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July 23, 2022

NOTICE: To the Heirs of Spanish & Mexican Land Grants

RE: Mexican-American Land Grant Adjudication

By: Armando C. Alonzo

MEXICAN-AMERICAN LAND GRANT ADJUDICATION:

The Mexican War brought not only soldiers to the lower border country, but also a host of Anglo-Americans who began almost immediately to challenge the Mexicans for control of the land. Spanish and Mexican land grants, some of long standing, became the focus of competition, controversy, and conflict. Despite what Mexicans believed to be specific guarantees to their property and civil rights under Articles VIII and IX of the Treaty of Guadalupe Hidalgo, the older Mexican landholders on the north bank of the Rio Grande often found themselves uncertain about their rights to lands granted by Spain and Mexico. The treaty provided no standard for validation of land grants. Land grant adjudication proceeded in a piecemeal fashion with the federal government determining the procedures in the new American Southwest, except that, by virtue of its prior claim to the Trans-Nueces, the state of Texas controlled the process in the annexed lands. Because the federal government never challenged this position, the state determined the manner of settling the titles to lands in the annexed territory. Contrary to popular belief, however Texas acted equitably by making available several opportunities for adjudication. Still, the validation of Hispanic land grants opened the gates to Tejano land loss, an event that involved complex dynamics beyond the range of this article. Anglos ultimately took advantage of their growing economic power, used new laws to gain land, and occasionally resorted to devious means to subvert the Mexicans' position as dominant landholders.

At the end of the war, some soldiers and other Anglo adventurers stayed in the area as well as several scores of Anglo and European merchants who had moved to Matamoros in the 1820s and 1830s. While the latter were content merely to restart the Mexican trade, many newcomers had loftier economic and political ambitions. Some of them were interested in the delta farmlands and rich pastures upon which large numbers of livestock grazed. They often manifested an anti-Mexican bias that stirred up trouble and widened the chasm between Mexicans on the one hand and Anglos and Europeans on the other. For example, Judge Rice Garland, who sold lands and bought land certificates in Matamoros, advertised in the Brownsville American Flag on June 2, 1847, that "Mexican law and authority are forever at an end" in the Nueces territory and that "by the laws of Texas no alien can hold real estate within its limits." In the same ad he declared in Spanish that all original owners of land must have their lands surveyed and possess deeds. He warned Mexican owners that "preparations are being made to locate other claims on the land covered by such titles." Despite such threats, Mexicans were not about to relinquish their claims so easily.

But before adjudication, Anglo legal challenges against Mexican claimants resulted in newcomers' acquiring rights to lands in the Espiritu Santo grant and to a tract containing La Sal del Rey, a dry salt lake mined since the late seventeenth century, in the **San Salvador del Tule grant**. In the first case, Charles Stillman's economic and political power forced Rafael García Cavazos to sell his rights, even though the court had ruled in the latter's favor by voiding squatters' claims to property acquired by Stillman. In the second case, the courts ruled against the Hispanic claimants to the grant in favor of Anglos who had received land certificates from the Republic of Texas. One can only surmise that the Mexican claimants' anxiety must have increased instead of lessened as a result of these actions. Those in the middle of the controversy over land grants included rancheros who were concerned about their property rights and newcomers who during the Mexican War had acquired derechos or undivided interests in the land. The latter were mostly merchants who had sought out grantees or heirs as well as previous purchasers of the grants and for a few dollars bought the undivided rights or derechos from them. They must have anticipated that the lands along the Rio Grande frontier would be more valuable once the war was over. In fact, during the conflict some merchants located stores and warehouses on the north bank of the river. Others desired the new lands for purposes of speculation. Thus, those claiming vested interests and those interested in the acquisition of land grants insisted that public policy would best be served if the state took rapid steps to validate the grants.

Governor Peter H. Bell responded energetically. Writing to the Texas legislature on December 26, 1849, he noted the urgency of "settling upon a secure and permanent basis the land titles of the country" and recommended that the legislature establish a board of commissioners to investigate titles. It soon became apparent that some people did not like the idea of a special commission and particularly objected to the governor's recommendation to limit investigation of claims to those where evidence of title was already in Texas. This would effectively bar the claims of those who lacked original records but whose titles were longstanding. Another concern was a belief that Article 8 of the Texas constitution, which allowed for the confiscation of land if the owner had left or refused to participate in the Texas Revolution, or aided the Mexicans, would be used against claimants. The intent of this article was to punish Texans of Mexican descent who had sided with General Santa Anna or who had remained neutral. However, an amendment requiring an affidavit that a claimant or person under whom he claimed title had not borne arms or aided the enemy during the revolution was voted down in the House of Representatives by a vote of 23 to 19. The bill's opponents argued that it was unfair to demand the allegiance of Mexicans to whom no protection had been offered.

While these proceedings were under way in Austin, a movement emerged to establish a Rio Grande territory separate from Texas. Meeting at Brownsville on February 2, 1850, the leading territorializers included a motley group of Anglos and, at least initially, Mexican rancheros, although the role played by the latter is unclear. Perhaps they, too, were perplexed by the motives of Texas officials of whom they had always been suspicious since the revolution. These lower Valley men asserted that Texas never had jurisdiction over the region and warned that the state government might annul land titles in the Nueces Strip or impose on residents there "expensive and ruinous lawsuits" to defend their property. They proposed that Congress be petitioned to allow the formation of a territorial government that would quickly and fairly adjudicate land titles, arguing that land with clear titles might then be purchased for less money than it would cost to obtain under a certificate from the state. The separatists concluded with a call for a convention to form a provisional government until the United States Congress could be petitioned.

The separatists' meeting precipitated a countermovement whose supporters expressed confidence in the state of Texas and who denied the separatists' charges that Texas had neglected and acted in bad faith with regard to the interests of the lower Rio Grande valley. On February 5, 1850, they adopted resolutions that recognized state sovereignty over the Trans-Nueces territory and denied that they had ever submitted to the jurisdiction of Texas previous to its statehood. The assembly also urged the state to establish one or more tribunals to investigate "legal and just titles to land situated between the Nueces river and the Rio Grande," and applauded Governor Bell's previous proposal calling on the legislature to institute a commission for such purpose. On February 8, 1850, the state legislature passed an act providing for the appointment of a special commission to investigate claims to all Spanish and Mexican grants west of the Nueces River. On February 22, Governor Bell again addressed the people of the new counties in south Texas, stating that the commissioners would investigate and recommend for confirmation to the state legislature claims that originated in equity and fairness. He also assured them that the work of the commission would promote the prosperity of the area. Before the work of the commission got underway, the separatist movement was entirely bankrupt. Cognizant of the lingering legacy of conflict between Mexicans and Anglo-Texans, Senator Thomas J. Rusk told the United States Senate on March 11, 1850, that the Mexicans had been duped by individuals who only recently came to the area and that they had exploited the prejudices of "Mexicans who were originally and always adverse to Texas." Texans generally condemned the separatists for engaging in dirty politics and for currying the support of Northerners, whose motives Texans detested. Despite the demise of the territorialists' cause, the commission was hampered in some localities by the suspicions aroused by the separatists.

Under this law, the commission was to consist of two commissioners and an attorney who were to "take cognizance of all claims [that]...originated in good faith." William H. Bourland and James B. Miller, experienced public officials in Texas, were appointed commissioners, and Robert Jones Rivers, a well-known lawyer and judge, served as the board's attorney. Claimants were required to submit a full written description of the land claimed, along with all the evidence of title and rights on which the claim was based. They also had to provide an affidavit that documents submitted were not forged or antedated. Witnesses could be summoned to testify before the commission. Once this phase of the investigation was complete, the commissioners were to report where the titles were perfect. In case of an imperfect claim, the commission could recommend confirmation if it concluded that all requirements for perfecting the title would have been met had there not been a change in national sovereignty. The board was required to prepare an abstract on each claim together with a recommendation on whether it should be confirmed or rejected. The abstract and supporting evidence would then be submitted to the governor who, in turn, would give the documents to the legislature for final action.

After several delays the three members of the commission opened for business at Laredo on July 15, 1850. Laredoans, suspicious of the commissioners, did not want to present any claims. Upon being assured by Webb County clerk Hamilton P. Bee of the board's honest intentions, however, rancheros submitted fifteen claims. Sensing the urgency of showing good faith to the Mexican people, Bourland felt it wise to present the claims for immediate confirmation, although the board had a year to report. Bourland returned to Austin and submitted the list to Governor Bell on August 24, 1850. On September 4, 1850, the legislature confirmed the rancheros' fifteen claims. In the meantime, Miller and Rivers had proceeded to Rio Grande City, county seat of Starr County. There, Miller and Rivers received an inhospitable welcome from the Mexican residents, who refused to submit a single claim. In frustration Rivers resigned from the commission, and Miller resolved that he would not return to Rio Grande City.

He moved on to Brownsville, where a letter from Bourland found him, requesting him to return to Rio Grande City. As a result of this unfavorable stay, no claims were presented at Rio Grande City. From Austin Bourland proceeded to Brownsville, where Miller was taking testimony. From there, Bourland wrote to the governor that because of the demise of the separatists' movement they were being treated with respect, and that he was confident no trouble would arise. When the board finished its work in Brownsville, Miller decided to make the voyage from Port Isabel to Galveston on the steamer Anson before going overland to Austin. Two days out, the Anson sank fifteen miles from Matagorda. Miller lost his trunk, the original titles, and about \$800 in fees from claimants. Because of this loss, he urged the governor to amend the law to make the commissioners' decision final. Miller's suggestion was not accepted, however, and as a result the commission had to redo all of its work by procuring duplicates and other evidence. Following an adjournment of several months in the early part of 1851, Bourland went on his own to Eagle Pass, Laredo, and Rio Grande City in April. He then traveled to Corpus Christi, where he held his last session in late summer of 1851. In accordance with the law, on November 20, 1851, the governor sent a report on the work of the commission to the legislature, where a select committee examined the testimony. On February 10, 1852, the legislature, closely following the commissioners' recommendation, confirmed 234 claims in the names of the original Spanish and Mexican grantees, including those transferred to heirs and purchasers. The claims confirmed included those to 31 tracts in Webb County, 144 in Starr County, 56 in Cameron County, 21 in Nueces County, and 2 in Kinney County.

What is the significance of the legislative confirmations of 1852? Evidently, the validation of land grants satisfied not only rancheros but anyone claiming an interest in or desiring to acquire land. Clearly, the way was now open for additional transactions as well as for lawsuits between parties claiming title to the same lands. On another level, as David Montejano asserts, confirmation of title ostensibly incorporated the landed elites into the new political fabric of the region so that at least the old conflicts between Mexicans and Anglo-Texans were temporarily set aside.

Several of the claims that the commissioners refused to recommend were nonetheless confirmed by the state legislature in 1852. These included the claims to Llano Grande (1790) and Las Mesteñas (1794), both located in Hidalgo County. It is interesting to speculate why the legislature overrode the commission. **Perhaps the facts that the two grants were well settled and that they belonged to the influential Hinojosa and Ballí families may have persuaded the legislature to confirm them.** Besides, the confirmation of these two grants facilitated acquisitions by other interested parties and served to ease suspicions on the part of the old settlers and those wanting to purchase the land from them.

The important work of the commission and subsequent confirmation by the state, however, did not entirely bring an end to the issue of settling Spanish and Mexican land grants, mainly because seventy grants were not adjudicated either in 1851 or in 1852. In addition, the commission had rejected a small number of claims. Since the Bourland Commission had completed its work, Texas responded by allowing claimants the right to sue in the district courts for validation and confirmation, and by making individual legislative confirmations. Of these two methods, the first was by far more commonly used. Special state laws enacted in 1860, 1870, and 1901 provided the manner and time limitations under which claims could be presented. Under the first act, suit had to be brought in the state district court in which the grant was located. The second and third acts permitted the bringing of suit in the district court of Travis County. Sixty-eight land grants ended up in the courts under the three legislative acts.

Of these, fifty-three were approved by the courts without having to resort to any other adjudication procedure. Except for seven grants adjudicated under the 1901 act, all of these claims were presented under the 1860 and 1870 acts. Thus, the claimants acted relatively quickly. Only two grants were rejected by the courts.

Among the more important claims that the Bourland Commission had denied but that were later approved by the district courts was that to San Salvador del Tule (1797), one of the largest land grants in south Texas. This claim had a history similar to those the commissioners rejected in 1851 in that the grant was occupied by the grantees and other purchasers, who made improvements on the land, vacated it temporarily, and subsequently reoccupied it. In the second half of the 1800s Mexican landholders in the **San Salvador del Tule grant** raised considerable livestock. When this claim was first presented to the Bourland Commission in 1852, it had been rejected on the basis of abandonment of the grant in 1811 due to Indian attacks. Yet, James B. Miller, in a dissenting opinion to the governor's, recommended confirmation. Miller asserted that the grantees and descendants soon returned to the grant, that the cattle had greatly increased, and that "the amount of land now in cultivation, owing to the long continuity of settlement, and the great number of occupants is very considerable." He urged that the grant be recognized, since rejection would work a great hardship on the settlers. He said that he did not favor depriving them of their homes or annulling "their titles, which, for three quarters of a century have been respected and considered valid." In 1904 the district court in Austin ruled in favor of the claimants, forty-seven landowners, most of whom were well-known Tejano rancheros.

The courts also confirmed another seven grants that had been recommended initially by the commissioners but not confirmed by the state legislature in 1851 and 1852. Due to the loss of the original records of the Bourland Commission, the loss of the legislative committee report which examined the commissioners' recommendations, and a lack of social or legal histories of these grants, it is impossible to explain why confirmation did not take place in 1851 and 1852. A possible hypothesis is that the original Mexican claimants and subsequent buyers vacated the grants, and evidently Anglo newcomers squatted on the land. Interestingly, six land grants had to be adjudicated and validated by both the courts and the legislature. **The Ballís' claim to Padre Island suffered this fate. It is not clear why this double confirmation took place in these cases. Perhaps the claimants did not hold the grant as original grantees, but rather as purchasers of undivided interests or as holders under the legal doctrine of adverse possession. Consequently, their rights were not as secure. Further study would be necessary to determine the status of their holdings.**

Texas courts ultimately rejected only two claims. One of these, the claim for the ejidos or commons of Reynosa in Hidalgo County, had been rejected outright by the Bourland Commission in 1851. The courts agreed with the commissioners' judgment that the ejido lands reverted to the Mexican government when the old town of Reynosa was broken up, and that Mexico claimed the land in October of 1836 when Mexicans bought it. But as a result of winning its independence in March 1836, Texas claimed the land so that the Mexicans had no right to it. Obviously, this case was a travesty of justice because Texas never had effective control over the Trans-Nueces before 1848. A claim for a porción in the jurisdiction of Revilla (Guerrero), downriver from Laredo, became only the second claim to be rejected by the courts. The reason for this decision is unknown.

Long after the completion of the work of the Bourland Commission, the state legislature, and the courts, fifteen porciones were approved by the state legislature on March 31, 1921. Only one of these grants had originally been recommended by the commissioners in 1851. Because of the limited information in the General Land Office files and in the House of Representatives Journal, where the bill (H.B. No. 496) originated, it is not clear why these porciones had not been adjudicated earlier. However, the notes on porciones 34 and 57, state that these grants had been vacated. This ground evidently was used by the commissioners to refuse to recommend validation. It is likely that the other grants had a similar history and determination. Why were they finally confirmed in 1921? It would appear that equity dictated this result in view of the fact that people continued to hold onto the land into the twentieth century. After 1921, four other porciones received legislative adjudication and confirmation. Porciones 39 and 40 in the jurisdiction of Guerrero had evidently never been adjudicated, despite the fact, noted earlier by the Bourland Commission, that they were "older and [longer] subsisting grants" than those of 1767. They were approved by the legislature on March 25, 1927. The third porción, also in Guerrero, had been recommended in 1855, but evidently the legislature took no action. As a result it, too, was validated and confirmed at a late date-March 11, 1930. The last porción to be validated and confirmed by the legislature was porción 69 in the jurisdiction of Mier. It received confirmation on June 16, 1965. Again, it is likely that as the lands in these grants were held by either descendants or others in good faith, equity demanded their approval.

Despite the availability of the Bourland Commission, the state courts and the legislature, twenty-four land grants in south Texas, such as Juan Garza Díaz's grant, Vargas, and Joseph Antonio Cantú's porción 55 in Hidalgo County were never adjudicated. The reasons are unknown. However, a few theories can be advanced. It is possible that the holders of the grants temporarily vacated the land, and therefore they missed the commissioners. It is also possible that the expense of hiring a lawyer to seek confirmation through either the courts or the legislature was too prohibitive. Some claimants might not have wanted to pursue adjudication, believing or knowing that the grant was subject to challenge. It is important to note that in these cases people continued to hold land and to make and record transactions in the county where the land was located, so that while the state of Texas has no knowledge of the land because no record of title and patent exists in the General Land Office, the lands are of record in the county to this very day.

Contrary to popular history among Tejanos, the adjudication process in the Trans-Nueces was quick, and it favored Mexican land tenure. Thus by 1852 the legislature confirmed 209 claims with only a handful of outright rejections. The state courts then proceeded to validate sixty-seven additional claims, all but seven of them before the act of 1901. The courts rejected only two claims in the 1920s. As noted above, special circumstances prevailed in the Laredo area, resulting in this late adjudication. Equity, however, favored Mexican landholders for the most part. In the end only twenty-four land grants were never adjudicated for sundry reasons. Stephen Powers, Edward Dougherty, and other lawyers evidently profited from the validation proceedings by receiving land as a fee for representing claimants before the commissioners. Therefore, except for individual cases in which very few newcomers acquired interests in land grants and in which Anglo lawyers profited from defending land grant claimants, Mexicans maintained controlled of the land at least in the initial period of incorporation of the Trans-Nueces under the sovereignty of Texas and the United States. It was a different story after confirmation.

Also see **Mexican Americans, Land Grants** for additional information.

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Adapted from the Chicago Manual of Style, 15th edition is the preferred citation for this entry.

Armando C. Alonzo, "Mexican-American Land Grant Adjudication

Handbook of Texas Online, accessed July 05, 2022.

<https://www.tshaonline.org/handbook/entries/mexican-american-land-grant-adjudication>

Published by, The Texas State Historical Association.