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TROUBLOUS TIMES IN NEW MEXICO
1659-1670

By FRANCE V. SCHOLES

(Continued)

CHAPTER IX

PEÑALOSA VS. POSADA

I

THE EMBARGO of the property sent by Governor Peñalosa to New Spain in the autumn of 1662¹ had serious repercussions in New Mexico. It proved to be the parting of the ways in the relationships of the governor and the custodian, Friar Alonso de Posada. The former abandoned whatever friendly feeling he still had for the prelate, and during the year 1663 he adopted an attitude of hostility that finally culminated in the unprecedented action of the arrest of Posada at the end of September of that year.

News of the embargo reached Santa Fé on December 25, 1662, when a messenger arrived from Parral bearing dispatches and copies of the documents relating to the seizure of the property by the ex-governor Juan Manso on orders issued by Posada.² Receipt of these reports created a sensation. According to Posada, the governor considered sending certain soldiers to effect his arrest, but was dissuaded by the advice and counsel of Tomé Domínguez de Mendoza.³ Instead, he sent a sharply worded complaint to the prelate, asking for confirmation of the news.⁴ We have no record of Posada's reply.

1. See Chapter VI.

2. The news was brought by Juan Varela de Losada, who had charge of the livestock that had been sent to Parral.

3. Posada to the Holy Office, Santo Domingo, June 7, 1664. *Proceso contra Peñalosa*.

4. Peñalosa to Posada, Santa Fé, December 25, 1662. *Ibid.*

The governor's attitude was also made clear in a letter sent to Posada on December 27, 1662, by Friar Gabriel de Torija, a resident in the convent of Santa Fé. He wrote: "I have felt great pain in my soul because of having seen the governor express bitterness and anger against Your Reverence. I withdrew from the palace because I heard such evil sounding things [spoken] against the chaste person of Your Reverence. Among such [things] His Lordship said that it was shameful that a creature like Your Reverence should act in opposition to his person . . . It is said that he is preparing reports, [although] I do not know what they contain."⁵ Two days later Torija sent another letter with further news of the governor's activities.⁶

Torija's loyalty to the custodian was not shared by all of the friars in Santa Fé. On December 25 Friar Miguel de Guevara, who had been a close friend and partisan of Peñalosa for some time, sent Posada an extremely outspoken letter criticizing the Parral embargo. In this communication, Guevara expressed doubt whether Posada had possessed authority to embargo the property, without explicit orders to do so and questioned whether the prelate was "a competent judge before whom the decrees in favor of Don Bernardo could be presented." Governor Peñalosa, "as supreme head in this kingdom and legitimate and immediate judge of all temporal cases," should have been notified, and if he had failed to act, then the decrees could have been presented to other authorities, provided there had been specific instructions to do so. "But even in such case, I am not sure that Your Reverence would have been a competent judge, because Your Reverence is an ecclesiastical judge and commissary of the Holy Office of the jurisdiction of New Mexico, but it does not appear that you are [such a judge and commissary] in the [jurisdiction] of Parral; and since El Paso and La Toma del Rio [are in] the jurisdiction of Parral, I do not know how Your Reverence, even if you had special instruc-

5. Torija to Posada, Santa Fé, Dec. 27, 1662. A. G. P. M., Inquisición 598.

6. Torija to Posada, Santa Fé, Dec. 29, 1662. *Ibid.*

tions, could make the embargo outside your jurisdiction.”⁷ Guevara admitted that he did not understand legal technicalities, but stated that “what disturbs me is that we should give cause for a gentleman of the qualities of Don Diego to do what he does not wish to do, despite his nobility, courtesy, and great affection for our Holy Order.”⁸

On the following day, December 26, Guevara addressed a more caustic letter to Friar Salvador de Guerra, the prelate’s secretary. He said that he regretted that at the very moment when it had appeared possible to regain what had been lost as the result of events of the preceding years (refer-

7. The jurisdictional status of the El Paso area at that time is not entirely clear. The Manso mission was administered as part of the custodia of New Mexico, and the governors of the province were frequently called upon to assist and protect the mission. Capt. Andrés López de Gracia, former resident of New Mexico proper, was the first *alcalde mayor* of the El Paso area, and there is some evidence that he was appointed by Governor López de Mendizábal. Hughes, *The Beginnings of Spanish Settlement in the El Paso District* (Berkeley, 1914), p. 311. In 1662 ex-governor Manso alleged, in proceedings against López de Mendizábal, that the latter had made a certain deal with Francisco Ramírez, son-in-law of Capt. Andrés López de Gracia, “para que saliese destas provincias con toda su casa y familia y ganados y se fuesse a bibir a la toma del Río con el dho. su suegro.” A. G. P. M., Tierras 3286. La Toma was in the El Paso area a short distance from the Manso mission. The phrase “saliese destas provincias” is rather indefinite, but may be interpreted as meaning that Ramírez was to leave the jurisdiction of New Mexico. In the same year Posada and his secretary, Friar Salvador de Guerra, accompanied the mission supply train as far as La Toma. In letters of Posada and Guerra to the Holy Office, dated November 28, 1662, we find these statements: (1) “en este estancia de nra. Sra. de guadalupe toma de el Río de el norte y Jurisdiccion de el Parral;” (2) “la toma del Rio del Norte que es donde se acava la Jurisdiccion del nuebo Mexico;” (3) “. . . hasta este paraje de la thoma . . . ques donde se acava la Jurisdiccion del nuebo mexico y enpiesa la de la nueba viscaia.” A. G. P. M., Tierras 3283. In a declaration before the Holy Office, April 19, 1663, López de Mendizábal referred to Posada’s meeting with Francisco Domínguez, who brought the *real provisión* which Posada used as authority to justify the Parral embargo, and he stated that inasmuch as Posada was then on the south bank of the Río Grande, he was “fuera de su jurisdicción.” *Ibid.* In 1663 Capt. Andrés López de Gracia was ordered by the governor of Nueva Vizcaya to move to Casas Grandes, where he later served as *alcalde mayor*. Hughes, *op. cit.*, pp. 311-312; Museo Nacional, Mexico, *Asuntos*, vol. 242, f. 191. In a letter to the governor of Nueva Vizcaya, August 10, 1667, he referred to the case of the killing of a mulatto servant of Friar García de San Francisco at El Paso, and stated that he would go to investigate, thus implying that the area was within the jurisdiction of Nueva Vizcaya. Biblioteca Nacional, Mexico, MSS, Leg. 1, doc. 28. On the other hand, there is evidence that Diego de Trujillo, who held office as *alcalde mayor* of the El Paso area for a short time after Capt. Andrés López de Gracia, was appointed by the “government of New Mexico.” Hughes, *op. cit.*, p. 312. For a discussion of the jurisdictional status of the El Paso area in 1680 *et seq.*, see Hughes, *op. cit.*, ch. 8.

8. Guevara to Posada, Santa Fé, Dec. 25, 1662. A. G. P. M., Inquisición 598.

ring, of course, to the unhappy events of López de Mendizábal's administration), "our Father Custodian has taken measures to disturb the peace of this kingdom and to upset the noble serenity of the governor whom Heaven was pleased to give us in such a stormy time." Despite the fact that Posada, as prelate, had been the person who had greatest cause to appreciate what Peñalosa had done to honor and assist the Franciscans, he had shown the governor discourtesy and ingratitude. "God does not wish that there should be peace and quiet in this kingdom as much as the devil does!"⁹

Not content with these bitter criticisms of his prelate, Guevara sent Posada another letter on January 2, 1663, in which he stated that if the news of the embargo proved to be true, "it will be one of the greatest misfortunes of this kingdom, [as well as] for the Order and reputation of Your Reverence; for it will be necessary for those who wear the habit of St. Francis to explain to their superior prelates such uncalled for, ungrateful, and undeserved acts toward a person like Don Diego, who, in all things and in behalf of all, seeks and has striven for the peace and advancement of this kingdom, the good name of the sons of St. Francis, the veneration of the sacerdotal estate, and, above all, the establishment of the faith, so abased in these realms."¹⁰

Guevara was not alone in criticizing his prelate, for Friar Nicolás de Freitas also wrote to him in much the same terms. Freitas had maintained close and friendly relations with Peñalosa for some time, had served as his chaplain, and had become his personal companion and confidant. In a letter dated January 2, 1663, he called Posada's attention to the fact that the *real provisión* of the *audiencia*, by virtue of which Posada had given orders to embargo the property at Parral, had actually been addressed to Peñalosa, and asserted that the custodian's action had confirmed "what the biting tongue of Mendizábal said in his report, in which he affirmed that the friars of this land do not obey the king."

9. Guevara to Guerra, Santa Fé, Dec. 26, 1662. *Ibid.*

10. Guevara to Posada, Santa Fé, Jan. 2, 1663. *Ibid.*

Moreover, even if Posada had possessed jurisdiction, the embargo was unjustified, "because I can affirm under oath that I have seen everything that belongs to Mendizábal in the possession of the depository; a fact that causes me great confusion, when I hear that Your Reverence embargoed as property of Mendizábal the goods of Pedro de Moya."^{10a} He continued:

What will they say in Mexico when they hear it said that the friars in New Mexico are enemies of the peace, that they cry out so often, "Peace, Peace," *et non erat pax*? What will they say when they see that we give cares in exchange for honors, losses in exchange for property, and in return for Don Diego's friendly attentions we rewarded him with offenses? What will our Very Reverend Father Commissary General say when he hears the things that are told of our ingratitude? What bliss it has created in our rivals, what joy to our enemies! What governor will aid us when he hears that we showed ourselves most opposed to the one who was most inclined toward us? Look here, our father, for the love of God, let Your Reverence consider that to all the holy friars who assist in this wilderness, and to me more than all of them, the cost of peace was much war, that of quiet, many vexations, and that in order to attain it, I found myself among the arrows of the enemy and in the hands of barbarism. And thus that which cost so much is lost for so little. Your Reverence, what reason is left us for hope, for pleasure, for peace, for tranquility? Pardon me, Your Reverence, because deep feeling has not allowed me to be silent, nor has sorrow been able to prevent this heart-felt complaint, which not only I, but the entire custodia and the whole land, are sensible of.¹¹

10a. In January, 1663, a probanza was drawn up to prove that Pedro Martínez de Moya, a member of Peñalosa's entourage, was owner of the Parral shipment. The witnesses who gave testimony were all associates and partisans of the governor. A. G. P. M., Tierras 3283. In testimony before the Holy Office, Peñalosa later admitted that all of his property was held "in the name" of Martínez. *Proceso contra Peñalosa*.

11. Freitas to Posada, Santa Fé, Jan. 2, 1663. A. G. P. M., Inquisición 598.

The letters of Guevara and Freitas were undoubtedly inspired by the governor. Friar Bernardo López de Covarrubias testified that Peñalosa actively sought to have "certain friars follow his action and write [letters]," and that Freitas became such an impassioned advocate "that the said Father went about continually inciting the said governor's anger against the said ministers of the Holy Office, telling him that the said embargo was null and void."¹² Moreover, during his hearings before the Holy Office three years later, Peñalosa admitted that he had read the letters of Freitas and Guevara before they were sent to Posada, and that he asked other friars to write complaints to Posada's superior prelates in Mexico City.¹³ On January 3, 1663, the custodian sent the letters of Torija, Guevara, and Freitas, together with a covering dispatch, to the Holy Office, in order to inform the Inquisitors of the governor's attitude.¹⁴

Peñalosa lost no time in making plans to contest the legality of the embargo. Dispatches and other papers were hastily prepared, and sometime in January, 1663, Tomás Domínguez de Mendoza was sent to Mexico City to institute proceedings to have the embargo revoked. Domínguez was unsuccessful in this mission, and in the autumn of the same year he returned to New Mexico.

II

During the spring and summer of 1663 Peñalosa's attitude toward the custodian became increasingly unfriendly. It appears that Posada, realizing the delicacy of the situation, avoided personal contact with the governor and busied

12. *Proceso contra Peñalosa*.

13. *Ibid.*

14. The letters were received by the Holy Office in December, 1663. In a formal *parecer* addressed to the Inquisitors, the *fiscal* stated that the letters of Guevara and Freitas manifested hostility, or at least lack of respect, for the Inquisition, inasmuch as it was not the function of such friars to question the legality or wisdom of Posada's actions. Moreover, he contested Guevara's view that Posada had no right to exercise authority while he was in the jurisdiction of Parral, for the order authorizing the embargo could be dispatched "in any place whatsoever in which the carts were found." A. G. P. M., Inquisición 598.

himself with affairs of mission administration. But Peñalosa had many other visitors, both lay and ecclesiastical, and with these persons he discussed the embargo on numerous occasions, expressing his indignation in bitter terms.

He sought to maintain the fiction that the property of López that had come into his possession was still intact, and to this end he exhibited to his visitors various items of goods, such as pieces of silver plate, writing desks, piñon nuts, and textile products, that were stored at the Casa Real. To some he also showed the box containing the silver bullion brought from Sonora by Granillo in 1660.¹⁵ Although he must have realized that these tactics were not convincing, in view of the general knowledge that other parts of López' property had been sent to Parral, he maintained a brazen attitude, indulging in dangerous speech concerning the Inquisition and making threats against Posada and the prelate's secretary, Friar Salvador de Guerra.

According to the testimony of several witnesses, he characterized the Inquisitors as "puppets in bonnets" and as "petty clerics of little importance." It was also reported that he asserted superiority over the Holy Office and other ecclesiastical tribunals, because of his position as representative of the Crown. Although he later denied many of these charges, the burden of the evidence clearly indicates that he not only expressed lack of respect for the Holy Office, but made statements showing that he had an exaggerated notion of his position and authority as governor.¹⁶

Several persons, lay and ecclesiastical, testified that the governor also used all manner of derogatory speech concerning Posada and Guerra, and that he berated both friars and laymen who remained loyal to the custodian or maintained friendly contact with him. He composed satires and rude verses concerning Posada and other Franciscans, some of which he read to visitors and members of his household. From time to time he talked about expelling Posada from the

15. *Proceso contra Peñalosa.*

16. *Ibid.*

province, and it was alleged that he even made threats against the prelate's life.¹⁷

This unhappy state of affairs was aggravated in the autumn of 1663 by a dispute over the question of ecclesiastical sanctuary. For reasons that are obscure Peñalosa ordered the arrest of Don Pedro Durán y Chávez, who lived in the Río Abajo area, and his nephew Cristóbal. On August 23, 1663, a detachment of soldiers who were taking the prisoner to Santa Fé for trial arrived at the pueblo of Santo Domingo where they planned to spend the night. The guards carelessly left Don Pedro alone for a short time, and the latter, who was in irons, persuaded an Indian servant to carry him across the plaza to the pueblo church, where he immediately claimed sanctuary. When the governor was informed of what had happened, he gave orders for his secretary, Juan Lucero de Godoy, to proceed to Santo Domingo and seize the prisoner. On Sunday, August 26, Lucero and the soldiers, who had kept a guard over the convent during the intervening three days, violently removed Durán and took him to Santa Fé where he was incarcerated in a cell in the Casa Real.¹⁸

News of this event was immediately dispatched to Posada who was then in residence at the convent of Pecos. Instead of instituting legal proceedings at once against Peñalosa and the soldiers for this violation of ecclesiastical immunity, the custodian thought it would be more prudent, in view of the general situation, to write to Peñalosa, "with entire urbanity, humility, and modesty," asking him to return Durán to the Santo Domingo church. This letter was sent on August 27. In his reply Peñalosa refused to grant the custodian's request and sought to justify and excuse his action, citing various decrees and precedents concerning procedure in cases of ecclesiastical asylum. The guardian of Santo Domingo also made representations to the governor, but without success.¹⁹

17. *Ibid.*

18. Sworn testimony of various witnesses and *Petición e informe*, of Friar Alonso de Posada, May 16, 1664. *Proceso contra Peñalosa*.

19. *Petición e informe*, May 16, 1664.

After receiving Peñalosa's unsatisfactory reply, Posada went to Santo Domingo where he made an informal inquiry concerning the Durán case to satisfy himself that the right of asylum had been violated. He then sent Peñalosa another letter requesting return of Durán to Santo Domingo. To this communication, which was received in Santa Fé on September 16, the governor made no reply. After waiting a few more days, the custodian instituted formal legal proceedings by taking sworn testimony of several witnesses who had been present when Durán was violently removed from sanctuary. Having received this testimony, the prelate, on September 27, issued the *carta monitoria* calling upon Peñalosa, under pain of excommunication, to return the prisoner within twenty-four hours after notification. In case the governor held that he had just cause not to comply with this demand, he should have his attorney present a formal statement to that effect before the prelate and permit the case to proceed according to the usual judicial forms; otherwise, if the prisoner was not released within the stated period, the prelate would invoke the censures with the full rigor of the law.²⁰

It was still Posada's desire, however, to effect a friendly settlement of the dispute without imposing ecclesiastical censure, and to this end he selected Friar Diego de Parraga for the delicate task of negotiating with the governor. Parraga was instructed to go to Santa Fé and make a direct appeal to Peñalosa to release Durán and thus avoid legal proceedings. If the governor, after two appeals of this kind, remained adamant, then Parraga was authorized to make formal notification of the *carta monitoria* drawn up on September 27. Having taken this action, Posada returned to Pecos to await developments.

Taking a lay brother, Friar Blas de Herrera, as his companion, Parraga proceeded to Santa Fé on the afternoon of Friday, September 28. At the convent he was informed that Peñalosa was apparently in no mood for compromise, be-

20. *Ibid.*

cause that very day he had made threats that any representative of the prelate who came to present formal demands would be put in irons. The next day (September 29) when Parraga and Herrera called at the Casa Real, they referred to this threat, and according to Herrera the governor grimly exhibited sets of irons and left no doubt as to the use he planned to make of them. Peñalosa's version of this incident states, however, that the friars came in jesting about the irons, and that he, in similar vein, pointed to three or four pairs in one corner of the room. If the interview started with jest, as may be true, discussion of the business at hand revealed that Peñalosa was determined to resist any pressure, friendly or otherwise, to bring about Durán's release. According to the governor's own account of the conference, he urged his visitors to intervene with the custodian to prevent his excommunication. Parraga's version merely states that "seeing that the said governor and captain general Don Diego de Peñalosa Briceño showed himself stern in discussing the said problem, I tried to find a remedy, writing to . . . Posada . . . describing the situation and requesting that if it were possible the matter should be dropped, since to continue, according to indications, would cause greater scandal." Parraga's letter was written on Sunday, September 30, and he planned to send it to Pecos by messenger on the following day. But when Monday came Parraga learned that the governor, instead of waiting to see what the prelate's next move would be, had already embarked upon a bold course of action.²¹

Firm in his stand not to negotiate or participate in litigation regarding Durán's release and equally determined not to submit to excommunication, Peñalosa decided that the only solution was to expel the custodian from the province. After the interview with Parraga and Herrera on September 29, he discussed his plan with Father Freitas and the lieutenant-governor, Pedro Manso de Valdez, who encour-

21. Declarations of Friar Blas de Herrera, Dec. 14, 1663, and Friar Gabriel de Torija, June 3, 1664; *Petición e informe*, May 16, 1664; testimony of Peñalosa, Dec. 5, 1665. *Proceso contra Peñalosa*.

aged him to carry it out. Toward midnight of September 29-30, he went to Freitas' room (Freitas was living in the Casa Real), and "asked him to consider well, as the learned man that he was, whether he could do what they had discussed regarding the expulsion of the said Father Custodian." Freitas promised to give him a written opinion (*parecer*) approving the plan, and said that he would get Friar Diego de Santander, "who was a jurist," to sign it. There is also evidence that on the evening of September 29, and again the following day, Peñalosa visited the Santa Fé convent, where he made bold threats against the custodian.²²

III

On Sunday afternoon, September 30, Peñalosa summoned the lieutenant-governor and a detachment of soldiers and set out for Pecos, where Posada was in residence. Arriving about nine o'clock in the evening, he was received in a friendly manner by the custodian, who immediately gave orders to have chocolate prepared for his guests. The governor lost no time in making it known that he had come on a serious errand, making thinly veiled threats, but Posada maintained his composure and even facilitated search of his rooms by the soldiers. Peñalosa finally remarked that there were certain questions that he wished to discuss in private, and asked Posada to walk with him into the convent cloister. The following account of their conversation is taken from a long deposition made by the custodian a few months later—

And thus we went out to the cloister, and after we had gone out, he said to me with fury: "Father, can the custodian excommunicate the governor and captain general of this kingdom?"

To which I replied: "Sir, that depends on the [nature of] the case, for if it is one of those contained in canon law, yes, he can [do so], because then the ecclesiastical judge does no more than use and exercise through his office what is ordained in

22. Declaration of Friar Gabriel de Torija, June 3, 1664, and testimony of Peñalosa, Dec. 5, 1665. *Ibid.*

the [canon law] and what the Supreme Head of the Church commands.”

To this the said General Don Diego de Peñalosa replied: “If the custodian excommunicated me, I would hang him or garrote him immediately, and if the Pontiff came here and wanted to excommunicate me or actually did so, I would hang the Pontiff, because in this kingdom I am the prince and the supreme magistrate, and there is no one who may excommunicate the prince and supreme magistrate.”

I replied: “Sir, it is not necessary to bring the person and holiness of the Pontiff into such matters, for it is better to leave His Holiness on the supreme throne he occupies, with the due authority and respect which all faithful Christians must render to him and with which they regard his person. As for hanging him, he is absent; I am here for Your Lordship to hang, and I shall not be the first friar or priest to die in defense of Our Holy Mother the Roman Catholic Church.” . . .

And the above-mentioned General Don Diego, continuing with his replies and propositions, said to me: “Why does Your Reverence have pretensions of excommunicating me for having ordered Don Pedro de Chávez taken from the church of Santo Domingo and held prisoner?”

I replied: “Sir, as an ecclesiastical judge I am obliged to defend the immunity of the Church, and because terms had not been reached for proceeding in the matter judicially. I wrote two letters of supplication to Your Lordship, who, up to now, is not excommunicated nor declared as such. And with regard to the case concerning immunity, you may state through your attorney, proceeding in legal form, the reasons you had for taking [Durán y Chávez] from [sanctuary]. And if the reasons of Your Lordship were sufficient basis for doing so, there is no controversy, because the case is one of those contained in the law, as will be seen in the second part of the Decretals, in *Quest. 4, Cap. 8, 9, and 10*. And if the case is carried to the use of force it is not necessary to hang the Pontiff of the Roman Catholic Church, for by hanging me the affair may be concluded.”

And I replied in this way because he had stated to me for the second time the preceding propositions that he would hang the Pontiff. And to this the said General Don Diego de Peñalosa replied, raising with his right hand the cape and cloak he was wearing in order to show me the pistols he had in his belt, "Now then, we will consider this affair and Your Reverence and all the other custodians of New Mexico will learn what a governor can do; and therefore I order Your Reverence in the name of the king to go with me to the Villa where Your Reverence will see the difficulties cleared up."

I replied: "Sir, these matters need little action, if they are considered with prudence and judgment. There are many authors who clarify the manner in which ecclesiastical and secular judges must deal with them, and therefore neither contention nor anger is necessary."²³

After this fruitless argument, they returned indoors, and after further discussion Peñalosa announced that he wished the custodian to accompany him to Santa Fé that very night. Although Posada protested that the hour was late, the governor was adamant, and about midnight they set out for the villa.²⁴

The next morning, when they arrived in Santa Fé, Posada remarked that he would go to the convent, but the governor firmly insisted that he should have breakfast first at the Casa Real. Up to this point Peñalosa had not revealed his true purpose in bringing the prelate to Santa Fé, but this move, which was obviously designed to prevent Posada from setting foot on ecclesiastical ground, was a clear indication of his intention. But Posada realized that he had no choice, and he accepted the invitation. Peñalosa was also playing for time at this point, for during the night he had sent two soldiers ahead with orders to remove Durán and his nephew from the room in which they were imprisoned in the Casa Real and to have the room prepared for another occupant, and he wished to make sure that these instructions had been

23. *Petición e informe*, May 16, 1664.

24. *Ibid.*

carried out. After breakfast Posada again remarked that he would go to the convent, and the governor finally informed him that he would be held in the Casa Real and conducted him to the room so recently occupied by the prisoner whose release he was seeking to effect. Guards were placed at the door of the cell, which faced the patio, and at the entrance of another room connecting with it, and orders were given to permit no one to communicate with the prelate without the governor's consent. Two small field pieces were placed in position as a further precaution to prevent escape of the prisoner.²⁵

News of the custodian's arrest spread rapidly. Fearing a repetition of events of the Rosas period, when most of the friars were expelled from Santa Fé and the Blessed Sacrament was brought to the Casa Real, the guardian of the Santa Fé convent, Friar Nicolás Enríquez, closed the church and had the Host consumed. Similar action was taken by the clergy in some of the missions. Letters were also dispatched to the Holy Office informing the Inquisitors of what had occurred.

For nine days (October 1-9) Posada was held in confinement at the Casa Real. During this time the governor and prelate had many heated arguments concerning the authority of the latter as ecclesiastical judge of the province. Posada cited the privileges conferred by the papal bull *Exponi Nobis* of Adrian VI, the so-called *Omnimoda*, but Peñalosa insisted that these privileges had been revoked. Again and again the governor insisted that as representative of the Crown, he exercised superior authority in the province and that he would permit no prelate, bishop, or archbishop to institute legal action against him or subject him to ecclesiastical censure. He also accused Posada of inciting rebellion against civil authority. It was necessary, therefore, for the good of the province and the preservation of public peace to expel the prelate from the province.²⁶

25. *Petición e informe*, May 16, 1664, and testimony of various witnesses. *Proceso contra Peñalosa*.

26. Declaration of Friar Blas de Herrera, Dec. 12, 1663, and *Petición e informe*, May 16, 1664. *Ibid.*

From time to time friars from the Santa Fé convent were permitted to see the custodian, but always in the presence of some member of Peñalosa's entourage. Posada counselled his associates to refrain from any overt act, and to give the governor no excuse for hostile action. He also averted a serious dispute arising out of the governor's demand that the Santa Fé church should be reopened. The guardian of the convent had resisted Peñalosa on this point, because he believed that the governor and the soldiers who had participated in Posada's arrest had automatically incurred excommunication. But inasmuch as Peñalosa was insistent, Posada instructed the friars to reopen the church and admit the governor to mass. "I did this in consideration of the fact that the Church on certain occasions is accustomed to tolerate things that are necessary in order to avoid greater evils."²⁷

Peñalosa realized that it was necessary to build up some sort of legal case against the custodian before carrying out his plans, and an effort was made to find witnesses who would testify that Posada had infringed on the rights of civil authority and jurisdiction and had incited revolt. But the governor was unable to find more than one or two persons who would give testimony against the prelate, and within a few days it was apparent that the scheme had failed.²⁸

Consequently, on October 6 Peñalosa took action to bring about a face-saving settlement of the entire dispute. Discreet suggestions were made that some of the elder friars should make an appeal for the custodian's release, and thus give the governor an opportunity to grant their request as a special act of favor to the Order. When this method failed, Peñalosa wrote an urgent letter to Friar Joseph de Espeleta, then at Isleta, stating that "he was troubled and at no time would he appreciate a visit more than at present." On October 8 Espeleta and Friar Tomás de Alvarado, a former pre-

27. *Petición e informe*, May 16, 1664.

28. *Ibid.*

ate, arrived in Santa Fé, and in conference with the governor they worked out a compromise. It was agreed that all the papers that had been drawn up since the custodian's arrest should be placed in a sealed package, which would not be opened until after Peñalosa had stood *residencia* at the end of his term of office. Moreover, both Posada and the governor would agree not to mention the affair again or give any account of it to any person outside the province or to the authorities, civil and ecclesiastical, in New Spain. Under these conditions, Peñalosa promised that he would free the prelate and henceforth be his friend.²⁹

These terms were immediately communicated to Posada. At first he refused to consider them, because they represented a complete capitulation to the governor on the major issues at stake in the entire controversy. Durán was to be left in the governor's hands, and no censures of any kind were to be imposed for the violation of sanctuary or for the arrest of the custodian. But Espeleta and Alvarado urged the need of an immediate settlement, in view of the isolation of the province and the hostile attitude of the governor, and Posada finally instructed them to consult with the other friars in Santa Fé and bring back a report of their views. The conference at the convent apparently supported the views of Espeleta and Alvarado, and Posada felt constrained to accept the terms of settlement. He was informed, however, that Peñalosa expected him to take formal oath to fulfill the bargain. To the person who brought this message Posada stated that although he would take oath, since the friars had already agreed to it, he would do so verbally and without any intention that it was binding.³⁰

On the afternoon of October 9, Peñalosa, Espeleta, Alvarado, and several other persons gathered in the custodian's cell in the Casa Real, and the agreement was ratified. Papers relating to the incident were sealed in a specially

29. *Ibid.*

30. Declaration of Friar Tomás de Alvarado, Nov. 12, 1663, and of Friar Nicolás Enríquez, May 15, 1664; *Petición e informe*, May 16, 1664. *Proceso contra Peñalosa*.

marked package and delivered to Peñalosa who said that after his *residencia* he would burn it. The governor and prelate then took oath in the hands of Espeleta to keep the agreement, but Posada added the qualifying phrase, "insofar as possible." Later in the day Peñalosa released his prisoner and accompanied him to the gateway of the Santa Fé convent. The next day Posada left for Santo Domingo.³¹

The affair of September 30-October 9, 1663, constitutes a unique incident in the troubled annals of New Mexico prior to the Pueblo Revolt of 1680. In the past the custodians had frequently subjected the governors to ecclesiastical censure, and in a few outstanding cases they had been responsible for more drastic action against a provincial executive. Thus in 1613 Friar Isidro Ordóñez had seized Governor Pedro de Peralta and held him in jail for several months. The arrest and trial of López de Mendizábal by the Holy Office was the result of representations made by the friars. But the Posada incident is the only recorded case of the arrest of a custodian by a governor. Peñalosa had boasted that he would reverse the older tradition, and he made good his threat.

The failure of the governor to carry out his bold plan to expel the prelate indicates, however, that he had not cast off all fear of the power of the Church and the Holy Office. He realized that he was already involved in difficulty with the Inquisition because of the Parral embargo and other events of the preceding year. Moreover, it was inevitable that reports of Posada's arrest would eventually reach Mexico City, and that sooner or later the Holy Office would call him to account for such a flagrant violation of the privileges and immunities of its local representative. Expulsion of the prelate would provide further cause for complaint, and would justify more drastic punishment when the day of reckoning finally came. Consequently, it was wiser to abandon his plan and to negotiate a compromise. The agreement of October 9 was merely a truce, but it served to tie the prelate's hands for the present, at least so far as public

31. *Ibid.*

action was concerned, and it gave the governor time to plan his next move and to take appropriate action to guard his own personal interests.

IV

In October or November Tomé Domínguez de Mendoza returned to New Mexico with the news that his mission to Mexico City had been unsuccessful. Pending receipt of further information and clarification of the situation, the Holy Office had suspended all litigation over the Parral embargo. At the same time Domínguez undoubtedly informed the governor that his brother, Juan Domínguez de Mendoza, and other persons who had gone to Mexico in the autumn of 1662 had been summoned by the Holy Office to give testimony concerning New Mexican affairs. Juan Domínguez had also returned, perhaps in advance of Tomé, and he probably gave Peñalosa some warning of the Inquisitors' attitude.

These reports indicated that the Holy Office intended to make a thorough investigation of the events of 1662, and that the governor faced the prospect of prolonged litigation, if not more serious trouble, with that tribunal. There was also a strong probability that the remainder of López' property still in his possession would be embargoed unless he took immediate action to dispose of it. Moreover, Peñalosa had reason to fear that if he remained in the province until the arrival of his successor, who was expected in 1664, he would have to face serious *residencia* proceedings. He knew that many citizens had grievances, and he could not be sure that the prelate would feel bound by his oath on October 9.

Taking all these factors into account, it was imperative that he should leave New Mexico as soon as the necessary preparations could be made. Departure of the governor without express authorization of the viceroy would be a serious matter. There is some evidence, however, that Peñalosa had already asked and received permission to leave for New Spain without waiting for the arrival of his suc-

cessor.³² Toward the end of 1663 he began to put his affairs in order and to make plans for the journey.

Peñalosa made his plans with considerable care. Numerous documents were removed from the local provincial archive and placed with his personal effects for shipment to New Spain. It was undoubtedly his purpose to prevent damaging papers from falling into the hands of his enemies, and also to secure possession of documents that could be used for his own defense in anticipated litigation in Mexico City. The brief inventory of these papers that was made in 1665 at the time of Peñalosa's arrest by the Holy Office lists many items that would be invaluable to historians of New Mexico in the seventeenth century, and it is hoped that someday they may be found.³³

Realizing that Posada had made full reports of the dispute over the *encomienda* revenues of the New Mexico soldiers arrested by the Holy Office in 1662, Peñalosa took action to refute the charge that he had appointed personal associates as *escuderos* for the *encomiendas* of Diego Romero and Francisco Gómez Robledo. Titles of *escudería* were now issued to Cristóbal Durán y Chávez and Juan Domínguez de Mendoza, and antedated to May 4 and 7, 1662, respectively.³⁴

32. When Tomé Domínguez de Mendoza went to New Spain in 1663, Peñalosa gave him certain funds, part of which were to be paid to a man in Mexico City as a fee for presenting a petition to the viceroy asking permission for the governor to return to New Spain. A. G. P. M., Tierras 3286. On April 10, 1664, Francisco de Valencia gave testimony before Posada in which he referred to Peñalosa's departure from the province, "con licencia que desia tenia del Virrey." *Proceso contra Peñalosa*.

33. Some of the most important items included in the inventory of Peñalosa's papers made in 1665 are: (1) *Instrumentos judiciales y caussas que se fulminaron en el Nuevo Mexico contra algunos vezinos* (27 piezas); (2) *Libro de Governasion del Nuevo Mexico del Tiempo del Sr. Don Juan de Eulate* (49 folios); (3) *Autos criminales contra las perssonas de Diego de la Serra, Don Fernando de Chabes, y los dcmas conthenidas en ellos, condenados a muerte y por traidores por la fuga y delitos que contra los sussodichos contienen, 1643*; (4) *Vissita general del Nuevo Mexico y Padrones de Todas las almas xptianas* (24 piezas); (5) Legajo of 219 *instrumentos*, of which nineteen were *causas de oficio y a pedimento de partes*; (6) *Autos sobre lo acaesido en lo de los Chabes y Custodia del Nuevo Mexico, Año de 1663* (apparently the *pliego* formed and sealed on October 9, 1663); (7) *Libro de gobierno* of Peñalosa's term of office. The inventory also lists many other *legajos*, briefly described as containing letters, petitions, titles, etc., of which there were several hundred. A. G. P. M., Tierras 3286.

34. Declaration of Cristóbal Durán y Chávez, March 9, 1664. *Proceso contra Peñalosa*. Title of *escudería* for Juan Domínguez de Mendoza, May 7, 1662. Biblioteca Nacional, Madrid, MS. 19258.

His choice of Durán and Juan Domínguez is not without significance. As noted above in section II, Cristóbal Durán y Chávez had been arrested by the governor in August, 1663, and he was later sentenced to certain penalties. His uncle, Don Pedro, whose violent removal from sanctuary at Santo Domingo had caused the bitter quarrel with Posada, was later freed without penalties at the request of Tomé Domínguez de Mendoza.³⁵ Juan Domínguez, brother of Tomé, had been a partisan of López de Mendizábal and had participated in the Parral embargo. The choice of Cristóbal Durán and Juan Domínguez as *escuderos* for the Romero and Gómez *encomiendas* indicates that Peñalosa was motivated by a desire to appease persons who had been hostile to him in the past and who might be expected to file charges against him during *residencia* proceedings.

Sometime in November Peñalosa attempted a maneuver designed to strengthen his hand in litigation over the Parral embargo. He sent word to Posada inviting him to come to Santa Fé and certify the property of López stored at the Casa Real. Although this invitation was made in the guise of a friendly gesture, it was merely an attempt to put the custodian on record that the property, or at least most of it, had not been sent to Parral and was still in Santa Fé at that time. But Posada refused to fall into the trap. He replied that if the governor had property that had belonged to López it was subject to embargo by the Holy Office, and that he would certify the goods only on condition that they should be turned over to a responsible person as depository, pending receipt of instructions from the tribunal in Mexico City.³⁶

But Peñalosa had no intention of losing the profit he hoped to derive from this property. Most of the goods were packed in the wagons that were made ready to take the governor's effects to New Spain. A few items were sold to local citizens. Part of the livestock seized in 1662 or bought at the fictitious auctions had been sent to Parral. The re-

35. *Proceso contra Peñalosa*.

36. Declarations of Friar Blas de Herrera, Dec. 14, 1663, and Friar Nicolás Enríquez, May 15, 1664. *Ibid.*

mainder was now turned over to Diego González Lobón who was apparently preparing to drive herds of stock to Parral.³⁷ It would be convenient, however, to be able to pretend that part of the property was still in deposit in New Mexico, and to this end he notified Pedro Lucero de Godoy that he had been chosen as depository. When Lucero appeared to receive the goods, he found that what Peñalosa planned to turn over was "trash," and at first refused to "dirty up my house" with it. He eventually accepted certain items worth only a few pesos.³⁸

Before leaving for New Spain, Peñalosa appointed Tomé Domínguez de Mendoza to serve as governor *ad interim* until the arrival of his successor. Finally, in February or March, 1664, he set out on the long journey to Mexico City. On the way he met Juan de Miranda, the new governor, and turned over *vales* for 3500 pesos, representing debts owed him by citizens of New Mexico, authorizing Miranda to act as collector for the same.³⁹ The date of Peñalosa's arrival in Mexico City is not known, but it was probably sometime during the following autumn.

V

As early as July 12, 1663, Posada had started to take sworn testimony concerning the conduct of Peñalosa. The events of August-October of that year interrupted the investigation, and for some time thereafter he had to proceed with caution in order not to arouse the governor's suspicions. After the departure of Peñalosa for New Spain, he became more active and received the declarations of numerous persons, lay and ecclesiastical. By June 8, 1664, he had examined twenty-six witnesses who gave a mass of testimony concerning all phases of Peñalosa's activities. Copies of the declarations were sent to the Holy Office soon thereafter. During the next fifteen months several more

37. *Proceso contra Peñalosa*. Also declaration by Peñalosa, June 23, 1665. A. G. P. M., Tierras 3286.

38. *Proceso contra Peñalosa*.

39. A. G. P. M., Tierras 3286.

witnesses were examined. In the autumn of 1665 these declarations and the originals of those that had been sent off in the preceding year were transmitted to the Holy Office where they were incorporated in the bulky file of documents in the Peñalosa case.⁴⁰

Most of the evidence dealt with the procedure adopted by Peñalosa to acquire possession of López' property, the disputes between Peñalosa and Posada concerning the revenues of the encomiendas of Romero, Anaya, and Gómez Robledo, the governor's reaction to the embargo at Parral, the Durán case, and the arrest and imprisonment of Posada in September-October, 1663. Interspersed in this evidence were bits of information concerning other phases of Peñalosa's conduct which are summarized below.

(1) On his way to New Mexico in 1661, Peñalosa formed a liaison with a young woman in Parral, who accompanied him to Santa Fé and lived with him in the Casa Real. The governor made no pretense of trying to conceal this illicit relationship. On the contrary, he publicly accompanied his mistress to mass in the Santa Fé church where, it was alleged, she was given a seat of honor in front of the wives of the local citizens. It was reported that on one occasion they even went to confession together, Father Freitas confessing one of them and Father Guevara, the other. The brazen manner in which Peñalosa openly paraded his relations with the young woman caused considerable scandal, and before long the whisperings of angry citizens and friars reached his ears. According to the testimony of Friar Blas de Herrera, the governor asserted:

The friars mutter about me that I keep my mistress in my house. It is true that I have her there and that I brought her there, and that in the church she sits in the most important place of all the women, in a special and unique place. She is the mother of my daughter, and my mistress, and indeed she is most deserving of the place, and not only to sit in it but to be put in a gilded crystal tabernacle, for if

40. *Proceso contra Peñalosa.*

in Mexico the greatest dignitary or lord did not show her the greatest esteem for being my mistress, I would make him repent it in the greatest way imaginable.⁴¹

(2) Evidence concerning the governor's misconduct was not limited to tales concerning his mistress but also included reports of flagrant immorality with various women of the province. Likewise, evidence was given illustrating the extremely lewd and obscene speech in which he delighted to indulge.

(3) It appears that one of Peñalosa's favorite pastimes was to intone passages from prayers and chants, mimicking the friars. Thus it was reported that on a certain occasion in the presence of several friars, the governor intoned a *Gloria* and the *Credo*, and asked his listeners how they liked his performance. Assured that it was well done, he replied: "I was a cleric in my [native] land, and I performed marriages!" He also delighted to engage in debate on theological topics, including such subjects as the nature of the Trinity and technical problems relating to the adoration of the Cross and holy images. In one of his more playful moments he called for discussion of the question whether God has a beard.

(4) Serious charges were also made concerning certain alleged cases of cruel oppression of the Indians. Thus Capt. Andrés López Zambrano, *alcalde mayor* of the Keres jurisdiction, testified that in September of 1663, Peñalosa visited the pueblo of Cochití and proposed to carry off a nine year old Indian girl as a servant for the Casa Real. The mother of the child and her uncle, governor of the pueblo, made such tearful protest that he relented. Then later in the day, he summoned the uncle and asked for some gift in lieu of taking the girl, and a sum of twenty-six pesos was agreed upon, which the uncle paid by handing over three cows, mantas, and hides. Commenting on this incident, López Zambrano remarked that it was "great tyranny" thus to

41. *Ibid.*

force a mother and uncle to ransom "their own blood," especially since the governor could have bought an *Apache de depósito* for twenty-six pesos. The witness also declared that by order of Peñalosa he was obliged to go to Sia and take an Indian girl of eight or nine years from her mother and bring her to Santa Fé for service in the Casa Real; and he cited a similar case involving a girl from Taos, whom the governor took with him to New Spain. Likewise, he testified that Peñalosa had taken a poor crippled girl, the daughter of Christian Indian parents, and sent her as a gift to the viceroy's wife, pretending that she was an Apache.⁴²

When called upon to answer these charges during his trial by the Holy Office, Peñalosa challenged the accuracy of López Zambrano's testimony. He denied that he demanded money of the governor of Cochití, insisting that the sum he received was a gift, such as the Indians were accustomed to give provincial governors when they visited a pueblo. The girls taken from Sia and Taos were orphans whom he offered to care for, one of whom he later sent to Mexico to be reared by one of his relatives. The crippled girl was a *genizara*, daughter of an Apache-Quivira mother and a Pueblo Indian, and he took her to raise at the suggestion of the Santa Fé family who had her. Thus he had been inspired to do good rather than by any need for such servants, because he had so many Apache captives that he gave away more than a hundred!⁴³

VI

The new governor, Juan de Miranda, arrived in New Mexico in the spring of 1664. On May 16 Posada presented a long petition of complaint, with numerous supporting documents, concerning the Durán affair and the incident of September 30-October 9, 1663. Copies of these papers were sent to the Holy Office a few weeks later.⁴⁴

In 1665 Peñalosa testified that when he met Miranda in Nueva Vizcaya in the preceding year, his successor de-

42. *Ibid.*

43. *Ibid.*

44. *Ibid.*

manded that he should agree to stand *residencia* in absentia, and that he should give power of attorney to Tomé Domínguez de Mendoza to act as his representative. Believing that such proceedings, if held without express commission of qualified authority, would have little validity, and in order not to risk delay in his journey to Mexico City, he acceded to Miranda's demand. Using this authorization, Miranda forced Domínguez to stand *residencia* for Peñalosa, carrying on the proceedings in an arbitrary manner. Complaints against the new governor were filed by the *cabildo* of Santa Fé, and he was removed from office. The *real acuerdo* later granted Peñalosa a two-year term in which to stand *residencia* in proper form.⁴⁵

This version is in sharp contrast with another account given by Governor Antonio de Otermín in 1682 in a letter to the viceroy describing the hostility and opposition experienced by some of his predecessors. Referring to the Miranda case, Otermín wrote:

In the year 1665 Tomé Domínguez de Mendoza brought charges against Don Juan de Miranda during his first term of office, and made such grave complaint against him that he was deprived of office, imprisoned in the pueblo of Picuries with five guards, and later taken with the same [guards] to the *casas de cabildo* of the villa. All his property was seized, and [he was tried] in an iniquitous *residencia*, with thirty-three secret witnesses and many public demands, all of them false. He went to Mexico [and] appealed on the grounds of injustice. His property was returned, and he was later reappointed to this government.⁴⁶

These conflicting reports show, in any case, that Miranda's administration was stormy, and there can be little doubt that the leader of the opposition was Tomé Domínguez de Mendoza. Because of complaints filed in Mexico City, he was removed from office before the expira-

45. A. G. P. M., Tierras 3286.

46. Otermín to the viceroy, San Lorenzo, April 5, 1682. A. G. I., Mexico 53.

tion of his term, and his successor, Fernando de Villanueva, assumed authority some time in the summer of 1665. Unfortunately the record of Miranda's *residencia* is lost. The reappointment of Miranda as governor a few years later implies, however, that he eventually gave a satisfactory account of his conduct to the viceregal authorities.

Friar Alonso de Posada's services as custodian and commissary of the Holy Office came to an end in the summer of 1665, when he was succeeded in both offices by Friar Juan Paz. In the following autumn he returned to Mexico City with the mission supply caravan. Soon after his arrival in the capital in the following year he was summoned before the Holy Office to certify the authenticity of the numerous reports he had sent to the tribunal and to give testimony concerning his relations with Peñalosa.⁴⁷ Little is known concerning his later history. In 1672 he was voted the honors and privileges granted by the Order to ex-custodians of New Mexico.⁴⁸ In 1686 he was still in active service, and held the office of procurator-general of the Franciscans in Mexico. It was in that year that he wrote his well-known report on geography and ethnography of the Southwest.⁴⁹ But the years spent in New Mexico as custodian and commissary of the Holy Office constitute the most important phase of his career. His energy and fearless leadership during that period mark him out as one of the ablest prelates of the province in colonial times.

47. *Proceso contra Peñalosa*.

48. Biblioteca Nacional, Mexico, MSS., Leg. 9, doc. 8.

49. Printed in *Documentos para la historia de México*, 3a série (México, 1856).

(To be continued)