which they "pray an appeal" to this office from your opinion and recommendation upon the original petition in the case of the private claim, and also from your decision rejecting their application for a rehearing.

A transcript of the record in triplicate, embracing the foregoing proceedings, was transmitted by you to this office with your letter of Feb. 23, 1883.

Under date of March 12, 1883, John J. Johnson, esq., of this city, as attorney for Stearns and Douglas, filed in this office additional objections "against the opinion and report of the surveyor-general," which have relation, as above purports, to your decision upon the private claim.

One of said objections only, your "denying them" (the objections) "the right to prove that said lands were uncultivated and uninhabited," has reference to your decision denying their petition for a rehearing.

Two principal matters are thus presented for consideration: the appeal from your conclusion and recommendation approving the private claim, and the appeal from your decision denying a rehearing.

First. The 8th section of the act of July 22, 1854, which authorizes and directs the proceedings, before the surveyor-general, in cases of land claims in New Mexico, under grants from Spain or Mexico, makes it his duty "under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands, under the laws, usages, and customs of Spain and Mexico. * * * He shall make a full report on all such claims as originated before cession of the territory to the United States, * * * with his decision as to the validity or invalidity of each of the same, * * * which report shall be laid before Congress for such action therein as may be just and proper," etc.

I am not aware that an appeal from the report of the surveyor-general in any of the numerous cases reported under this act has ever before been attempted. A direct decision of this office or the Department as to the right of appeal cannot therefore be referred to; but the language of the statute is plain, and precludes the idea of such an appeal. The surveyor-general is required to ascertain the particulars indicated and make a full report thereof, *which report* is the matter to be laid before Congress for such action *thereon* as may be just and proper. Congress has called for no other action nor expression from any one, and has reserved to itself the final decision upon the claim as reported. By prescribing specifically that the basis of its action shall be the report of the surveyor-general, it has negatived the supposition that such report can be subject to revision, modification, or rejection, by any power or authority short of its own. It has authorized no intermediate tribunal nor agent to act in the premises.

The proceeding for appeal is not accompanied by proof of service on the opposite party, as required by the rules.

Second. The rules provide that rehearings "will be allowed in accordance with legal principles applicable to motions for new trials at law." I have considered the matter alleged as grounds for a rehearing, and am of opinion that they do not, as regards the substance of the application, bring the case within the rules.

The surveyor-general is not required by the statute nor the instructions of the hon. Secretary of the Interior to give notice of the examination of private claims under foreign grants before him; and, as appears from the records, these examinations in his office have been uniformly *ex parte*. The same was the practice as to claims of like character before the land commission in California, as far as related to adverse claims and outside parties. The commission there as well as the surveyor-general in New Mexico was required to decide upon the validity of the claims presented; but in neither case has that requirement been held to authorize the adjudication of contests between conflicting claims; consequently the giving of notice to outside parties was not necessary. The issue in both cases is between the grant claimants and the United States. In cases before the California commission the United States was represented by a special agent appointed for the purpose. In the New Mexico cases the Government appears to have been represented solely by the surveyor-general.

The land sought to be entered by the objectors is shown by the plat annexed to their petition for rehearing to be within the claimed limits of the private claim. The facts alleged, that the two quarter sections referred to have never been used for cultivation or grazing, etc.; that about two years before several persons among the petitioners of the private claim, who had never before claimed beyond the acequias, went upon the same, staked off the ground, and claimed to hold it by virtue of assignments under the Spanish grant; and that said two quarter sections were at the date of the treaty of acquisition unoccupied and abandoned, would therefore, if proved, be immaterial and inadmissible. It may, in case of confirmation of the claim, be competent evidence towards determining the correct location.

The proof of the existence of other towns or settlements within the alleged five leagues limitations, and the claim that therefore there was no grant to Albuquerque of the dimensions and locality claimed, would raise a question in the case not within your province to determine.

The surveyor-general is by the statute required to report upon the origin, etc., of claims presented, with his opinion as to their validity (which has been practically determined to relate to their regularity and genuineness), not to hear and determine contests between conflicting grants. It often occurs that there are overlapping grants, each regular and "valid" upon its face. In such cases, the duty of the surveyor-general is to report upon each by itself, and according to its character, in his judgment, for genuineness; and such has been the practice. The questions of priority and superiority of title are not passed upon by officers of the executive department, but are left to the proper judicial tribunals. This testimony would therefore be inadmissible if a rehearing should be ordered.

The inference drawn from what is claimed to be shown by the exhibits introduced before you by the grant claimants could only be employed by way of argument to show that under alleged provisions of Spanish law such a grant as you have reported could not have been made; the lands in question being held by individuals in severalty, subject to abandonment, etc.

The lands under town or community grants, portions of them, at least, are set off to individuals and held in severalty, and are subject to transfer, abandonment, and in case of abandonment to be regranted. The exhibits referred to were part of the testimony in the case as presented, and doubtless received due consideration. There is no allegation that they did not.

The prayer of the claimants' petition does not give shape to the confirmation, if confirmation be made. That is within the control of Congress. A rehearing would have no effect upon the prayer of the petition.

But, aside from matter of substance, the objectors did not comply with the rules as regards form and practice.

Rule 71 provides that the "proceedings in hearings and contests before surveyors-general shall, as to notices, depositions, and other matters, be governed, as nearly as may be, by the rules prescribed for proceedings before registers and receivers unless otherwise provided by law."

Rule 76 provides that "motions for rehearings before registers and receivers * * * will be allowed in accordance with legal principles applicable to motions for new trials at law *after due notice to the opposing party.*"

The petition of the claimants is subscribed by their attorneys, whose residence is stated; but no notice is shown to have been given them.

Rule 78 requires that "motions for rehearings and reviews must be accompanied by an affidavit of the party or his attorney that the motion is made in good faith and not for the purpose of delay."

No affidavit containing the declaration required by the rule, or its equivalent, accompanies the petition for rehearing or is found in the case.

I shall not at this time consider whether the objectors have acquired a standing in regard to the land in question which entitles them to appear in this case, their appeals from the register's rejection of their declarations being pending undecided. It is possible that the proceedings taken would give them preference rights, in case the private claim should be rejected by Congress, or, if confirmed, the land should be found to be not embraced within it.

The conclusions reached are :

- 1st. That appeal does not lie to this office from your report on the private claim.
- 2d. That the appeal taken therefrom is ineffective for want of notice to the opposite party.
- 3d. That the grounds alleged for rehearing do not sustain the motion for rehearing.
- 4th. That the motion for rehearing is informal and invalid for want of notice to the opposing party, and of the affidavit required by rule 78.
- 5th. That both appeals be dismissed.

The transcript in the case, with the objections, argument, and accompanying papers filed in this office by Mr. Johnson, and a copy of this decision, will be transmitted to Congress in due course.

You will give notice to Messrs. De Witte Stearns and Thomas G. Douglas of this decision, and that I shall suspend action on the case at issue for twenty days from the service of such notice, to enable them to apply to the hon. Secretary of the Interior for an order in accordance with rules 83 and 84, and advise this office of the date of service of such notice. The attorney of the parties resident here will be notified from this office.

Respectfully,

N. C. McFARLAND,
Commissioner.

(Indorsed :) Department of the Interior, General Land Office, July 10, 1883. N. C. McFarland, Commissioner. Copy decision dismissing appeals of Stearns and Douglas from report and decision of surveyor-general in case of claim of inhabitants of town of Albuquerque for confirmation.

To the hon. the Sec'y of the Interior :

THE INHABITANTS OF ALBUQUERQUE }
vs. } No. 130. General Land Office.
THE UNITED STATES. }

The petitioners, De Witt Stearns and Mr. Douglass, through their attorney, John J. Johnson, respectfully represent that they are citizens of the United States of America, and reside at Albuquerque, New Mexico; that they served in the Army of the United States during the late rebellion and are honorably discharged soldiers; that, under the provisions of sec. 2304, Revised Statutes, they are entitled to enter 160 acres each of public lands as soldiers' homestead; that on the 25th of November, A. D. 1882, they filed with the register of the land office at Santa Fé, New Mexico, their declaration in due form of law, supported by proper affidavits, applying for and to enter under the provisions of the act of June 8th, 1872, amendatory of an act entitled an act to enable honorably discharged soldiers and sailors, their widows and orphan children, to secure homesteads on the public domain; the lands more particularly described in these proceedings being in section 20, in township 10 N. of range 3 E. of the New Mexico principal meridian; that on the 26th of November, A. D. 1882, the same were returned to petitioners endorsed "Rejected, township 10 north, range 3 east not open for

settlement. Telegram Com. Gen. Land Office, November 25th, 1881, signed Max Frost, register, W. H. Bailhache, receiver." From this action an appeal was taken, and all the papers relating to the appeals were forwarded to the Commissioner of the General Land Office, Washington, D. C.

Thereupon, certain persons claiming under a Spanish grant filed their petition before the surveyor-general asserting claims of title under said Spanish grant; after some considerable time occupied in his investigations, that officer reported in favor of the claimants under a Spanish grant. The petitioners then filed a petition before that officer praying that said report be reopened and a rehearing had, and that they be allowed to offer evidence to prove that the land in question is public domain; that it has been surveyed and divided into townships and subdivided into fractional parts of sections by the United States Government; that said land was never occupied or claimed or utilized within the memory of man by any one, until the staking off by the pretended claimants about two years before petitioners filed their declaration; that it is all of a sterile nature, being sand hills that have never produced anything, even grass; that said land is all above any acequia or ditch, and that it was abandoned and unoccupied, and Government land at the time of the treaty of Guadalupe Hidalgo, and consequently became the property of the United States, and a part of the public domain, and has so remained until the time petitioners sought to enter the same.

That said surveyor-general refused to reopen the case and hear evidence as above stated, but, on the contrary, decided that there was a grant and so recommended its confirmation to Congress. From his decision these petitioners prayed an appeal, which in the course of time was transmitted to the Commissioner of the General Land Office, when additional exceptions to said report were filed.

Said exceptions were, together with said appeal from said report, taken up and considered by the Commissioner of the General Land Office, and after consideration thereof said appeals were dismissed; among the reasons assigned for said dismissal was that there was no right of appeal from the report of the surveyor-general in this case.

Petitioners aver that, by law as well as the rules of practice, they have the right of appeal from the report and decision of the surveyor-general. They, therefore, invoke the supervisory powers of the honorable Secretary of the Interior, and pray that an order be issued, directing the Commissioner of the General Land Office to send up the record and papers, in these appeals, that the decisions may be reviewed by your honor, in accordance with law and practice, as in such cases made and provided.

JOHN J. JOHNSON,
Atty. for Appellants.

I, John J. Johnson, attorney of record in the cases above referred to, state that I have read the above petition, by me signed; that from information derived from the record in this case, I believe the facts herein set forth to be true; and that said petition is not interposed for purposes of delay.

[L. s.]

JOHN J. JOHNSON,
Atty. for Appellants.

Sworn and subscribed to before me this 16th day of July, 1883.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, *Jr., Asst. Clerk.*

I certify that, in my opinion, the above petition is well founded in point of law.

JOHN J. JOHNSON,
Atty. for Appellants.

I further certify that I have this day mailed a true copy of the above petition to Breeden & Hazledine, attorneys for the claimants, in a registered letter.

July 17th, 1883.

J. J. JOHNSON,
Atty. for Appellants.

(Indorsed:) No. 130. The inhabitants of Albuquerque vs. the United States. Petition praying for an order directing the Commissioner to certify said proceedings to the Secretary and suspend further action. M. July 17, 1883. Johnson, J. J., Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, July 17, 1883.

The COMMISSIONER OF THE GENERAL-LAND OFFICE:

SIR: I transmit herewith an application of John J. Johnson, esq., praying for an order upon you to send up the records and papers in the matter of the appeal of De Witt

Stearns and Mr. Douglass, who applied to enter tracts in sec. 20, tp. 10 N., R. 3 E., of the New Mexico principal meridian, under section 2304 of the Revised Statutes.

Upon examination of the petition, I fail to find any facts that would justify the exercise of supervisory power by me, and therefore decline to interfere. The motion is denied.

Very respectfully,

H. M. TELLER,
Secretary.

TRANSCRIPT OF PRIVATE LAND CLAIM NO. 130. (THE TOWN OF ALBUQUERQUE.)

(Reported by the United States surveyor-general, on September 5, 1882.

TOWN OF ALBUQUERQUE.

Petition of claimants to surveyor-general, July 25, '81, filed in Sur. Gen.'s Office.

The town of Albuquerque, to the Honorable Henry M. Atkinson, United States surveyor-general for New Mexico.

Your petitioners, Ambrosio Armijo, Franz Huning, Cristobal Armijo, Atanacio Montoya, Francisco Armijo y Otero, Santiago Baca, Elias S. Storeo, Jose L. Perea, Harry R. Whiting, Melchior Werner, and divers other parties not here named as property owners at this time in the town of Albuquerque and its vicinity—that is to say, in the town lots, farms, ranches and settlements, lying and being situate upon the tract of land in the county of Bernalillo and Territory of New Mexico, commonly known as the Albuquerque grant—do for themselves and all the other parties in interest in said tract of land, respectfully represent to your honor:

That upon the establishment of said settlement or town many years ago, the same was called and has always been known as the village of San Felipe de Albuquerque, so named in honor of Francisco Fernandez de la Cueva, Duke of Albuquerque, who was twice (in 1659 and 1660, and in 1701 to 1711) Viceroy of Mexico; that the town when established or soon afterwards was created a villa or village, a Spanish honorary title conferred by the King or Cortes upon cities or towns in some way distinguished or deemed worthy of the honor; that the town has, from time immemorial, been the seat of justice for the civil jurisdiction embracing it, a division of the military district, a parish of the Catholic diocese, has always had schools for the education of the children of its inhabitants, and has often been the subject of legislation in the provincial departments and territorial deputations of New Mexico, was a town of several thousand inhabitants at the time of the change of national sovereignty in 1846, and is at this time a growing and flourishing city of about three thousand inhabitants, engaged in trade, commerce, manufacturing, farming, stock raising, etc., having running through it the New Mexico and Southern Pacific (otherwise the Atchison, Topeka and Santa Fé) Railroad, and having in course of construction to or through the city also the Denver and Rio Grande, and the Atlantic and Pacific Railways.

That the said inhabitants, your petitioners, do, as a community of settlers, in the name of the town of Albuquerque, owners in severalty of landed and other interest in and upon the said tract of land, assert title to and as against the United States claim the said tract of land under and by virtue of a royal grant or grants from the Crown of Spain, made by the legally constituted agents of the king to the ancestors of your petitioners and their heirs and assigns under the laws, ordinances, and decrees of the Spanish Government relating to the acquisition and tenure of lands by communities and persons by virtue of the continuous undisputed and quiet possession and enjoyment of said lands by your petitioners and their predecessors in interest during many generations, and also under and by virtue of the stipulations and guaranties of the treaty of Guadalupe Hidalgo, between the United States and Mexico, touching the right of property in the ceded Territory.

That the tract of land so claimed by your petitioners is a tract of four Spanish square leagues in size and extent, having for its center the flagstaff and adobe monument surrounding the same now standing in the middle of the plaza or public square at or about the center of the town of Albuquerque, and having for its exterior limits and boundaries north and south and east and west lines through the respective termini of lines one linear Spanish league in length extended north, south, east, and west, from the center of said flagstaff and adobe monument surrounding the same according as the said tract of four square leagues is represented upon the sketch map herewith, marked A.

That your petitioners, for the purpose of showing that their ancestors were and they, as their successors, are, as a community of settlers, entitled to the land here claimed, whether the same was ever actually given in possession formally or not, make reference to the following laws of the Spanish Government, printed and published in the volume of laws, ordinances, and decrees of Spain, entitled "*Recopilacion de Indias*," to wit: Law VI granting to any settlement of not less than thirty white persons four square leagues of land, provided the same be not less than five leagues from any other such settlement, and be not in prejudice to the interest of any Indian Pueblo or private parties; Law VII providing that when it is proposed to form a settlement or community of not less than ten white persons the necessary extent of territory shall be granted them; Law X providing that when it is proposed to found a new settlement of not less than ten married men, the necessary extent of territory shall be granted them; the settlers to have power to elect their local officers and representatives; Law XIII providing that the commons granted to a community shall be of adequate extent, so that if the same flourish and increase there may always be sufficient ground for the use of the people and their live stock; and Law XIV providing for the concession of land to the settlements with allowance for their increase and the setting apart of certain portions for the pasturage of the work animals and beef cattle of the people and of the public animals and providing also for the distribution of the tract into lots and fields among the settlers.

That your petitioners believe that the said settlement or town of Albuquerque was in existence at the time of the Pueblo Indian insurrection of 1680 when all the white inhabitants of New Mexico retreated from the province, and all personal effects of every description left behind were destroyed; that in fact its inhabitants then had a royal grant for their lands, but when expelled the country, probably with no hope or expectation of ever returning, and deeming the grant worthless, did not care to save or preserve it, but suffered it to be lost or destroyed like the Government records themselves of that period; that after the return of the Spaniards to reoccupy the country and their lands in 1693 the said town of Albuquerque was then or about that time resettled, and as the record shows the settlers were, in 1706, regranted the lands there by a royal concession made to them by the king revalidating or regranteeing title to such of the expelled settlers as returned to reoccupy their lands, and granting unclaimed lands to new settlers, as is evidenced in archive file No. 156 hereinafter described and referred to.

That although your petitioners cannot present to your honor any actual concession to their ancestors for said tract of land, yet they assert and claim that as the town of Albuquerque is known historically and is conceded by all persons to have been in existence during at least the last one hundred and seventy-five years as an established community of settlers and as during at least that period the lands there have been occupied, cultivated, and improved, sold, conveyed, and delivered by and between parties, the holders of such property must be presented to have had a formal grant therefor, *ab initio*, or not having such original title, to have acquired by the right of a long undisputed possession, a possession and status subsisting at the time of the change of National Sovereignty, such a title as is contemplated, protected, and guaranteed by the treaty of Guadalupe Hidalgo.

That your petitioners believing as aforesaid, that the original settlers of said Albuquerque (as they were clearly possessed of all the requisites to entitle them to a grant of at least four square leagues, and as there are references to such a grant among the old archives) did receive and once had in their possession a royal concession or grant for the said tract of land, have for a long time by diligent search and inquiry endeavored to find such concession or grant so as to present the same to your honor for investigation and approval, but have been unable to find the same, but your petitioners believe and respectfully submit that such missing grant is referred to in documents numbers 156 and 238 which reference is hereinafter made as among the old Spanish archives now in your office.

That your petitioners, for the purpose of showing and corroborating the fact of the existence of said town of Albuquerque, and the fact of the possession and use of lands, and the succession of titles to lands in and about the said town, and upon and within the said tract of land, hereby make reference to the following described papers or documents among the old Spanish archives now in your office, and also to divers other original old papers in said archives not here designated relative to and concerning landed interest in said town and said tract, to wit:

Original document, file No. 156, containing, first, the petition of one Lorenzo de Carabajal to the chief alcalde and war captain of the said village of Albuquerque, setting forth that whereas, on the 17th day of ———, 1706, he had been by the sergeant major assigned and given possession of the ruins of an old house formerly belonging to his father, and by the chief alcalde a piece of cultivable land on the day the delivery of the lands of that village was executed to the citizens and new settlers under the royal authority conferred on said chief alcalde for that purpose, and had not yet received the title juridically establishing the said house and land to be his in fee, he

therefore prayed that the grant be executed, and he be placed in royal possession; second, the decree of said chief alcalde, dated March 9, 1707, declaring the grant to said house and land in the name of His Majesty the King; and third, the act of possession for said house and land executed by said chief alcalde and war captain dated at the village of San Felipe de Albuquerque July 14, 1708, designating the boundaries of said granted premises, and imposing a penalty upon said Lorenzo de Carabajal and one Cristobal Varela should they as adjoining property holders go into court concerning the proceedings, the fine to be applied to the building of the church. A translation of which document No. 156 is herewith presented, marked B.

Original document, file No. 53, being a decree and a protest concerning lands in said town of Albuquerque, dated at the village of San Felipe de Albuquerque, the twenty-first day of June, the year not given, but as the decree is signed, as chief alcalde, by one Juan Gonzalez Bas, who is known from the record, to have been such of that jurisdiction in 1731, supposed to be that year, which decree and protest prove the existence of an organized community at said town of Albuquerque and the existence of titles to lands there at that time.

Original document, file No. 314, archives, being the petition of one Francisco Garcia, praying for the revalidation of a grant made to him in 1706, for land at the said town of Albuquerque, and for an additional grant, and the decree of the governor and captain-general, dated October 5, 1716, granting as prayed for, a translation of which document, file No. 314, is herewith presented, marked C.

Original document, in file No. 306, dated at the village of San Felipe de Albuquerque, August 15, 1715, wherein Luis Garcia, chief alcalde and war captain of said village, states and certifies that by authority and direction of General Juan Paez Hurtado, visitor general, then present, and inspecting, he proceeded to a certain house, and land adjoining said village, occupied and claimed by both Alejo Gutierrez and Ventura, de la Candelaria, who had purchased the same in partnership, but could not amicably divide their interest therein, and appealed to said visitor-general to decide in the premises, and that he divided the said property into two equal parts by designating and assigning to said Gutierrez one-half of the land to the south and one-half of the house (four rooms) to the west, and to said Candelaria one-half of the land to the north and one-half of the house (four rooms) to the east, with orders that they respectively erect land-marks to designate their lands.

Original document, file No. 172, dated at the village of San Felipe de Albuquerque, April 23, 1722, being the report of Alonzo Rael de Aguilar, provincial lieutenant general, of a compromise settlement by him of a dispute between Pedro Lucero and Ventura de la Candelaria, for land in said village of Albuquerque, claimed by them under a grant to Nicolas Lucero, which settlement was effected under special orders from governor and captain-general Domingo de Bustamante dispatching his said lieutenant-general to Albuquerque for that purpose.

Original document, file No. 516, being deed of conveyance dated May 21, 1731, from Juana de Analla to Jose Montano, for a piece of land in the village of Albuquerque, inherited by the vendor and executed before Juan Gonzales Bas, as chief alcalde of the village of San Felipe de Albuquerque and its jurisdiction.

Original document, file No. 751, being deed of conveyance, dated December 4, 1733, from Cristobal Jaramillo to Matias Romero, for a building lot in Albuquerque, executed before Geromino Jaramillo as chief alcalde of the village of San Felipe de Albuquerque.

Original document, file No. 843, being a decree, dated at the village of San Felipe de Albuquerque, January 17, 1735, by the chief alcalde and war captain of said village, valuing and distributing among the heirs of one Jacinto Sanchez, deceased, certain real estate within the Albuquerque tract of land, described in said decree as follows: "The ranche below, situate in the vega, on the del Norte River, about one fourth league, valued at one hundred and twenty dollars, and ascending up to the boundary of this village and this small ranche where the deceased had lived, was examined and the same being examined by its boundaries, house and cultivated lands (which house consisted of four dwelling rooms and a porch) the whole was valued at three hundred dollars."

Original document, file No. 238, being two deeds of conveyance both dated and executed at the village of San Felipe de Albuquerque, before Juan Gonzales Bas, as chief alcalde and war captain of said village and its jurisdiction, the former of which deeds bears date December 11, 1734, and is from Leonor Dominguez, widow of Cristobal Jaramillo, deceased, to Nicolas Deerau for a piece of uncultivated land therein described, established to be hers by the writing which she holds included in the grant which she holds made in the name of His Majesty the King; and the latter of which deeds bears date August 20, 1735, and is from Pedro Lucero, son and heir of Nicolas Lucero, deceased, to Nicolas Deerau for a piece of land therein described, which land, as in said deed declared, was possessed by the said Nicolas Lucero under a grant therefor, and for other lands made to him by his majesty as original founder of said village.

Original document, file No. 1051, of said old Spanish archives, being the petition of one Antonio Varela, to the governor and captain general, for a grant of land, as he had

been promised land whenever there should be any available, as there now was at the place Fonclara; decree of Governor and Captain-General Velez, Cachupin, dated September 1, 1753, ordering the chief alcalde of Albuquerque to report on the petition; report of Chief Alcalde Miguel Lucero that there was land sufficient to give the applicant; decree of the governor requiring the chief alcalde to report whether the land was vacant; its extent, etc.; report of the chief alcalde that the land applied for in Albuquerque, 183 varas, had been granted to an Indian named Cristobal de la Cruz, who had not occupied it according to law, that it was unoccupied and the Indian removed from the town; and decree of the governor, dated February 7, 1754, granting the land to said Antonio Varela as abandoned land.

Original statistical table and notes, marked "1808, census of New Mexico," now among the Government archives at said surveyor-general's office, exhibiting the number of Catholic churches and their laity, and the populations of the twenty-five parish towns in the province of New Mexico, on December 31, 1808, which table shows that the population of the village of San Felipe de Albuquerque was then 4,051, of which 2,011 were male and 2040 female resident members of the church, and of which notes the one referring to the church at said village of Albuquerque, says: "The church and convent were rebuilt in 1790 upon the recommendation of the Rev. Father Minister, and at the expense of the people. The church is provided with all the necessaries for the administration of the Holy Sacrament with the exception of the black ornament, which is unserviceable."

The department legislative assembly of New Mexico, sitting at Santa Fé, as appears from its original journal of proceedings in manuscript, pages 37 and 38, now at the surveyor-general's office among said archives, at its session of January 4, 1823, divided the province into civil partidos or districts, the record of that act in said journal, after setting forth the boundaries of New Mexico, being as follows:

"The province is hereby divided into four proportionate partidos, apportioning the population, which are:

The partido of the capital, Santa Fé, which shall be recognized as their shire by Vado de Pecos, Cochiti, Jemez, and Alameda.

The partido of the village of Albuquerque, which shall be recognized as their by the corporations of Isleta, Tome, Belen, Socorro, and Laguna.

The partido of the village of Santa Cruz de la Cañada, which shall be recognized as their shire by the three corporations of San Juan de los Caballeros, Abiquiui and Taos.

The partido of Paso del Rio del Norte, which shall be recognized as their shire by the two corporations of Isleta and San Lorenzo del Real."

And the foregoing division being determined, it was ordered that a circular be transmitted to all the corporations, to the end that they may understand concerning what matters they may proceed to the shire, for the purposes contemplated in Chapter I of Article XIX of the regulations prescribed by the general and extraordinary Cortez of Spain, on June 23, 1813, for the constitutional corporations, provincial assemblies, and superior political chiefs.

That the whole of the tract of land claimed by your petitioners, and represented upon said sketch map A, is claimed and held in severalty by divers owners under bona fide title; and that no portion thereof is believed to be or reported to be vacant or unclaimed land, but very part and portion thereof is claimed and held by descent or purchase or other valid and sufficient title existing and subsisting at the time of the change of national sovereignty in New Mexico and at the date of the treaty of Guadalupe Hidalgo.

That your petitioners pray that their claim for the said tract of land of four square leagues in area be recognized and confirmed as to the heirs, successors, and legal representatives of the original inhabitants of the town of Albuquerque, saving and excepting from the operation and effect of such recognition and confirmation all such title, if any there be, in said premises as was formerly in the National Government of Mexico, and as passed to the United States under the treaty of Guadalupe Hidalgo.

That your petitioners, for the purpose of showing the nature and status of their claim for said tract of land as against the United States, herewith present, marked D, an original letter from the Honorable Carl Schurz, Secretary of the Interior, dated March 27, inclosing a report to him of March 24, 1830, of the Hon. J. A. Williamson, Commissioner of the General Land Office, concerning the said tract of land and the claim of your petitioners, the inhabitants of the town of Albuquerque, therefor.

That your petitioners, in view of the fact and circumstance that the said town of Albuquerque is not an incorporated city, town, or village, and is without a municipal government or officials, and in consideration of the fact that there is no vacant or unclaimed land within the limits of the said tract, and therefore is not a city, town, or village such as contemplated by the instructions to you of August 21, 1854, do not apply for the confirmation of their said claim for said tract of land through any corporate authority, but they ask for such confirmation to your petitioners, the inhabitants of the town of Albuquerque, the heirs, successors, and legal representatives of the original settlers or grantees, for the facts and reasons hereinbefore set forth, and as the inhabitants of a

town whose existence is conceded at the period when the United States took possession of New Mexico, and at the passage of the act of July 22, 1854, and whose then existence may be taken "as prima facie evidence of a grant to such corporation or to the individuals under whom the lot-holders claim.

And your petitioners pray that their claim for the said tract of land of four square leagues be by your honor investigated and approved and recommended to Congress for confirmation under the treaty of Guadalupe Hidalgo, and the act of Congress establishing your office and providing for investigating and reporting private land claims in New Mexico, and they further pray that the said tract of land be surveyed and set apart to your petitioners, the inhabitants of the town of Albuquerque, and that a patent be issued therefor by the United States.

Respectfully submitted.

AMBROSIO ARMIJO,
Presidente.
FRANZ HUNING,
CRISTOBAL ARMIJO,
ATANACIO MONTOYA,
FRANCO ARMIJO Y OTERO,
SANTIAGO BACA,
ELIAS S. STOVER,
HARRY R. WHITING,
J. L. PEREA,
MELCHIOR WERNER,
Commissioners.

BREEDEN & HAZLEDINE,
Attorneys for Petitioners of Albuquerque, N. Mex.

TOWN OF ALBUQUERQUE.

[Translated copy of document 156, filed in Surveyor General's Office July 25, 1881.]

EXHIBIT B.

VILLAGE OF ALBUQUERQUE,
March 9, 1707.

His hon. the chief alcalde and war captain :

I, Lorenzo de Carabajal, resident of this village of Albuquerque y San Francisco Javier, appear before you in due legal form, and state, sir, that inasmuch as on the 17th day of _____, of last year, 1706, the sergeant major designated to me, and placed me in possession of a ruin of an old house which had been my father's, and inasmuch also as you were pleased to designate to me a piece of cultivable land on the day that you made the distribution of the lands of this town to the residents and new settlers under the royal authority communicated to you for that and other purposes, I being at this time yet without a proprietary grant legally showing the said land and house to be my own, I ask and pray that you be pleased to make a title to said land and house, and place me in royal possession thereof in the name of His Majesty, so that I may freely and without any impediment enjoy the same now and always, and I declare before God our Father and on the sign of the cross that this petition is not in dissimulation, and as may be necessary, etc.

LORENZO DE CARABAJAL.

At the village of Albuquerque y San Francisco Javier, on the ninth day of the month of March, year 1707, the petition was presented by the party, and, being by me examined, I, Captain Martin Hurtado, chief alcalde and war captain of this village and its jurisdiction, treated the same as before me in so far as lawful; and I do make to him the grant to the land designated and the house in the name of His Majesty; and that it may so appear, I signed this as special justice, with my two attending witnesses present, the same being Juan de la Mora and Pedro de Chaves, attending witnesses.

JUAN DE LA MORA,
P. DE CHAVES,
Attending Witnesses.

Before me, as special justice.

MARTIN HURTADO.

At this village of San Felipe de Albuquerque, on the fourteenth day of the month of July, of the year 1708, I, Captain Martin Hurtado, chief alcalde and war captain, proceeded to place Lorenzo de Carabajal in royal possession of the cultivable lands and

of the house lot which belong to him, designating to him the boundaries, on the north side the lands of Cristobal Varela, and on the east the acequia madre, and on the south the Del Norte River, and I command as well Lorenzo de Carabajal as Cristobal Varela that they have no litigation concerning what has been executed, under penalty of twenty dollars for the building of the church, and that it may so appear I signed this with two witnesses of my attendance, who were Cristobal Jaramillo and Pedro de Roxas.

CRISTOBAL JARAMILLO,
PEDRO DE ROXAS.
Before me, special justice.

MARTIN HURTADO.

TOWN OF ALBUQUERQUE.

[Translated copy of document 314, July 25, '81, filed in Surveyor-General's Office.]

EXHIBIT C.

His Excellency the Governor and Captain-General:

I, Squadron Corporal Francisco Garcia, a soldier of the garrison of the village of Santa Fé, appear before your excellency in due legal form, and state that having settled at the village of Albuquerque upon a piece of land or low land which I am now occupying by virtue of a grant which was made to me in the name of His Majesty by Captain Martin Hurtado, chief alcalde and war captain of this village, on the twenty-fifth of February of the past year, 1706, and which grant I lay before your excellency with the necessary legal formality in order that you may inspect, revalidate, and confirm the same. And inasmuch as I have my house built upon lands that are not included in said grant, and in order to enable me to hold the same by proper title and right, your excellency will please to make me a grant in the name of His Majesty for the land where I have my house erected, at the edge of an arroyo that forms a sand-bank hitherwards, for which I ask a grant so that no one else shall set up claim to the said arroyo. Therefore I ask and pray that your excellency be well pleased to revalidate the said grant to me and to make to me the same *de novo* for the said arroyo; whereby I will receive benefit and favor with justice which I seek, and I declare in form that this is not in dissimulation and as is necessary, etc.

FRANCISCO GARCIA.

VILLAGE OF ALBUQUERQUE,
October 5, Year 1716.

PREAMBLE.

This petition, together with the grant he refers to, being presented to me, Felix Martinez, governor and captain-general of this kingdom of New Mexico and its provinces, and castellan of the forces and garrisons therein for His Majesty, and I being in this said village of Albuquerque on official visit and being in public audience and the case being examined by me:

DECREE.

I do revalidate and confirm to him the grant which is laid before me and do make to him *de novo* the grant he asks in the name of His Majesty for land where he has his house and the other land which his said petition refers to, so that as his own he use the same at his will, and this decree will serve him as a sufficient title and grant; and that it may so appear I signed this with my secretary of state and war.

FELIX MARTINEZ.

Before me,

MIGUEL THENORIA DE ALBA,
Secretary of State and of War.

TOWN OF ALBUQUERQUE.

[Secretary of Interior's and Commissioner's letters, filed in the Surveyor-General's Office July 25, 1881.]

EXHIBIT D.

Secretary of Interior's letter.

DEPARTMENT OF THE INTERIOR,
Washington, 27 March, 1880.

Hon. P. B. PLUMB, U. S. Senate:

SIR: A letter addressed to you on the 26th January last, by E. S. Stover, of Albuquerque, New Mexico, and left by you in this Department, on the 5th ultimo, was referred to the Commissioner of the General Land Office. I have the honor to trans-

mit herewith a copy of his report on the subject under date of the 24th instant. He is of opinion that the rights of *bona fide* claimants to lands in that Territory are ample protected by existing laws, and that there is no necessity for withdrawing the lands near Albuquerque.

Very respectfully,

C. SCHURZ,
Secretary.

COMMISSIONER WILLIAMSON'S REPORT.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 24, 1880.

Hon. C. SCHURZ,
Secretary of the Interior :

SIR: On 5th February last there was referred to this office by the Department, for inquiry and report, a letter to Hon. P. B. Plumb, U. S. Senate, dated 26th January last, from E. S. Stover, of Albuquerque, New Mexico, relative to certain lands in the Rio Grande Valley, in Bernalillo County.

Mr. Stover states that the land in question is unsurveyed, and that it has been occupied and cultivated for over one hundred years, having been deeded from one party to another, and handed down from generation to generation; but as the title is in the Government, the speculators are making an effort to secure the same, and thus rob the people of their homes and the lands which they and their forefathers have occupied for so many years; and ask if said lands cannot be withdrawn from market until the question of title is settled.

In reply I have the honor to report that the lands in question are supposed to be those in the vicinity of the town of Albuquerque on both sides of the Rio Grande River; being townships 9 N., range 2 E.; 9 N., 3 E.; 10 N., 2 E.; 10 N., 3 E., and those portions of 11 N., 2 E., and 11 N., 3 E., not included in the surveys of private land claims.

The town of Albuquerque is situated in T., 10 N., R. 3 E., but only the exterior lines of said township have been surveyed, and the same fact appears as to the other townships named.

The Atlantic and Pacific R. R., which was definitely located March 12, 1872, runs through the town of Albuquerque, and has a land grant extending for fifty miles on each side of the road covering the *odd* sections within said limits; but no grant emanating from Spain or Mexico, as referred to by Mr. Stover, has ever been brought to the notice of this office.

By the 8th section of the act of July 22, 1854, provision is made for the settlement of private land claims in the Territory of New Mexico; and instructions were issued by this office August 21, 1854, and approved by the honorable Secretary of the Interior on the 25th of the same month and year, to the surveyor-general of New Mexico for carrying this law into effect. That portion of said instructions which may affect the town of Albuquerque is as follows:

"In the case of any town lot, farm lot, or pasture lots held under a grant from any corporation or town to which lands may be granted for the establishment of a town by the Spanish or Mexican Government, or the lawful authorities thereof, or in the case of any city, town or village lot, which city, town, or village existed at the time possession was taken of New Mexico by the authorities of the United States, the claims to the same may be presented by the corporate authorities; or where the land on which the city, town, or village was originally granted to an individual the claim may be presented by or in the name of such individual; and the fact being proved to you of the existence of such city, town, or village at the period when the United States took possession, may be considered by you as *prima facie* evidence of a grant to such corporation or to the individuals under whom the lot-holders claim; and where any city, town, or village shall be in existence at the passage of the act of 22nd July, 1854, the claim for the land embraced within the limits of the same may be made and proved up before you by the corporate authority of the said city, town or village. Such is the principle sanctioned by the act of 3rd, March, 1851, for the adjudication of Spanish and Mexican claims in California, and I think its application and adoption proper in regard to claims in New Mexico."

The foregoing, it would seem, affords ample facilities for the protection of any claim based upon a grant or otherwise, which may be made by an individual or the corporate authorities of the town of Albuquerque, as the said 8th section provides that all lands covered by such claims "shall be reserved from sale or other disposal by the Government and shall not be subject to the donations granted by the previous provisions of this act" until the final action of Congress thereon, but this office is powerless to recognize the validity of any such claim until it has been confirmed by Congress.

The course to be pursued therefore by the said town of Albuquerque seems clear; but should the claim presented by it not cover all the ancient settlements upon the

lands in question, such settlements are fully protected by the decision of the Supreme Court of the United States in the case of Stephen D. Hosmer vs. William T. Wallace, relative to which the registers and receivers of the different U. S. land offices were instructed by me, July 1, 1879, as follows:

"In the future execution of the pre-emption, homestead, and timber-culture laws you will be governed by the principles laid down in this decision."

"Lands covered by existing settlements are not legally open to homestead, pre-emption, or timber-culture entries, except with the consent of the settler, and any entries of such lands which may be allowed under the pre-emption, homestead, or timber-culture laws will be open to contest by the settler according to the rules of practice approved October 9, 1878."

The 2d section of the said act of July 22, 1854, grants a donation of one hundred and sixty acres of land in said Territory to individual settlers possessing the qualifications prescribed therein who settled there prior to January 1, 1858, on condition of actual settlement and cultivation for not less than four years, and the inclosed printed copy of the instructions from this office, dated August 28, 1854, approved by Secretary McClelland September 2, 1854, fully explain the manner of proceeding to procure title under said act.

From the foregoing it would seem that the rights of *bona fide* claimants in the Territory of New Mexico are amply protected by existing legislation, and that there is no necessity for a withdrawal of the lands in the townships referred to.

The letter of Mr. Stover is herewith returned.

Very respectfully, your obed't serv't,

J. A. WILLIAMSON,
Commissioner.

TOWN OF ALBUQUERQUE.

TESTIMONY.

In the investigation of this private land claim, office file No. 188, in the name of the town of Albuquerque, there being present Henry M. Atkinson, United States surveyor-general for New Mexico, David J. Miller, translator and chief clerk of surveyor-general, and Henry L. Waldo, attorney for claimants, the following persons, being first duly sworn as witnesses, were interrogated at testified; and PABLO DOMINGUEZ, being first sworn, on his oath declared:

Question by H. L. WALDO as attorney for claimants. What is your name, age, occupation, and place of residence?

Answer. My name is Pablo Dominguez, my age is seventy-two years, my occupation is farmer, and my residence is here at Santa Fé.

Q. How long have you lived in New Mexico?—A. I was born here at Santa Fé, and have lived here in New Mexico all my life.

Q. Do you know the town of Albuquerque in this Territory?—A. I do.

Q. How long have you known that town?—A. I think since about the year 1823.

Q. About how much population did it have at that time?—A. There were at least two hundred houses there then and some 1,500 population.

Q. Did you know it in the years 1846, 1847, and 1848?—A. I did, and then it had a population of upwards of 3,000.

Q. Have you any interest in the result of this investigation?—A. I have none whatever.

Q. Has that town continued to be occupied as a town since 1846, '47, and '48?—A. It has been occupied as a town continuously since then to this time.

PABLO DOMINGUEZ.

Sworn to and subscribed before me this August 31, 1881.

HENRY M. ATKINSON,
Surveyor-General.

JAMES CONKLIN, being by the surveyor-general sworn on his oath, declares:

Question by Mr. WALDO. What is your name, age, occupation, and residence?—Answer. My name is James Conklin, my age is eighty-four years, my profession is tailor, and my residence is here at Santa Fé.

Q. How long have you lived in the Territory of New Mexico?—A. Since the year 1825.

Q. Where were you born?—A. I was born in Canada, and when a youth was sent to Saint Louis, Missouri, where I was raised.

Q. Do you know the town of Albuquerque in this Territory?—Answer. I do, very well.

Q. When, or about when, were you first there?—A. In or about the year 1827, and thereafter I used to go there annually, having business there.

Q. Was there a town there when you first knew the place?—A. Yes, an old town. Some of the leading men of New Mexico lived there, such as the Armijos, the Pereas, and so forth.

Q. How many people were there in those days when you first knew it and afterwards?—A. From 1,200 to 1,500 people.

Q. Did you know the place in the years 1846, 1847, and 1848?—A. I did, and was then quite familiar with it.

Q. How many people then lived there?—A. I judge from 1,200 to 1,500.

Q. Has there been a town there continuously since these years?—A. There has.

Q. Have you any interest in this claim, or in the result of this investigation?—A. I have none at all.

JAMES CONKLIN.

Sworn to and subscribed before me this August 31, 1882.

HENRY M. ATKINSON,
Surveyor-General.

TOWN OF ALBUQUERQUE.

OPINION.

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

THE INHABITANTS OF THE TOWN OF ALBUQUERQUE }
vs.
THE UNITED STATES. }

In the matter of the claim of the inhabitants of the town of Albuquerque, in Bernalillo County, Territory of New Mexico.

This claim is brought before the surveyor-general; under the treaty of Guadalupe Hidalgo and the 8th section of the act of Congress approved July 22, 1854.

The petition of claimants sets forth that they are citizens and property-holders of the town of Albuquerque; that the town has been in existence for over one hundred and seventy-five years; that the muniments of title were lost or destroyed at the time of the expulsion of the Spaniards by the Indians in 1680, but cites numerous official documents on file in the old Spanish and Mexican archives of this office, showing a recognition by such officials of the existence of a grant.

They further claim that by operation of the law, the town is entitled to four square leagues of land, it having been in existence in 1846.

Under the laws and ordinances of Spain settlements of not less than thirty white inhabitants were entitled to four square leagues.

I have no doubt that a grant originally existed to this town, as the numerous documents on file in this office, a portion of which are referred to in the petition of claimants, bear evidence of the fact in their reference to the same, and the records of the office as well as the testimony taken in the case clearly establish the fact that the town was in existence in 1846 and 1854.

The instructions of the Commissioner of the General Land Office to the surveyor-general of August 21, 1854, set forth in substance that where proof is made of the existence of a town at the period when the United States took possession, it may be considered *prima facie* evidence of the existence of a grant to such town or to the individuals under whom the lot-holders claim.

In view of all the facts, I am of the opinion that the inhabitants of the town of Albuquerque have a just and lawful claim for the land petitioned for, and I approve to the inhabitants of said town the claim for four square leagues having the center of the flagstaff and adobe monument surrounding the same in the middle of the main plaza or square about the center of the old town of Albuquerque as the centre of said tract, unless it may be subsequently shown that the mutual point is elsewhere, and having for its exterior boundaries north and south and east and west lines through the respective termini of lines one Spanish league in each direction north, south, east, and west, from the central point.

The prayer of the petitioners that the grant be approved to the heirs, successors, and legal representatives of the original settlers or grantees cannot be granted, as no evidence of title appears in any specific individuals, but the inhabitants of the town are by operations of the laws and instructions cited entitled to the grant.

The claim is hereby approved and recommended for confirmation by Congress to the inhabitants of the town of Albuquerque.

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

HENRY M. ATKINSON,
Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico, September 5, 1882.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico, September 30, 1882.

The foregoing transcript contains true copies of the papers on file in this office in private land claim number one hundred and thirty, in the name of the town of Albuquerque.

HENRY M. ATKINSON,
Surveyor-General.

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

THE INHABITANTS OF THE TOWN OF ALBUQUERQUE }
vs.
THE UNITED STATES. }

In the matter of the claim of the inhabitants of the town of Albuquerque, Bernalillo County, Territory of New Mexico.

Petition for rehearing.

Your petitioners, De Witte Stearns and Thos. G. Douglas, would respectfully represent and show unto your honor—that they are citizens of the United States, and residents of Albuquerque, Bernalillo County, Territory of New Mexico; that they are honorably discharged soldiers of the United States of America, and as such, under and in pursuance of the homestead laws of the said United States, granting one hundred and sixty (160) acres of land to honorably discharged soldiers and sailors; their widows and orphans, they, your petitioners, filed their declarations with the register of the United States land office at Santa Fé, declaring their intention to enter the northeast quarter of section twenty, township ten, range three east, of the New Mexican principal meridian, and the southeast quarter of said section twenty, of the aforesaid township, which said applications and declarations were rejected by the said register, by reason, as your petitioners are informed, that the Commissioner of the United States Land Office at Washington, D. C., has ordered that the same be withdrawn from the market or entry during the pendency of the adjudication of the claim of the inhabitants of Albuquerque, under a grant or pretended grant, claiming the same land, from which ruling these petitioners have duly appealed. Your petitioners would further show that while all the citizens of the United States are interested in the public domain, and especially those honorably discharged soldiers and sailors, their widows and orphans, who are entitled to homesteads, at the hearing of the said original petition counsel for them alone were only present, and the hearing was *ex parte*; and that there are other facts in addition to those which were then and there brought before your honor, which should so be brought before you and considered, before a just and equitable decision can possibly be arrived at. Which facts are as follows, to wit:

It is a fact, which can and will be established by many witnesses, that all, or nearly all, of the above-mentioned two quarter sections of land, sought to be homesteaded by your petitioners, is situated above and beyond any acequias at this present time, and has never since the memory of man been used for agricultural or grazing purposes, and is a bed of sand hills, not productive of anything, even grass; and that, up to about two years ago, was regarded by the entire community as of no value; and that it was never before that time claimed, even by any one, and it was not reduced to the possession of any one, but about two years ago, when there was a prospect that this land would have a value in the near future, then, for the first time, some half a dozen persons (who are principal among your original petitioners), who had been claiming to hold property adversely to the United States, by virtue of a pretended grant from Spain, which up to this time they never had claimed to extend beyond and above the acequias; they then went upon this sand-hill land for the first time, in violation of all right, and regardless of law in such cases made and provided, and staked off the ground, and pretended to claim it by virtue of assignments under the pretended Spanish grant, adversely to the United States, and with a view or pretense of ever acquiring a title from the United States, by virtue of any of the laws of the United States.

Your petitioners would show, further, that there never was a grant from Spain to the town of Albuquerque of four square leagues, with a center at the flagstaff in old Albuquerque, which is clearly made manifest by applying the laws of Spain, relied upon by the original petitioners, and cited and referred to by them on page 4 of original petition as Laws VI, X, VII, XIII, XIV, from which sixth law it appears that such a grant as the original petitioners claim could not be made where it would conflict with any other town or settlement situate less than five leagues away, or twelve and a half English miles.

It is a fact, which your petitioners will substantiate by sworn testimony, that the town or old Spanish village of Pajarito is older than Albuquerque, and at a time within the memory of persons now living Pajarito was the shire-town of the civil and military district, and was the seat of government, whose jurisdiction was over and extended to and beyond Albuquerque, Albuquerque being subordinate to the jurisdiction of the officials who lived and had their offices and headquarters at Pajarito. Further, the said town of Albuquerque is less than twelve and a half English miles, or five Spanish leagues, from the Indian Pueblo Sandia, as also the Isleta Reservation and the private land grant of Alameda; and immediately within the four leagues asked for by original petitioners are situated the old Spanish towns, known as Ranchos Atrisco, Padillo, and Barelax; the inhabitants of said towns hold title to the lands of the same under and by virtue of grants to private individuals direct from the Spanish crown; all of which your petitioners will show. And since no four league grant pursuant to said above quoted law could be granted to a town or settlement situated less than five leagues away from another town or settlement, and as Pajarito is an older town and of more original importance, the presumption arises that if any four league grant existed Pajarito had it.

The further exhibits furnished with the said original petition show conclusively that the lands in and about Albuquerque were held by Spanish grants in severalty and come direct from the crown to the individuals. (See Exhibit Nos. 156 & 238 pages 7 and 11 of original petition.) Also that, by the Spanish law, lands once granted as above to individuals in severalty, when once abandoned by the grantee, reverted back to the Crown. See Exhibit No. 1051, pages 11 and 12, original petition, where lands had been granted to an Indian and abandoned; in compliance with law, they reverted to the Crown, and were afterwards, upon proof of such abandonment, granted to another person.

Your petitioners would further show that the claimants to those lands in the original petition hold the lands to which they are entitled by titles showing the proper metes and bounds thereof; and are such titles as the present law of the land recognizes, and the courts of the same are fully competent and able to protect. Your petitioners would show that the two quarter sections of land hereinbefore referred to were at the time of the treaty of Gaudaloupe Hidalgo unoccupied and abandoned, and as such became the property of the United States, and ought of right to be subject to your petitioners' entry.

The prayer of the original petitioners is indefinite, and asks for title to an indefinite number of people; and, if granted, will only complicate the titles to all the lands in said tract, they being then held in common. Further, Congress cannot divest title of bona fide owners in this way; neither can it give the public domain to individuals in the manner asked by the original petitioners, without great injustice being done to all other citizens who may be entitled to the benefits of the homestead laws. Therefore, your petitioners ask and pray that your honor will again open this cause, for a hearing of such further evidence as they will cause to be presented and brought before your honor, and upon a full and final hearing of the whole case and the argument of counsel, it may please your honor to decree a recommendation to disallow the said petition of the original petitioners, on the ground that they are sufficiently protected in their vested rights under the present laws.

And, further, that it may please your honor to recommend to the honorable Commissioner of the United States Land Office, and to the honorable Congress of the United States, that the two quarter sections of land hereinbefore referred to are a part of the public domain and subject to the claim and entry sought to be made by your petitioners.

And your petitioners will ever pray, etc.,

DE WITTE STEARNS,
THOS. G. DOUGLAS.

TERRITORY OF NEW MEXICO,
County of Bernalillo:

This day personally appeared before me, the undersigned De Witte Stearns and Thos. G. Douglas, who, being duly sworn, depose and say that they have read over the foregoing petition, and that they are the petitioners whose names are subscribed

thereto, and that as to all those matters and things therein stated as of their own knowledge they know the same to be true, and those stated on information and belief they believe them to be true.

DE WITTE STEARNS.
THOS. G. DOUGLAS.

Subscribed and sworn to before me at my office in Albuquerque this the eighth day of December, A. D. 1882.

M. J. MACK,
Notary Public, Bernalillo Co.

Before the honorable Henry M. Atkinson, surveyor-general of the United States within and for the Territory of New Mexico, at his office in Santa Fé.

THE INHABITANTS OF THE TOWN OF ALBUQUERQUE }
vs. } No. 130.
THE UNITED STATES.

Upon original petition of the said inhabitants of the town of Albuquerque, and the opinion of the surveyor-general thereon, recommending to the Congress of the United States a confirmation of four (4) square leagues of land.

Said opinion rendered September 5th, A. D. 1882, and the further petition of De Witte Stearns and Thos. G. Douglas, filed therein on the — day of November, A. D. 1882, asking for a rehearing and argument of said cause, supported by affidavits, stating reasons for such rehearing, as also the opinion and ruling of the surveyor-general upon the petition of said Stearns and Douglas, rendered at Santa Fé, December 15th, 1882, in which opinion the surveyor-general declines to open the original cause, and refuses petitioners a hearing as prayed for in their petition, in words and figures as will appear by reference to the hereunto appended exhibit, marked "A," and prayed to be taken as a part of this petition for appeal.

From which said opinion and ruling of the surveyor-general your petitioners pray an appeal to the honorable Commissioner of the United States General Land Office, at Washington, D. C. And in support and behalf of this appeal state that they, your petitioners, object to the ruling and opinion of the surveyor-general, in that he erred in overruling their petition and motion; and that the ruling opinion and action of the surveyor-general is contrary to the law, evidence, and facts in the case, and does these appellants great injustice, in that they would be able to show that the surveyor-general erred in giving his opinion in the original case, by recommending to Congress a confirmation of four (4) square leagues, as will fully appear upon an examination of the whole case, as sought to be made out in the original petition and exhibits, as also the original opinion of the surveyor-general rendered thereon, and the petition of your appellants for a rehearing, together with the surveyor-general's letter and opinion, which is hereinbefore referred to as Exhibit A.

To all of which proceedings and opinions of the surveyor-general your appellants object as contrary to law, evidence, and facts in the case, as presented; and they do hereby take an appeal from said rulings and opinions to the honorable Commissioner of the General Land Office at Washington, D. C.; and ask that the same may be reviewed by the honorable Commissioner, and corrected, to the end that justice may be done to these appellants in the premises, and such final disposition made as to all matters therein contained as may seem just and meet and the circumstances require.

STEARNS AND DOUGLAS,

Of and for appellants of Albuquerque, N. M.

DECEMBER 18TH, 1882.

EXHIBIT A.

SANTA FÉ, N. M., December 15th, 1882.

Messrs. STEARNS and DOUGLASS,
Attorneys-at-law, Albuquerque, N. M.:

GENTLEMEN: I have to acknowledge the receipt of your petition, asking for a reopening of the cause of the inhabitants of the town of Albuquerque *vs.* the United States, in the matter of the claim of said inhabitants to a grant of four (4) square leagues of land, with the flag-staff in the main plaza of the old town as a center.

When Mr. Stearns was here he verbally stated to me that the flag-staff was not the central or initial point, as he could prove, and upon that question I informed him I would and could admit testimony, as it was important that the central point of the grant should be definitely fixed, in order that a proper survey could be made of the tract.

In your petition you state additional grounds for rehearing, which bear, as you claim, upon the validity of the grant, which, in substance, are:

1st. That no claim was ever made, until within two years past, to the sand hills in the east half of sec. 20, near the town, which you now claim under the provisions of the homestead laws of the United States, and the same were never used for agricultural or grazing purposes by the inhabitants of Albuquerque.

2d. That there never was a grant to the town of Albuquerque, and could not be, as it was within five (5) leagues of the town of Pajarito, which you claim is the older of the two, and under the law Pajarito was entitled to a grant, which precluded a grant to another town less than five (5) leagues distant therefrom.

3d. That the town of Albuquerque is less than five leagues from the Indian pueblo of Sandia, and hence, for that reason, was not entitled to a grant under the law.

4th. That the various decrees and acts of possession referred to in the petition of claimants was evidence that the lands in and about Albuquerque were granted in severalty from time to time, which could not have been the case if they had previously been granted to the town of Albuquerque, and the land thereby segregated from the public domain, and hence not subject to alienation by the subsequent officials, empowered to make such concessions.

5th. That the petition of claimants is indefinite and asks for title to be confirmed to an indefinite number of people; and,

6th. That Congress cannot divest title to *bona fide* owners in this way.

In all these town grants there was a certain portion given for grazing purposes and for commons, and hence it was not necessary that a special individual claim should have been asserted to the sand hills in the east half of section 20, now claimed by you, if the same falls within the general limits of the grant; as all within the granted limits belonged to and was constructively occupied and in the possession of the grantees, and should it be shown that no particular individual ever laid claim to that portion of the grant it would not affect the title or right of the inhabitants to the same, if it is established that they have a grant as claimed.

The determination of your second proposition settles all the other points in your declaration, except as to any error there may be in the central or initial point of the grant, as fixed in claimants' petition. The clause in Law 6, lib. 4, tit. 5, prohibiting grants to towns less than five leagues of any other town, evidently refers to any other town claiming a grant under that law; but whether or not that is the proper interpretation to place upon the law referred to, the fact that there are a number of official documents in the old archives of this office showing recognition of a grant by the successive Spanish and Mexican officials, from a period as far back as 1706, and by officials authorized by the Spanish and Mexican laws to alienate the public domain, it must be presumed that they acted within the scope of the authority conferred upon them by the law.

Nor do these orders, decrees, and acts of possession indicate original grants in severalty to the parties referred to; as they are considered merely proceedings of denouncement under the laws, of the portion originally assigned to a settler who had abandoned and forfeited his right thereto, under the previous grant and act of possession, and the placing of another settler in possession of the forfeited premises; thus clearly showing a recognition of a pre-existing grant under some law, and presumably under that authorizing grants to towns, comprising thirty (30) families or more, for four (4) square leagues of land; and at all events the instructions issued by the honorable Secretary of the Interior, under the act of Congress approved July 22nd, 1854, specifies that where a town is shown to have existed at the period when the United States took possession, it may be considered as *prima facie* evidence of a grant to such corporation. In this instance the existence in 1846 to 1854 of the town of Albuquerque is shown from the testimony, but the old Spanish and Mexican archives in the possession of this office bear evidence not only to the existence of the town of Albuquerque for nearly two centuries, but these records also show that the Government officials during that period recognized the existence of a grant, as appears from the manner of proceedings on the part of such authorities, in denouncing certain abandoned lots or parcels of land in the town, and placing other settlers in possession of such denounced lots or parcels of land, as was the custom under the pueblo grants, and the conclusion that a grant existed to the town of Albuquerque is irresistible.

The claim of a large population who have acquired property in the town by inheritance and purchase from those who, with their ancestors, have lived there for centuries, cannot be disregarded, as the treaty stipulations require such recognition of their property rights as they were entitled under the Spanish and Mexican Governments,

and as it is a matter of record evidence that the properly constituted authorities of those Governments recognized these property rights in the inhabitants of the town, this Government can do no less than protect them in what we consider a legal as well as equitable claim to the property occupied and possessed by them for so long a period. It was these considerations that led to the approval of the claim on the 5th of September last. The claim was filed July 25th, 1881, and was pending from that time until approved as stated, and transcripts in triplicate of all the papers in the case have long since been prepared for transmission to Congress. The law cited did not prescribe any limit within which pueblo grants could be made to Indian pueblos, except that the same should not conflict therewith.

The last clause of the 8th section of the act of Congress approved July 22d, 1854, provides that until final action of Congress upon these claims, all (such) lands shall be reserved from sale or other disposal by the Government.

No claim has ever been presented to this office by the town of Pajarito, or any individual, claiming a grant thereto; and until the same is presented by the proper parties in due form, I cannot take cognizance that such a claim for a grant exists, and unless presented by parties in interest and in the manner prescribed by law and the instructions issued thereunder. The question as to the validity of a claim is separate and distinct from the one affecting the boundaries of same, as the latter is open for investigation until the grant has been surveyed, and the survey finally approved, and I will receive testimony at any time on the question as to the location of the initial or central point of the grant in question; but, under the circumstances, I do not feel warranted in reopening the cause upon your application.

Under the law referred to, no homestead or pre-emption right could attach to lands covered by a grant, until Congress has finally acted thereon; and in order to be competent to contest, an individual must have a valid adverse interest to the grant in question: and independent of the other objections to reopening the case, I am inclined to the opinion that you do not possess the requisite status which would entitle you to the privileges of a contestant; but the Government through its attorney is always a competent party to contest the validity of this or any other claim.

Very respectfully,

H. M. ATKINSON,
Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico, February 15, 1883.

The foregoing is a true copy of the application of Stearns and Douglas for rehearing, and of reply of the surveyor-general thereto, on file in this office, in private land claim No. 130, the town of Albuquerque.

HENRY M. ATKINSON,
Surveyor-General.