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REPUBLIC OF MEXICO  
SECRETARY OF FOREIGN RELATIONS

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In the Matter

OF THE

CLAIM

of certain Mexican Citizens

TO

LANDS ON THE RIO GRANDE

KNOWN BY THE NAME OF

District of "El Chamizal"

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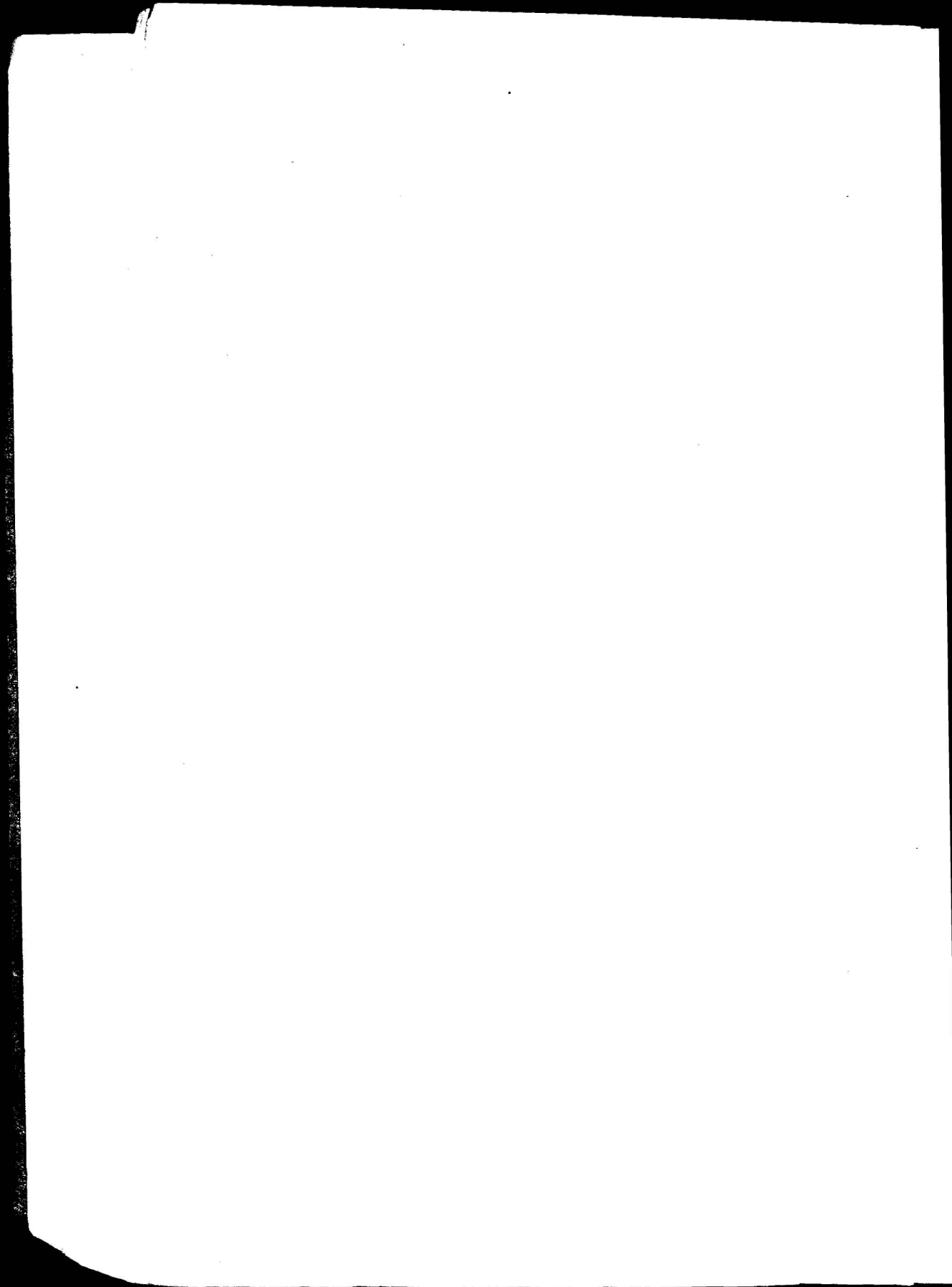
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## PETITION.

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To His Excellency, Hon. IGNACIO MARISCAL,  
Secretary of Foreign Relations, United States of Mexico,  
City of Mexico, Federal District, Republic of Mexico.

YOUR PETITIONERS, whose names are subscribed hereto and who are each and all citizens of the Republic of Mexico entitled to the whole or as tenants in common to a certain portion of the lands hereinafter mentioned, wrongfully withheld from them as hereinafter mentioned, beg leave to present to your Excellency this petition and statement of their grievances in the premises, and thereby to apply to your Excellency for relief on the ground that upon the facts as hereinafter stated your petitioners will be remediless in the premises except by and through the good offices of your Excellency, and in that behalf your petitioners set forth the facts and circumstances in connection with their rights and wrongs and the remedy proposed for the same as follows:

### THE GRIEVANCES OF YOUR PETITIONERS.

1. Your petitioners allege that they and each of them and their ancestors and predecessors in title are being and for years have been wrongfully disseized and deprived of their right and title derived by and through the sovereignty of the Mexican Government in and to certain lands, tenements and hereditaments originally lying on the south side of the Rio Grande River and within the boundaries and jurisdiction of the Mexican Government at the time of the promulgation of the treaty between the Republic of Mexico and the United States of America, commonly known as the treaty of Guadalupe Hidalgo, concluded February 2, 1848, and conserved to the Government and people of Mexico by the subsequent treaties and conventions between the two governments and especially the treaty concluded at Washington, November 12, 1884.

2. That said lands to which your petitioners have title are certain lands formerly lying on the south bank of the Rio Grande River at the time of the Treaty of Guadalupe Hidalgo, but now lying on the northern side of the present channel of the Rio Grande, and commonly known as the District of El Chamizal, and a portion of which lands were in controversy in a case formerly pending before the International (Water) Boundary Commission of the United States of America and the Republic of Mexico under the title of case No. 4 known as "El Chamizal" and hereinafter referred to.

3. That your petitioners each and all of them have some right, title or interest to the whole or some portion of said lands either individually in fee or as tenant in common or as joint tenants or otherwise in said property the amounts and descriptions of which interests your petitioners stand ready to prove at the proper time and place by record and other evidence to be produced.

#### DESCRIPTION OF THE LANDS.

4. That the description of the whole district in and to which your petitioners have title in manner and form as aforesaid is as follows:

Beginning at a point above and near the City of El Paso, Texas, where the present channel of the Rio Grande is intersected by the old, abandoned channel of said river, that is to say, the channel of said river as same existed in 1848 at the time of the Treaty of Guadalupe Hidalgo, and for many years subsequent thereto; thence following said old channel, as the same was surveyed in the years 1852-3 by Messrs. W. H. Emory and Jose Salazar, to where said old channel again intersects and connects with the present channel of said river, immediately below and near the said City of El Paso, Texas, and thence up said present channel to the place of beginning.

5. Your petitioners further allege that they are prepared to sustain and prove their title to the said lands in controversy by the record evidences of the Mexican title to the same, extending from the grants or patents from the Government to their ancestors and predecessors in title down to the claimants, making thereby a complete record title to the lands and premises in question.



### THE REASON OF THE DISPUTED TITLE.

6. And your petitioners further allege that the only reason why there is any dispute or controversy in relation to said matters arises from the fact that while the deeds and records in your petitioners' Mexican chain of title and the surveys plotted upon the ground, show conclusively that your petitioners are entitled to the said lands in the Chamizal District, there has been and is set up a claim of title by certain American citizens and corporations in and to the same arising out of the claim on their part that the Mexican right, title and interest of your petitioners and their ancestors and predecessors in title as Mexican citizens in and to said lands has been annulled and defeated by a change in the channel of the Rio Grande, whereby the right and title of your petitioners and their ancestors and predecessors in title to said lands has been annulled and said American title has been created through changes occurring in such channel since the date of said Treaty of Guadalupe Hidalgo.

### THE DISPUTE IMPORTANT AND DANGEROUS TO THE PEACE OF THE TWO NATIONS.

7. Your petitioners further allege that said controversy between the Mexican chain of title and this alleged claim of a new American title arising out of a change in the bed of the river on the part of certain American citizens claiming said property, has been of long standing and has been a constant source of friction and conflict between your petitioners, their ancestors and predecessors in title, and said American citizens, and on occasion has led to force and arms and bloodshed and seriously endangers the peaceful relations between the two countries, so much so that the said controversy was in some of its aspects a portion of the boundary dispute between the two countries which was brought before the said International (Water) Boundary Commission of the United States and Mexico under the title of case No. 4 known as "El Chamizal" as aforesaid, and as to which the American and Mexican Commissioners were unable to agree after a very lengthy and prolonged series of sessions in relation to said dispute and in this connection your petitioners call attention to the letter from the Hon. Anson Mills, American Commissioner on said International (Water) Boundary Commission dated December 4, 1897,

to the Honorable Secretary of State of the United States of America, calling attention to said case No. 4, known as "El Chamizal," and stating that:

"As stated in my letter transmitting this case, August 4, 1896, on page 3, it is perhaps the most important case submitted for our consideration and presented great provocation to the citizens of both countries for violence and disorder, where so many small tracts of land are claimed by citizens of both nations."

#### THE NATURE OF THE ISSUES.

8. Your petitioners further allege that the issues in the controversy between the Mexican titles to said lands in which your petitioners are interested and the alleged American title to the same rests upon the following points, viz:

First. The exact plotting upon the land itself of the channel of the Rio Grande as it existed at the time of the Treaty of Guadalupe Hidalgo in 1848.

Second. It is conceded on both sides that the channel of said river has since changed to the southward, placing upon the American shore a considerable quantity of land known as the Chamizal District which heretofore, and at the time of the treaty, was on the Mexican side of the river and the only dispute between the two governments as represented by their respective Commissioners in said International (Water) Boundary Commission in regard to said El Chamizal case No. 4 was the question of whether the said change of channel had been the result of "the slow and gradual erosion and the deposit of alluvium" resulting in an exchange of title to said lands from the Mexican to the American side under Article I. of the Treaty of November 12, 1884, or had been "any other change," etc., under Article II. of said treaty. In that connection your petitioners call attention to the statement of the American Commissioner on said International (Water) Boundary Commission contained in the Joint Journal of November 6, 1895, and set forth on page 45 of Volume I. of the Proceedings of said International (Water) Boundary Commission as published by the Department of State of the United States of America, where he states:

"The sole question before the Joint Commission, as he understands it, is the location of the boundary line and the national juris-

diction over the lands adjacent, and not one of personal title to any lands, and to simplify the case and avoid multiplicity of papers in the record and hasten an early conclusion, he is ready and willing to admit on the part of his Government, that at the time of the establishment of the boundary between the two governments in 1855, by the Commissioners Emory and Salazar, as provided in the Treaty of Guadalupe Hidalgo, the tract of land then known as "El Chamizal" was wholly within the territory and jurisdiction of Mexico; and that subsequently a portion of that tract has been passed by the action of the Rio Grande to the United States side of the river, and he admits that, having admitted this, the whole question before the Commission is whether or not the river in its passage moved over the land by gradual erosion from the Mexican bank and deposit on the United States bank, as described in Article I. of the Treaty of 1884, or by a sudden avulsion, by cutting a new bed or deepening another channel than that which marked the boundary.

"In the former case, the present channel of the river to be the boundary, or in the latter, the boundary to be established in the old channel though it be dry."

#### THE TREATY PROVISIONS.

9. Your petitioners further allege that the following extracts from the treaties between the two countries sufficiently set forth the agreements between the two governments in so far as they apply to the boundary of the land in question, viz :

EXTRACT FROM THE TREATY OF GUADALUPE HIDALGO, FEBRUARY 2, 1842.

"Article V. The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one to the point where it strikes the southern boundary of New Mexico; thence, westwardly along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination."

EXTRACT FROM THE TREATY CONCLUDED AT WASHINGTON, NOVEMBER  
12, 1884.

“Article I. The dividing line shall forever be that described in the aforesaid treaty and follow the center of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

“Article II. Any other change, wrought by the force of the current, whether by the cutting of a new bed, or where there is more than one channel by the deepening of another channel than that which marked the boundary at the time of the survey made under the aforesaid treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commissions in 1852; but the line then fixed shall continue to follow the middle of the original channel bed, even should this become wholly dry or be obstructed by deposits.

“Article III. No artificial change in the navigable course of the river, by building jetties, piers, or obstructions which may tend to deflect the current or produce deposits of alluvium, or by dredging to deepen another then the original channel under the treaty when there is more than one channel, or by cutting waterways to shorten the navigable distance shall be permitted to affect or alter the dividing line as determined by the aforesaid commissions in 1852 or as determined by Article I. hereof and under the reservation therein contained; but the protection of the bank on either side from erosion by revetments of stone or other material not unduly projecting into the current of the river shall not be deemed an artificial change. \* \* \*

“Article V. Rights of property in respect of lands which may have become separated through the creation of new channels as defined in Article II. hereof, shall not be affected thereby, but such lands shall continue to be under the jurisdiction of the country to which they previously belonged.”

THE BOUNDARY BETWEEN THE TITLES OF SAID  
LANDS IN 1848.

10. Your petitioners further allege that, at the time of the Treaty of Guadalupe Hidalgo which thus established as the boundary



line between the Mexican and United States governments the then existing channel of the Rio Grande River as it existed in 1848, said channel at that time also constituted the dividing line between a certain grant of two caballerias or about two hundred acres of land lying on the northern side of said river originally granted by the State of Chihuahua to Don Juan Maria Ponce de Leon in the year 1827, and the lands of your petitioners lying in the district of El Chamizal on the Mexican side of the said river.

#### THE PONCE DE LEON GRANT BECAME AN AMERICAN TITLE BY THE TREATY.

11. Your petitioners further allege that thereafter and in the year 1858 the records show that said Don Juan Maria Ponce de Leon applied to and obtained from the State of Texas a confirmation of his title to the said two caballerias or two hundred acres, the sovereignty over said property having, by the Treaty of Guadalupe Hidalgo, passed into the United States of America and the State of Texas.

#### THE SUBSEQUENT CHANGES IN THE CHANNEL OF THE RIVER.

12. Your petitioners further allege that subsequently and after the Treaty of Guadalupe Hidalgo aforesaid, said River Rio Grande or Bravo in and about the years 1862 and 1865 in time of great floods and by reason of the violence of its currents at such times abandoned the channel in which it ran in 1848 and subsequent years, and made for itself by avulsion new channels, in one of which said river now runs and which said new channel invaded and does invade the lands of your petitioners above described and caused the same to be thrown or left on the northern side of said river, but your petitioners allege and aver that such alteration in the center of the normal channel of said river was not effected by natural causes working through "the slow and gradual erosion and deposit of alluvium," but was caused by "other changes wrought by the force of the current in cutting a new bed, or when there was more than one channel, the deepening of another channel" than that which marked the boundary line at the time of the survey made under the said Treaty of Guadalupe Hidalgo; and that by reason of said change being made in the manner and form aforesaid, the title to said lands remained in your petitioners,

their ancestors and predecessors in title and the sovereignty remained in the Government of Mexico and by reason of the provisions of said treaties affecting changes in the channel so occurring said lands never became subject to or under the jurisdiction or sovereignty of the United States of America or the State of Texas.

#### THE DEFECTS ON THE FACE OF THE AMERICAN TITLE.

13. Your petitioners further aver as showing the tortious and well-known illegal character of the American title claimed in and to the said lands, that it was not until the year 1887—twenty-five and twenty-two years respectively after the actual changes in said river occurred placing the said Mexican territory by avulsion on the northern bank of the Rio Grande River—that any record claim of title was made under the American sovereignty to said lands so changed from one side of the river to the other, but in that year, as your petitioners are informed, the Campbell Real Estate Company, a Texas corporation applied for and obtained from the State of Texas on behalf of Ponce de Leon and in alleged further confirmation of the former confirmation from the State of Texas to Ponce de Leon hereinabove mentioned (Ponce de Leon having died years previous to such application of 1887 and his heirs having, many years prior thereto, sold and conveyed the original two caballerias of land) a certain patent in the name of the State of Texas quitclaiming to Juan Maria Ponce de Leon, his heirs and assigns forever 3,597,005 square varas of land, or about six hundred acres. That in said patent it is falsely recited that the same is the same land to which said Ponce de Leon was entitled by virtue of an act of the Legislature of the State of Texas relinquishing all her right and interest in El Rancho del Ponce, known as the town of Franklin, approved February 11, 1858, for the said patent contains a further description calling for six hundred acres of land when the former quitclaim from the State of Texas of 1858 was to a tract of land called "El Rancho de Ponce," being the original grant to Juan Maria Ponce de Leon of two caballerias containing about two hundred acres of land, and said letters patent, bearing date May 4, 1887, contained the following exception or reservation as to the validity of said title:

"This letter patent shall not be so construed as to prejudice the rights of adverse claimants prior to February 11, 1858."

14. Your petitioners further allege that the American claimants to the said lands were and are compelled by the exigency of the case to claim title under the State of Texas, which by reason of said avulsion came into the apparent possession of said lands, and only acquired an alleged paper title thereto under the facts and circumstances aforesaid, when the State of Texas in relinquishing its rights expressly preserved and protected the rights of your petitioners, their ancestors and predecessors in title by the insertion of said clause in said quitclaim from said State. Your petitioners further allege that the insertion in such patent under which the American claimants claim title of said clause is in itself an implied admission of the outstanding titles of your petitioners, their ancestors and predecessors in title, and the holding of the American claimants thereunder even in a court of law, where a statute of limitations might be urged as a defense, could not be construed as an adverse holding so as to set running any municipal statute of limitations, and in the forum of international arbitration where no such defense is permissible such a clause in the opposing title prevents even the objection of staleness in the adverse claim.

THE LINE CANNOT BE LOCATED DEFINITELY FROM  
THE MAP AGREED ON.

15. Your petitioners further allege that the exact location of the river channel or bed of the Rio Grande opposite the City of El Paso, as ascertained by the survey made under the Treaty of Guadalupe Hidalgo, cannot at the present time be definitely ascertained or plotted upon the ground within a space of half a mile by reason of the fact that the only map in existence establishing the line of said survey and the channel of said river is the map of Emory and Salazar bearing date 1852, and made on a scale of 1/60,000, and being for the purpose of plotting said lands in dispute in this controversy a scale so small that the said line cannot be run with any certainty upon the ground within the limits mentioned, and that in consequence said line can only be correctly established with reference to said map by ascertaining the same from the records of the ancient deeds to lands in said district of "El Chamizal" in said disputed territory now claimed to be in the State of Texas and the United States of America bounding on and near said river and running from 1827 to within the last twenty years or so, and also the testimony of witnesses as to the changes oc-

curring in the bed and channels of said river from 1848 to date, and your petitioners respectfully submit that the map provisionally agreed upon in said Chamizal case No. 4 by the American and Mexican Commissioners in the International (Water) Boundary Commission between Mexico and the United States of America herein mentioned and published on pages 96 and 97, Volume I., of the Proceedings of said Commission, was a map inadvertently agreed upon by the Mexican Commissioner because of his attention not being drawn to the impossibility of correctly plotting the same from the ancient map aforesaid and the further fact that his attention was not drawn to the ancient deeds and evidence now in the possession of and to be produced by your petitioners establishing the course and channel of said river at points different from those laid down in said new map said to be a proper plotting on a large scale of the said ancient map made on said small scale, and in this connection your petitioners beg leave to call your attention to correspondence had between an agent of your petitioners, Mr. Brewster Cameron and Professor Lewis M. Haupt, a graduate of West Point Military Academy, late professor of civil engineering in the University of Pennsylvania, and recently a member of the Isthmian Canal Commission of the United States of America, in which the absolute unreliability of a map on the scale of the Emory and Salazar map as the foundation of an exact plotting of title to the lands in question is conclusively shown by the opinion of a most eminent and respected civil engineer, and the said correspondence, consisting of the letter of inquiry of Mr. Brewster Cameron and the answer thereto of Professor Lewis M. Haupt is annexed hereto and marked "Exhibit A" and prayed to be made and taken as a part hereof with the same force and effect as if herein recited at length.

#### NEW CORRECT SURVEY AND MAP.

16. And your petitioners further submit herewith and pray the same to be made and taken as a part of this petition, a map hereto attached and marked "Exhibit F," certified to be made by the official surveyor of the City of Juarez from the calls and monuments described in said ancient Mexican deeds referred to, whereby there is plotted upon said ground pursuant to said survey both the present map of the streets, blocks and avenues of the City of El Paso, north of the channel of the river of 1852, and also the respective channels of the River Rio Grande or beds of the same as the same existed in the year



1852 and as the same were changed by the floods of 1862 and 1865 as heretofore alleged and can be proved by said ancient records and the testimony of witnesses as herein alleged. •

17. And your petitioners further aver and stand ready to produce at the proper time and place the proper records or certified copies of same from which said map was made, together with the testimony of said surveyor as to his plotting the same upon the land in connection with the said map as aforesaid, the same being too voluminous to be set forth in this petition, and also to produce witnesses who can testify in relation to the said changes by avulsion occurring in the channels and beds of the Rio Grande at the years mentioned, and also submit in connection therewith certain testimony already taken in a certain suit in the United States Circuit Court in and for the District of Texas, entitled W. J. Warder, plaintiff, v. Mrs. Laura Loomis et al., defendants, which said testimony is contained on pages 27 to 46, inclusive, of the transcript of record of said case in the Supreme Court of the United States for the October term, 1904, No. 201, and a copy of which is hereto annexed and marked "Exhibit C," and made and prayed to be taken as a part hereof, many of said witnesses having since that time become deceased and their testimony being thus perpetuated for the purposes of this petition.

PETITIONERS HAVE EXHAUSTED ALL LEGAL REMEDIES IN MEXICO AND THE UNITED STATES  
AND BEFORE THE INTERNATIONAL  
BOUNDARY COMMISSION.

18. Your petitioners further allege that by reason of the facts hereinafter stated they have not been able to present the evidence, facts and arguments on which they relied to support their claims either before the International (Water) Boundary Commission above mentioned or in the courts of the United States or in the courts of Mexico, and by each and all of said tribunals have been denied a hearing on the merits of the case, leaving them in the position of being remediless in the premises except by and through the good offices of the Government of the Republic of Mexico.

THE PROCEEDINGS IN NO. 4 THE "EL CHAMIZAL" CASE  
BEFORE THE INTERNATIONAL (WATER)  
BOUNDARY COMMISSION.

19. Your petitioners further show that on or about January 23, 1894, Pedro Ygnacio Garcia, a resident of the City of Paso del Norte, now known as Juarez, presented to the Jefe Politico at the City of Juarez the following petition:

CITIZEN JEFE POLITICO (Mayor):

Pedro Ygnacio Garcia, of legal age, a farmer and resident citizen of this city, respectfully presents himself to your honor, and, begging leave of the court, says:

That, in the year 1818 the then Lieutenant of Cavalry and Political Governor of Paso del Norte, granted and conveyed to Senor Ricardo Brusuelas, twenty thousand square varas (20,000 vs. sq.) of land, more or less, said land lying and being situated at a certain point that was at that time on this side of the Rio Bravo. That said Senor Brusuelas in conjunction and acting with Don. Felix Miranda, Mrs. Ursula Miranda and Jose Antonio Apodaca did sell, grant and convey to my grandfather, Senor Don Lorenzo del Barrio, in the year 1827, a certain piece, tract or parcel of land known by "El Chamizal," a house having already been built on said property. That my aforesaid grandfather was in public and peaceable possession of the aforesaid real estate without any interruption whatever from the time that he bought the place up to the time of his death, which event took place in the year 1865. That on the following year, viz., in 1866, October 15th, his son and executor of the estate, Mr. Antonio del Barrio, granted, deeded and conveyed to me the aforesaid property, the same being from that time on in my possession, through my legally authorized agent, Mr. Jose Acosta up to the year 1873, in which year, in consequence of the abrupt and sudden change of the current of the aforesaid Rio Bravo, that land in question was by that fact left on the other side of said river, or on the side of what is called to-day El Paso, Texas. Ever since this change took place I have not dared to occupy my aforesaid land, fearful, as I was, among other things, that some personal injury might befall me from the part of a few North Americans, who, supposing this land to belong to the United States of North America, pretended to come into the possession of the same, and also because I was not satisfied in my own mind which of

the two governments I ought to recognize as having jurisdiction over the same, in regard to the collection of taxes.

The facts to sustain my claim aforesaid are contained in the documents herein inclosed, comprising twenty-three legal pages; and in order to ascertain the facts relating to the sudden change of the course of the river and the identification of the land in question, I beg that you have the testimony of the witnesses mentioned in the accompanying interrogatories taken, all of whom are residents of this city, so that each in his turn be examined, and when this be done you will please forward all the documents in the case, viz.: the petition, the papers herein transmitted, and the interrogatories and answers, to the International Boundary Commission, according to Article VIII. of the convention between Mexico and the United States, *neto* on the first day of March, 1889, so that said Commission may decide in conformity with the stipulations in clauses II. and III. of the Convention of 1884, to which of the two nations belongs the land in question, and whether or not I have any right to the aforesaid land.

It is justice that I demand.

PEDRO Y. GARCIA.

City of Juarez, Mexico, 23d January, 1894.

Thereupon the following proceedings were had:

DISTRICT OF BRAVOS,

Mayor's Office (Jefatura Politica), No. 371.

The Judge of Letters of this District having carried out the attestations asked for by Citizen Pedro Y. Garcia in his petition, dated January 23d last, this office ordered as follows:

“February 19, 1894.

“That the interested party be informed of the receipt of his petition of January 23d last, that the said petition, together with the documents accompanying same, and the investigation held in regard to it be transmitted to the International Boundary Commission for such action as may be proper.”

I have the honor to insert the above for such action as your Honorable Commission may deem proper, inclosing herewith the petition

in fifteen pages, the documents in originals, and uncertified copy of same and the attestation above mentioned.

JESUS O. NAJERA.

Liberty and Constitution, Ciudad Juarez, February 26, 1894.  
To the Chief of the Mexican Commission of the International Boundary Commission. (Present.)

DEPARTMENT OF STATE OF FOREIGN RELATIONS,  
Section for America, Asia and Oceanica,  
Special Sub-Section for Boundaries,

Mexico, October 29th, 1894.

On the 4th of September last, the Fiscal Attorney of the District Court of Paso del Norte, Chihuahua, instituted two investigations with the view of ascertaining the changes that had occurred in the current of the Rio Bravo from a point where the river reaches the last international post that marked the boundary between Mexico and the United States of America, to a point two leagues to the east of said city, and from the 2d February, 1848, up to the day when said investigations were begun.

The proceedings held for that purpose were three in number, and are sent you herewith in folios 22, 12 and 104, in conformity with the prescriptions of Articles I. and IV. of the Convention of March 1st, 1889, to the end that you proceed, together with the Commissioner of the United States of America, agreeably with said Article IV., to the place where the changes occurred, and institute such proceedings as be proper in order to be able to determine and arrive at a decision as called for by the treaty.

MARISCAL.

To the Commissioner of Mexico, of the International Commission of Boundaries, with the United States of America, Reynosa, Tamaulipas.

(One package sent under separate cover.)

The presentment of the foregoing petition of Pedro Y. Garcia gave rise to what is now known in the report of proceedings of the International Boundary Commission as case No. 4, known as "El Chamizal."

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At the time of the presentment of said petition and during the hearing of testimony before the Boundary Commission, an American lawyer, Mr. T. W. Dougherty, appeared before said Commission, in behalf of one or more of these petitioners, and presented to it, as shown on page 68, Volume I., of its report, the following communication.

TO THE INTERNATIONAL BOUNDARY COMMISSION OF THE UNITED STATES OF AMERICA AND THE UNITED STATES OF MEXICO, NOW IN SESSION IN THE CITY OF EL PASO, TEXAS:

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The claimants of land between the Rio Grande River, as it ran at the time of the treaty between the two countries in 1852 and 1853, and where the said river now runs, through the undersigned, their attorney, respectfully ask that before the boundary line is agreed upon, that you have brought before you and take the testimony of the following witnesses, to wit: Price Cooper, Sam. Bean and John Clark, all American citizens. I hereto attach affidavit of Price Cooper, and am informed that the other witnesses will testify to the same facts; also Dr. Samaniego, who is ex-Governor of Chihuahua and ex-Mayor of Juarez. Quirino Lara (whose statement is hereto attached) and Dr. Samaniego, Juarez, Mexico, has examined the same and states it is true. Francisco Varcla, El Paso, Texas, Jesus Tellis, Marcello Armijo, Francisco Provencio, Jose M. Sierra, Gregorio Herrera, Dolores Bernal, all of which reside in Juarez, Mexico, i. e., also Roy Bean, who resides in Langtry, Texas, T. T. Teel, Sam Wade, who live in El Paso, Texas, all of which will testify that the Rio Grande River ran where Price Cooper testifies in his affidavit it ran in 1852 and 1853. Price Cooper lives at Ysleta, Texas; Sam Bean, Los Cruces, N. M.; also George Baylor lives at Ysleta, Texas; John Clark, San Elizario, Texas. We ask that these witnesses be interrogated in regard to where the river ran in 1852 and 1853 and when it changed, and how it came to change its channel. Also ask that I be permitted to be present when said witnesses are examined and permitted to ask questions in regard to where the river ran in 1852 and 1853, and such other questions as may be important in proving where the line or river was in 1852 or 1853. And that you require said witnesses to go on the ground and show where the river ran in 1852 and 1853, and in duty bound will ever pray, etc.,

T. W. DOUGHERTY,  
Attorney for Claimants.

With which petition of Attorney Dougherty was also presented the affidavit of Price Cooper, an American citizen, as follows:

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

I, Price Cooper, do for the purpose of saving the trouble and expense of returning to El Paso, Texas, make the following statement of facts, the same being my testimony to be used before the International Boundary Commission of the United States of America and the United States of Mexico. I came to El Paso, Texas, in 1842, and have lived in El Paso and vicinity ever since. I saw the surveyors surveying the line between the United States of America and the United States of Mexico, between Juarez, Mexico, and El Paso, Texas. I know where the Rio Grande River ran in 1853; a little north of where the Santa Fe Railroad roundhouse now stands, from there in an easterly direction to where First Street in El Paso, and from there it ran under the opera house, and from there in an easterly direction to some old trees between Oregon and Utah streets, and ran through the Pomeroy transfer corral. Thence under where the jail is now, and from there in a northeasterly direction and north of where the Texas and Pacific Railway depot is now. Thence crossing Overland and San Antonio streets, and going in the direction of Concordia. It ran there until in 1862, when it changed suddenly to near where the street-car track turns on Seventh Street. The change was caused by an overflow in the river by the river leaving the old channel and forming a new one. All the changes in the river have been made by sudden changes in the river, abandoning the old channel and taking a new one. I know that Captain French put in a dam to prevent the river from returning to its old channel of 1853. This dam was built by Captain French after the overflow in the river in 1862, when it changed from the old channel and made a new one. Captain French was an American citizen, and was Town Marshal of the town of El Paso, Texas.

PRICE COOPER.

Sworn to and subscribed before me this }  
21st day of April, 1896. }

T. H. CONKLIN,  
Notary Public,  
El Paso County, Texas.

Also a statement in writing by Quirino Lara, a Mexican citizen, the correctness of which was vouched for by Doctor Mariano Samaniego, of Juarez, and which statement was as follows:

STATE OF TEXAS, }  
COUNTY OF EL PASO, } ss.

I, Quirino Lara, hereby declare and render my testimony, which may be used before the Honorable Boundary Commission of the United States of America and of the United States of Mexico, to wit:

I was born in the year 1840 at Paso del Norte, in the "Partido" (Section) "Barrial," where I lived up to the month of December, 1879, when I moved to the "Partido Chamizal" on the north side of the river, after its change in 1862, where I have lived until this present date. About the year 1872 I was Governor of the Indian "Pueblo" of El Paso. About the years 1846, at the time of the battle of Temascalitos, and in 1853, one thousand eight hundred and fifty-three, when the American Flag was hoisted at La Mesilla, I saw the Rio Grande or Bravo running between Paso del Norte, now Juarez City, and El Paso, Texas, at the point I will proceed to designate. It ran where the water tank is now located, adjoining the roundhouse of the Santa Fe Railroad; thence easterly over what is now called First Street, passing on the south of the City Hall and Opera House; and, further on, where the house called "Cuco" is now situated; thence westerly, where the county jail is now located; and continuing westwardly over the place now occupied by Overland Street, a little above the Texas and Pacific Station in the direction of Concordia. Thus did the river run up to the year one thousand eight hundred and sixty-two (1862), in which year it changed suddenly to the place where there now lies the roadbed or railroad that passes by the little smelter; and, when it reached the point where Campbell Street is now situated, turned to the northeast in the direction of Fort Magoffin.

The river did not change gradually by eating away the land, but did so by cutting it off and forming a new channel. I worked on a channel dug by Dr. Mariano Samaniego in the year 1869, with the object of changing the river to its old place, but Captain French constructed a dam further up, which prevented the river from running into the channel made by Dr. Samaniego.

QUIRINO LARA.

Thereupon as appears from the joint letter of the said Commissioners, dated El Paso, Texas, May 18, 1896, to Messrs. T. W. Dougherty and A. H. Kirby, occurring on page 69 of Volume I. of the Report of the Proceedings of the International (Water) Boundary Commission, the said Commissioners practically refused to hear any of said testimony or documents relating to the changes in the river so far as they might affect the accuracy of the present location of the map made in 1896 by Messrs. Corella and Dabney, consulting engineers to the Commission and plotted from the map of Emory and Salazar of 1852, and thereby foreclosing your petitioners from establishing the facts above stated, namely, first, that the plotting of the map of 1896 on the ground from the map of Emory and Salazar of 1852 could not be made with any accuracy by reason of the small scale of the map of 1852, and further from showing from calls in the deeds and ancient records the actual location of the river in the different years in connection with the ancient map of 1852 in order to ascertain the line as therein established, and thereby the merits of the case have never received proper hearing before said Commission.

In spite, however, of this ruling out of a large portion of the most valuable testimony that might have been produced before it, the Boundary Commission thereafter proceeded to take the testimony of four witnesses in behalf of Mexico and three witnesses in behalf of the United States of America, whose testimony is shown on pages 50 to 59 and on pages 64 to 67 of Volume I. of the Record of Proceedings of the International (Water) Boundary Commission.

#### CHANGES IN RIVER CHANNEL OCCURRED ONLY IN TIMES OF VIOLENT INUNDATIONS.

The testimony of each and all of said witnesses, both for the United States and for Mexico, establishes the fact that no changes in the Rio Grande ever occurred at any other time than in time of excessive and violent inundations and overflows, and that the changes of the channel, from its location at the time of the survey made by Messrs. Emory and Salazar, were but two (2), and each of which occurred during time of overflow, and that such changes in the channel could not be seen or determined until the overflowed waters subsided and settled into a fixed channel, when, beyond all possible question (and the fact is admitted and impossible of contradiction) it was readily seen that the former "river bed" had been "abandoned" and a



new one opened from a considerable distance south of the former river beds as shown on said map presented herewith.

20. Your petitioners further allege that the admission of the American Commissioner, contained on page 45, Volume I., of the Proceedings of the International (Water) Boundary Commission, that, at the time of the establishment of the boundary in 1852, the tract of land known as El Chamizal was well within the territory and jurisdiction of Mexico, and that subsequently a portion of that tract has been passed by the action of the Rio Grande to the United States side of the river, leaves the burden of proof upon the United States to prove, under the terms of the treaty, that such change occurred in such manner as to change the title to said lands from one government to the other, for it is expressly provided that "any other" change except that of "slow and gradual erosion" shall not change the title; nor shall the title, or boundary, change in the event the river shall abandon an existing bed and open a new channel; and once title is admitted to have been in the Mexican Government it remains there until the other party setting up title is able to prove by competent evidence that the title was changed by the single natural cause competent to affect such change, namely "slow and gradual erosion." In this connection your petitioners annex hereto the admirable argument of the Hon. F. Xavier Osorno, the Mexican Commissioner on said International (Water) Boundary Commission and contained at pages 81 to 86, inclusive, of Volume I., of the record of their proceedings and the same is hereto annexed and marked "Exhibit D" and prayed to be made and taken as a part hereof with the same force and effect as if herein set forth at length.

21. Your petitioners further allege that the American Commissioner was doubtless familiar with the changes that occurred in the channel of the Rio Grande at El Paso, Texas, and Juarez, Mexico, for the reason that in the year 1859 he occupied the position of Deputy Surveyor, and in that year made, as he claims, a survey of the Juan Maria Ponce de Leon two caballerias of land on the north side of the river. (See Vol. 1, pp. 62 and 63 of the Record of Proceedings of the International (Water) Boundary Commission.) The American Commissioner was doubtless familiar with the character of the changes and how such changes were effected, when in what the American Commissioner, on page 88, Volume I., of the Report of Proceedings of the Boundary Commission, calls a special report to his own Government, he says:

"\* \* \* that the 1,300 miles of the Rio Grande which constitute the international boundary from El Paso to the Gulf may be divided into three characteristic divisions."

He then characterizes the first division as follows:

"The first from El Paso to Presidio del Norte, where, by reason of the greater fall in the river's current and the firmer consistency of the earth, the changes in the river's channel are true avulsions and clearly come within the avulsive changes described by Attorney-General Cushing in his opinion of November 11, 1856; that is to say, by 'deserting its original bed the river forms for itself a new channel in another direction,' thus forming an Island, the length of which, parallel to the river, is many times its width, and often leaving many inhabitants with cultivated fields living on it, and 'the nation from whose territory the river thus breaks its way suffers injury by the loss of territory greater than the benefit of retaining the natural river boundary.'"

This significant language, made at a time when the American Commissioner did not probably recognize its significance, case No. 4 known as "El Chamizal" at El Paso, Texas, not having arisen at that time, the American Commissioner attempts to explain away by stating that he meant to say "that the *avulsive changes* in the upper section of the river were *true avulsions*."

### THE CONFLICTING TITLES HAVE MENACED THE PEACE OF THE TWO COUNTRIES.

22. Your petitioners further allege that at various times the American claimants to said lands attempting to enforce their rights have used force and arms in evicting and excluding therefrom the Mexican claimants, and that the said American claimants being backed by the court processes of the Texan Government while the Mexican claimants have been without the backing of their own Government in the premises, great and manifest abuses and injustices have been heaped upon Mexican citizens by American citizens without any redress being possible or available to your petitioners, and in that connection your petitioners refer to certain affidavits giving details as to some of said occasions when such force and arms were used as aforesaid, and the same are marked "Exhibit E" and prayed to be made and taken as a part hereof with the same force and effect as if herein set forth at length, and your petitioners further allege that to

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remedy such wrongs this petition is now presented after every other means has been sought to obtain redress. Your petitioners further allege that among the means sought to obtain redress in the premises by your petitioners and persons representing the same titles as your petitioners, were and are the following:

THE FINAL DISAGREEMENT OF THE MEXICAN AND AMERICAN COMMISSIONERS AS TO THE MERITS OF CASE NO. 4, THE EL CHAMIZAL CASE, HAVE EXHAUSTED THE REMEDIES OF YOUR PETITIONERS BEFORE THAT TRIBUNAL.

23. Your petitioners further allege that by reason of the disagreement of the Mexican and American Boundary Commissioners in Case No. 4 known as El Chamizal, your petitioners have exhausted their remedies before that tribunal and no redress from the proceedings of said Boundary Commission is available to them.

THE MEXICAN COURTS HAVE REFUSED TO ACT.

24. Your petitioners further show that the courts of Mexico have refused, and perhaps under the conditions as they existed, very properly, to take jurisdiction over the premises and issues involved for the reason that their attempt to do so would at once produce serious political and international complications, the courts of the United States and the State of Texas having assumed jurisdiction by reason of the said lands having come actually on the northern side of the Rio Grande River by reason of such change.

THE PETITIONERS HAVE EXHAUSTED ANY POSSIBLE REMEDY IN THE MEXICAN COURTS AND SAID COURTS ARE WITHOUT JURISDICTION IN THE PREMISES.

25. The Mexican Courts could not properly act in the premises under the conditions, so petitioners further allege that as the lands in question actually come on the northern side of the Rio Grande River

and jurisdiction over them has been assumed by the Government of the United States and the American Courts have actually exercised jurisdiction over the premises, any attempt on the part of the Mexican Courts to take jurisdiction or enforce their decrees through their administrative officers over such lands would lead to political and international complications of a grave and serious nature, hence your petitioners have exhausted whatever remedy they might have in the Mexican Courts.

YOUR PETITIONERS HAVE EXHAUSTED THEIR REMEDIES IN THE AMERICAN COURTS AND HAVE NOT BEEN ALLOWED TO TRY THEIR TITLE UPON THE MERITS OF THE CASE, BUT HAVE BEEN FORECLOSED AND ESTOPPED FROM SUCH INQUIRY.

26. Your petitioners further show that they have attempted to acquire a judicial determination by suits instituted in the Courts of the United States of America of the validity of their claim of title to the said lands in question, but having been thrown out of said courts and left remediless in the said premises without having been allowed to go into their title on the merits of the controversies as to the nature of their title in and to said land, said courts having ruled that so long as the sovereignty of the United States has accepted jurisdiction over the premises your petitioners would not be allowed to allege or prove that the title of the Mexican Government and of Mexican citizens claiming under it still exists in said land.

27. Your petitioners aver that after the International Boundary Commission failed to reach an agreement in case No. 4, known as "El Chamizal," Mr. W. J. Warder, an American citizen, under contracts made with a large number of petitioners, and having acquired an interest in the title to a part of the land included within the description of the aforesaid tract of land, instituted at El Paso, Texas, in the Circuit Court of the United States, a Court of proper and competent jurisdiction, a suit to try the title to the lands described in his petition filed in said suit. Your petitioners annex hereto a copy of the second amended original petition filed in said suit and of other pertinent proceedings therein, marked "Exhibit B," and pray the same to be made and taken as a part hereof with the same force and effect as if herein recited at length.

The testimony of the witnesses in said suit is hereto annexed and made part hereof in "Exhibit C" mentioned in Article Seventeen hereof.

After the plaintiff had introduced said testimony, the defendants in said cause, without the introduction or production of any testimony whatever, and without attempting to prove or show any title to the property involved, requested the Judge of the Court, by a written motion filed by them, defendants, to adjudge the case against plaintiff. Said motion and request to the trial Judge was as follows:

### MOTION.

"The defendants ask the Court to strike out all evidence introduced by plaintiff to show title to the property involved in Julio Provencio for the reasons:

First: Because the evidence does not establish any grant to the property from the sovereignty of the soil.

Second: The evidence is not sufficient to raise the presumption of a grant to any person under whom plaintiff claims title to the land.

Third: Because the deeds offered in evidence were not recorded in the County of El Paso, or deposited in the General Land Office of Texas.

Fourth: Because the execution of the deeds under which plaintiff claims is not established by the evidence.

Fifth: And the Court is asked to strike out all evidence introduced by plaintiff respecting a change or changes in the Rio Grande by avulsion, and all evidence to show that the land in controversy has not been placed on the north side of the river by accretion, and all evidence tending to show any title under the Government of Mexico of property because the admitted facts and the evidence show that the United States Government and Texas are, and for many years have been, exercising jurisdiction, civil and political, over the property, and the United States Government claims, and for many years has claimed, that said property is in the United States, and by its claim has, for the purposes of this case, established the fact that the changes

in the river by which the land was thrown upon the north side of the river were by accretion and not by avulsion.

BEALL & KEMP,  
EDWARDS & EDWARDS,  
PATTERSON & BUCKLER,  
*Attorneys for Defendants.*”

28. Your petitioners further allege that the plaintiff in said suit, whose cause and interest was identical with the claims of petitioners to the territory now claimed by your petitioners, and which is being withheld from them by American adverse claimants under American titles, established by his testimony in said cause that, in so far as the record or paper title to the property was concerned, he had a good and perfect title.

This conclusion is sustained by the record evidence of the judgment rendered by the Court in pronouncing his judgment upon the first four grounds or cause set out, and as above recited in the motion of the defendant.

The judgment of the Court on said motion to dismiss was as follows:

#### JUDGMENT OF THE COURT.

“The Court after hearing the arguments of the respective counsel overruled *all* of defendants’ objections, except the last one, which is No. 5 in the motion, and is as follows:

“5th: And the Court is asked to strike out all evidence introduced by plaintiff respecting a change or changes in the Rio Grande by avulsion and all evidence to show that the land in controversy has not been placed on the north side of the river by accretion, and all evidence tending to show any title under the Government of Mexico of the property, because admitted facts and the evidence show that the United States Government and Texas are, and for many years have been exercising jurisdiction, civil and political, over the property, and the United States Government claims, and for many years has claimed, that said property is in the United States, and by its claim has, for the purposes of this case, established the fact that the changes in the river by which the land was thrown upon the north side of the

river were by accretion and not by avulsion," which fifth objection, the others Nos. 1, 2, 3 and 4 being overruled, was by the Court sustained, and in sustaining said fifth objection the Court stated, in substance, that his reason for so doing was that the United States Government, through its Boundary Commissioner, Col. Anson Mills, and through its political department was asserting political as well as civil jurisdiction over said territory and over said property in controversy, and that the jurisdiction so exercised by the political department of the United States must be presumed by the Court to be rightfully exercised, and that the only way in which said jurisdiction could be rightfully exercised would be by reason of accretion. That, therefore, the Court would refuse to hear any evidence whatever tending to show that the changes in the channel of the river, from the place where it was located in the year 1852 by the United States Boundary Commission to the place where said channel now is, was caused by avulsion or in any other way save and except by accretion and all testimony introduced by the plaintiff to show that the changes in the channel were by avulsion was by the Court excluded and stricken out, and that the Court would refuse to hear any further testimony to show that the changes in the river had been caused by avulsion."

Your petitioners submit that in overruling objection 1 the Court held: That the evidence *was sufficient* to establish a grant to the property from the sovereignty of the soil.

In overruling objection 2 of the defendants the Court held that the evidence *was sufficient* to raise a presumption of a grant to a person under whom plaintiff claimed title to the land. In overruling the third objection, the Court decided that it was *not necessary* that the deeds, under which plaintiff claimed the property *should have been recorded* in El Paso County or deposited in the General Land Office of Texas. And in overruling the fourth objection, the Court's judgment was to the effect that the execution of the deeds under which the plaintiff claimed the property *was established*.

29. Your petitioners further allege that the effect of the judgment above quoted sustaining defendants' fifth objection was and is, to hold, judicially, that plaintiff would not, and will not, and that these petitioners will not be permitted in the Courts of the United States to prove that the changes in the river were changes wrought by the force or violence of the current, and were not such changes as worked a change of boundary, for the reason "that the United States

Government and Texas are, and for many years have been, exercising jurisdiction, civil and political, over the property, and that the United States Government claims (a fact, in the opinion of petitioners, rather assumed by the Court than established by evidence, except in so far as the admission of plaintiff that the United States and Texas were exercising political jurisdiction over the territory, would sustain or warrant such conclusion or assumption), and for many years had claimed that said property is in the United States," and that therefore the Court must presume that the changes in the river were by accretion, that is, by "slow and gradual erosion and deposit of alluvium and not *by the abandonment* of an existing river bed and the opening of a new one."

Indeed the language used by the Honorable Court in pronouncing his judgment is convincing that any appeal by your petitioners for redress to the Judiciary of the United States is utterly useless and can be of no avail for the reasons stated in the concluding clause of said judgment.

30. And your petitioners further show that the plaintiff in said cause, representing the contention of your petitioners, and loyally seeking to exhaust all legal avenues in which relief might be found, prosecuted appeals from the judgment rendered against him in said case to the United States Circuit Court of Appeals for the Fifth Circuit, which thereupon by its judgment confirmed the judgment of the lower court made as aforesaid, foreclosing and precluding the plaintiff in said case from proving the merits of his case, and thereupon the plaintiff in said cause representing the contention of petitioners, prosecuted an appeal to the Supreme Court of the United States, but in said Court the said appeal was dismissed on the ground that said Court had no jurisdiction of the same by reason of the fact that on the record as presented no constitutional or treaty rights were involved and thereby prevented any inquiry into the merits of said claim of title involved in said suit, and to the record of said appeals establishing said propositions that the plaintiff therein under said decisions has never been able to prove the merits of the cause, but has been foreclosed and prevented from doing so by reason of the legal propositions laid down and enforced by the said Courts respectively, your petitioners beg leave to refer to the original of said records and to make the same a part hereof with the same force and effect as if set forth herein at length.



31. Your petitioners have thus exhausted every method of maintaining their rights in the premises except the method of this petition and this request that the Government of your Excellency shall protect and preserve the rights of your petitioners through the diplomatic channel of communication of the same to the United States of America and the prosecution of same through diplomatic channels to an inquiry into the merits of your petitioners' claim of title and the obtaining of the proper relief to your petitioners thereon.

32. Your petitioners further show that the lands of your petitioners and Mexican territory have thus been appropriated by American citizens and are being appropriated to the uses and purposes of the State of Texas and the County and City of El Paso, and that American citizens are now wrongfully using, occupying and collecting rents and revenues therefrom, and that the State of Texas and County and City of El Paso are levying and collecting taxes upon said property, and in such instances as where failure is made to pay the taxes levied upon the property, are selling and conveying the property for the purpose of enforcing the payment of taxes thereon, when, as a matter of fact, said lands belong to and are a part of the territory of Mexico and are subject to taxation by said Republic of Mexico and are of right owned and should be in the possession of your petitioners and other Mexican citizens of right owning the true title to the same.

33. Your petitioners further allege that the right of your petitioners to resume in any instance their former possession of said land has always, since the changes in the channel of the Rio Grande been denied and still is denied and forcibly resisted by American citizens now claiming said property.

34. Your petitioners further allege that the property of which they have thus been wrongfully deprived by American citizens and the American Government is of a very great value and not less than at least the sum of \$

35. Your petitioners further allege that backed up and encouraged by the fallacious and wrongful contentions of the American member of the Boundary Commission, those holding said property are claiming title thereto under the false and mistaken view and claim that said land was accreted to the soil of the Juan Maria Ponce de Leon and other American and State of Texas grants, which originally lay on the northern bank of the Rio Grande River and had said river for the southern boundary.

36. Your petitioners allege with the greatest emphasis that not only was ample evidence adduced before the International Boundary Commission to show that the changes in the channel of the Rio Grande were not such as under the treaties between the two Governments, worked any change in the International Boundary line, but that much more testimony to the same effect, and absolutely undisputable, could have been adduced before said Commission, had the Commission given attorneys representing petitioners, as they were respectfully requested to do, the opportunity of presenting more witnesses and testimony. In addition to the testimony adduced and that proffered to the International Boundary Commission, the testimony under oath of eleven witnesses was heard, but afterwards disregarded and held for naught by the trial Judge, in the trial of the case of W. J. Warder v. Mrs. Laura Loomis and others hereinbefore cited, all of which testimony shows conclusively that there were two avulsive changes in the channel of the Rio Grande, one in 1862 and the other in 1865, and both the result of violence of the current, and that in both instances the river abandoned an existing channel and made for itself a new channel, thus cutting off and leaving north of said new channel the property of your petitioners, and in that connection your petitioners refer to "Exhibit C" hereto annexed containing the testimony given in said suit in regard to the avulsive changes in the channel of the river.

THE AMERICAN COMMISSIONER ON THE INTERNATIONAL (WATER) BOUNDARY COMMISSION WAS DISQUALIFIED BY REASON OF PERSONAL INTEREST IN THE RESULT OF SAID CONTROVERSIES, AND THE PERSONAL INTEREST OF NEAR RELATIVES AND KIN IN THE RESULT OF SAID CONTROVERSIES, TO SIT AS A JUDGE OR MEMBER OF SAID COMMISSION IN SO FAR AS THE AMERICAN AND MEXICAN TITLES INVOLVED IN CASE NO. 4, KNOWN AS EL CHAMIZAL CASE, ARE CONCERNED.

37. Your petitioners with much reluctance and protesting that unquestionably the sovereignty of the United States and its executive officers at the time in question had no knowledge whatever of the facts now to be set forth, respectfully show to this Government that under no circumstances whatsoever should the International (Water) Boundary Commission continue in existence, for the reasons and facts now to be stated disqualifying the American Commissioner Hon. Anson

Mills from further participation in the settlement of the boundary dispute between said Governments, at least in so far as the settlement of the boundary involved in the Case No. 4, known as "El Chamizal," is concerned.

38. Your petitioners respectfully allege to this Government that at the time Case No. 4, known as "El Chamizal," was sub judice before said Commissioners, the Hon. Anson Mills, American Commissioner, was under the well recognized rules of the common and civil law, by reason of personal interest in the result of said controversy and personal interest of near relatives and kin in the result of said controversy, disqualified to sit as a Judge or member of said Commission in determining said judicial question in so far as the labors of said Commission extended to the matter of determining the boundary line at El Paso, Texas, and Juarez, Mexico, of the Mexican and American rights in and to the Chamizal District.

39. Your petitioners further allege that at the outset of the sittings of said International (Water) Boundary Commission in regard to Case No. 4, known as El Chamizal, it became important to determine where on the land as existing at present the *filum aquae* and banks of the River Rio Grande ran at the time of the Treaty of Guadalupe Hidalgo, viz., 1848 or 1852, and that the available means of ascertaining such line were substantially as follows:

First: The map of Emory & Salazar made on a scale of 1/60,000 in the year 1852 and the plotting of the same upon the land.

Second: The calls in certain ancient deeds and surveys on both sides of the river plotted on the land.

Third: The testimony of witnesses in regard to the changes in the channel.

40. Your petitioners further allege that the petitioners in Chamizal case No. 4, and especially those represented by attorneys Dougherty & Kirby, whose letter to the International Boundary Commission, together with the exhibits thereto attached is more fully set forth in paragraph 19 hereof, claimed that the river of 1852 and the river of 1827 ran in substantially the same channel, and that such channel when plotted on the ground would have made the *filum aquae* of said river begin at a point at or near where Block No. 168 in Campbell's Addition to the City of El Paso lies on the present north bank of the channel of 1905, and running thence southeasterly to a point at or near the corner of Chihuahua and Second Streets in said city;

thence along about Second Street in said city to a point at or near and between Utah and Stanton Streets; thence northeasterly to a point at or near the corner of First and Kansas Streets in said city, thence still northeasterly between the County Court House and jail by a somewhat irregular line through Blocks Nos. 198, 199, 200, 205 and 204 in Campbell's Addition, and thence along about San Antonio Street from Saint Vrain Street to the easterly side line of the map of Magoffin's Addition to the City of El Paso, and thence easterly by a slightly curved line to the bank of the channel of the Rio Grande River as it existed before the Island cut-off, the said river by a plotting on the land itself as at present existing and mapped being more accurately shown by the map presented herewith and marked "Exhibit G," the said map containing a plotting upon the said map of the City of El Paso as now existing, of the channel of 1827-1852 and of the channel of 1862 and of the present channel of 1905 of the Rio Grande River as claimed by your petitioners, and that under said claim made by the said parties claiming under the Mexican title and instituting and assisting in the prosecution of the Mexican titles in said El Chamizal Case No. 4 before said International (Water) Boundary Commission, the premises conveyed by the deeds herein-after mentioned, executed by both the Hon. Anson Mills and by the Hon. W. W. Mills, were included in the disputed portion of the lands the title to which as between the American and Mexican Governments was intended to be litigated in said El Chamizal Case No. 4 before said International (Water) Boundary Commission.

41. Your petitioners at the same time bring to your attention the fact that according to the map provisionally agreed upon between the Hon. Anson Mills as American Commissioner and the Hon. E. Xavier Osorno as Mexican Commissioner, and given at page 97 of the Proceedings of said Commission, the channel of the river of 1852 was plotted on said map considerably to the south of the said actual channel as it truly existed on said date, so that the filum aquae thereof ran substantially from a point where a westerly prolongation of the present Sixth Street intersects the present channel of the Rio Grande River, and running thence about southeasterly and easterly, passing the junction of El Paso and Seventh Streets substantially between Eighth and Ninth Street to Florence Street, and thence in a northeasterly direction to the channel of the Rio Grande River as it existed before the Island cut-off, and that if the said channel of 1852 as

so plotted on said provisional map so agreed upon by said Commissioners is the true channel of said river in 1852, the premises conveyed by the deed from Hon. Anson Mills, hereinafter mentioned, and a portion of the premises conveyed by the deeds from Hon. W. W. Mills to certain grantees hereinafter mentioned would not be included in the disputed territory, but there would still remain as included in the unquestionably disputed territory of the El Chamizal District the following described property included in said deeds from Hon. W. W. Mills, viz.: Blocks 19, 20, 22, 37, 41, 42, 43 and 64, of the map of Campbell's Addition to the City of El Paso, Texas.

42. Your petitioners further allege that at the time he so acted as Judge of the dispute in the El Chamizal Case No. 4, said Hon. Anson Mills was interested as a property owner who had previously warranted the title under the alleged American title, as hereinafter set forth, to Block No. 101 on the map of Campbell's Addition to the City of El Paso, in procuring the location of the *filum aquae* of the channel of the River Rio Grande as it existed in the year 1852 to the southward of said block say along about Eighth Street, instead of to the northward of said block along about Second and First Streets, which was claimed to be the true line by the claimants to the Mexican title in said El Chamizal Case No. 4, and in that the action of said Commissioners in refusing to hear any testimony of witnesses or receive any other evidence of the location of said channel than the alleged plotting of the same from said small map of Emory & Salazar by the engineers of the Commission, was a judicial act of said Hon. Anson Mills so locating said line as to free himself by such decision from the possibility of being liable in damages on his covenant of warranty in the deed hereinafter mentioned.

43. The said Hon. Anson Mills was disqualified as a Judge to sit on said Commission at said time, and is now disqualified for the reason that for many years prior thereto the said Hon. Anson Mills asserted and is now asserting a claim to land lying within the territory before described, and which claim and title is adverse and inimical and in direct conflict with the claim of your petitioners and of the Republic of Mexico, said claim being founded on the alleged American title to said property, and that a decision in said case adverse to the alleged American title would have resulted in making said Hon. Anson Mills liable in considerable money under covenants of warranty which he had theretofore made in a certain deed conveying the

alleged American title in and to certain property lying within the said Chamizal District, and in this connection your petitioners aver as follows:

44. Your petitioners allege that the said Hon. Anson Mills since and before the year 1887 has claimed to be the owner of certain lands situate within the boundaries of the territory claimed by your petitioners and the Republic of Mexico and the said lands are more particularly described in the deed hereinafter mentioned, and that on the 24th day of May, 1887, the said Hon. Anson Mills duly executed for \$750 to him cash in hand paid and delivered to E. H. Alton of El Paso, Texas, and Jesse Haston of Miles City, Montana, his certain deed in writing under seal whereby the said Hon. Anson Mills as grantor conveyed to the said E. H. Alton and Jesse Haston as grantees certain lands lying within the said Chamizal District and known as Block No. 101, according to the map of Campbell's Addition to the City of El Paso, more particularly described as follows: Beginning at a point in the westerly line of Oregon Street ninety feet southerly from the northeast corner of said block; thence running southerly along the line of said Oregon Street (35) thirty-five feet; thence at right angles westerly (120) one hundred and twenty feet to an alley; thence at right angles northerly and parallel with said Oregon Street (35) thirty-five feet; thence at right angles easterly (120) one hundred and twenty feet to Oregon Street, the point of beginning. Said parcel of land having a front of (35) thirty-five feet on Oregon Street, running back between parallel lines (120) one hundred and twenty feet and being the whole of lot (6) six and (9) nine feet adjoining of lot (7) seven in said Block No. (101) one hundred and one.

And thereupon as grantor did enter into covenants with the said grantees to warrant and forever defend, all and singular, the said premises unto the said grantees, their heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, and that a certified copy of the said deed is hereto annexed and marked "Exhibit H" and prayed to be made and taken as a part hereof.

45. That the said Hon. Anson Mills was disqualified as a Judge to sit on said Commission at said time, and is now disqualified for the reason that his brother, Hon. W. W. Mills, and thus related to him within two degrees of consanguinity, had for many years prior thereto

asserted and is now asserting a claim to land lying within the territory before described, and which claim and title is adverse, inimical and in direct conflict with the claim of petitioners and of the Republic of Mexico, said claim being founded on the alleged American title to said property and that a decision in said case adverse to the American title would have resulted in making the said Hon. W. W. Mills, brother of said Hon. Anson Mills, liable in large sums under various covenants of warranty which he had theretofore made in certain deeds conveying the alleged American title in and to certain property lying within said Chamizal District, and in this connection your petitioners aver as follows:

46. Your petitioners allege that said Hon. W. W. Mills, since the year 1882 has claimed, either for himself, or in behalf of his wife, to be the owner of certain lands situated within the boundaries of the territory claimed by petitioners and the Republic of Mexico, and which said lands are partially described as follows: The eastern fifty feet of fractional west one-half of Block 71 in Campbell Addition to the City of El Paso, which tract of land lies within the disputed territory as does practically all of said Campbell Addition.

47. Your petitioners allege that said Anson Mills was further disqualified for the following reasons, to wit: For the reason that while it appears that the parcel of land immediately above described is the only land now claimed and rendered for taxation by Mrs. Mary H. Mills, wife of W. W. Mills, the deed records of El Paso County, Texas, show that W. W. Mills has executed more than twenty sales and transfers of lands lying within the disputed territory and executed deeds warranting the titles to said lands against all claimants and particularly against the claim of petitioners thereto.

48. And your petitioners in support of the facts above stated attach hereto certified copies of three of said deeds copied from the records of El Paso County, and marked "Exhibit I" and prayed to be made and taken as a part hereof with the same force and effect as if herein recited at length, showing conveyances made by said W. W. Mills, of the property mentioned at the dates mentioned and containing covenants of warranty as to the title to the same and pray permission to bring in further certified copies of said other deeds at any hearing on this petition as additional parts of said "Exhibit I."

The foregoing premises being fully considered your petitioners respectfully pray that your Excellency will take the necessary or

proper steps in the premises to present and prosecute on behalf of your petitioners through diplomatic channels in the International Forum the right and title of the Republic of Mexico and your petitioners as Mexican citizens in and to the lands in the Chamizal District hereinabove set forth, and thereupon to procure the transfer of the possession to said lands back to the sovereignty and control of the Republic of Mexico and in and to the private right and title of your petitioners in order that the titles and rights obtained by your petitioners to the said lands through the said Republic of Mexico may be maintained and protected and may be respected by the United States of America and the State of Texas and the citizens thereof, as is enjoined and guaranteed to the Republic of Mexico and to your petitioners under the several treaties above set forth, for unless your Honorable Government shall act in the premises your petitioners as above set forth are utterly remediless in the premises and without the possibility of presenting the merit of their case or titles or to obtain relief for their wrongs and injuries above recited in any court or forum, and your petitioners further pray that by reason of the facts above set forth and established proving that the said Hon. Anson Mills, American Commissioner, under the International (Water) Boundary Commission above mentioned is disqualified to act as such on the merits of the disputed title to the El Chamizal District that he at least be excluded from all further participation as a Judge or Commissioner in passing upon the right or title of your petitioners to the lands in the Chamizal District, and that arrangements or protocols be made with the American Government for the appointment of a new special commission to arbitrate or pass upon the right and title of your petitioners in and to the lands in said Chamizal District, or that under proper protocols agreed upon for the purpose an arbitration board be appointed before whom your petitioners may present the merits of their claims and obtain the relief to which they are justly entitled, and your petitioners will ever pray.

Respectfully submitted,

Juarez, Mexico, September —, 1905.



NAMES TO PETITION.

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PEDRO Y. GARCIA.

JESUS D. MONTES.

E. ORTUZAR.

MANUEL TRUEBA.

JOSÉ O. ALVAREZ.

CARMEN S. V. DE SAMANIEGO

for me and as first executrix of my  
deceased husband.

ANTONIO TIRRE.

ESPIRIDION BARGAS.

ZENON VARGAS.

MATIAS VELARDE.

MARLANO FERRALES.

FRANCISCO PROVENCIO.

ANTONIO FERRALES.

SANTOS HERRERA.

APOLONIO CARABAJAL.

RODRIGO TIRRE.

MARCELO ARMIJO.

ADVERTO ARMIJO.

JOSE MA. SIERRA.

SAN TA CRUZ BARGAS.

TOMAS ORTEGA.

CASIMIRO BENAVIDES.

MONICO BENAVIDES.

JESUS DOMINGUES.

JESUS SIERRA.

MARIA ABALOS.

RAFAEL BARGAS.

ANTONIO CADENA.

RAMON CUARON.

FRANCISCO CUARON.

PABLO TELLES.

SEAL AND STAMP

In the City of Juarez, District of Bravos, of the State of Chihuahua, of the Republic Mexico, on the 6th day of the month of November, 1905, before me, Licenciado Rafael del Castillo, Judge of Letters of this district, acting in legal form and by virtue of being legally empowered Notary acting in this city, and having been authorized by the Government, appeared Messrs. Santiago Alvarado and Jesus D. Montes, both married and of age, the first a merchant and resident of the City of El Paso, Texas, County of El Paso, Texas, but now temporarily in Ciudad Juarez, and the second an employe and resident of this same city, and each one of said affiants, Messrs. Alvarado and Montes, whom I certify to know, said under oath: That they know well and have known for a long time the thirty-one (31) persons whose names appear on the pages foregoing, which are pages 41, 42 and 43 of this book.

That each one of said thirty-one (31) persons are residents and citizens of the City of Juarez, of the State of Chihuahua, Mexico, and declare moreover that they are owners respectively of parts and parcels of lands that are now on the north side of the Rio Bravo, in

and near El Paso, Texas, and which lands were originally on the south side of said river, that is to say, in the State of Chihuahua and near the City of Juarez, in what was formerly known as the "District of El Chamizal," which lands are fully described on page eight (8) of the foregoing printed petition.

As witnesses to this act are named the Messrs. Ouésimo Hernandez Obregon and Rafael Rocha, of age and residents of this city, the first a business agent and married, and the second an employe and single, fully able to testify according to law and whom I certify to know and these named witnesses sign before me with the affiants the Messrs. Alvarado and Montes. This I certify.

(Signed)

JESUS D. MONTES.

SANTIAGO ALVARADO.

O. HERNANDEZ OBREGON.

RAFAEL ROCHA (flourish),

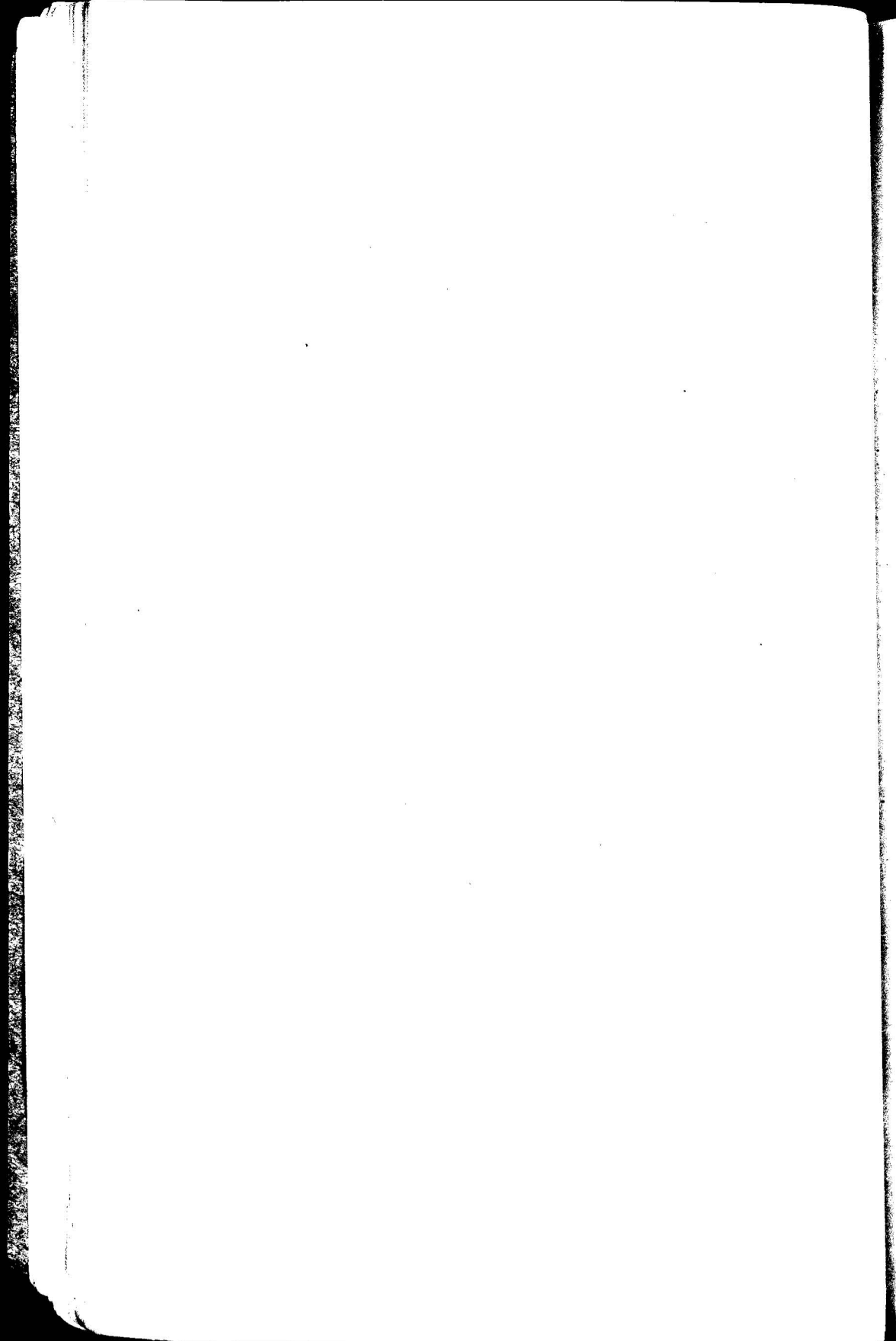
RAFAEL DEL CASTILLO.

SAMUEL REYNOLDS.

*Secretary.*







“EXHIBIT A.”

17 Battery Place,  
New York, September 6, 1905.

PROFESSOR LEWIS M. HAUPT,  
Consulting Engineer,  
Philadelphia, Pennsylvania.

Dear Professor Haupt:

Having knowledge of the fact that you are regarded as one of the highest authorities in the United States on matters relating to river hydraulics, I take the liberty to inquire whether it would have been possible for any engineers, even though they possessed the highest professional skill, to have come within say half a mile of locating with absolute definiteness, in the year 1896, the line of an old abandoned river channel as said channel existed in the year 1852, from a map plotted on a scale of 1/60,000, without the aid of any field notes of said ancient survey showing the meanders of the stream.

Will you also kindly give me the equivalent for one inch of the map drawn to said scale.

Very truly yours,

BREWSTER CAMERON.

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LEWIS M. HAUPT,  
Consulting Engineer,  
107 North 35th Street,

Philadelphia, Pa., Sept. 15, 1905.

BREWSTER CAMERON, Esq.,  
New York, N. Y.

Dear Sir:

In response to your favor of the 6th inst., inquiring as to the ability to relocate a stream from an old survey on a small scale, it gives me pleasure to state that in the accompanying “Table of Map Equivalents,” you will find, No. 35, will give the number of miles, or fraction thereof, to the inch of map on a scale of 1/60,000, as 0".947; so

that a half mile would be represented by less than a half inch of map (0".473).

In alluvial bottoms, the beds of streams subject to floods, are very unstable, swinging sometimes several miles out of the bed in a few weeks and to attempt to fix a location of such a stream from a chart made nearly a half century before, and especially without the original field notes, would be of no value whatever as a basis in determining boundaries. Moreover even were the "meanders" given, the secular variation of the compass should also be carefully determined before the boundaries could be retraced, even from the notes. Early surveys, where land is of little value, were frequently made by locating only a few points on a stream at long intervals and assuming the "meanders" between them. In so general a map as the scale indicated, this was probably the method followed, so that no reliance could be placed on the map as a basis for the establishment of a claim.

If this does not fully cover your inquiry please advise me and I will be more specific.

Very truly yours,

LEWIS M. HAUPT.



“EXHIBIT B.”

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION.

FILED APRIL 7, 1903.

In the United States Circuit Court for the Western District of Texas, at El Paso, Texas.

W. J. WARDER,

vs.

Mrs. LAURA LOOMIS, et al.

No. 340.

Suit in Trespass to Try Title and for damages, pending in the Circuit Court of the United States for the Western District of the State of Texas, at El Paso, Texas.

To the Honorable Judges of the United States Circuit Court for the Western District of the State of Texas, El Paso, Texas.

In the above cause now comes the plaintiff and with the leave of the Court first had, files this, his second amended original petition, in lieu of his first amended original petition, filed herein November 10th, 1902, and of his first supplemental petition, filed November 11, 1902.

Your petitioner, W. J. Warder, a citizen of Stanislaus County, State of California, complaining of Mrs. Laura Loomis, R. C. Loomis, A. M. Loomis, Mrs. Pansy Latta, W. B. Latta, Mrs. Annie Webb, M. H. Webb and Ralph Loomis, heirs of A. M. Loomis, deceased, residents of El Paso, Texas, defendants herein, would most respectfully represent to this Honorable Court:

First: That this is a suit of civil nature, at common law,

wherein the matter in dispute exceeds, exclusive of interest and costs, the sum of value of twenty-five hundred dollars (\$2,500.00), and arising under the Constitution and Laws of the United States, as well as the Treaties made, under its authority, between the United States of America and the Republic of Mexico, and involves the construction of said treaties; and in which there is a controversy between citizens of different States, that is to say, the plaintiff herein, W. J. Warder, is a citizen of the State of California, and the defendants, Mrs. Laura Loomis, R. C. Loomis, A. M. Loomis, Mrs. Pansy Latta, W. B. Latta, Mrs. Annie Webb, M. H. Webb and Ralph Loomis, heirs of A. M. Loomis, deceased, are residents and citizens of El Paso, State of Texas, and in the Western District of Texas.

Second: Your petitioner respectfully shows to this Honorable Court that on the first (1st) day of January, A. D. 1900, plaintiff was lawfully seized and possessed of a certain tract of land hereinafter described and situated in what is commonly called the County of El Paso, and State of Texas, but in truth and in fact situated between the present channel of the Rio Grande River and the channel as it existed in 1852, and between the present City of El Paso, Texas, and the City of Juarez, Mexico. That the national, state, county and municipal authorities of the United States, State of Texas, County of El Paso and the City of El Paso are exercising political jurisdiction over said territory, collecting taxes and revenues thereon. That on the first (1st) day of January, A. D., 1900, plaintiff was holding the property hereinafter described in fee simple. That on the day and year aforesaid the defendants entered upon said land, ejected the plaintiff therefrom and wrongfully withholds from the plaintiff the possession thereof, to plaintiff's damage of five hundred dollars (\$500.00); that the premises so entered upon and wrongfully withheld by the defendants from plaintiff are described as follows, to wit: From west to east on the south side one hundred and five (105) varas, bounded by the main road; from south to north on the east side four hundred and twelve and two-fourths ( $412 \frac{2}{4}$ ) varas, bounded by the lands of Maria Ortega Sedillos; from east to west on the north, one hundred seven and one-half ( $107 \frac{1}{2}$ ) varas, bounded by the Francisco Lucero ditch from the Chamizal ditch, and thence from north to south on the west is four hundred and eight and three-fourths ( $408 \frac{3}{4}$ ) varas, bounded by the National Road (Stanton Street). Including Blocks 25, 32, 48 and a part of Block 57, accord-

ing to map of Campbell's Addition to El Paso, Texas, as the same is shown upon the maps and plats of said City of El Paso of the additions thereto, and of which said property plaintiff and those under whom he claims the same had for many years, to say, since the year 1817, claiming to own the same under and by virtue of deeds and conveyances thereof, been in the peaceable, quiet, adverse and actual possession of said land.

This plaintiff further says that for more than ten years next before the filing of this suit and before the filing of suit No. 277, entitled W. J. Warder vs. The Campbell Real Estate Company, et al., out of which this suit grew by reason of an order granting a severance to the said defendants from other defendants in said cause No. 277, and he and those under whom he claims have had and held and has had and held peaceable, adverse and continuous possession of said tracts of land, cultivating, using and enjoying the same, wherefore he pleads the statute of ten years limitation and his title acquired thereby in bar of and against any claim of title thereto asserted by the defendants.

Plaintiff further says that for more than forty years next before the filing of this suit, before the severance granted in said cause No. 277 and before the filing of the original petition filed in said cause No. 277, he and those under whom he claims said property have had and held actual, peaceable, quiet and adverse possession thereof, cultivating, using and enjoying the same, wherefore he says that by virtue of his having continued possession of said premises as aforesaid, he has by virtue of such possession acquired such good and sufficient title thereto as will bar and is paramount to any title or claim asserted by the defendants to said property. And plaintiff prays that he be quieted in his title and possession of said property.

The plaintiff further shows that the annual rent of said property is of the value of two hundred and fifty dollars (\$250.00), wherefore plaintiff prays that defendants be cited to answer this petition and for judgment against said defendants for the above described premises, for his damages and for costs of suit, and all such other and further general and special relief.

JAY GOOD & SEYMOUR THURMOND,

*Attorneys for Plaintiff.*

(Indorsed): No. 340, W. J. Warder vs. Mrs. Laura Loomis, et al. Plaintiff's second Amended Original Petition. Filed April 7, 1903. D. H. Hart, Clerk. This suit is brought as well to try title as for damages. Jay Good and Seymour Thurmond.

Before said Circuit Court, at its April term, 1903, the above case of W. J. Warder vs. Loomis was brought to trial and testimony was introduced to the following effect:

Plaintiff, W. J. Warder, proved by the introduction of the original letters that on October 15th, 1817, one Pablo Perea conveyed to Domingo Abalos the land sued for, upon which was a house of four rooms and one hall, with garden adjoining said house and agricultural lands. That on October 18, 1841, Domingo Abalos conveyed the same property to Francisco San Juan, who conveyed it to Julio Provencio, by whom it was conveyed to Santiago Alvarado, who conveyed it to the plaintiff Warder. That plaintiff proved a sufficient paper title to the property is virtually and sufficiently admitted by the Court, before which the case was tried, in his judgment overruling the first four grounds of paragraphs Nos. 1, 2, 3 and 4, of the motion of defendants to strike out of record the testimony introduced by plaintiff to show title to the property. Plaintiff then in order to complete his case and compel defendants to prove a better title than that proven by himself, introduced eleven (11) witnesses, to wit: Sam Bean, an American eighty years old; Marcelo Armijo, 83 years old; Jesus Telles, 76 years old; Pablo Telles, 70 years old; Antonio Puertas, 70 years old; Reymundo Cano, 65 years old; Matias Velarde, 56 years old; Silverio Varela, 56 years old; Jose Maria Sierra, 65 years old; Dr. Mariano Samaniego, who has lived in Juarez off and on since 1852, and Esperidion Provencio, 55 years old.

EXHIBIT "C."

Testimony in case of W. J. Warder vs. Mrs. Laura Loomis, et als., in the U. S. Circuit Court of the District of Texas.

SAM BEAN, sworn for the plaintiff, testified:

My name is Sam Bean. Am 80 years old, and live in New Mexico. I was first here in El Paso in 1846. I was then with Col. Donovan's troop as a soldier. Our company was quartered in Juarez, just across the river from here, for three weeks or a month. While in Juarez, which was then known as Paso del Norte, and this City, El Paso, was known as Franklin, we, the soldiers, occupied the public buildings and offices. I saw a great many of the public documents, Government papers and archives destroyed. The papers were taken out of pigeon holes, packages and books, torn out and used by the soldiers for all kinds of purposes, such as kindling fires and for private purposes. Whenever a soldier would want a sheet of paper for any purpose he would walk up to a pigeon hole where they were kept, or to a book, and take what he wanted. These papers were torn up and scattered everywhere. I could not read Spanish and of course could not say what particular papers were destroyed. We, the soldiers, paid no attention anyway to the character of the papers, and consequently I cannot say that any of the papers related to lands. All I know about it is that we took possession of the public offices and that a great many of the papers found by us in those offices were destroyed. At that time, in 1846, the Rio Grande River ran about along where the present Opera House now stands. After 1846, I was not in El Paso again until about 1858, when I passed through here again and went up into New Mexico, where I settled. I often came to El Paso after that. I knew Juan Ponce de Leon well. The town of Franklin was located on his land. I often stopped at his house, which stood where what is now called Center Block, north of San Francisco Street. It was only a short ways from De Leon's house down to the river. I often lead my horse from the house down to the river to water him. I was not here during the flood of 1862, but on visiting El Paso after that I noticed that the river had moved a long ways southward. Since I have been here this time as a witness in this case, I have been upon the ground for the purpose of tracing out, if I could, the channel in which the river ran where I first knew

it and up to about 1858. I can trace the old channel; in some place it is very distinct, in others it has been built on and filled in. I remember when it ran along about where the Opera House is, between Overland and First Streets, and that it ran just back of the Court house, between where the Court House stands and where the County Jail is.

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MARCELO ARMIJO, sworn for plaintiff, testified:

I am 83 years of age, have lived at Paso del Norte, Mexico, now known as Juarez, all my life. I knew Julio Provencio and Francisco San Juan, they are both dead, they lived in Juarez. I knew the property involved in this suit, knew it when Francisco San Juan owned it and conveyed it to Julio Provencio. The property at the time San Juan owned it was on the south side or right-hand side of the Rio Grande River, at the time called Rio Bravo. The property lay next to and adjoining what was known as the Camino Nacional or National Road, and what is now known as Stanton Street, in the City of El Paso. The property lay east of this road and north of what was known as the road to the dam. The road to the dam ran along with reference to the property in controversy where Eleventh Street in the City of El Paso now runs. San Juan never lived on the property that I know of. He had tenants or laborers cultivating it. Provencio lived on it and cultivated it up to until about 1865, when he was forced to leave it by the overflow. I am familiar with the Rio Grande River and its changes since 1852. Prior to the year 1852, the Rio Grande River ran about where Mayer's Opera House now stands, between Overland and First Streets of the City of El Paso. It ran on up near the County Court House between the Court House and County Jail. In 1862, there was a great rise in the Rio Grande River. The contiguous country was overflowed. The rise lasted about three or four months and when it subsided the river settled down in a channel near, just north of, the Ketelsen and Degatan house; which is at the corner of El Paso and Fifth Streets, in the City of El Paso, where the channel remained until 1865, when after another big overflow in that year, it, the channel, changed to where it is now, that is about where Thirteenth Street in the City of El Paso is. Before the overflow in 1862, all of the country or land between where the river ran prior to 1862 and the place or channel to

which it changed at or near Ketelsen & Degatau's at the corner of El Paso and Fifth Streets, was in cultivation, various people resided there, they were farmers and raised grain and fruits, they had orchards, vineyards and gardens. The floods of 1862 washed down all the houses, which are built of adobe, a kind of mud brick which melts easily, the vineyards and orchards were washed away, the water was all over the land, the people were forced to abandon their houses. After the flood subsided there were left some dead grape vines, fallen trees and roots. A few trees were left standing, but all were killed. Here and there could be found a leaning tree and occasionally a fallen tree and dead grape vines. The water was over both banks of the river. The river came up into what is now Juarez nearly to what is known as the Chamizal Ditch, which runs through the present town of Juarez. After the flood of 1862 had subsided, the people returned to the lands lying south, that is on the Mexican side of the then channel of the river, and again renewed agricultural pursuits. Then in 1865 a flood equal to or perhaps greater than the one of 1862 came and the people were again forced to leave and their orchards, vineyards, houses, etc., were again swept away. The strong current of the river during these overflows was toward the Mexican or south bank of the river, and washed that bank away. The river would rise quite [early] every year at that time. From say 1852 and prior thereto until after 1865, the Rio Grande River here at El Paso, El Paso being on the north side of the river and Juarez immediately opposite on the south side was a running stream and always had water in it. Of late years it goes nearly or quite dry at this point during the late summer months. There was never any change in the channel of the river except in time of overflow. When the river was at ordinarily low water mark no changes in the bank occurred. The only changes in time of overflow were in 1862 and 1865, as I have stated. The first one being in 1862, when the river changed from about where the Opera House now is to just north of Ketelsen and Degatau's or to Fifth Street. There is a stump of a mesquite tree in the sidewalk on El Paso Street. The tree of which this is the stump, prior to 1862, stood on the south side of the river. After the flood of 1862, this stump was on the north side of the river. The stump is still there at this time. I remember the tree, it was one to which the canoes in crossing from the north to the south side of the river were tied on the south side of the river.

JESUS TELLES, sworn for plaintiff, testified:

I am 65 years of age, and live in the City of Juarez, formerly known as Paso del Norte, on the south side of the Rio Grande River, opposite the City of El Paso, formerly known as Franklin, on the north side of the river. I have lived in Juarez all my life, and am familiar with the Rio Grande River, formerly known as the Rio Bravo. In 1852, and prior thereto, the river ran about where Second Street now is, at the point where El Paso Street crosses Second, and on up diverging northeastward to just back of the present El Paso County Court House, and between where the Court House is and the next block south on which the County Jail stands. The river ran at that place until 1862, when after an overflow in that year it settled into a channel south of where it ran prior to the flood of 1862. This last channel was about where Fifth street now is. The country lying south of the river prior to 1852, that is between where the river ran prior to 1862, and where it now runs, was all level and flat. It, the land, was owned by various small farmers, and fruit raisers. It was cultivated in small orchards, vineyards and gardens. The homes were built of adobe. The overflow of 1862 washed the houses away and washed down the trees and destroyed the vineyards and gardens. There was some, but very little of the orchard trees and vines left after the water subsided, the trees and vines were all killed and were afterwards used as wood; what few trees were left standing were killed, and here and there they were lying on the ground where the water had washed them down. In 1865, there was another overflow similar to the one in 1862. During the overflow in 1865 the channel of the river changed still further south, and finally settled down where it now is, just south of Twelfth street of the City of El Paso.

PABLO TELLES, 70 years old; ANTONIO PUERTAS, 70 years old, and RAYMUNDO CANO, 65 years of age, testified in regard to the changes in the river in substance as did Marcello Armijo and Jesus Telles.

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MATIAS VELARDE, sworn for plaintiff, testified as follows:

My name is Matias Velarde. Was born in what is now known as Juarez, Mexico, and have lived there all my life. I am 56 years



old, and remember the floods of 1862 and 1865 in the Rio Grande River. In 1862 the river ran about where Second street is in the City of El Paso. When the flood of that year subsided it left the channel of the river near Ketelsen & Degatua's at corner of Fifth and El Paso streets. The south or Mexican bank of the river was not overflowed, the northern or Texas bank did overflow and the current ran toward the Mexican bank and washed that bank away. There were houses and farms on the south side of the river and these were washed away. The banks would tumble in and be washed away. There was nothing left between where the river settled in its new channel at Fifth street and the old channel it had run in before. The vines and trees were all washed away as well as the houses and nothing left to mark the places where former habitations stood. After the flood in 1862 subsided, the people then rebuilt their houses that had been washed away south of the new channel and opened up their farms and gardens. In 1865, another flood came and lasted some three or four months as the one in 1862 had done. The country was again covered with water and this time the river again changed its channel and settled down somewhere about where it is now. There has been no practical change in the channel of the river since after the flood of 1865 it settled in its present channel. Both of the floods of 1852 and 1865 resulted in the bank of the river on the Mexican side being washed away and land being made on the northern or American side. After the river changed from about where Second street is to Fifth street, in 1862, the old channel formerly at Second street was still there, but no water ran in it.

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SILVERIO VARELA, sworn for plaintiff, testified:

I am 56 years of age and live in El Paso, Texas. I was born in what is now called Juarez, Mexico, at one time called Paso del Norte. I remember the Rio Grande River and the years before its channel changed from about where the Opera House now is in El Paso, down to Fifth street, just this side of Ketelsen & Degetau's place. I was then living with my sisters and father on the same land upon which I now live and which is on the opposite side of what is now called Stanton street, but which was then known as the Camino Nacional or National Road, to the property in controversy in this suit. My father then owned the property upon which I am now living. After the

flood of 1862, all we had being washed away, I left and went to New Mexico to work. I returned several years afterward and built on the property we had formerly owned. This property upon which I reside had stones at the four corners to mark the corners. These stones had been put there by my father to mark the corners of his land. When I returned I could only find one of the corner stones, it was still there, the others were gone.

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JOSE MARIA SIERRA, sworn for plaintiff, testified:

I am 65 years of age, and have lived all my life in Juarez, Mexico. I remember when the American troops were quartered in Juarez, in 1846. I was then a small boy, but remember the circumstance well. The soldiers took up their quarters in the public buildings where the public officers and documents were kept. A great many of the public archives and documents were destroyed by these soldiers. They destroyed them in many ways. I saw piles of them made just outside of the buildings and fire set to them, burning them up.

As to changes in the river, this witness testified in substance as did the witness Marcelo Armijo, Jesus Telles, Pablo Telles, Antonio Puertas and Raymondo Cano.

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DR. M. SAMANIEGO, sworn for the plaintiff, testified:

I have lived in Juarez, Mexico, off and on since 1852. Am a practicing physician. Have held several offices in Mexico. Have been Governor of the State of Chihuahua and Mayor of Juarez. I knew where the river ran prior to 1862. It ran about where Second street now is in the City of El Paso, that is it ran along about the course of Second street. In 1862 and in 1865, there were great overflows of the river, and in those years the channel changed. As stated, prior to 1862, the river ran along about the course that Second street now runs through the City of El Paso. After the flood of 1862 had subsided, the channel then ran near Kettelsen & Degatau's place, about where Fifth street in the City of El Paso now is. The old channel at Second street was dry, except some years during high water or a rise in the river water would run through the old channel

at Second street and also through the new channel at Fifth street. In 1865, the channel again changed. In this year, after the overflow, the river took up its channel, where it now runs, a little south of Twelfth street in the City of El Paso. During these overflows, the current of the river ran with greater force against the south or Mexican bank of the river than against the north bank, and naturally washed away the south bank. Before the rise of 1862 the land now included between Second and Fifth streets in the City of El Paso lay on the south or Mexican side of the river, and was occupied and cultivated by small Mexican farmers, fruit raisers and gardeners. The houses were of adobe, a kind of sun-dried mud brick. The farms, gardens, trees and houses were all washed away, and the people compelled by the high water to abandon their houses and property. The land between Fifth and Twelfth streets, or between Fifth and where the river now runs, of course remained on the south or Mexican side of the river until after the overflow of 1865, when this land was also thrown into the north side of the river, by reason of a new channel being made, as I have stated, just south of Twelfth street. The land in controversy in this suit lies between Seventh and Twelfth streets, and is consequently south of Fifth street and north of the present channel of the river. I am familiar with the land and knew Julio Provencio, who at one time owned it. He is now dead, he died in Juarez. There were some large cottonwood trees that I remember were standing on the south side of the river, up near the Santa Fe Depot. These trees are now, or were a few years ago, still standing, but are now on the north side of the river. There were other large trees further down the river that were on the south side before these floods, but are now on the north side. While all of the houses, crops, vineyards, orchards and gardens were ruined and mostly swept away, they were not entirely gone. After the floods subsided here and there could be found a fallen tree, grape vine roots, etc., all were killed, however, as the water remained over the land for three or four months. Prior to about 1880, the Rio Grande River at this point usually had water in it the year around. Of late years it is dry the greater part of the year. In former years there were rises in the river quite every year, beginning about April or May, and the river would remain high for two, three or four months. There were no perceptible changes, however, in the channel, until 1862, and that change and the one in 1865 are the only ones that occurred. Since

1865, there has been practically no change in the channel. I am claiming land on this side of the river that I claim was prior to 1862 and 1865, on the south or Mexican side. About 1869, Captain Wm. French, who was then City Marshal of El Paso, built a dam out into the river above the City of El Paso. This dam did not extend across the river, but only out into the river about half way across. The result of building this dam, or rather the dam itself, would, when the river was up, throw the current towards the Mexican side, and it also prevented the river from coming back into its old channel.

On cross examination, witness testified that he had been examined as a witness before the Boundary Commission in 1896, and that he then testified as follows:

Cross Examination of Dr. Samaniego.

The following questions and answers were read to the witness, Dr. M. Samaniego, from page 65 of the report of proceedings of the International Boundary Commission, and the witness admitted that he had testified before the Commission as shown by said questions and answers:

Questions propounded by the Mexican Commissioner.

Q. Either as an official or private party, do you know anything of the peculiarities and characteristics of the river?

A. I know the habits and characteristics of the river. The river is very changeable on account of the soil being movable.

Q. You say the river is changeable. During your experience on the river, have you noticed that these changes occurred during the whole year or only during the floods?

A. During the floods generally.

Q. Do you think that these changes were made by the violence of the waters?

A. These changes occur along the curves of the river and by eating of the sand, and are more perceptible when the waters recede.

Q. Were you here in 1852? Can you tell then more about where the river ran at that time?

A. I was here in 1852. My recollection from the distance we had to go from this side to the river and on the other side to the Court House, which was where the Ponce House stood, in block 17, I

should say that the river ran then about where the Windsor Hotel is now.

Q. The Emory and Salazar survey showed the river to be lower than where you have placed it. How do you explain it?

A. As I was young, I am not positive, because I did not pay much attention to those things and what I know is more from conversation with old residents. Lately I have conversed with Antonio Costa and before then with Jesus Serna, Father Ramon Ortiz and Nepomuceno Varela, the latter two are dead.

Q. Since 1852 do you remember of any changes in the river? If so, please state them?

A. In the year 1862 there was a great flood. The river extended up to what was called Franklin, now El Paso. One could not see ordinary objects from one bank of the river to the other. Of course, during the flood it did some damage, but more when the river receded, the current all the time bearing more strongly towards the Mexican side. In 1864 the current was so strong as to destroy the jetties constructed on the Mexican side of the river, going behind them and this prevented the river from going back to its old channel.

Q. Since the year 1864 have any remarkable changes occurred in the river?

A. Yes, sir; year by year, but the most notable one was between 1868 and 1869, owing to the works constructed by Captain French.

Q. From 1862 to 1864 in which those large floods occurred which you mentioned, when the waters receded, did you not observe that the river occupied a different channel from the one it occupied at a perceptible distance from the other?

A. Yes, sir; the changes were to such a degree that at times during the night the river would wear away from fifty to a hundred yards. There were instances in which people living in houses distant fifty yards from the bank, on one evening, had to fly in the morning from the place on account of the encroachments of the river, and on many occasions they had not time to cut down their wheat or other crops. It carried away forests without giving time to the people to cut the trees down.

Q. Of the changes of the river that you have mentioned were they all perceptible to the eye?

A. Yes, sir.

Q. And finally, is it not of your knowledge and a notorious fact that these changes do not take place in winter?

A. There are never changes during the winter.

Interrogated by the United States Commissioner.

Q. Have you not lost some lands yourself by these changes in the river?

A. Yes, sir.

Q. How many pieces of land have you lost?

A. I remember of having lost three pieces which were those acquired from Diego Ortega, another from Jose Maria Sierra, another from Juan Maria Ponce and others that are now partly on this side and partly on the other side of the river.

Q. In what year did you lose the lands you got from Ortega?

A. In 1864.

Q. In what year did you lose the lands you got from Sierra?

A. I lost it gradually up to 1872.

Q. In what year did you lose the piece you got from Ponce?

A. They all stood along on the same line.

Q. Now, the other pieces that have been partly destroyed—in what years were they partly destroyed?

A. Principally from 1862 to 1864, and after that gradually up to 1872, at which time I, being Jefe Politico, there were constructed some defensive works.

Q. Referring to the testimony you have given regarding the location of the river in 1852, is it your judgment now that the river then ran where the Windsor Hotel now is?

A. Of course, I thought so from what I believed to be a fact, but from looking at the map of Salazar I think I must be mistaken in that idea.

Q. From 1852 did the river make any great changes toward Mexico about the Windsor Hotel up to 1859?

A. When I returned in 1859 the river was much nearer its present location.

Q. Can you explain on the map about where it was in that locality in 1859?

A. I think that the river ran about where the large irrigation canal now existing runs.

Q. Now, lower down the river about the Court House in El Paso, do you recollect where the river ran in that location in 1852?

A. Below the Court House the river passed by what was called Fort Magoffin near the present dwelling of Mr. Magoffin.

Q. Referring to your testimony taken two years ago before the civil authorities in Juarez, I find an answer to the fifth interrogatory which may explain your present testimony regarding the Windsor Hotel. In that answer you state that you specially remember that when you left in 1844, the river ran where the Hotel Windsor is now. May you not have confused this period, 1844 with 1852?

The answer to interrogatory fifth, given by the witness to Senor Felipe Seijas, District Judge, on September 4th, 1894, was then read to the witness as follows:

"In his answer to interrogatory second, he states that he had resided 33 years in this town, still he now states that he lived here from the year 1841 to 1844. That for the last mentioned year up to 1859 he was absent; he being able to perceive on his return that the river had changed its course notably in the space of time included between the years 1844 and 1859, he specially remembers that when he left in the year 1844 the river ran where the Hotel Windsor is now situated, or more or less at a point on now El Paso street, equidistant from its northern and southern extremities. That the change took place from the year 1859 to the present time in an abrupt manner, especially in the year 1865. That in regard to the changes of said river from the year 1844 to 1859, he can say nothing as to this period of time because he was not here."

Witness answered: "It is not strange that the river might have run there more or less between 1844 and 1852, because the changes were very gradual and there were trees that prevented encroachments."

Q. In this answer, above referred to, you also stated that you were absent from 1844 to 1859. How do you explain the discrepancy?

A. It is probably due to it having been overlooked in taking my former testimony, because I returned here in 1852 on a visit.

Q. How long did you remain when you returned on a visit in 1852?

A. From the month of March to November of that year.

Q. Then eight months' residence here during 1852 was all the opportunity you had to observe the then location of the river?

A. Yes, sir; that was the only occasion to notice the then location of the river.

Q. You have testified that Captain French constructed some works on the United States side in 1868 to 1869. Do you know for what purpose he constructed those works?

A. In order to throw the river over to this side, because it threatened to destroy a ditch he had on the American side.

Q. Were not these works necessary to protect that ditch on the American side?

A. I do not believe so, because the ditch was not so near as to be in absolute danger.

Q. Was it not true that the breaking of the Mexican dam across the river threw the current with force against the American side at a point where these works were being constructed?

A. From the very beginning the current bore toward the Mexican side. Captain French had built his defenses on a rocky place, which was not susceptible of being encroached upon by the river.

Q. Then what was the object of building the defenses if the river could not encroach upon it?

A. With a view of throwing the current more to the Mexican side, because he had land on the other side which would be increased.

Q. Then the works were to protect these lands, which he was fearful of being destroyed, were they not?

A. Yes, sir. Also with bad intent, because he had no sympathy toward Mexico, as publicly expressed by him at many times.

Q. Did you have any sympathy with Captain French regarding the peril of loss of his lands?

A. They were not in danger.

Q. You have just testified that one object was to protect the lands that he owned.

A. His main reason was to do harm to the Mexican bank.

Q. About the time that Captain French was constructing these works on the American side, were you not constructing some works on the American side?

A. No, sir.

Q. Did you not dig a canal or make arrangements for digging a canal to turn the river through the sand bars on the United States side?

A. In the first place, I was not in authority at that time, and in



my private capacity I bought some land from W. W. Mills, and then, with the consent of all the people there, a canal was dug on the United States side with a view of diminishing the current from bearing on the Mexican side, which was done with the full consent of the United States authorities.

Q. Who were these authorities?

A. I do not remember, but the consent was notorious, as there were more than 100 men at work on that canal.

Q. Who were these 100 men working on the canal, Mexicans or Americans?

A. They consisted of men living on the Mexican side of the river. Those most threatened by the current of the river on the Mexican side.

Q. It is true that at that time there were few Americans living on the United States side?

A. Very few.

Q. Was there any city organization on the United States side at that time?

A. There were authorities; a Custom House existed then and a District Court.

Q. You say that Captain French had bad intentions toward the Mexican side because he was trying to throw the current against that side. Had you good intentions when you were trying to throw the current on the United States side?

A. Our object was not to do damage to the United States side, but to divert part of the current.

Q. I think that was your object, but I think a similar generosity would give the same credit to Captain French. Do you not think so?

A. Captain French built his defenses at a place where they were unnecessary, as far as protection went, and hurt this side. Referring to the ditch, many of the inhabitants came there to see it dug and make fun of the idea, because as they thought, our intention was to throw the entire river to that side, whereas it was a canal that would not have done any harm, and constructed with a view of irrigation.

Q. Did not the Americans full [fill] up the canal soon after you constructed it?

A. No, sir. It filled up by itself, because the water did not continue running through.

Q. You say you purchased the land on the American side through which you built this canal. From whom did you purchase it?

A. From W. W. Mills.

Q. Have you a recorded title to that land?

A. The title exists and the survey of same made by Mr. Fountain. I do not know if it was recorded or not.

Q. How much money did the construction of this canal cost, and from what fund was it paid?

A. It did not cost any money, for the people themselves that wanted their property protected did the work.

Q. About how many days' labor, more or less, did it take to construct this canal?

A. About 100 men for nine days.

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ESPERIDION PROVENCIO, sworn for plaintiff, testified:

I live in Juarez, Mexico. Have lived there all my life, and am 55 years old. Have held official positions in Juarez. I remember when the changes in the channel of the Rio Grande River occurred. There were two changes; one in 1862 and the other in 1865. In 1862, before the change, the river ran along and about the course of what is now Second street of the City of El Paso, but during the overflow of the Rio Grande in 1862 the channel changed, and when the waters subsided and the river took a fixed channel it was at about where Fifth street now is, near the house known as Ketelsen & Degetaus, which house is at the corner of Fifth and El Paso streets and on the south side of Fifth street. At one time after 1862 there were two channels; one was the old channel, the one the river abandoned in 1862, another one near Ketelsen & Degetaus. The water, however, whenever it ran after 1862 in the old channel, would soon dry out of that channel and continue to run in the channel made at Fifth street. In 1865, during an overflow such as we had in 1862, the river changed from the Fifth street channel to where it now runs, and since this last change there has been practically no change. The houses that stood on the overflowed land as well as the gardens, orchards and vineyards, were all washed away during these two over-

flows I have mentioned. I remember after the flood of 1862 going over the ground and seeing a pear tree lying on the ground, but I cannot say whether this tree fell into the river from the banks caving in on the south or Mexican side and was washed over to this side or whether it had stood where it had fallen or was lying. During these floods the banks of the Mexican side caved in badly almost continually.

Upon cross examination the witness stated that he was a witness and testified before the Boundary Commission in 1896.

Thereupon counsel for defendant read from the proceedings the following questions and answers of the witness as contained on page 51 of said proceedings:

Q. From 1852 to now have you noticed any change in the river?

A. I have no recollection except from 1860 to this date.

Q. When was the first noticeable change in the river since 1852?

A. About the year 1864.

Q. Did the change take place in 1864 or later on?

A. It began in 1864.

Q. From 1868 to this date has the river made any noticeable change?

A. Very slight changes have taken place since then.

Q. Explain how you know what you have stated?

A. Because the violent changes of the river in 1864 caused considerable alarm in the city, and the people went to the banks of the river and pulled down trees and tried to check the advance of the waters. I was there sometimes to help and sometimes simply to observe. I helped to take out furniture from houses in danger and to remove beams from houses, etc.

Q. When the change took place, was it slow or violent?

A. I cannot appreciate what is meant by slow or violent, but sometimes as much as fifty yards would be washed away at certain points in a day.

Witness admitted that he had testified as above before the Boundary Commission.

On page 58 of the Boundary Commission proceedings. Referring to some cottonwood trees near the Santa Fe depot claimed by some of the witnesses in this case to have been prior to 1862 on the

south or Mexican side of the river, the following questions and answers were read to the witness, and he admitted that he had so testified:

Q. Do you remember ever having seen these trees where we are now standing, in years gone by?

A. From 1862 to 1864 I saw some trees here. I think these are the same trees, but I am not sure.

Q. If these are the same trees you saw in 1862 to 1864, which bank of the river were they then on?

A. I think they were on the American side in 1862.

These further questions propounded by the American Commissioner and answers of the witness thereto were read to him, and he admitted that he had so testified:

Q. I think that you stated in your former testimony that there had been no changes in the river from 1860 to 1864?

A. Yes, sir.

Q. How old were you in 1860?

A. Thirteen years of age.

Q. Do you think that you could remember well at that age that there were no changes whatever in the succeeding years to 1864?

A. No, there were no noticeable changes opposite the ferry.

Q. But there might have been some changes might there not?

A. Probably there could be.

Q. Please describe the destruction of the bank on the Mexican side that you spoke of in your former testimony? Describe the size of the piece of earth that you saw fall into the river?

A. When the river made the alarming change it carried away pieces of earth one yard, two yards, etc., constantly, in intervals of a few minutes. At the time of these changes the people would be standing on the banks watching a piece going down, and somebody would call "look out! there is more going to fall!" and they would have to jump back to keep from falling into the river.

Q. In this way the river tore off all the earth from the fields, did it not?

A. Yes, sir.

Q. About how deep did it cut down in tearing it away?

A. As the river made the curve, of course the volume of water was then deeper. When the river was washing away the land, which was composed of two kinds of earth, sand and, on top, clay, the water

would wash the sand easily and then the weight of the clay, being one or two yards deep in places, would cause it to fall in. Under the clay was all sand and I do not know how deep it was. The current was very deep.

The Mexican Boundary Commissioner then asked the following question:

Q. This work of destruction took place only during the great flood, did it not?

A. Yes, sir.

The United States Commissioner then asked the following questions:

Q. What became of these large pieces of earth that fell into the river?

A. They would go under the water and disappear.

Q. What was going on during this time on the opposite or American bank?

A. The sand banks would advance this way.

Q. Under the water?

A. It was under water when the river was high. When the river was low you could see it.

Q. Did you ever, in any of the changes that you have noticed in the river after the flood had subsided, recognize anything on the United States side that you had formerly seen on the Mexican side, trees, houses, etc.?

A. Yes, sir. Cottonwood trees and one pear tree lodged in the sand. I could observe these trees in the sand frequently. All killed.

Q. Referring to the pear tree. Please describe about where you saw it when standing on the Mexican side?

A. The pear tree was about where the smelter is.

Q. Please describe about where it lodged on the American side?

A. Right on the sand bar that the river was leaving when it was coming this way.

Q. Above or below where it was taken from?

A. Oh! far below.

Q. How far below?

A. As I do not know who owned the pear tree I cannot tell how far it was.

Q. If you saw it standing on the Mexican side before it was torn away and afterwards saw it deposited on the sand bar on the

American side, you ought, approximately to state the distance between the place you had seen it standing and the place where you afterwards saw it on the sand bar?

A. I did not say that I saw this pear tree standing, but supposed it belonged on the Mexican side because a great many trees were taken from here.

Q. Then you had never recognized anything deposited on the American side that you had known on the Mexican side?

A. No, sir.

Q. Have you ever known in anything of these high floods the river to overflow the Mexican bank?

A. In 1864, when the great change was observed, it did not overflow the Mexican bank, nor from 1864 to the present time.

Q. Have you ever known the current of the river to cut through the Mexican bank a new channel with two distinct banks and leaving the old bed with its banks undisturbed?

A. No, sir. In eight days it will form a new bed at some point, and abandon the place where it had formerly been.

Q. In your previous testimony you state that the river has made very slight changes from '68. Do you know when the jetties known as the Garfias Jetties were built?

A. About 1885.

Q. This was eighteen years after you say there had ceased to be any noticeable change. For what purpose do you suppose those works, costing \$80,000.00, were constructed?

A. The object of the works was that the people were tired of constant work on the river and have had continuous fear that the town might be washed away some time. When the railroad company made a bridge it once was about to be washed away and they had to haul a great deal of rock to place at the head of it on the Mexican side, and that is why the works were constructed.

Question by the Mexican Commissioner:

Do you think that these works were constructed to protect against the slow and gradual work of the river or against the floods?

A. They were made to protect the town from being carried away in the event of another flood like that of '64, because the current that the river had made was dangerous to the town.

Question by U. S. Commissioner:

Will you please describe how the Mexican bank commenced in the flood of '64 when the dam was destroyed?

A. I have already said that my recollection only dates from the year 1860, and that in 1864 owing to deviation which the river had at the dam, heretofore referred to running entirely toward the Mexican side, it sent the current toward the American side in an impetuous manner against a stone bank, which now exists a little below said dam, and that the recussion of said shock returned the current precipitously toward "El Chamizal" (now Mejia), this being the cause of the lands and houses being carried away, there having been cases of many persons having been unable to save their personal property, the river from that time on being subject to frequent changes caused by the strong flows and always coming nearer and nearer the city.

Q. When the destruction of the Mexican bank was going on here at Juarez, what was going on at Fort Bliss on the American side?

A. The same as occurred here.

Q. The United States bank then was being destroyed by the current of the river in the same manner that the Mexican bank was being destroyed at Juarez, was it not?

A. It occurred in consequence of the curve that it made here, but in years after.

Q. Do you know of the Americans putting up any works there to stop that destruction like the Mexicans did here at Juarez?

A. I do not remember.

Q. Which side lost the most land by the changes of the river, the Mexican side at Juarez, or the United States side at Fort Bliss?

A. I cannot exactly say about the loss, but I think that Juarez has lost more land and more valuable land than there.

Q. In all the years since 1860, you have frequently crossed the river to and fro at this point, have you not?

A. Yes, sir; in front of here.

Q. Have you ever, in any of your crossings, found two independent river beds with two independent river banks to each, one carrying water and the other dry?

A. Sometimes when I crossed and the river was very high, then when it would fall again it would leave a little arroyo on the American side.

Q. What is between this arroyo on the American side and the main channel on the Mexican side?

A. Sand only.

Q. (By Mexican Commissioner): Referring to the question of the United States Commissioner, about the two river beds, this way of forming two streams took place only by the violence of the great floods, did it not?

A. When the river fell from the maximum height this was observed.

J. E. TERRY, sworn for the plaintiff, testified:

My name is J. E. Terry, am 65 years of age and have lived in El Paso a number of years. I lived here before 1862, but in 1862 left and went to the war. At the time we left to go to the war the river was very high, almost as far as you could see it was a sea of water. The river appeared to me to be a mile or more wide, and the whole country was overflowed. As I remember it both banks were overflowed. I know that as we left El Paso or Franklin, as it was then called, we had to ride around near the foot hills to keep out of the water. I know that before I left in 1862 that the river had its channel and was running along about the course that now runs through the City of El Paso. When I returned from the war I found the river running where it now is. I am a contractor and builder, and have built many houses in the City of El Paso in the past eight or ten years. In excavating for foundations it is not hard to tell where you have struck the bed of the old river. I have gone over the ground often that was once the bed of the river. In many places there are depressions where the channel once was, notably above El Paso Street and just back of the County Court House and between the Court House and jail, the place where the old channel was can be easily traced out. I came to El Paso in 1856, and at that time there had been a change in the channel of the river, the river was then running about where it is now. I was then told by the people residing here that the river had lately changed, and an old channel was pointed out to me as being the channel prior to the change in 1856. This old channel was very evident and was about where the present Opera House in the City of El Paso is. When the rise came



in 1862 the river was then running about where it now is. I did not return to El Paso after I left in 1862 until 1882.

Plaintiff then introduced Lucius Dills, a surveyor, and proved by him: That he took the Chamizal Acequia (Ditch) as his base line; that he took an observation on the old church at Juarez, another from the County Court House in El Paso, and another on the Post-office Building in the City of El Paso for the purpose of triangulation. That he then commenced at the southwest corner of the Marcelino Romero tract situated at the intersection of the north bank of the Chamizal Acequia (Ditch) and the east line of what was formerly the National Road, from there he ran north along the west line of the Marcelino Romero tract same being the east line of the National Road to the northwest corner of said tract, then taking the old original deeds, many of them dating back as far as 1812, and none later than 1847 or 1848, he surveyed and platted in each tract of land on each side of the National Road until he crossed the Rio Grande River and reached the property in controversy in this suit: that according to the calls in the old deeds the property in controversy in this suit was located north of the old road to the dam and east of the National Road, and that the southwest corner of said tract was at the intersection of said roads: that according to the field notes said property should be at the intersection of what is now Eleventh Street and Stanton Street, bounded on the south by Eleventh Street, and on the west by Stanton Street; that he found along Eleventh Street the traces of an old road, also along Stanton Street; that he continued to plat, in the various deeds until he found deeds which called to be bounded on the north by the Rio Grande River: that giving the deeds the proper distance called for, the north line of said deeds reached a point on Second Street; that the fact that each of these deeds gives the distance east and west, north and south, and calls for the adjoining tracts on the east, west, north and south made the work much easier than it would otherwise have been: that the lands on the east side of the public road fell short about  $2\frac{1}{2}$  feet, and on the west side of the road about 46 feet, but that this was not unusual, taking into consideration the distance which he had to run and the further fact that in olden times they surveyed with a chain, and that there is generally an excess in the old surveys, and that when the land is surveyed with a steel tape there is generally a shortage: that he found and located all the tracts called for as being adjacent to the property in controversy in this

suit; that said surveyor then exhibited a map or plat showing the lands that he had surveyed, taking the field notes from the old original deeds, and how he had platted them in on this map, the red lines showing the boundaries of different tracts surveyed and platted by him, which said map is hereby attached. Witness also stated that on another map he had platted a great many of the other surveys that were formerly on the south side of the Rio Grande River but are now on the north side thereof, but that he did not deem it necessary to exhibit or show any more of said surveys than what is shown on plat. The map presented by him and used in evidence which map and plat is sent up for inspection by the Circuit Court of Appeals, by order of the Presiding Judge made under paragraph 4, rule XIV., of the United States Circuit Court of Appeals for the Fifth Circuit.

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MARCELINO ROMERO, sworn for plaintiff, testified:

I am 55 years of age, and have lived all my life in Juarez, Mexico, at the same place where I now live. I was born there and the place was owned by my father long before. My place is on the south side of the Rio Grande River about 400 yards from the present southern bank of the river. The road or street running by my property on the west side connects with what is called Stanton Street of the City of El Paso, said street or road was formerly known as the National Road. In Juarez said street or road is now called Avenida Lerdo. It crosses what is known as the Chamizal Acequia or ditch at the corner of my property. Said ditch or Acequia runs in front, south of my property and between my house and the house of Julio Sisneros, whose house is on the south side of said Acequia, both of the houses are very old. About 20 years ago I built my present house on exactly the same spot where the house of my father had built stood. My house stands on the S. W. corner of my property. The Chamizal ditch or Acequia has been where it now is ever since I can remember, and tradition has it that it has been there over three hundred years. None of the old inhabitants of Juarez know anything of this Chamizal ditch ever being at any other place than where it is now.

EXHIBIT "D."

Argument of the Hon. F. Xavier Osorno, the Mexican Commissioner on the International (Water) Boundary Commission. (See report of Proceedings of said Commission, Vol. 1.)

EL PASO, Texas, July 13th, 1896.

The Joint Commission met at the office of the United States Commissioner at 11 o'clock A. M., the meeting scheduled for the 11th instant not having taken place.

Thereupon the Commissioners entered into the discussion of Case No. 4, "El Chamizal;" and, as it treats of a reclamation presented in behalf of Mexico, the Mexican Commissioner was the first to address, in order to demonstrate that the change operated by the River Bravo since 1852 up to date ought not to alter—adhering to the meaning and letter of the Treaty—the primary boundary line established by Messrs. Salazar and Emory, because, as he believes, there is not the least doubt that said change or rather changes were due to the force of the current's water, that are excessively violent in this river at the time of floods, and not to the *slow and gradual* erosion expressly laid down in the solemn international compact existing between Mexico and the United States. The American Commissioner, not conforming to the opinion held by the Mexican Commissioner, adduced arguments to the contrary; and, thence arose a long discussion that was protracted for more than five hours and which, unfortunately, was fruitless, notwithstanding the best endeavors of both Commissioners to arrive at a concurrence alike decorous and equitable to the interests of the two nations they represent. In view thereof both Commissioners decided to submit each one of them their report to their respective Governments, not without first setting forth in compendium in this journal the arguments adduced by each in support of their opposed views. The cardinal arguments brought forward by the Mexican Commissioner can be embodied in the following points:

1st. That the Treaty in Article I imposes as a condition *sine qua non* for the nonalteration of the boundary line through any change of the River Bravo, provided that "such change be due to *slow and gradual erosion.*" and that any other change—as a general

rule—occasioned by the force of the current shall not bring about the alteration in any way of the boundary line, such as established by the surveys of the International Boundary Commission of 1852. Related as these two articles are with each other, every international question, as far as the case at issue is concerned, is embraced by the following syllogism:

Major: Any change other than *slow and gradual* does not alter the boundary line.

Minor: As a fact, the change of the river in the case denominated "El Chamizal" was not slow and gradual, but on the contrary violent and at periods of time of unequal intermissions.

Conclusion: Hence the change of the river on lands of "El Chamizal" does not alter the boundary line marked in 1852.

The major proposition of that syllogism is evident in itself without necessitating other proof; and if the Mexican Commissioner should be able to show the proof of the minor one, the American Commissioner cannot but submit to the force of logic, of the conclusion. Proof of the minor proposition. In order to demonstrate the truth of same, it is proper first of all to agree as to what must be understood by *slow and gradual corrosion* and he accepts at once, as good, the definitions which Webster gives in English, of the following words: "Corrosion—the action or effect of corrosive agents, or the process of corrosive change; as the rusting of iron is a variety of corrosion." "Slow—moving a short space in a relatively long time; not swift; not quick in motion; not rapid; moderate; deliberate; as a slow stream; a slow motion." And in the second acceptance of "*slow*" there are found these words that are suitable and adjustable to the case in point and must be borne in mind continually: "not happening in a short time; gradual; late." "Gradual—proceeding by steps or degrees; advancing step by step, as in ascent or descent or from one state to another; regularly; progressive; slow; as *gradual increase of knowledge*; gradual; late."

Having defined what has to be understood by slow and gradual corrosion, the Mexican Commissioner affirmed that judging from the depositions of all of the witnesses that were examined, from the inconstant and mutable character of the River Bravo, at the region in which the disputed land lies, and from the topographical configuration which that same land preserves as yet, the change of the bed which the Bravo occupied in 1852 to the one it now has, with a dif-

ferent channel, is not, nor can it have been, slow and gradual as is hereinafter demonstrated.

Testimonial proof: The declarations of all the witnesses are unanimous upon these points, that the change or changes of the river have always occurred at the time of great floods and due to the force of the current; that such changes even when happening do not occur year by year, in a gradual manner; but capriciously and at indeterminate periods as for instance: the river did not change at all, or changed imperceptibly in a period of twelve years, say between 1852 and 1864; whereas from that last year on up to 1868 an epoch of great and terrible inundations, there occurred the greatest change that ever was operated in the bed of the river. Here follows how all the witnesses testified in that regard:

Jesus Serna, the first one examined by the Joint Commission, testified that "In 1854 there was a *large flood* but in 1864 there was a noticeable change. The *change was violent* and destroyed trees, crops and houses."

The second one, Mr. Ynocente Ochoa, who, on account of his wealth and honorableness is one of the most respectable persons of Ciudad Juarez, said: "From 1858 to 1860 there were some small changes; the largest change took place in 1864 when the *dam was destroyed*; the *principal change* was in 1864 but since then the changes have been small." (Journal of April 14th.) "The largest change *was violent* as I have already stated and took place in 1864." (Proceedings of May 14th.)

The third witness, Mr. Espiridion Provenio, one of the most prominent real estate owners of Ciudad Juarez, and who has held important public offices, affirmed: "The first *noticeable* change of the river occurred about the year 1864." "I cannot appreciate what is meant by slow or violent, but sometimes as much as *fifty yards* would be washed away at certain points in a day." (Journal of April 14th.) "When the river made the alarming change *it carried away pieces of earth one yard, two yards*, and constantly in intervals of a few minutes. At the time of these changes, the people would be standing on the bank watching a piece going down, and somebody would call: Look out there is more going to fall, and they would have to jump back to keep from falling into the river." "This work of destruction *took place only during the great floods*." "In 1864, owing to a deviation which the river had at the dam heretofore referred to, run-

ning entirely towards the Mexican side, it sent the current towards the American side in an impetuous manner against a stone bank which now exists a little below said dam, and thus the recussion of said shock returned the current precipitously towards 'El Chamizal,' now Mejia, this being the cause of the lands and houses being carried away; there have been cases of many persons having been unable to save their personal property." (Journal of April 20th.)

The fourth witness, Mr. Jose M. Flores, a well-known and reputable merchant and one of the oldest residents at El Paso and Ciudad Juarez, who, besides, was presented by the American Commissioner, asserted "That between 1864 and 1868 the current came with *such violence* that houses and fields were destroyed." "If the river changed between 1852 and 1864, it was not much, but imperceptibly." "Some years it had no effect—there was not enough water to make a change—and some years it would change considerably, *according to the stage of the water.*" (Journal of April 16th.)

The fifth witness, who was presented also by the American Commissioner, was Mr. Samuel Schutz, formerly a merchant of importance and one of the oldest residents of El Paso, Texas. From his testimony it appears: "It changed opposite the city here, but more so a little below here, until up to 1864. We had a big flood then and rise in the river and it worked more on the Mexican side and undermined the banks more than in any previous years since I lived here in El Paso." "The currents that came between 1864 and 1868 were *with such violence* that houses and fields were destroyed." (Journal of April 16th.)

Mr. Joseph Magoffin, a banker of El Paso, of the utmost respectability, where, with short absences, he has resided since 1844, was the sixth witness. He was presented by the American Commissioner, and asserted under oath: "The river was trying to work into Mexico all the time; its natural course is that way. This *damage* to the Mexican side of the river, caused by the *washing* away of the banks from Ketelsen and Degetau's down to opposite the smelter, caused the river to turn and come directly towards Old Fort Bliss, my father's place. We had there 20 wagons working from two to three months at a time to *try and keep the river from washing away the Post.* The banks on the south or Mexican side of the river were, as a rule, from 10 to 20 feet high down here at the Chamizal. They are all gone now, or nearly so, and all this accretion to the United States has been

by the *washing away of the banks* and the banks falling into the river. It continued to wash away, as I said before, up to 1862, when I left and went with the Southern army."

The seventh and last witness, Dr. Mariano Samaniego, a most honorable person and who has occupied high public positions in the Republic of Mexico such as Congressman to the Union and Governor of the State of Chihuahua, testified: "I have noticed that the changes *occur during the floods generally*. In 1862 there was a great flood; the river extended up to what was called Franklin, now El Paso. One could not see ordinary objects from one bank of the river to the other. Of course during the floods it did some damage but more when the river receded; the current all the time bearing more strongly towards the Mexican side. In 1864 *the current was so strong* as to destroy the jetties constructed on the Mexican side of the river, going behind them and this prevented the river from going back to its old channel." "The changes were to *such a degree that at times during the night the river would wear away from 50 to 100 yards*. There were instances in which people living in houses distant 50 yards from the banks, on one evening had to fly in the morning from the place on account of the encroachments of the river and on many occasions they had no time to cut down their wheat or other crops. It carried away forests without giving time to the people to cut the trees down." "There are never changes during the winter." (Journal of May 16th.)

#### CHARACTER OF THE RIVER.

It is almost needless to demonstrate that the River Bravo is inconstant and mutable—especially so at the region of the disputed land—since it is a fact evident to everybody. It is, however, proper to insert here the authorized opinion of two American engineers who have made a special study of the River Bravo; to wit: Major O. H. Ernst and Colonel Anson Mills himself. Says the first named: "At the lowest stage the water ceases to flow and except in detached pools the bed becomes entirely dry. During the spring freshets the water sometimes rises to a height of from 9 to 10 feet above the lowest level and flows with a rapid current heavily charged with sediment. At such times it possesses great *building as well as destructive power*. Between these two extremes there are, at different seasons all degrees of volume and velocity. The size and character of the stream are ever

varying and its requirements as to form and dimensions of bed vary equally." "It is shifting from one position to another, altering its course, eroding one bank and building up the opposite one, forming islands and bars, and then destroying them." (Journal of May 7th.)

Says the second: "That while he was not ready to admit that it never had made changes in the winter time, he had never known or heard of it making changes during that season, for the reason that high waters were seldom, if ever, known during the winter months." (Journal of May 18th.)

Which above utterances demonstrate that the changes of the river do never, nor can they, occur in winter, when the river "*is entirely dry* except at detached pools."

#### TOPOGRAPHICAL CONFIGURATION OF THE DISPUTED LAND.

By the map (see page 98) made by the Mexican Engineer, Mr. Zayas, and by the technical report of Lieutenant Colonel Corella, Consulting Engineer of the International Boundary Commission, in such parts as it refers to said map, it appears that the disputed land (which lies between the bed of the River Bravo as it ran in 1852 and the bed it now occupies) far from having been leveled in a uniform manner through the soft and erosive action of the waters, as would have happened necessarily if the change of the river had been *slow and gradual*, presents a difference in levels between the northern and the extreme southern part of the land, the latter being higher than the northern one (an inexplicable fact if the slow and gradual erosion were to be admitted).

Therefore, resuming all the above, it is seen that only by torturing the grammatical sense of the words and by violating the most rudimentary rules of dialectics there may be said, after hearing the unanimous testimony of the witnesses, that a river which "destroys dams"; "*tears off in a few minutes parcels of land of even more than fifty yards*"; "*runs with such a violence as to destroy houses and fields*"; "*threatens to carry away Fort Bliss*"; "*that operates great disruptions*"; "*that from night to morning sweeps off houses and everything else, without giving time to the dwellers to even save their personal effects*"; "*that is only impetuous, terrible and destructive at the time of floods*"; and, lastly, *not only allays its fury but runs dry and dies out during winter time and a part of spring, which is nearly*



*half the year*; that this river, a torrential stream, operates its changes by *slow and gradual erosion*. Can the tremendous destructive power of a river, called Bravo (fierce) by antonomasia, be said to be corrosive as is the action of rust, by small degrees, upon iron until it converts it slowly and imperceptibly into dust (*as the rusting of iron*)? How can it be affirmed that the destruction within a few minutes of 50 and 100 yards of land is slow; or how can it be maintained that it is operated in a relatively long time (*moving a short space in a relatively long time*)? Who, unless blinded, can sustain any longer that a river so inconstant as the Bravo does its work *step by step* and *degree by degree*, in the manner as in the human mind is augmented the wealth of knowledge (*proceeding by steps or degrees; regularly, progressive, slow, as a gradual increase of knowledge*)? And would not absurdity reach the ridiculous in pretending to set down as *regularly progressive* the destructive action of a river that requires more than twelve years to change its bed, that changes it in four or five with terrific violence and is always dry half the year? Why, then, insist upon that point? What has been stated is sufficient and more than sufficient to demonstrate that the change of bed of the River Bravo del Norte, from the place it occupied in 1852 to the one it now has, was not due to the slow and gradual corrosion mentioned in Article I of the Treaty of 1884, and demonstrates the incontrovertible truth embodied in the minor proposition of the syllogism formulated above, the conclusion of which is so legitimate as to make it impossible of denial on the part of the Commissioner of the United States. All the debated question in the "Chamizal" case may be confined within the narrow bounds of the syllogism which it is proper to reproduce in the way of conclusion.

Major proposition: Any change other than slow and gradual does not alter the boundary line (Art. I of the Convention of November 12th, 1884).

Minor proposition: Since the change of the river in the case denominated "El Chamizal" was *not slow and gradual*, but on the contrary violent and at periods of time of unequal intermissions (which has been fully demonstrated above).

Conclusion: Thence, the change of the river at the lands of "El Chamizal" does not alter the boundary line marked in 1852 by the International Boundary Commission. (Art. II of the Convention of 1884.)

There are many other arguments based on the Roman laws, a perpetual and never failing source of distributive justice, as well as on the Law of Nations, that are observed in and governs the international relations between civilized people. But as such arguments would be only of value as an illustration in the international matter at issue, well may they be suppressed for the sake of the brevity and conciseness with which the proceedings must be put down. Nevertheless, so as to define well the terms of this discussion, it is proper to quote here some definitions and legal precepts accepted in the jurisprudence of the United States itself:

*Accretion*, in its vulgar acceptation according to Webster, means in English "The act of increasing by natural growth; the increase of organic bodies by the natural accession of parts; organic growth." (Law)—"The adhering of property or something else, by which the owner of one thing becomes possessed of a right to another; generally gain of land by the washing up of sand or soil from the sea or river, or by a *gradual* recession of the water from the usual water-mark."

*Avulsion*, in its vulgar meaning is: "A tearing *asunder*; a forcible separation. (Law)—The sudden removal of lands or soil from the estate of one man to that of another by an inundation or a current or by a sudden change in the course of a river by which a part of the estate of one man is cut off and joined to the estate of another. The property in the part thus separated, or cut off *continues in the original owner.*"—Webster.

#### LEGAL PART.

Here are some legal doctrines recognized and quoted by the Supreme Court of the United States in the case of "The State of Nebraska, complainant, vs. the State of Iowa." That case is certainly very different from the one now disputed and in which if the Supreme Court of the latter nation declared that "Notwithstanding the rapidity of the changes in the course of the channel and the washing from the one side and on to the other, the law of *accretion* controls the Missouri River, as elsewhere; and that not only in respect to the rights of individual landowners, but also in respect to the boundary lines between States." It was because the characteristics of that river are quite different from the Bravo and to the point the Mexican Commissioner calls very particularly the attention of the Commissioner of the United States. In the first place, and this is

very important, the Missouri does not remain entirely dry for nearly half a year, but on the contrary it "is a river of the first class, navigable by steamers of heavy tonnage"; the Missouri not only does not dry as the Bravo, which is *merely a torrential river* in which the slow and gradual process of accretion is impossible, but it is a stream changing according to the seasons of the year constantly corroding its banks. "It readily and rapidly yields to the force of a current and the banks formed of it afford a very slight resistance to the changes that the rapidly flowing river is *constantly* making. The current of the Missouri River is *very rapid*, varying at different places and with the time of year and the stage of the water from five to ten miles an hour." Except in few cases the United States Supreme Court admits that the Missouri, in reference to accretion, does not differ from other rivers except in the velocity of its current; but otherwise the accretion proceeds *always*—mark *always*—by *imperceptible* deposits of particles of earth in suspension; something that does not happen in the Bravo, that does not *always* carry water, and in which the changes and damages not even occur *always* nor each year" (the only thing which distinguishes this river from other streams, in the matter of *accretion*, is the rapidity of the change caused by the velocity of the current, and this in itself, in the very nature of things, works no change in the principle underlying the rule of law in respect thereto.) The *accretion* whatever may be the fact in respect to the diminution is, in the Missouri, *always* gradual and by the imperceptible deposits of floating particles of earth. There is, except in such cases of avulsion as may be noticed hereafter, in all matters of increase of bank, always a mere gradual and *imperceptible* process." What is to be understood by imperceptible is shown to us by this quotation: "The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, they could not perceive it *while the process was going on*"; which undoubtedly has not happened in the changes of the Bravo in the lands of "El Chamizal," as the land, in sight of its inhabitants, has disappeared with appalling violence under itself, and from night to morning, they have proven that their houses and fields have disappeared through the violence of the waters.

The complete difference of character between the Missouri about the disputed region by the State of Nebraska against the State of Iowa, and the River Bravo in the Chamizal lands claimed by Mexico,

against the United States, having been shown, it is proper to quote right here the principles of International Law that are universally recognized by all civilized nations and have in the present case indisputable value, having served as foundation to the most highly respectable court such as the Supreme Court of the United States of America, whose decisions, high and wise, may well serve of universal jurisprudence and whose authority the United States Commissioner must respectfully acknowledge.

EXHIBIT E.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, W. J. Warder, American, single and of legal age, do solemnly swear: That about the year 1895, I was applied to by a large number of citizens of Mexico, Mexicans, residing in and who had previously resided in the City of Juarez, formerly known as Paso del Norte, Mexico, and requested by them to undertake to recover and to assist them in an effort to recover for them certain lands claimed by said Mexican citizens to have formerly belonged to them. It was represented to me that these lands, while now lying on the northern side of the Rio Grande River and apparently in the State of Texas, and in the County and City of El Paso, had formerly lain on the southern side of the Rio Grande in Mexico, and in what was known as the district of El Chamizal and that through certain sudden changes in the channel of the Rio Grande, by which said channel abandoned an existing river bed and opened a new one far south of where the original channel bed was, these lands had been thrown upon the north side of the river. Upon investigation of the matter, I found that the facts as to the original location of the lands, and the conditions under which they had become transferred from the southern to the northern side of the river had been truly and correctly represented to me, I further learned that said lands were being claimed by American residents and non-residents of the City and County of El Paso. The claim of the Americans was, in my opinion, erroneously based upon the idea that the lands that had been cut off from the Mexican territory by this change in the channel of the river, had by such change been transferred to the American side of the river, and consequently had by accretion been added to the American soil. Believing the claims of these former owners of Mexican property to be well founded in justice and right, and learning that in many instances where the Mexicans had, after returning to their former properties and endeavoring to reassume possession thereof, they had been met with the claims asserted by the American claimants and that the title to their properties had been, by the action of the Rio Grande, divested out of them, and vested in the American claimants, and that

the attempts of the Mexican claimants to regain possession was and would be forcibly resisted, I accepted the propositions made to me and after entered upon the task of accomplishing by proper, legal and peaceful means the recovery of the property for those whom I considered to be rightfully and legally entitled thereto.

Among my first efforts was, in company with certain attorneys at law, whom I interested conjointly in the matter, to present or cause to be presented, after the question of boundary had been submitted to them by the two interested Governments to the International (Water) Boundary Commission, such testimony as would establish unquestionably the fact that the changes wrought in the channel of the Rio Grande had been such as did not work a change in the International Boundary, and that therefore the boundary remained where it had been previously located by Messrs. Emory and Salazar, which location was far north of the present channel of the Rio Grande. My efforts in this behalf were finally met with the proposition that the Boundary Commission was not the proper tribunal for the adjudication or settlement of land titles, or conflicting claims to lands, and for this reason the testimony of witnesses produced and to be produced before the Commission (which testimony was offered for no other object than that for which it will finally, in all probability have to be considered), was respectfully declined to be heard. That the result of the investigation and deliberations of the International Boundary Commission with regard to Case No. 4, known as El Chamizal, was a radical disagreement between the two Commissions is now a matter of record and of history.

The forum of International Arbitration, to wit, the International Boundary Commission, having been appealed to in vain, I then sought to establish in the Courts of the United States of America the rights of the former and dispossessed owners of the property thereto. The result of this appeal to the Judicial Forum is likewise a record and disclosed the fact, judicially determined, that the United States and State of Texas and the County and City of El Paso are claimants, with the private claimants, of the territory in dispute, and that the Courts of the United States feel precluded from hearing testimony that would tend to establish, or in fact establish, the fact that the claim of the United States, Texas, and El Paso County and City to dominion over the territory was erroneous. I refer to the case of *W. J. Warder vs. Mrs. Laura Loomis*, that was tried in the Circuit Court

of the United States of America at El Paso, appealed to the Circuit Court of Appeals and then to the United States Supreme Court. In many instances, too numerous here to mention, but of which substantial proof can be made, I have assisted the Mexican owners to regain possession of their property, as I considered was my legal right by placing tenants in actual possession thereof, where I have found the property vacant and unoccupied by adverse claimants. The American claimants in many instances have wrested possession thus peacefully taken by threatened and actual physical force, and in other instances have regained possession through such legal process as was available without, and in advance of, a judicial determination of the legal rights of the contending parties.

These facts are stated with full recognition of their import and the responsibility therefor and the truthfulness thereof I stand ready to verify.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 27th day of September, 1905.

W. J. WARDER.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. }

Before me, a Notary Public, in and for the County and State aforesaid, on this day personally appeared W. J. Warder, to me well known to be the person whose name is subscribed to the foregoing statement, and after having been duly sworn by me, in my presence subscribed his name thereto and on his oath states that the matters and things therein contained are true.

GIVEN UNDER MY HAND and official seal this 27th day of September, A. D. 1905.

H. F. BENNETT,

[Seal.]

*Notary Public in and for El Paso Co., Texas.*

STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

I, Park W. Pitman, County Clerk of the County of El Paso, State of Texas, and Clerk of the County Court of El Paso County

(which is a Court of Record), do hereby certify that H. F. Bennett, whose name is subscribed to the annexed instrument was, at the date of same, and is now, a Notary Public in and for said El Paso County, duly commissioned and qualified and authorized by law to administer oaths and take acknowledgements of instruments, and full faith and credit are due to all his official acts as such.

And I do further certify that I am well acquainted with the handwriting of such Notary, and verily believe that the signature attached to the annexed instrument is his proper signature and is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said County Court, at my office in the County of El Paso, this 27th day of September, A. D. 1905.

PARK W. PITMAN,  
*County Clerk and Clerk of the Court of El  
Paso Co., Texas.*

By C. F. ENGLISH,  
*Deputy.*

No. 32.

Fees, \$8.00.

The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

El Paso, Texas, September 27, 1905.

(Signed) F. MALLEX,  
*Consul.*

[Seal.] Mexican Consulate in El Paso, Texas.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Luis Jordan, married and of age, do solemnly swear: That I am a resident of the City of El Paso, Texas, and reside upon what is now called Lot No. 9 in Lot 76, at the corner of Sixth and Kansas



streets, in Campbell's Addition to the City of El Paso. I have resided at the same place for more than four years. I am in possession of said property under a lease from an American named W. J. Warder, who represented to me that he was the agent of certain Mexicans who claimed to own said property by reason of having acquired the same from Mexico many years ago, when that part of the City of El Paso, Texas, where the property is situated, lay on the southern side of the Rio Grande River, in the State of Chihuahua, Mexico, and was known as the Chamizal District.

More than one attempt has been made to induce me to surrender the possession of the property to Americans residing in El Paso and who claim that the property belongs to them by reason of their having purchased it from the Campbell Real Estate Company, or from persons to whom the Campbell Real Estate Company had previously sold. Within the past sixty days I have been threatened with arrest by these Americans, claiming the property under the Campbell Real Estate Company title unless I moved off the property, or would acknowledge said Americans as owners of said property and pay to them rent therefor.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
this 26th day of September, A. D., 1905.

LUIS JORDAN.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

Before me, the undersigned authority, on this day personally appears Luis Jordan, to me well known to be the person whose name is subscribed to the foregoing statement and after being duly sworn by me, and having said statement read over to him, in my presence, subscribed his name thereto, and upon his oath stated to me that the matters and things in said statement contained are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
and affixed my official seal, this 26th day of September,  
A. D., 1905.

H. F. BENNETT,

*Notary Public in and for El Paso County, Texas.*

[Seal.]



THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, E. J. Hogan, American, single, and of age, do solemnly swear: That I reside in the County and City of El Paso, Texas. I am acquainted with Mr. W. J. Warder, who as the agent and representative of Mexican claimants to certain lands lying on the northern side of the present channel of the Rio Grande, has for several years past been maintaining possession through tenants of certain lands lying near the place where I am employed. About three years ago said Warder was in possession, by a certain tenant named Dolores Valdez, of a small parcel of land near the City of El Paso and lying within what I am told were the original boundaries of a certain Chamizal District, which originally lay in Mexico. Said tenant had been in possession of the property, cultivating and using it for more than a year and resided thereon with his family. Several days before the parties Sorensen and Morgan, hereinafter mentioned, invaded the premises of said W. J. Warder, I was informed that said Sorensen and Morgan intended to take forcible possession of said parcel of land. A few days after I heard that forcible possession would be taken of the property. At an early hour in the morning and about the date when I had been told an attempt would be made to take forcible possession of the property, I saw an American named Morgan, a member of the firm of Sorensen and Morgan, contractors of El Paso, Texas, go into and on to said tract of land. Morgan came to the place in a wagon and was armed with a gun, or at least carried a gun in the wagon. I was told that he pulled down the Mexican tenant's fence and went in. I know that the firm of Sorensen & Morgan took possession of a part of the property and have since remained and are still in the possession thereof. The property I speak of is a small tract of land lying about one mile southeasterly from the Court House of El Paso County, in the City of El Paso.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
at El Paso, Texas, this 26th day of September, 1905.

EDWARD J. HOGAN.

THE STATE OF TEXAS, {  
COUNTY OF EL PASO. } SS.

Before me, the undersigned authority, on this day personally appeared E. J. Hogan, to me well known to be the person whose name is subscribed to the foregoing statement, and after being duly sworn by me, and having said statement read over to him, in my presence, subscribed his name thereto, and upon his oath stated to me that the matters and things in said statement contained are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 26th day of September, A. D., 1905.

[Seal.] VOLNEY M. BROWN,  
*Notary Public in and for El Paso County, Texas.*

THE STATE OF TEXAS, {  
COUNTY OF EL PASO. } SS.

I, George Paul, an American, married, and of legal age, resident at El Paso, Texas, do solemnly swear that I am familiar with the foregoing affidavit and statement made by E. J. Hogan, and I further state that from my own personal knowledge and from information gained from reliable and credible sources I know that the facts stated by said E. J. Hogan are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 26th day of September, 1905, at El Paso, Texas.

GEORGE PAUL.

THE STATE OF TEXAS, {  
COUNTY OF EL PASO. } SS.

Before me, the undersigned authority, on this day personally appeared George Paul, to me well known to be the person whose name is subscribed to the following statement, and after being duly sworn by me, and having said statement read over to him in my presence, sub-

scribed his name thereto, and upon his oath stated to me that the matters and things in said statement contained are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 26th day of September, A. D., 1905.

VOLNEY M. BROWN,  
*Notary Public, El Paso County, Texas.*

[Seal.]

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Dolores Valdez, married, and of legal age, resident at El Paso, Texas, do solemnly swear that the statement foregoing made by Hogan, and corroborated by George Paul, both of whom are to me well known, is true. I further swear that I am the Dolores Valdez mentioned in said statement, and that on the morning referred to in said statement, when the American, Morgan, entered into and upon the tract of land mentioned by Hogan, I was in possession of said land as the tenant of said W. J. Warder. That I had been in possession of said land as such tenant for more than one year; that Morgan entered the premises without my consent and at an hour in the morning before I or my family were awake. When I and my family awoke that morning at the usual hour, and not later than seven o'clock A. M., Morgan had already entered upon the premises. That he came and entered virtually in the night time while my family and myself were asleep. He necessarily had to and did take down the fence to get in, as when I retired the night before the fence was up and when I got up the next morning the fence was down and Morgan inside the enclosure. Sorensen and Morgan are, I am told, a partnership firm of contractors; I know that they are now and have been since the time above referred to when Morgan entered inside my enclosure, in possession of a part of the land leased to me by W. J. Warder, and of which I had possession.

The above facts are those known to me, and as evidence thereof I have hereunto set my hand this the 26th day of September, A. D., 1905.

DOLORES VALDEZ.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

Before me, the undersigned authority, on this day personally appeared Dolores Valdez, to me well known to be the person whose name is subscribed to the foregoing statement, and after being duly sworn by me, and having said statement read over to him, in my presence, subscribed his name thereto, and upon his oath stated to me that the matters and things in said statement contained are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this 26th day of September, A. D., 1905.

[Seal.] VOLNEY M. BROWN,  
*Notary Public, El Paso County, Texas.*

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

I, Park W. Pitman, County Clerk of the County of El Paso, State of Texas, and Clerk of the County Court of El Paso County (which is a Court of Record), do hereby certify that Volney M. Brown, whose name is subscribed to the annexed affidavits of Hogan, Paul and Valdez, was at the date of the same, and is now, a Notary Public in and for said El Paso County, duly commissioned and qualified, and authorized by law to administer oaths and take acknowledgements of instruments, and full faith and credit are due to all his official acts as such.

And I do further certify that I am well acquainted with the handwriting of such Notary, and verily believe that the signature attached to the annexed affidavits and depositions is his proper signature and is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said County Court at my office in the County of El Paso, this 27th day of September, A. D., 1905.

[Seal.] PARK W. PITMAN,  
*County Clery and Clerk of the County Court  
of El Paso County, Texas.*

By C. F. ENGLISH,  
*Deputy.*

No. 29. Fees, \$8.00.

The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

El Paso, Texas, September 27, 1905.

(s) F. MALLEN,  
*Consul.*

[Seal.] Mexican Consulate in El Paso, Texas.

THE STATE OF TEXAS, ( ss.  
COUNTY OF EL PASO. )

I, Santiago Alvarado, married and of age, do solemnly swear: That I reside in the City of El Paso, Texas, in El Paso County, Texas, where I have resided for more than twenty years. That I am familiar with that certain territory now called a part of the City of El Paso, Texas, and known as Campbell's Addition to the City of El Paso. From my own knowledge and from knowledge gained from many and reliable sources, I am familiar with the former channel or bed of the Rio Grande prior to the change that occurred therein in the years 1862 and 1865. And said river formerly ran more than three-fourths ( $\frac{3}{4}$ ) of a mile north of where its present channel now is. I reside at this time on a tract of land which formerly lay on the southern side of the Rio Grande River in the district known as El Chamizal, in the State of Chihuahua, Mexico. Said tract of land is now on the northern side of said Rio Grande River and is a part of what is in the City of El Paso called Campbell's Addition to said city. Said tract of land is a part of the property once owned by Juan Barrio, who acquired the same from the Mexican Government and was inherited and conveyed by the heirs of Juan Barrio to Mark Howell and J. A. Gilmore, and by them conveyed to W. J. Warder.

A certain American corporation, known as and called Campbell's Real Estate Company, in or about the year 1882, took possession of all that certain Mexican territory which by the changes in the channel of the Rio Grande had been thrown on the northern side of the river, and caused the same to be surveyed into blocks of land with streets and alleys, etc. These blocks were also subdivided into smaller tracts called lots. This territory after it was surveyed into lots and

blocks was then called Campbell's Addition to the City of El Paso, and was claimed, sold and transferred by said Campbell's Real Estate Company to various individuals. The property upon which I side is covered by what is called by said Campbell's Real Estate Company lot eight (8) in block twenty-four (24) in said Campbell's Addition.

In the year 1897, about the 15th day of July, I was residing and had resided for more than twelve (12) years on a parcel of land a part of said original district of El Chamizal that is now called, and has been sold and conveyed by said Campbell Real Estate Company as block forty-eight (48) in said Campbell's Addition to the City of El Paso, Texas. I at that time owned said property, having acquired the same by deed from Julio Provencio, who acquired the same from Francisco San Juan, who acquired it from Domingo Abalos, who acquired same from Pablo Perez, who acquired it from the Mexican Government, as appears by the original deeds now in the possession of Mr. W. J. Warder, of El Paso, Texas.

Certain Americans living in the City of El Paso, and claiming to have the better title to said block 48, for the reason that they had purchased the same from the Campbell Real Estate Company, instituted a suit against me in the Texas courts to dispossess me of my right and title to said property. I was then, as I have stated, living on the property with my wife and children. After or at the time said suit was instituted in the Texas courts against me, the Americans who were claiming the lands under deeds from the Campbell Real Estate Company, caused to be issued certain process, called in American law a writ of sequestration, and being a writ of process commanding an officer of the law to dispossess one unless certain bonds are given. I was required to give a bond in the sum of twenty-four hundred (\$2,400.00) dollars or be turned out of my house, which I had built upon the land, and be dispossessed of my property. I was not, and am not a man of wealth, and consequently was unable to give the large bond that was required of me in order to retain possession of my property. I was forcibly dispossessed. At the time I was, with my family, removed from the building during a severe rainstorm, one of my children was ill. The weather was disagreeable and wet. Without avail I protested against being put out in the street with my family at such a time and in the severe weather especially, as one of my children was very sick. As stated, my protest availed me nothing.



and as a result of the exposure to the severe weather, in its condition, my child shortly thereafter died, and its death is attributable to the fact that I was compelled to expose it to the severe weather that existed at that time. I have also resided as owner and then as tenant of W. J. Warder upon a tract of land called by the Campbell Real Estate Company block twenty-five (25) in Campbell's Addition to the City of El Paso. This block twenty-five (25) is also a part of the same tract of land that in 1885 was deeded to me by Julio Provencio, and is the same title as that referred to above in which block forty-eight (48) was and is involved. I am familiar with the bringing of a suit by Mr. W. J. Warder in the United States Circuit Court at El Paso, against Mrs. Laura Loomis and others, heirs of A. M. Loomis, deceased. The object of the suit by Warder was to secure an adjudication in the American Courts of the rights of those claiming under the Mexican titles as opposed to the American titles. The result of the trial of the case was that the judge of the court refused to consider the testimony offered by Warder to show that under the terms of the treaties between Mexico and the United States and under the truthful facts and evidence the changes in the channel of the Rio Grande had not been such as worked a change in the original boundary between the United States and Mexico. The judge of the court claimed that the United States Government, through its Boundary Commissioner, Anson Mills, was claiming the land. That the State of Texas was exercising jurisdiction over, taxing it and enforcing the payment of taxes thereon. That the City of El Paso was also collecting taxes on the property and exercising control over it. That unless the changes in the channel of the river had been such as to change also the boundary, that is, if the changes in the channel had not been slow and gradual, then those acts of the United States, State and City Governments were unauthorized and the property was Mexican territory. That the court was bound to presume that the United States, State and City Governments were acting advisedly and rightfully in the premises, and therefore he, the judge, would refuse to hear testimony that would tend to show that the acts of these governments were wrongful instead of rightful, and therefore gave judgments against the Mexicans and in favor of the American title.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
this the 26th day of September, A. D., 1905, at El Paso,  
Texas. SANTIAGO ALVARADO.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

Before me, a Notary Public, in and for El Paso County, Texas, on this day personally appeared Santiago Alvarado, to me well known to be the person whose name is subscribed to the foregoing statement, and after being duly sworn by me, and having said statement read over to him, in my presence, subscribed his name thereto, and upon his oath stated to me that the matters and things in said statement contained are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this 26th day of September, A. D., 1905.

[Seal.] H. F. BENNETT,  
*Notary Public in and for El Paso County, Texas.*

STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

I, Park W. Pitman, County Clerk of the County of El Paso, State of Texas, and Clerk of the County Court of El Paso County (which is a Court of Record) do hereby certify that H. F. Bennett, whose name is subscribed to the annexed instrument, was, at the date of same, and is now, a Notary Public in and for said El Paso County, duly commissioned and qualified, and authorized by law to administer oaths and to take acknowledgments of instruments, and full faith and credit are due to all his official acts as such.

And I do further certify that I am well acquainted with the handwriting of such Notary, and verily believe that the signature attached to the annexed instrument is his proper signature and is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said County Court at my office in the County of El Paso, this 26th day of September, A. D. 1905.

[Seal.] PARK W. PITMAN,  
*County Clerk and Clerk of the County Court  
of El Paso County, Texas.*

By C. F. ENGLISH,  
*Deputy.*

No. 27. Fees, \$8.00.

The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

El Paso, Texas, September 27, 1905.

(s) F. MALLEN,  
Consul.

[Seal.] Mexican Consulate in El Paso, Texas.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Sixto Alvarado, single, of age, and residing in the City of El Paso, State of Texas, do solemnly swear: That about five (5) years ago, to the best of my recollection, in the year 1900, I was living with my brother, Santiago Alvarado, on that parcel of land which is called and known in the City of El Paso as Block Twenty-five (25) in what is called Campbell's Addition to the City of El Paso. Said block of land is situated in the southern part of what is now claimed to be the City of El Paso, and about 200 yards north of the present channel of the Rio Grande. In the year stated, 1900, my brother Santiago was living with his family upon said block of land. My brother had purchased in 1885 a certain tract of land from Julio Provencio. The tract of land referred to is a part of that territory which originally lay on the southern side of the Rio Grande in Mexico, in the district known as El Chamizal, but which, on account of the changes in the channel of said river, now lie on the northern side of said river, Block twenty-five (25) in what is called Campbell's Addition to the City of El Paso is laid out on the site of the tract of land purchased, as I have stated, by my brother Santiago in 1885 from Julio Provencio. My brother built houses on the land and enclosed it with a fence immediately after he purchased it from Provencio and in 1900 had been in actual and peaceable possession for more than five (5) years.

On a certain day in said year 1900, an American named A. M. Loomis, at a time when my brother Santiago was absent and I alone in possession of the place, came with several laborers, whom he, Loomis, instructed and ordered to tear down the fence around the property and to destroy the improvements thereon. I protested

against the high-handed and arbitrary manner in which Loomis proposed to take possession of the property by force. No heed, however, was paid to my protest, Loomis ordered his men to go ahead and tear down the fence, he, Loomis, stating at the time he would be responsible in the premises. Being unable to resist the superior force, I was compelled through fear of personal violence and injury to permit the forcible trespass on the property. Loomis and his men then did tear down the fence and hauled away a part of the posts. For the criminal acts of Loomis and his men in committing this trespass, they were afterwards prosecuted before the Justice of the Peace in El Paso and a fine imposed against them. I attended the trial and testified as a witness in the case. At the time this forcible trespass was committed, Loomis did not have or pretend to have or act under any legal order or authority.

These are facts stated from my own knowledge and are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
this 26th day of September, A. D. 1905.

his  
SIXTO X ALVARADO.  
mark.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

Before me, a Notary Public, in and for El Paso County, Texas, on this day personally appeared Sixto Alvarado, to me well known to be the person whose name is subscribed to the foregoing instrument by making his mark, and after being duly sworn by me and having said statement read over to him, in my presence subscribed his name thereto, and upon his oath stated to me that the matters and things in said statement contained are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
and affixed my official seal this 26th day of September,  
A. D. 1905.

[Seal.] H. F. BENNETT,  
*Notary Public in and for El Paso County, Texas.*



THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

I, Silverio Varela, do solemnly swear that I am a married man sixty-five (65) years of age, and reside with my wife, Concepcion Chavez de Varela, upon what is called in the City of El Paso, in El Paso County, Texas, Lots numbers sixteen (16) and seventeen (17), in Block No. 103, in Campbell's Addition to the City of El Paso, Texas. That my father, who is now dead, was named Prudencio Varela. That during the lifetime of my said father, he owned a certain piece of land, situated in the district known as "El Chamizal" in the State of Chihuahua, Mexico, on the southern side of the Rio Grande River and near the city now know as Juarez. Said land is described in the document, which is a copy of the original now in my possession, hereto attached and marked "Exhibit X." At my father's death, this property descended to myself and my brother Francisco, who is also dead. My father lived upon the land for many years, cultivating it and living there with his family, consisting of my mother, my brother Francisco and myself. The family lived upon the land until the great floods or overflows of the Rio Grande, in and about the years 1862 and 1865, when our houses, fences and crops were destroyed by the floods and we were compelled to leave for safety, as were all those living in that part of the district of El Chamizal that now lies on the northern side of the Rio Grande. Thereafter, about the year 1889 my brother Francisco and I returned to our land and took possession thereof and built houses thereon. As will be seen by the boundaries of the land, as shown in the attached copy of my father's title, the area is about  $4\frac{1}{2}$  English acres, and includes within its boundaries the property and land in what is known as part of Block 136, all of Block 116, and the greater portion of Block 103, parts of Utah Street, Stanton Street and Third and Fourth Streets, in what is called Campbell's Addition to the City of El Paso, Texas, as is shown by the plat of said property, and of said part of what is called Campbell's Addition to the City of El Paso, by which said property has been covered and appropriated under the designation of lots and blocks.

At the time my mother and I returned to take possession of our property, we found a portion of it then occupied and a part unoccupied. We took possession of the unoccupied part and enclosed it. We built a house on Lots 11 and 12 in Block 116, a part of the property, and occupied the same for about eight or nine months, when we were dispossessed by parties claiming to own the property under American titles. We, my brother and I, then erected another house on Lot thirteen (13) in said Block 116, and after living there three or four years we were likewise dispossessed by parties claiming the property under America. I then moved into the house which I now occupy on Lots sixteen (16) and seventeen (17) in the block shown on the plat as 103, and my brother moved into and occupied the house now situated on Lot 14 in said Block 103.

About the year 1902, one Conklin, an American claiming to own the property under American title, came to our place and entering our enclosure began to make adobes. These acts resulted in a quarrel between Conklin and myself and Conklin left. Shortly thereafter a carpenter came and began tearing down the fence we had built, and claimed to be acting under instructions from Conklin. I protested and the carpenter left. Shortly thereafter a man named Dix came to the place and began tearing away our fences and building another. My brother and I were away at the time. I came and found Dix tearing down the fence and replacing it with another. Dix told me Conklin had sent him to do this work and was paying him for it. I left for the purpose of seeing an attorney and in the meantime, during my absence, my brother and his wife arrived on the scene and in an altercation resulting in their protesting against Dix's forceful invasion of our possessions and destruction of our property, Dix made a violent assault on both my brother and my brother's wife, knocked them both down and beat them with a club. **During this assault I returned and was also assaulted by Dix.** My brother, his wife and myself were all painfully and seriously hurt and wounded by Dix. At the time these Americans were taking possession and attempting to take possession of our property, we were informed that a certain company, called Campbell's Real Estate Company, and others who had purchased parcels of property from said Campbell's Real Estate Company, were claiming the property under American titles—but by our possession my brother and I sought to maintain our right and title to the property as best we could. I am still in possession of that

part above indicated and marked on the sketch as Lots 16 and 17, Block 103, and my brother's son, Francisco, lives on that part marked on the sketch as Lot 14, Block 103. All of the remainder of the property has been taken from us, and efforts are now being made to dispossess us of the two small parcels of which we still have possession.

WITNESS MY HAND, this 25th day of September, A. D. 1905.

SILVERIO VARELA.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

Before me, a Notary Public, in and for said State and County, on this day personally appeared Silverio Varela, known to me to be the person whose name is subscribed to the foregoing statement, and he, after being duly sworn by me, and having said statement read over to him, in my presence subscribed his name thereto and upon his oath stated to me that the matters and things in said statement were true.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 25th day of September, A. D. 1905.

H. F. BENNETT,

[Seal.]

*Notary Public in and for El Paso County.*

STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Park W. Pitman, County Clerk of the County of El Paso, State of Texas, and Clerk of the County Court of El Paso County (which is a Court of Record), do hereby certify that H. F. Bennett, whose name is subscribed to the annexed statement, was, at the time of same, and is now, a Notary Public in and for said El Paso County, duly commissioned and qualified and authorized by law to administer oaths and take acknowledgments of instruments, and full faith and credit are due to all his official acts as such.

And I do further certify that I am well acquainted with the



handwriting of such Notary, and verily believe that the signature attached to the annexed instrument is his proper signature and is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County Court, at my office in the County of El Paso, this 26th day of September, A. D. 1905.

PARK W. PITMAN,  
*County Clerk and Clerk of the County Court  
of El Paso County, Texas.*

By C. F. ENGLISH,  
*Deputy.*

No. 37. Fees, \$8.00.

The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

El Paso, Texas, September 27, 1905.

(s) F. MALLEEN,  
*Consul.*

[Seal.] Mexican Consulate in El Paso, Texas.

#### TRANSLATION.

On the margin a seal which says: "Court of the Second Instance, District of Bravos."

The Citizen Antonio Balderrama, Judge of the Second Instance of this City, certifies:

That, in a bundle of loose papers corresponding to the year 1826 found in the archives of the Court in his charge, there exists a document of which a copy is the following:

"Third Seal—Two reales: For the years 1826 and 1827. Habilitated by the supreme Government of the free State of Chihuahua:

Constitutional Alcalde of Second Elect: Prudencio Varela, citizen of this village of El Paso, conformably with my right and

came with axes and were prepared to, and stated to me that they intended and had been sent to tear down the fences around the property. I explained the situation to them—that I was simply a tenant of the property and endeavored to persuade them to see the parties under whom I was holding. They persisted in their threats to tear down the fences and take possession of the property, without, however, making any actual attempt to do so, and were only dissuaded from taking possession thereof by force by reason of the fact that I finally told them that if they attempted to carry out their threats to take possession, that it would result in serious personal conflict between themselves and myself. At the time I speak of, the Pablo Cordova mentioned above was also present (he is since dead), but on account of the menacing attitude of the two parties spoken of, the said Cordova was frightened away and left me alone to protect the possession.

The above facts I state from my own knowledge.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, this 26th day of September, 1905.

RAMUNDO CANO.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

Before me, a Notary Public, in and for said County and State, on this day personally appeared Ramundo Cano, to me known to be the person whose name is subscribed to the foregoing statement, and after being duly sworn by me and having said statement read over to him, in my presence subscribed his name thereto, and upon his oath stated to me that the matters and things in said statement contained are true.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this 26th day of September, A. D. 1905.

H. F. BENNETT,

[Seal.]

*Notary Public in and for El Paso County, Texas.*



THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Pedro Y. Garcia, citizen of Mexico, resident in the City of Juarez, State of Chihuahua, married and of age, do solemnly swear that about the year 1866 I acquired from Don. Lorenzo del Barrio, certain lands in the District of El Chamizal. That the railroad track of the Atchison, Topeka and Santa Fe Railroad Company now crosses the lands referred to and which belonged to me and were, for many years prior to the building of the said railroad track, in my possession and in the possession of my tenants and were cultivated by me and by my tenants. That about the year 1881, at the time and just before said railroad was built across my said land, my tenants, Jose Acosta, Francisco Acosta, Francisco Provencio and Marcelino Romero had crops of wheat and other grain and orchards and vineyards growing upon said land. That those then engaged in constructing said railroad forcefully entered upon said land, tearing down the fences and houses and taking possession of the same over my objection and protest, claiming that the land belonged to the United States and constructed and built the railroad track across and over said land, destroying the crops, fruit trees, grape vines, houses, etc., as well as taking the land. That the crops were destroyed, the land taken possession of and appropriated and the railroad built over it without my permission, and without the railroad company or any other company or person ever having previously acquired a right of way over said land from me, or anyone representing me, and without ever asking of me or my representative permission to so build said railroad over my said land, but built the same over my personal protest and objection made as aforesated. That about the same time, or soon thereafter, the remaining part of my said land was taken possession of by, as I was credibly informed and believe, a certain Real Estate Company called Campbell's Real Estate Company, and by it sold out and disposed of in parcels, which parcels are designated as and called lots and blocks in Campbell's Addition to the City of El Paso. Such possession and disposition by said Campbell Real Estate Company of said property was without title, right, or permission acquired from me, and said land is now being held, claimed and used by persons who claim to have purchased the same of said Campbell Real Estate Company, or from persons to whom said Campbell Real Estate Company had previously

sold. That I have never sold, or in any manner parted with my title to any of said property, except a small parcel, in area about one acre, which I sold about three years ago to Ketelsen and Degetau, merchants of Juarez, Mexico.

That part of the Chamizal District belonging to me and of which, as hereinbefore stated, I at one time had peaceable possession and control, is now covered by a large part and area of the western and southwestern part, along the northern bank of the present channel of the Rio Grande, of what is called Campbell's Addition to the City of El Paso, Texas, and which said Campbell's Addition to the City of El Paso is composed for the greater part, if not wholly, of land that originally, prior to the changes in the channel of the Rio Grande, which resulted from the excessive and violent overflows of said river, lay on the southern side of said river in the Republic of Mexico and in the District known as El Chamizal, but which is now on the northern side of said river, and which said Campbell's Addition to the City of El Paso is the land which pertained to the original district of El Chamizal, and which has been taken possession and disposed of by said Campbell's Real Estate Company.

I was forcibly dispossessed by the Campbell Real Estate Company, as hereinbefore stated, and by other persons. I protested repeatedly against the unceremonious and violent manner in which my property was being taken from me, and which threatened personal violence to me in case of resistance, and I was compelled, through fear of personal violence, to abandon the property to those who now hold it. Against the action of the Railroad Company in taking possession of my property, as above stated, I made such protest to the Mexican Government as appeared to me at the time available and proper, and as is shown in the copy of said protest hereto attached and marked "Exhibit X."

The facts here stated are those of which I have knowledge, and which facts can be unquestionably established by many witnesses, who reside in the cities of Juarez, Mexico and El Paso, Texas.

IN TESTIMONY WHEREOF, I have hereunto set my hand at El Paso, Texas, this the 26th day of September, A. D., 1905.

PEDRO Y. GARCIA.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

Before me, a Notary Public in and for El Paso County, Texas, on this day personally appeared Pedro Y. Garcia, to me known to be the person whose name is subscribed to the foregoing statement, and after being duly sworn by me, and having said statement read over to him, in my presence, subscribed his name thereto, and upon his oath stated that the matters and things in said statement contained were true.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this 26th day of September, A. D., 1905.

H. F. BENNETT,

[Seal.]

*Notary Public in and for El Paso County, Texas.*

STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Park W. Pitman, County Clerk of the County of El Paso, State of Texas, and Clerk of the County Court of El Paso County (which is a Court of Record), do hereby certify that H. F. Bennett, whose name is subscribed to the annexed instrument, was, at the date of same, and is now, a Notary Public in and for said El Paso County, duly commissioned and qualified and authorized by law to administer oaths and take acknowledgements of instruments and full faith and credit are due to all his official acts as such.

And I do further certify that I am well acquainted with the handwriting of such notary, and verily believe that the signature attached to the annexed instrument is his proper signature and is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said County Court, at my office in the County of El Paso this 26th day of September, A. D., 1905.

PARK W. PITMAN,

*County Clerk and Clerk of the County Court  
of El Paso County, Texas.*

By C. F. ENGLISH,  
*Deputy.*

No. 38. Fees, \$8.00.

The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

El Paso, Texas, September 27, 1905.

(s) F. MALLEX,  
*Consul.*

[Seal.] Mexican Consul in El Paso, Texas.

### TRANSLATION.

On the margin a seal which says: Jefatura Politica of the Bravos District.

In the Village of Paso del Norte, on the 13th day of June, 1881, at a meeting of the Ayuntamiento in special session, under the Presidency of the Citizen Jefe Politico Jacobo Ugarte, who convened the same for the purpose of considering of a matter of great public interest, and the same being made known and considering: That it is not clearly and finally determined that the limits or boundary between Mexico and the United States should always be the natural course of this Rio Bravo, but that it is rather recognized as the one laid out by the respective Commissioners of both Governments where the river then ran: That silence on the part of the Mexican authorities might occasion great wrongs to the general interests of the Republic and to those of this locality, very especially in view of the fact that it has come to their knowledge that a Railway Company, named the Atchison, Topeka and Santa Fe, which connects with the Mexican Central Railway, is constructing a border within the lands which the river has left on that bank, thereby attacking not only the rights which Mexico may have in case that the boundary is where this river had its current when the line was drawn, but that also with the works and firmness of this border and the others which it is said they will construct for the formation of a bridge over the river, the course of its current may be changed toward this side without have the least hope of recovering what is lost: That in the opinion of this Ayuntamiento, the work which is being formed is of those which the treaty specifies should be done by agreement between the two Governments, admitting that the boundary line is the point where the river now runs: Con-

sidering also that the works alluded to are to serve as a dyke to vary the natural current of the river, whereby the properties of the residents of this city are directly menaced, although they have been constantly endeavoring to defend themselves upon the invasion of the river, as is well known, and, finally, without the least doubt, that the damage which would thereby be caused, as well to the interests of this locality as to the general interests of the Republic by reason of the above mentioned works is transcendental and they contribute greatly to the advance of the river towards this city.

Wherefore, in the name of the City of Paso del Norte, and in the representation of its rights, Ayuntamiento of this City protests, in accordance with its rights, against all the works which may be commenced or constructed by said Company, its agents or others within the land referred to, which affects or prejudices the right of our constituents.

Let advice of this resolution be given to the Supreme Government of the State and publication be made as necessary for the legal effects. Resolution concluded, this record was made and signed. We certify. Jacobo Ugarte, Seal. Espiridion Provencio, Seal. Sebastian Vargas, Seal. Jose Maria Varela, Seal. Francisco Barron, Secretary, Seal.

This is a copy of its original, Paso del Norte, June 13, 1881.

This is a copy of a document which exists in this office and which is issued by the Ayuntamiento to Pedro Y. Garcia for such uses as he may see fit. C. Juarez, July 29, 1904.

The Jefe Politico.

S. MONTEMAYOR. [Seal.]

JORGE JAMARILLO, Secretary, Seal.

Seal Ayuntamiento C. Juarez, State of Chihuahua.



EXHIBIT "F."

A map hereto attached and marked "Exhibit F," certified to by an official surveyor of the City of Juarez, as having been correctly made from the calls and monuments described in the ancient Mexican deeds (see Art. 16, p. 16, sub-division entitled "New Correct Survey and Map"), showing the location of the Rio Grande River as it existed in 1827-1852, and the location of said river as it exists at the present time, between which two locations lie the lands in controversy.

EXHIBIT "G."

A map presented herewith and marked "Exhibit G," the said map containing a plotting upon the said map of the City of El Paso as now existing, of the channel of 1827-1852 and of the channel of 1862 and of the present channel of 1905 of the Rio Grande River as claimed by your petitioners (see Art. 40, p. 35, of this pamphlet), from which it clearly appears that certain premises conveyed under warranty title by General Anson Mills, the American Commissioner, and his brother, the Honorable W. W. Mills, are included in the disputed portion of the lands the title to which as between the American and Mexican governments was intended to be litigated in El Chamizal Case No. 4 before the International (Water) Boundary Commission.

EXHIBIT "H."

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

KNOW ALL MEN BY THESE PRESENTS, That Anson Mills, of the United States Army, temporarily of the County of El Paso, and State aforesaid, for and in consideration of the sum of (\$750) Seven Hundred and Fifty Dollars, to me in hand paid by E. H. Alton, of El Paso, Texas, and Jesse Haston, of Miles City, Montana, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said E. H. Alton and Jesse Haston, temporarily of the County of El Paso and State of Texas, all that certain lot, piece or parcel of land, lying situate and being in the City of El Paso, County of El Paso, and State of Texas, a part of Block No. (101) One Hundred and One according to the Map of Campbell's Addition to the City of El Paso, and particularly described as follows: Beginning at a point in the westerly line of Oregon street ninety feet southerly from the northeast corner of said block: thence running southerly along the line of said Oregon street (35) Thirty-five feet; thence at right angles westerly (120) One Hundred and Twenty feet to an alley; thence at right angles northerly and parallel with said Oregon street (35) Thirty-five feet; thence at right angles easterly (120) One Hundred and Twenty feet to Oregon street, the point of beginning. Said parcel of land having a front of (35) Thirty-five feet on Oregon street, running back between parallel lines (120) One Hundred and Twenty feet and being the whole of lot (6) Six and (9) Nine feet adjoining of lot (7) in said Block No. (101) One Hundred and One.

To have and to hold the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said E. H. Alton and Jesse Haston, their heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend, all and singular, the said premises unto the said E. H. Alton and Jesse Haston, their heirs

and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my hand at Fort Grant, Arizona, this Seventeenth day of May, A. D., 1887.

ANSON MILLS.

Signed, sealed and delivered in the presence of:

THE TERRITORY OF ARIZONA, }  
COUNTY OF GRAHAM. } SS.

Before me, Miles L. Wood, Notary Public in and for Graham County, Arizona Territory, on this day personally appeared Anson Mills, Major Tenth Cavalry, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 24th day of May, A. D. 1887.

[L. S.]

MILES L. WOOD,  
*Notary Public.*

Filed for record the 13th day of June, 1887, at 10.15 o'clock, A. M., and recorded the 18th day of June, 1887, at 10.50 o'clock, A. M.

E. P. CLARK, *Clerk.*  
*County Court, El Paso County, Texas.*

By J. H. PHELPS,  
*Deputy Clerk.*

Certificate of true Copy:

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Park W. Pitman, Clerk of the County Court of El Paso County, Texas, do hereby certify that the foregoing is a true and correct copy of the Record of W. D. dated May 17th, 1887, from Anson

Mills to E. H. Alton and Jesse Haston as the same appears of record in Deed Vol. II. at page 269 of the Deed Records of El Paso County, Texas.

Given under my hand and the seal of said Court at office in El Paso, this the 25th day of September, A. D., 1905.

Attest.

[Seal.]

PARK W. PITMAN,  
*Clerk.*

By C. F. ENGLISH,  
*Deputy.*

No. 34. Fees, \$8.00.

The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

El Paso, Texas, September 27, 1905.

F. MALLEN,  
*Consul.*

[Seal.] Mexican Consulate in El Paso, Texas.

EXHIBIT "I."

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } ss.

KNOW ALL MEN BY THESE PRESENTS, That we, W. W. Mills, and his wife Mary H. Mills and J. P. Hague, all of the City and County of El Paso and State of Texas, for and in consideration of the sum of three hundred and fifty dollars to us in hand paid by T. H. Conklin of the City and County of El Paso and State of Texas, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and conveyed, and by these presents do grant, bargain, sell, release, convey and deliver unto the said T. H. Conklin, his heirs and assigns, all of that certain parcel or lot of land lying and being situate in the City and County of El Paso, and State of Texas, described as follows, to wit:

25 x 120 feet of lot Eleven (11) in Block Eighty-eight (88), beginning at the northwesterly corner of said block eighty-eight (88) the corner of El Paso and Fifth streets, as shown by the Map of Campbell's Addition to the City of El Paso, thence in a southerly direction along the line of El Paso street to a point twenty-five (25) feet distant from said corner.

Thence in an easterly direction at right angles with said El Paso street, in a line parallel with the line of Fifth street, one hundred and twenty feet to the twenty feet alley in said block; thence in a northerly direction along said alley line twenty-five (25) feet to Fifth street.

Thence in a westerly direction along the line of Fifth street, one hundred and twenty feet to the place of beginning, the said lot so described having a front of twenty-five feet on El Paso street, and a hundred and twenty feet on Fifth street in said lot eleven (11) of said Block Eighty-eight (88), and which said lot was drawn by us in the partition of land between the Campbell Estate, the Estate of Watts J. F. Crosby, W. W. Williams, Mills and Hague, and Wm. M. Pier son; together with all and singular, the rights, members, hereditaments and appurtenances to the same belonging or in anywise incident or appertaining.

To have and to hold all and singular the premises above mentioned unto the said T. H. Conklin, his heirs and assigns forever; and

we do hereby bind ourselves, our heirs, executors and administrators to warrant and forever defend, all and singular, the said premises unto the said T. H. Conklin, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS OUR HANDS, this 14th day of March, A. D.,  
1882.

W. W. MILLS,  
MARY H. MILLS,  
J P. HAGUE.

STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS

Before me, J. A. Buckler, a Notary Public in and for the County and State aforesaid, on this day personally appeared W. W. Mills and J. P. Hague, each known to me to be the persons whose names are subscribed to the foregoing instrument of writing, and each acknowledged to me that he had executed the same for the purposes and considerations therein expressed, and also on this day personally appeared before me Mary H. Mills, known to me to be the other person, whose name is subscribed to the foregoing instrument of writing, and having been examined by me separately and apart from her said husband, W. W. Mills, and having the same fully explained to her, she, the said Mary H. Mills, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this the 14th day of March, 1882.

[L. S.]

J. A. BUCKLER,  
*Notary Public.*

A true copy.

Filed for record March 22d, 1882, at 10 o'clock, P. M., recorded March 24, 1882, at 3 P. M.

MANUEL E. FLORES,  
*Clerk.*

Certificate of true copy.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. }SS.

I, Park W. Pitman, Clerk of the County Court of El Paso County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the Record of W. D. from W. W. Mills, Mary H. Mills and J. P. Hague, to T. H. Conklin, as the same appears of record in Book 2, of the Deed Records of El Paso County, Texas, on pages 307, 308 and 309 thereof.

Given under my hand and the seal of said Court, at office in El Paso, Texas, this the 26th day of September, A. D., 1905.

Attest.

[L. S.]

PARK W. PITMAN,  
*Clerk.*

By C. F. ENGLISH,  
*Deputy.*

No. 31. Fees, \$8.00.

The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

El Paso, Texas, September 27, 1905.

F. MALLEN,  
*Consul.*

[Seal.] Mexican Consulate in El Paso, Texas.

DEED.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. }SS.

KNOW ALL MEN BY THESE PRESENTS, That I, W. W. Mills, of the County of El Paso and State aforesaid, in consideration of the sum of Five Hundred (\$500) Dollars, to me in hand paid by J. W. Tays, have granted, sold and conveyed and by these presents do grant,



sell and convey unto the said J. W. Tays, of the County of El Paso and State of Texas, an undivided one-half interest in Fractional Block No. Seventy-one (71) in the City of El Paso and State of Texas, as delineated on the map of said City, known as the map of "Campbell's Addition" to said City.

To have and to hold the above described premises, together with all and singular, the rights and appurtenances thereto in any wise belonging unto the said J. W. Tays, his heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend, all and singular, the said premises unto the said J. W. Tays, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my hand at El Paso, this 28th day of September, A. D., 1882.

W. W. MILLS.

Signed, sealed and delivered in the presence of:

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. }<sub>SS.</sub>

Before me, J. A. Buckler, a Notary Public in and for El Paso County, Texas, on this day personally appeared W. W. Mills, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 28th day of September, A. D., 1882.

[Seal.]

J. A. BUCKLER,  
*Notary Public.*

Filed for record March 12, 1883, at 8 o'clock, A. M. Duly recorded March 22d, 1883, at 11 o'clock, A. M.

MANUEL E. FLORES,  
*Clerk.*

By A. SCHILDKNECHT,  
*Deputy.*

Certificate of true copy.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Park W. Pitman, Clerk of the County Court of El Paso County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the Record of W. D. from W. W. Mills to J. W. Tays, as the same appears of record in Book 4, of the Deed Records of El Paso County, Texas, on pages 656 and 657 thereof.

Given under my hand and the seal of said Court, at office in El Paso, Texas, this the 26th day of September, A. D., 1905.

Attest.

[Seal.]

PARK W. PITMAN,  
*Clerk.*

By C. F. ENGLISH,  
*Deputy.*

No. 33. Fees, \$8.00.

The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

El Paso, Texas, September 27, 1905.

F. MALLEN,  
*Consul.*

[Seal.] Mexican Consulate in El Paso, Texas.

#### WARRANTY DEED.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

KNOW ALL MEN BY THESE PRESENTS, That I, W. W. Mills, of the City of El Paso, and State aforesaid, for and in consideration of One Thousand Dollars, the separate property of Louisa Ulman, to me in hand paid by said Louisa Ulman, have granted, sold and con-

veyed, and by these presents do grant, sell and convey unto the said Louisa Ulman, of the City of San Francisco, State of California, all the following lots and parcels of land described as follows, to wit: Situated in the City and County of El Paso, and State of Texas, according to Campbell Map of said City; the north twenty-five (25) feet of lot ten (10), in Block Twenty (20), also seventeen (17) by one hundred and twenty (120) feet off north side of lot Seven (7), and eighteen (18) feet by one hundred and twenty off the south side of lot eight (8) in Block Forty-two (42), being thirty-five (35) feet front on Chihuahua street; also lot Thirteen (13), and south nine feet of lot Fourteen (14), in Block Twenty-two (22); also lot Sixteen and south nine feet of lot Seventeen (17), in Block Thirty-seven (37); also lot eight (8) and south nine feet of lot seven (7) in Block Forty-one (41); also lot twenty (20) in Block Sixty-four (64); also lot twelve and south nine (9) feet of lot thirteen of Block Forty-three (43); also lots five (5) to ten (10), inclusive, in Block Ninety (90), and also lot eight (8) and south nine (9) feet of lot seven in Block Forty-one (41), and also the East one-half each of lots 7 to 10, in Blk. (19) nineteen.

To have and to hold the above described premises as her separate property, and not as the community property of herself and husband, together with all and singular, the rights and appurtenances thereto in anywise belonging unto her the said Louisa Ulman, her heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend, all and singular, the said premises unto the said Louisa Ulman, her heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS my hand this 2d day of June, A. D., 1887.

W. W. MILLS.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

Before me, W. E. Kneeland, a Notary Public, in and for El Paso County, Texas, on this day personally appeared W. W. Mills, well known to me to be the person whose name is subscribed to the

foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 2d day of June, A. D., 1887.

[L. S.]

W. E. KNEELAND,  
*Notary Public, El Paso, Texas.*

Filed June 2d, 1887, at 1.35 o'clock, P. M. Recorded August 13th, 1887.

E. P. CLARK,  
*Clerk.*

By M. J. CLARK,  
*Deputy.*

Certificate of true copy.

THE STATE OF TEXAS, }  
COUNTY OF EL PASO. } SS.

I, Park W. Pitman, Clerk of the County Court of El Paso County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the Record of W. D. from W. W. Mills to Louisa Ulman, as the same appears of record in Book 12, of the Deed Records of El Paso County, Texas, on pages 462 and 463 thereof.

Given under my hand and the seal of said Court, at office in El Paso, Texas, this 26th day of September, A. D., 1905.

Attest.

[Seal.]

PARK W. PITMAN,  
*Clerk.*

By C. F. ENGLISH,  
*Deputy.*

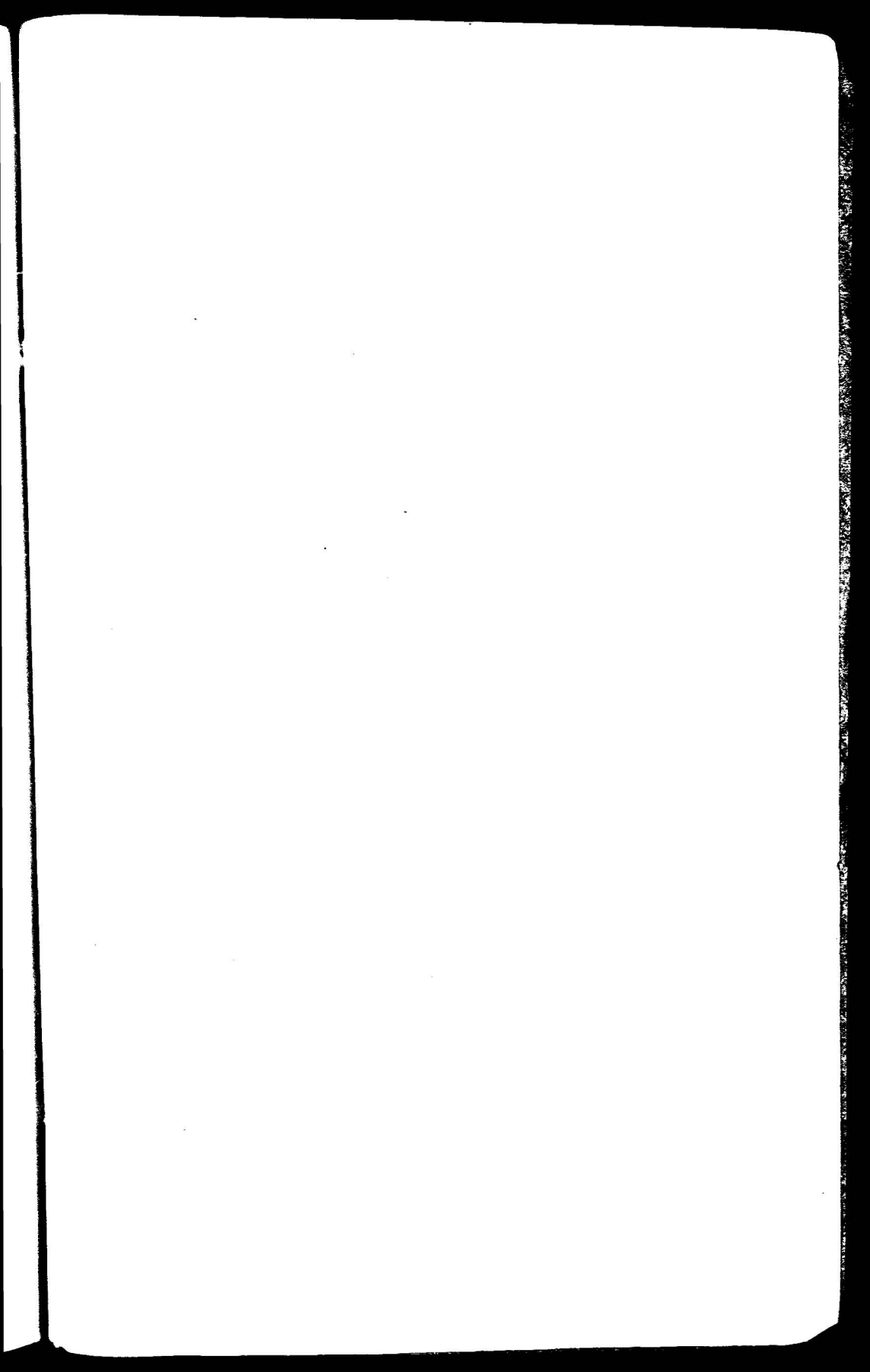
No. 28. Fees, \$8.00.

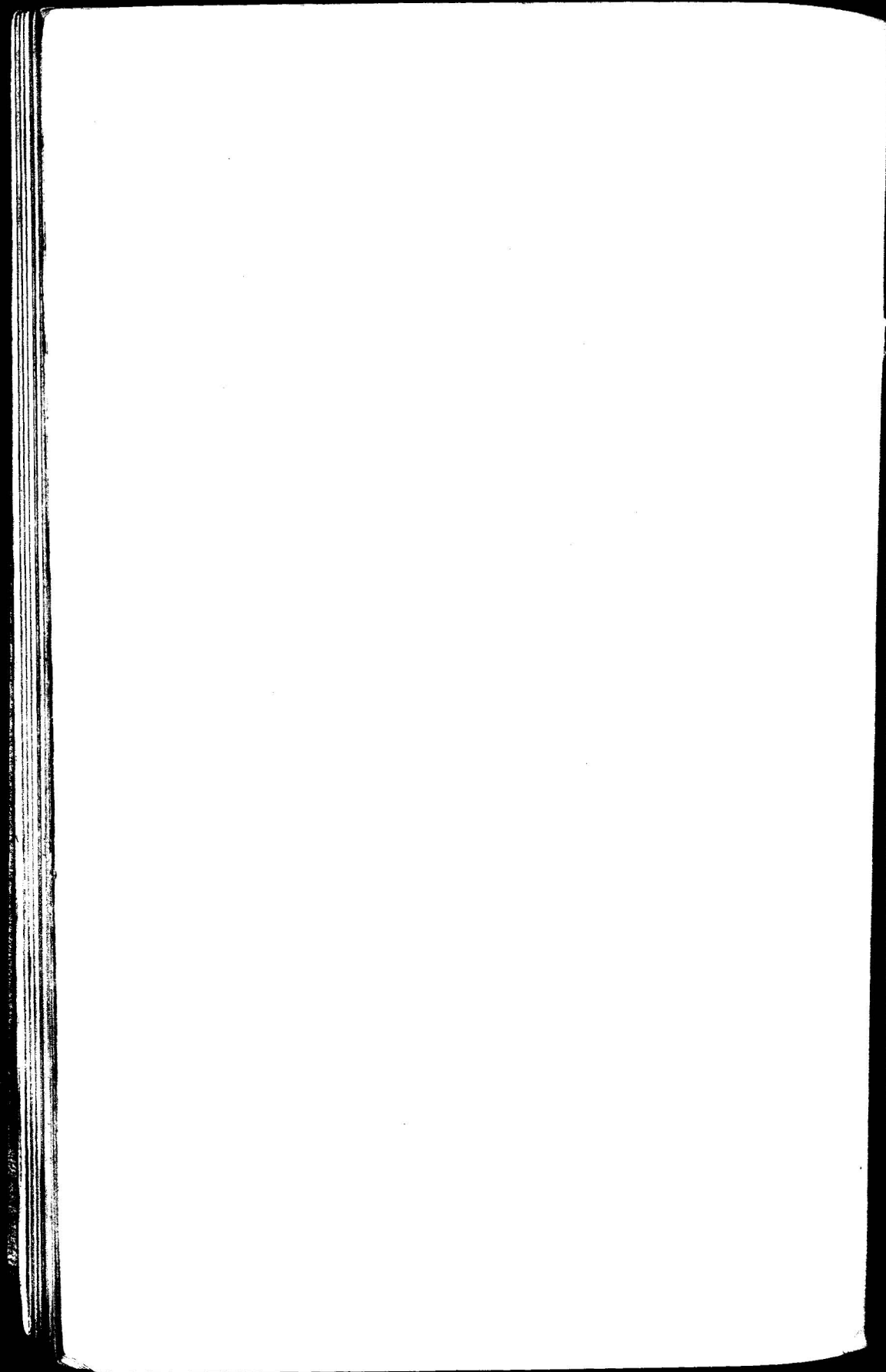
The undersigned, Consul of the United States of Mexico, certifies that Mr. C. F. English is Deputy Clerk of the County Court of this District, and his the foregoing signature.

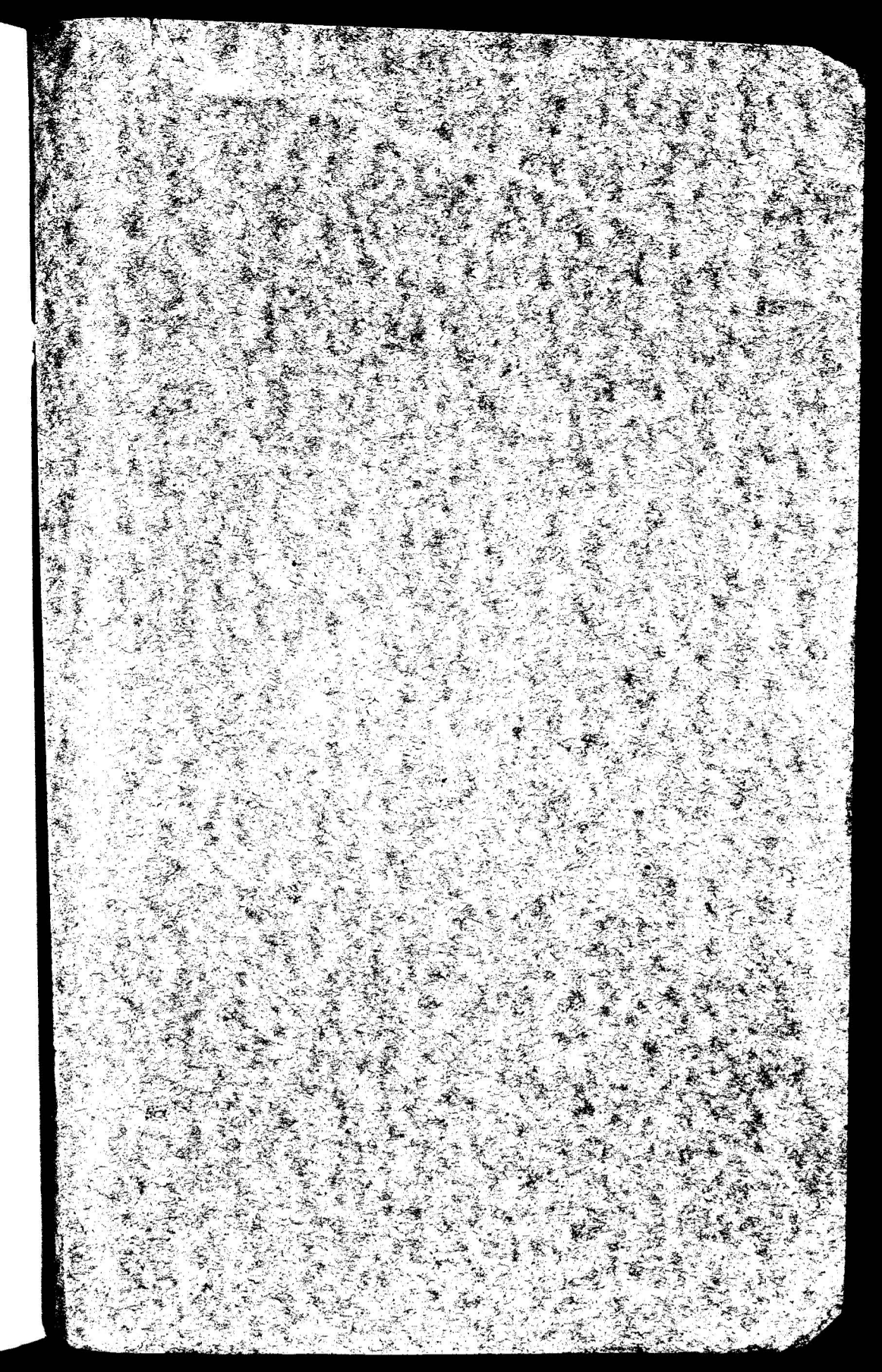
El Paso, Texas, September 27, 1905.

F. MALLEY,  
*Consul.*

[Seal.] Mexican Consulate in El Paso, Texas.









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