

The History of Ownership of Banningue

Introduction

The subject of this paper is the ownership of a tract of land known locally as Banningue covering about six acres in the projected Southeast Quarter of the Southeast Quarter of the Southwest Quarter of Section 21, Township 20 North, Range 10 East in the state of New Mexico. One deed estimates the dimensions of the tract to be 330 yards long south to north and 100 yards wide west to east. The long axis of the tract actually tilts about forty degrees to the west of north. The Rio de los Frijoles divides the tract very nearly in half lengthwise. The Rio Frijoles is a tributary of a river which joins the Rio Grande from the east at Española New Mexico.

Since the land was never part of the U. S. Public Land Survey System, and is instead derived of, and totally enclosed by, the Santo Domingo de Cundiyo Grant (or simply the Cundiyo Grant), this history will also include some history of the Cundiyo Grant in particular and of Spanish and Mexican grants in general. The King of Spain granted the land to the original European settlers. Recognition of the Cundiyo Grant continued through two subsequent changes of sovereignty, Mexican, and United States. Its continued recognition by the United States after annexation of the territory from Mexico was in no way automatic and rested on the decision of the Court of Private Land Claims. The proceedings and decision of that Court on case 211, José Antonio Vigil versus The United States, the case establishing the ownership of the Cundiyo Grant, are thus also included in this paper with some general comments about the court and the circumstances leading to its creation and the attitudes of the participants. This paper is the final project for a class entitled Surveying Law, which class devoted considerable time to enumerating sources of legal information about land, so it will refer to its own history.

The Beginning

Esquipula Vigil, the man I acquired Banningue from on June 23, 1990, will be 100 years old on May 17, this year, 1992. I talked to him recently to find out about the name Banningue and to find out if there was a deed conveying the land from the Cundiyo Grant to his Father, Lingino Vigil. He told me he didn't know what the name Banningue meant but he said it was the Indian name for the place. Cundiyo is also derived from an Indian place name. I say derived because I'm sure the pronunciation and the spelling has changed over the years. Banningue was spelled Buninge on one of the earlier deeds. The place was important enough to the Indians for them to give it a name. There are two mounds of earth, pottery shards, stone chips and arrow points within a mile of Banningue and another one within two miles. I think the mounds are remains of adobe buildings. The two closer mounds are included in the area originally granted to the first European settlers of Cundiyo.

Were the Indians the first owners of Banningue? From most accounts I have read they did not consider themselves owners until their rights to the land were challenged by those who sought to own it. My interpretation of how their point of view must have been is that they must have been part of the land. Ownership is a different concept when production is a duty to provide for the community rather than an opportunity for wealth or power. To them a fight for territory was probably a fight for life of the group. That is in contrast

to a modern territorial fight in court where the loser can go find a place to rent and start over without any real hardship. However, the Indians were probably building some kind of an economy by the time the Spanish arrived. Their pueblo structures were impressive. Maybe there were the beginnings of private ownership of land especially by pueblo chiefs. Recognition of ownership may have been encouraged by the arriving Spaniards.¹

When the Spanish came to the area in 1540 they considered the land and the Indians to be up for grabs. The Indians didn't like what was happening and ran them off in 1680 with the help and prodding of a severe drought. History began with the arrival of the Spanish but the history of legal land ownership did not begin until the Spanish re-conquest twelve years later. No records of legal land ownership survived the expulsion of the Spanish from New Mexico.

The returning Spanish were required by a new law to treat the Indians with more respect than they had before. The Cedula of 1684 named a new Governor and Captain General for the territory and declared that peaceful Indians shall be protected, that they shall be allowed to keep their liberty, that they shall be allowed exclusive use of lands they need and that settlements of Spaniards and Indians shall be kept separate.² This was the result of the ascendancy in Spain and the Catholic world of the point of view that the Indians and all such "civilized" (civilized from the Spanish point of view) indigenous people in discovered lands had rights (among others) to land ownership which rights predated discovery and claim by the Crown and would be respected by the Crown.

The *Recopilación de las Leyes de los Reynos de las Indias* of 1681 gave the Indians ownership of lands they "used". Use of the land was validated from the Spanish point of view, of course. Under Spanish law at the time individuals and communities, whether Indian or not, were only allowed to own land they could use or maintain in production. Indian ownership was a slightly different case at the time, however, because of the governments desire to maintain some separation between Indian settlements and Spanish (non-religious) activities. Different sections of the *Recopolatción* specified different separations required between various Spanish activities and Indian settlements. The result was that, in New Mexico, Indian pueblos were generally considered to "own" four square leagues.³ Individual ownership was a matter for the Indians to work out except that Indian lands could not be sold to or, otherwise alienated by, non-Indians.

The originally requested and granted southern boundary of the Cundiyo Grant was the northern boundary of the Nambé Pueblo, an Indian settlement. Pueblo Quemado the Spanish settlement bounding the Cundiyo Grant to the north took its name from a nearby abandoned Indian Pueblo. The Indians had, according to the Spanish settlers, been driven out by nomadic Indians and the pueblo burnt⁴. By Spanish law, the Indians did not own the land north of Nambé. They might have used it previously or even occasionally at the time, but since they were not living on it or cultivating it at the time of the grant, and did not protest the grant, they were not considered owners. It belonged to the Spanish Crown.

The Grant

The original petition for the Cundiyo Grant can be viewed from microfilm at the New Mexico State Records Center & Archives. The petition is part of the record of case 211, Court of Private Land Claims. The petition was translated for the court and the translation is also on microfilm. I was directed to this source by employees of the BLM when I inquired about the case referred to in the field notes of the Cundiyo Grant survey.

Four men and their families in Chimayo, a few miles down stream from Cundiyo, considered themselves to be in hard times in the year of 1743. They claimed the plots of land they inherited were too small to support their large families. The way to fix the problem was to move onto unsettled land nearby. They decided on Cundiyo and made their petition to Governor Mendoza in Santa Fe. At first the Governor rejected the petition on August 31, 1743 because neighboring communities used the land for pasture and because the requested area was so small and poor. By small he must have meant the area suitable for cultivation of crops. Later, on September 12 of the same year, on the advice of the Alcalde Mayor of Santa Cruz, Governor Mendoza changed his mind and ordered that the petitioners be put in possession of the land they requested. The task was performed by Juan Jose Lobato, the Alcalde Mayor of Santa Cruz on September 28, 1743 before witnesses. The Alcalde Mayor noted in his record of the event that that the ceremony was not performed exactly as legally required. He mentions that none of the witnesses were notaries, neither public nor royal, because of the notorious absence of any in the territory. He also mentions that he made the record on ordinary paper because stamped paper was not available. Otherwise, the customary procedures for making Spanish land grants seem to have been faithfully adhered to.⁵ The papers recording the process of the Cundiyo Grant were preserved by the Grantees their heirs and assigns for at least one hundred and forty years to become evidence of ownership in a claim of ownership of the Grant against the United States.

The Economy

People in Cundiyo and the surrounding area lived off the land. Such a life must not have allowed much free time but it is apparent that there was some time available to produce surplus goods. During the hundred or so years after the Cundiyo Grant was made, a couple of relatively wealthy individuals were established in the area. One, Pedro Córdoba, of nearby Pueblo Quemado (now Cordova), was the richest man around.⁶ He was compared to a king by the locals. He became wealthy as a merchant trading the products of the area, mainly wool and wool products such as yarn and blankets as far south as Chihuahua. This trade probably provided the area with such things as firearms and other metal goods. It also seems more such goods were acquired in this trade than the local demand required. The surplus was probably used by the Comancheros from Cordova, Truchas and Cundiyo in their trade with the Comanches on the plains over the mountains to the east.⁷ The second most wealthy man around was a Comanchero, José Antonio Vigil of Cundiyo who lived in Cundiyo.⁸ Thus it seems that some residents of the area were somewhat better prepared for the coming exploits of the aggressive and even more wealthy Americans.

The United States Takes Over

It seems that the trend in people's relationship to the land has always been towards the owner or potential owner's regard for the land as a commodity. The Pueblo Indians seem to have been developing the concept of private land. The arriving Spaniards brought with them a more advanced concept of private land but the concept was still of a more practical and less abstract nature. One had to derive one's subsistence from the land to have the right to own it. Only the King could own land otherwise. Some of the more wealthy settlers such as Pedro Córdova and Jodé Antonio Vigil dealt in land acquiring more than they or their families needed. This was probably allowed by the people because these men were probably seen as benefactors of the common good. The trend was brought to its complete development by the Americans who brought with them full scale land speculation.

American influence in the area which is now New Mexico began with trappers and traders. This influence increased steadily in the time following the Cundiyo Grant. These new arrivals regarded the locals as underachievers and sought to control the land they were not taking advantage of and maybe even that which they were living on. American interest became so great that the United States took possession of the territory by force leading to the Treaty of Guadalupe Hidalgo in 1846.

Once this happened the Americans went after the land and resources in full force. Their exploits, the Maxwell grant in particular, may even have embarrassed a significant number of influential Americans. During the next several decades it became obvious that, without some kind of government intervention, there would not be an equitable settlement of the conflicts which arose between the people already living in the area and the new American arrivals.

The Treaty of Guadalupe Hidalgo stipulated that citizens of Mexico living in the ceded territory would automatically be citizens of the United States with full rights to their private property especially land. The definition of private property, and especially property belonging to a community, does not seem to have been all that well agreed upon by the parties to the treaty. It may even be that they did not recognize the potential for misunderstanding. At any rate, it was generally acknowledged at the time that the new sovereign was required to perpetuate the law of the old sovereign regarding matters of property rights. The first arrangement made by the United States government to uphold the terms of the treaty while protecting the interests of the government was to establish the office of the Surveyor General of New Mexico. This officer was to survey the land in New Mexico and prepare claims to private land under provision of the treaty for presentation to Congress for its decision on the matter. Every person to hold the office of Surveyor General complained that there was insufficient money, manpower and expertise made available for the task and that as a result, justice, including protection of the public interest, was not being served.⁹

Thus it seems obvious that despite the Treaty of Guadalupe Hidalgo, Title to the Cundiyo Grant would not be automatically valid under United States Law.

The Court of Private Land Claims

Land title problems and exploitation in New Mexico finally became so notorious that Congress passed an act in 1891 which created the Court of Private Land Claims, consisting of five judges, to convert Spanish and Mexican land ownership rights to rights recognized under United States law in accordance with the Treaty of Guadalupe Hidalgo. The Court of Private Land Claims heard cases for thirteen years. One of these cases, filed in 1893, was brought by José Antonio Vigil to acquire title to the Cundiyo Grant. (This probably not the same José Antonio Vigil mentioned earlier since one historian claims that he died in 1861. Maybe one was the others heir since both men owned a significant portion of Cundiyo.)

The Court of Private Land Claims heard 282 cases involving land in New Mexico. Of these cases only eighty two were confirmed. It seems that because of the land speculation scandals which preceded the formation of the Court of Private Land Claims, the court took a tough stance. It could also be that the speculators' influence was still being felt. The burden of proof of valid Spanish or Mexican title rested on the claimant. The title was required to be perfect. Usually only the original documents were considered sufficient proof. Often copies of the documents certified by a local official such as the Alcalde Mayor were not considered sufficient since by the letter of Spanish and Mexican law only an Escribano could make a valid copy. There had seldom been an Escribano in the area when copies of grant documents were needed. The claimant was required to prove that the person making the grant was authorized to do so. If the person was not a Governor, then that person was usually not considered by the Court to have been authorized. Many presumptions made in favor of claimants made by earlier courts in Florida and California were not made by the Court of Private Land Claims. In only a few cases was long term possession of the land considered. Also, over time, the Court took the view that lands granted to a community and used on common by the community were actually public land and should come under ownership and management of the government.

Another difficulty faced by claimants was inadequate legal representation. Many of the lawyers themselves were interested in obtaining ownership of the land. They often did so by demanding land in exchange for their services. If, in the lawyers opinion, in light of the above described adverse situation, the claimant had a weak case the lawyer would simply drop it after several years paying little attention to it.¹⁰

José Antonio Vigil, by his testimony a very old man, escaped all these perils in his claim to the Cundiyo Grant. One obvious reason was the weight of evidence he presented. He filed the original grant papers, one hundred and forty years old, as evidence. He also filed ten deeds showing chain of title from the original grant which were abstracted for the court and found to be valid. There seems to have been more evidence but it does not seem to be available in the court record. He testified that he had lived on the grant lands that he owned during the the time that he had owned them and that there was continuous possession by sufficient previous owners.

There are a number of reasons for the success which one might deduce from the apparent circumstances. It seems that if José Antonio Vigil was indeed an heir to the other José Antonio Vigil, he was probably able to afford a lawyer. The Cundiyo Grant is small and most of the land is very poor providing very little grass and otherwise only firewood.

There was probably no one else including his lawyer who was interested in the land.

The Cundiyo case was decided on December 12, 1900, seven years after it was started, in favor of the claimant. The decree includes instructions for establishment of the grant boundary by a surveyor. The decree relinquished any claim to the land by the United States but reserves the rights to any "gold, silver, or quicksilver, or mineral of same".

Joseph F. Thomas, U. S. Deputy Surveyor, received the contract from the U. S. Government to survey the Cundiyo Grant. He completed the survey on July 26, 1901 for a fee including costs of \$194.84. Half of this was paid by the Grant as required by the statute which created the Court of Private Land Claims. Apparently the information provided the court to establish the boundary of the grant was either insufficient or in error. Mr. Thomas discovered this in the field and had to wait for an agent of the court to arrive and set things straight. This added significantly to the cost of the survey for which only \$115 were originally appropriated. The records for the contract for the survey of the Cundiyo Grant are available at the New Mexico State Records and Archives. The survey notes and plat are on file at the New Mexico office of the BLM.

The patent for the Cundiyo Grant was issued by President Theodore Roosevelt in February 11, 1903. The patent granted by the United States as a result of the decree states that any third party interest, including any Indian interest, in the land is not affected by the patent. The patent is on file at the New Mexico BLM office. Mr. Thomas' survey field notes were copied as part of the patent document.

It is interesting to compare the process of the original grant with that of its confirmation in the Court of Private Land Claims. The Grant process lasted less than a month and cost the grantees probably only their personal effort to have papers written up and delivered to the Governor and their attendance at land to be but in possession of the land. The confirmation process required a total of ten years to complete and cost the grant at least \$97 dollars and change for the survey in addition to the personal effort of making court appearances, hiring a lawyer, etc. I was unable to find out what the court costs were but I imagine that then, as is the case now, lawyers got a lot more for their time than surveyors did.

Taxes

On May 4, 1928 Fletcher A. Catron, Delinquent Tax Collector for the county of Santa Fe, New Mexico filed a complaint against the Unknown Owners of the Santo Domingo de Cundiyo Grant demanding payment of 2614.68 back taxes for the years 1914 through 1926, interest, and penalties. Mr. Catron signed an affidavit affirming "that, after diligent search and inquiry, the names and whereabouts of the said defendants can not be ascertained" so that the only way to serve notice of the tax suit was by publication. Was Catron unable to find the village of Cundiyo? Did the residents of Cundiyo refuse to talk to him? Time ran out before I was able to ask these questions of someone who might know. It sort of looks like the Cundiyo Grant was doomed to a tax sale.

Not so. Somehow the residents of Cudiyo got wind to the case (they must have) and it became known to J. Frank Curns, Special Tax Attorney for the state of New Mexico that the land in question was worthless, was valuated differently on different years, was assessed for the wrong acreage some years, and included tracts of land which had been

taxed separately during the time in question. He made a motion that the case be settled for \$300 including taxes for the year 1927 and court costs. The court ordered it so on May 28, 1928. I guess the residents of Cundiyo paid up because it seems they still own the grant.

I found the records of this case while searching the records at the Santa Fe District Court for a possible suit to quiet title by Lingino Vigil. I found the tax suit but no suit to quiet title. The search is very tedious. Either there are no indexes to the docket books back that far or they are not available for the public to search.

According to Esquipula Vigil (mentioned above) his father, Longino Vigil was the locally recognized owner of Baningue at that time and was moved by the threat of a tax sale to rescue Baningue. He had James C. Harvey survey it along with another tract of land he owned near the village of Cundiyo. The plat of the survey is dated July 26, 1928. What Longino intended to do, or did do, with the survey, I have been unable to find out.

Private Ownership

Harvey's plat is the oldest evidence I have on paper of private ownership of Baningue. I have searched the indexes at the Office of the County Clerk in Santa Fe County and have found neither a deed to Lingino Vigil nor from the Cundiyo Grant for Baningue.

On September 27, 1947, Longino Vigil sold Baningue to his son Esquipula Vigil for \$100. The deed does not mention Harvey's survey but simply states that the land is 100 yards east to west, 330 north to south and is bounded on the north, east, south and west by the rights of the "Merced de Cundiyo".

On June 19, 1967 Esquipula sold about .4 acres of the north end of Baningue to his nephew, Jose, G. Vigil for the sum of \$25 and forbid him to sell it. The survey was apparently made by Esquipula himself. The deed bears a sketch which shows the land to be situated 148 yards due north of south quarter corner of section 21, to be 93 yards long south to north and 42 yards wide east to west. The deed states that the "Corners marked on big rocks as shown on sketch by +". I have found those marks on the rocks.

The title history of the .4 acres from then on is:

January 17, 1997 Jose G. Vigil to Paul Martinez
 February 3, 1979 Paul Martinez to Jose G. Martinez
 May 22, 1987 Jose G. Martinez and his wife to Timothy P. Rogers
 June 18, 1990 Timothy P. Rogers to Emlen Hall and his wife
 June 23, 1990 Emlen Hall and his wife to Robert Kandarian, Richard Kandarian, and Carl Kandarian for one hell of a lot more than \$25.

On June 23, 1990 the rest of Baningue was traded to Robert Kandarian, Richard Kandarian, and Carl Kandarian from Esquipula Vigil for three and one half acres of land on the Rio Frijoles near the village of Cundiyo. Esquipula would take no reasonable amount of money for it. My father, Robert Kandarian, had continuously offered to buy it since about 1965. As it is, the land we bought to trade for Baningue probably cost more than Baningue was worth on the market.

The plat made by Harvey shows Banningue to be about 4.2 acres. The .4 acres Esquipula gave to his Nephew lies almost completely outside Harvey's survey. The area of Banningue which is fenced is about six acres. I plan to have the fence line surveyed and then request a quit claim deed from the Cundiyo Grant for the land inside the fence. One officer of the grant has told me this should be no problem. They customarily recognize fence lines as ownership lines. Some day I may have to sue for quiet title. I won't do it unless I need to.

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