Atrisco and Las Ciruelas 1722–1769

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Two hundred years ago the settlers on the margin of modern Albuquerque engaged in a legal battle over boundaries of their holdings and title to the land itself. From the litigation and testimonies by prominent eighteenth-century New Mexicans who had an interest in Atrisco, we learn much about settlement patterns, land holding, and economic conditions in the valley. The competition for land suitable both for agriculture and sheep raising demonstrates a developing and viable economy. It also reflects the increased demands on the land by a growing population.

There were settlers in the Atrisco valley many years before the Pueblo Rebellion of 1680. The founders of the seventeenth-century Durán y Chávez family probably had estates in the Río Abajo area as early as the 1660's, and it is possibly true that Fernando Durán y Chávez II, the only member of the clan who returned to New Mexico after the Revolt of 1680, reoccupied ancestral lands stretching from Bernalillo through the Atrisco area during 1681-1703. In 1662 the controversial governor of New Mexico, Diego de Peñalosa, tried to make a "formal settlement" at Atrisco and proceeded to recruit twelve or fifteen persons who offered to do so. Later the signatures on the agreement were called forgeries. Apparently Peñalosa had attempted a land-grab in the Río Abajo. The Durán y Chávez family had been involved in the bitter struggle for power between the friars and the governors which characterized the decades before the Pueblo Rebellion, and their shifting political alliances may well have had something to do with the loss of family holdings in the Río Abajo. The Peñalosa maneuver
of 1662 might explain why the governor and Don Pedro Durán y Chávez had an argument leading to Pedro’s arrest in 1663 and Peñalosa’s violation of the right of asylum when Pedro escaped from his guards, persuading an Indian to carry him into the Santo Domingo church. We know that Juan Domínguez de Mendoza had an hacienda in “the jurisdiction that they call Atrisco” as late as December of 1681, and that members of his family had helped the Durán y Chávez secure Pedro’s release in the 1663 fracas.

Whatever the pattern of settlement may have been before 1680, the continuity of Atrisco history was broken by the retreat of the Spaniards at the time of the Revolt. The earliest recorded date for the founding of Atrisco is 1703. Many years later, in 1776, Juan de Candelaria recorded his recollections of the founding, which had taken place when he was a boy of eleven:

> Atrisco was settled in 1703, in the month of March. Don Pedro Cubero Rodríguez was the governor. It covers about two leagues of ground with the seat of government at Bernalillo, but since the founding of Albuquerque in 1706, the government was transferred there. From its founding Atrisco has been Spanish. It is 23 leagues from Santa Fe to the north.

After Atrisco came under the jurisdiction of Albuquerque, it was often referred to as “Atrisco of Albuquerque” in the documents. Thus the permanent occupation of the valley of Atrisco was really part of the development of the Alcaldía Mayor of Albuquerque in the first decade of the eighteenth century. By 1744 Fray Miguel Menchero, Procurator of the Franciscan Custody of the Conversion of St. Paul of New Mexico, stated that both Albuquerque and Atrisco together had more than one hundred families, and that the major economic activities were farming and weaving. Between 1744 and 1776 the population grew steadily. Although some arable lands were still unplowed and others fallow, the families of the valley became more conscious of the value of land and the need to conserve it for their descendants.

One serious controversy between two branches of the Durán y Chávez family at Atrisco especially illuminates inter-family
rivalry and the pattern of kinship in the eighteenth-century Rio Grande valley. And of course it exposes some unscrupulous adventurers. The following essay is a case study in problems of New Mexico landholding during the eighteenth century. Subdivision of land, nebulous boundaries, questionable titles, costly litigation—all these difficulties are exemplified in the Atrisco case. Of course there were other Atrisco land disputes in the eighteenth century peripheral to the Ciruelas controversy, and many problems of titles, boundaries, entrances and exits were not resolved until the late nineteenth century or after. This study of the battle between two families for the possession of Las Ciruelas is but a prototype for future litigation.12

It all began with the sale of a piece of land on November 15, 1757. José Durán y Chávez, then living in El Paso, appeared before Antonio Baca, Alcalde Mayor of Albuquerque, and reported that he had agreed to sell to Jacinto Sanchez lands which he and his family had inherited from their father, Bernardo Durán y Chávez, to whom they had been willed by Fernando Durán y Chávez II. The sale price was 550 pesos; according to sworn statements, there were no claims outstanding against the property. Therefore Alcalde Baca attested to the legality of the transfer. José’s brother Juan was present at the transaction and gave his consent to the sale on his own behalf and with power of attorney for the children of his sister Lucía. Other members of the family, including a cousin, Andrés Antonio Romero, witnessed the document.13

A decade passed, and some of the land changed hands—by inheritance, division, and resale. During that time José Hurtado de Mendoza, an adventurer with legal training, from Jerez de la Frontera in Spain, via Jalapa and Chihuahua, came to Atrisco. In March 1766 he married Feliciana, the daughter of Jacinto Sánchez and Efígenia Durán y Chávez, and a son was born in 1767. Jacinto Sánchez died sometime between 1757 and 1769. During 1767 and 1768 Hurtado de Mendoza made two journeys to Chihuahua to investigate a rape case. Probably he obtained Fernando Durán y Chávez II’s will, or a copy of it, at this time.14
He must also have arranged for his wife's great-uncle, Nicolás Durán y Chávez, to make a statement about property in Atrisco known as Las Ciruelas. Don Nicolás claimed that from Las Ciruelas southward to the lands of the Durán y Chávez children, the property belonged to the heirs of his brother Bernardo. He insisted that this area did not belong to the Romero family, who were occupying it at that time. Nicolás made it clear that the irrigation ditch currently in use was not the original ditch through the Chávez estates, but one that he himself and his brother Pedro had dug after the division of the property left by their father, Fernando Durán y Chávez II. Nicolás claimed that this acequia ran through the Bernardo Chávez inheritance.\textsuperscript{15} In light of subsequent testimony and other official documents entered into evidence, it appears that Don Nicolás may have trifled with the truth.

Having obtained this statement from Nicolás, Doña Efígenia Durán y Chávez de Sánchez, Hurtado de Mendoza's mother-in-law, began legal proceedings over the ownership of Las Ciruelas and the adjacent properties.\textsuperscript{16} In her plea to Francisco Trebol Navarro, the Alcalde Mayor of Albuquerque, Efígenia described the sale of the land to her husband and the way the boundaries were determined. Jacinto Sánchez had been confined to bed on the day of the survey, but her brother, Diego Antonio Durán y Chávez, was present when the land was measured.\textsuperscript{17} Doña Efígenia went on to relate that even though the land clearly belonged to her husband, Felipe Romero, who lived nearby, had sold to Ignacio Romero a piece of the plot divided by the acequia. Efígenia had protested and Romero agreed to give her another piece of land in exchange if it turned out that he was not the legal owner of the property he had transferred to Ignacio. Nevertheless, Romero had continued to sow the land, which was not his, and this situation was prejudicial to her children and heirs. Now that more and more ditches and roads were being made, and more people were crossing the land on foot and horseback, the actual boundaries would become increasingly difficult to prove. She begged the Alcalde to establish the ownership of this property.
Alcalde Trébol initiated an investigation of the ownership of the Atrisco lands on April 12, 1769. The following day he summoned most of the interested parties to testify at the site. Doña Lucía Ana Durán y Chávez, widow of Felipe Romero and mother of Andrés Antonio Romero, was living in Las Ciruelas and farming the lands she contended that she had inherited from her father, Don Antonio Durán y Chávez.18 Efígenia and her son-in-law, Hurtado de Mendoza, claimed that Lucía Ana was living on land inherited by the children of Bernardo Durán y Chávez and sold in 1757 to Efígenia’s husband, Jacinto Sánchez. This meant that the chief point at issue was not what land was sold in 1757, but what land Bernardo’s children had inherited in the early eighteenth century. The location of acequias, roads, neighboring properties and fields as they were when Fernando Durán y Chávez II made his will on February 11, 1707,19 was of critical importance. Whatever his reasons, José Hurtado de Mendoza tried to muddy the waters at every turn. It was very fortunate for Doña Lucía Ana Durán y Chávez that her son, Andrés Antonio Romero, was a competent opponent for the interloper.

Trébol Navarro’s Atrisco investigation of April 1769 was brief and well organized. He required José Durán y Chávez, who had sold the Bernardo estate in 1757, and many others to testify. They went to the ruined house of old Pedro Durán y Chávez, on the margin of Las Ciruelas, to begin the reconnaissance. Don Pedro Gómez Durán y Chávez20 was sworn in, as were Bernardo Durán y Chávez (son of Nicolás), Doña Lucía Ana, and Ignacio Romero. The three men attested that the heirs of Bernardo Durán y Chávez had sold their father’s lands in Atrisco to Jacinto Sánchez—a body of land between the Camino Real and the ruined house on the east, to the boundaries of Nicolás and Pedro de Chávez on the south, along the acequia “that runs at the end of Pedro de Chávez’s land.”

Lucía Ana Durán y Chávez de Romero exhibited to Trébol a document executed by Alfonso Rael de Aguilar, Lieutenant General of the Kingdom of New Mexico until 1735. This writ con-
PERSONS INVOLVED IN THE 1769 PROCEEDINGS

(Only members of the Durán y Chávez family directly involved are included.)

Litigants capitalized.

<table>
<thead>
<tr>
<th>Bernardo Durán y Chávez</th>
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<tr>
<td>José Durán y Chávez</td>
</tr>
<tr>
<td>Juan Durán y Chávez</td>
</tr>
<tr>
<td>(sellers in 1757)</td>
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<tr>
<td>Lucía Durán y Chávez</td>
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</tbody>
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| Pedro Durán y Chávez    |
|                        |
| (witness in 1722)       |
| Efigenia Durán y Chávez |
| m. Jacinto Sánchez     |
| (buyer in 1757)        |
| Feliciana Sánchez      |
| m. José Hurtado de Mendoza |
| Diego Antonio Durán y Chávez |
| (witness in 1769)      |

| Antonio Durán y Chávez  |
|                        |
| (petitioned for ownership of Las Ciruelas in 1722) |
| Lúcia Ana Durán y Chávez |
| m. Felipe Romero       |
| (witness in 1757)      |
| Andrés Antonio Romero  |
| (witness in 1757)      |

| Francisco Durán y Chávez |
|                         |
| (witness in 1769)       |
| Ignacio Durán y Chávez  |

| Nicolás Durán y Chávez  |
|                        |
| (witness in 1722)       |
| Bernardo Durán y Chávez |
| (witness in 1769)       |

| Pedro Gómez Durán y Chávez |
|                          |
| (witness in 1722 and chief witness for Hurtado de Mendoza in 1769) |

**Others involved in some way with suit:**

- Alfonso Rael de Aguilar—Lieutenant General of the Kingdom of New Mexico in 1722.
- Isidro Sánchez Vañales Tagle—Military aide to Rael de Aguilar in 1722; chief witness for Andrés Antonio Romero in 1769.
- Antonio Baca—Alcalde Mayor of Albuquerque in 1757.
- Ignacio Romero—Buyer of land from Felipe Romero sometime between 1757-67.
- Francisco Trébol Navarro—Alcalde Mayor of Albuquerque in 1769.
- Pedro Fermín de Mendinueta—Governor of the Kingdom of New Mexico in 1769.
- Marcial Zamora and Juan de Candelaria—Witnesses in 1769.
firmed that Fernando Durán y Chávez II had given to Antonio Durán y Chávez, Lucía's deceased father, a plot of land bordering on the Nicolás farm. This gift was not a part of Fernando's will, but a separate document. According to Alcalde Trébol, Bernardo's heirs hotly contested the validity of Lucía Ana's document, contending that they knew of no land that had been left to Don Antonio by their grandfather, other than the farm called La Barranca. Because the Rael de Aguilar document had no standing as testamentary disposition, the Alcalde decided to dispossess Lucía Ana Durán y Chávez de Romero of the land in dispute. Ignacio Romero, who had bought land which the seller did not own, was also dispossessed. On April 13, 1769, Trébol Navarro assigned the lands between the Camino Real, the acequia, and the Nicolás property to Doña Efegienia Durán y Chávez, widow of Sánchez. It appeared that the scheming son-in-law had won the battle!

On that same day Lucía Ana Durán y Chávez accused her uncle, Pedro Gómez Durán y Chávez, of perjury, because his name appeared as witness to the Rael de Aguilar document of some four decades before. The old man angrily denied that he had ever signed such a paper and pronounced it a forgery. José Hurtado de Mendoza lost no time in petitioning Governor Fermin de Mendinueta for approval of the Trébol Navarro decision. Hurtado put special emphasis on Pedro Gómez Durán y Chávez's repudiation of the Rael de Aguilar document. On April 19, 1769, the Governor read the proceedings and ratified the Alcalde's decision, leaving Lucía Ana free to institute further proceedings if she saw fit to do so.

Andrés Antonio Romero assumed legal representation of his mother and went to Santa Fe to start a powerful, and in the end, victorious, campaign against Doña Efegienia and her son-in-law. The first sentence of Romero's initial plea before the Governor showed that he was aware of Hurtado de Mendoza's stratagem. He pointed out that the land had been sold to Jacinto Sánchez in 1757, but the transfer had not been made until the present year, 1769. He complained that the José Durán y Chávez who sold his father's land did not live in Atrisco and had no personal knowledge
of boundaries there. He made it clear that the "considerable piece of land" taken from his mother had been in the possession of her family since 1722, when his grandfather, Antonio Durán y Chávez, was the owner. Even before that time the tract had been held in common and was never part of the Bernardo Durán y Chávez estate. With admirable logic, Romero explained that Bernardo had died in 1705, a decade before Fernando II's death, and, as a consequence, no one knew the exact location and boundaries of the lands as they would later be decided by inheritance.

The problem of the acequia at Las Ciruelas occupied much of Romero's brief. He quoted Fernando II's will on the subject: "I leave to the children of my son Bernardo a plot of land that runs from Las Ciruelas to Pedro's house and has an irrigation ditch as its boundary." Romero explained that the land taken from his mother was on the opposite bank of the acequia, and that Fernando's will set no boundaries on the vacant land to the east of the ditch. As a matter of fact, the will failed to mention the land to the east. He submitted the Alfonso Rael de Aguilar writ, signed by Pedro Gómez Durán y Chávez, still living, and Pedro and Nicolás Durán y Chávez, now deceased. He contended that his grandfather's brothers, as settlers of the Atrisco valley, would never have signed the document had it not been true that Antonio owned the land. Romero accused Hurtado de Mendoza of using selections from Fernando's will in his plea, whereas the whole document was needed to ascertain the truth about boundaries and ditches. Romero claimed that his deceased father, Felipe Romero, had promised when he sold part of Las Ciruelas to Ignacio Romero, to give another plot in exchange to the Sánchez; although the only question of his right to sell the property was Jacinto Sánchez's verbal statement. On April 29, 1769, Governor Pedro Fermín de Mendinueta examined the Rael de Aguilar document. According to this paper, Alfonso Rael de Aguilar, Sargento Mayor and Lieutenant Governor of the Kingdom of New Mexico, certified that Antonio Durán y Chávez had appeared on April 27, 1722, and informed him of his father's will, executed and signed before the Alcalde Mayor of Albuquerque, Martín Hurtado, on February
11, 1707. The will divided lands in the Atrisco valley, including Antonio's lands in the area called La Barranca, among the children of Fernando Durán y Chávez II. Antonio claimed that his father had forgotten to include in his testament another plot of land which he had intended to leave to Antonio. Now, in fact, Antonio was using this land—a section bordering on the properties of Nicolás and Bernardo—as his own.

Don Antonio told Rael de Aguilar that his mother and all the heirs recognized his ownership of this land and were willing to give sworn testimony to that effect. Rael de Aguilar reported that they went to Atrisco and heard the statements of Antonio's mother, Lucía Hurtado, widow of Fernando II, and Antonio's brothers Pedro, Francisco, Nicolás, and Pedro Gómez Durán y Chávez.
With their permission and approval, Rael de Aguilar gave Antonio legal title to and possession of the land bordered on one side by the acequia and on the south by the lands of Pedro and Nicolás. The three brothers—Antonio, Nicolás, and Pedro Gómez—signed the document. Rael de Aguilar closed his report with a description of the ancient ceremony by which possession was given. He raised his hand and stepped off the boundaries, and "as a sign of royal possession granted, stones were thrown and grass was pulled up, along with other acts." Isidro Sánchez, a military aide to Rael de Aguilar, was also present and signed the document. Doña Lucía Ana and Andrés Antonio Romero were indeed fortunate that Isidro Sánchez was still alive in 1769 to testify to its authenticity.

José Hurtado de Mendoza went to great trouble in his attempt to undermine the validity of the 1722 document. He began with a lengthy rebuttal of Romero's brief, drawing up an interrogatory for the questioning of the witnesses to be presented on behalf of Doña Efigenia, in order that the testimony might be complete before Governor Fermín de Mendinueta reviewed the case. Hurtado de Mendoza may have been stalling for time. He had planted the disputed land and was waiting to harvest it.

Hurtado's arguments were rather persuasive. He protested the lack of a formal title to Las Ciruelas and its lands, and he insisted that any judge empowered to execute such an instrument would have filed the original in the governmental archive. Playing upon Fermín de Mendinueta's vanity, Hurtado pointed out that authority to grant land was a prerogative of the governor, not a power that could be delegated to, or usurped by, lesser officials. Hurtado claimed that Rael de Aguilar was not qualified to act as he did. He challenged the story that Fernando II had forgotten to specify in his will "a considerable piece of land" that belonged to Antonio. The testament had been made by a man of sound mind; this was not the kind of thing "one forgets." Hurtado dismissed the story as ridiculous. He then asked why Antonio had delayed from 1707 to 1722 before initiating action—at a time when Bernardo's children were no longer in Atrisco. Hurtado claimed that the signatures on the writ had been modified or forged.
The question of the acequia was crucial. Hurtado staked his entire case on the claim that the original acequia was the one which circled the well east of Las Ciruelas and ran to the farm lands of Pedro Gómez. The claim that this “Arbolito Acequia” was a boundary reinforced his contention that Las Ciruelas and lands on both sides of the Camino Real were part of the Bernardo Durán y Chávez inheritance. He made use of “expert witnesses” to prove that Romero’s ditch (the Pedro de Chávez acequia) had been dug much later by Nicolás Durán y Chávez and Pedro Durán y Chávez.

Hurtado also intended to cast doubt on the integrity of Lucía Ana’s son. He related that Andrés Antonio Romero, as well as his father Felipe, had witnessed the 1757 sale of the Bernardo Durán y Chávez lands. Hurtado charged that they had not raised any question about the boundaries at that time because they knew the disputed territory was part of the Bernardo properties. Hurtado said the offer to give his mother-in-law another plot was proof that Felipe Romero was not certain of his ownership of the land he sold to Ignacio Romero. He criticized Andrés Antonio for “malicious and frivolous” conduct in trying to confuse and obstruct justice. How dare he contradict Pedro Gómez Durán y Chávez, the only living son of Don Fernando II? Obviously he must be the most reliable and knowledgeable person now living on the entire history of Atrisco landholding.

On May 13, 1769, Trébol Navarro heard José Durán y Chávez’ testimony when he was questioned in accordance with Hurtado’s interrogatory. José contends that even though he had been absent from Atrisco for many years, he remembered very well the lands inherited by his father Bernardo. Furthermore, he had gone from El Paso to Atrisco in 1757 to ask his uncle Nicolás for assistance when he and his brother Juan sold the land to Jacinto Sánchez. Nicolás helped him to delineate the proper boundary lines. As a long-time resident of Atrisco, Don Nicolás had accurate knowledge on this matter. In November 1757 they had established the fact that the “Arbolito Acequia” was the property line. Although it had not been used for many years and was partially filled in, it
was clearly discernible. José testified that his uncle Pedro had also helped in the demarcation, and that he had certified to José that the Chávez brothers had dug the "Pedro Chávez Acequia" (Romero's boundary) years after their father's death in 1716. All of Hurtado's witnesses swore that Antonio Durán y Chávez had never had any land in the area except the La Barranca tract. They also denied that there had ever been a land grant judge (juez de posesión de tierras) in Atrisco.

Don Pedro Gómez Durán y Chávez attested to all these things and more. As the only living son of Fernando II, he gave the primary testimony. Pedro Gómez made his deposition in Tomé on May 18, 1769. He claimed that even though he was 65 years old and not feeling well, his mind was sound, especially in matters of family history. Nevertheless, most of Pedro Gómez's statements were vague. He swore that the lands opposite the house of his grandfather (Pedro Durán y Chávez I) had all belonged to the heirs of his brother Bernardo. He partially substantiated Hurtado's contention that the "Arbolito Acequia" was a boundary, but he could not give precise information on its course. He said that a second ditch was dug after his father had died. When shown the Rael de Aguilar document conferring land on Antonio, he denied that it was genuine because he had never used Gómez in his signature. Later Governor Fermín de Mendinueta was to discover that information given by the head of the family was untrustworthy. It appeared that Hurtado de Mendoza had succeeded in confusing the issues once again!

Hurtado de Mendoza concluded his second brief to Alcalde Trébol by saying that there was no doubt about the location of the original ditch—the "Arbolito Acequia," old and unused and partially filled with dirt, was the boundary of the lands his father-in-law had bought from the Bernardo Durán y Chávez family. He pronounced spurious Doña Lucía Ana's instrument of possession to Las Ciruelas. Nevertheless he demanded that Trébol Navarro require Lucía Ana to present the patent for closer study.

Romero lost no time in replying, taking the Hurtado brief apart, testimony by testimony and argument by argument. Only
when this was done could he play his trump card! Romero claimed that four decades ago Alfonso Rael de Aguilar, as Lieutenant Governor of the colony, had given possession of the Las Ciruelas tract to Antonio Durán y Chávez. Present at the ceremony were Don Antonio’s mother and her other sons and daughters. Pedro, Nicolás, Pedro Gómez, and Isabel all declared the land to be Antonio’s property. In 1722 they could have taken action to block conveyance of title had they wished to do so. Now, some forty-seven years later, the surviving brother, Pedro Gómez, was trying to invalidate by a feeble declaration (con su declaración caduca) a document which he had signed before a competent judge in 1722. Romero contended that Pedro Gómez was not in his right mind and that his testimony had to be discounted. He also challenged the veracity of Nicolás’s son Bernardo, because he “swore that he was the eldest son of Nicolás de Chávez,” which was not so. Romero produced the genealogy. As for the other members of the Chávez family testifying for Efígenia and Hurtado, Romero dismissed them as relatives prejudiced in her favor. He singled out one of them as a “genízaro” incapable of understanding the seriousness of a legal oath!

Then the coup de grace! Romero presented sworn testimony by a living witness to the family gathering in 1722, the signing of the Rael de Aguilar document, and the ceremony giving Antonio possession of the land. Isidro Sánchez Vañares Tagle, Lieutenant of the Pueblos of Jémez, Zia, Santa Ana and the Post of Bernalillo, wrote that he had gone to Atrisco with Rael de Aguilar in 1722 to attend to the Durán y Chávez matter. He swore that Rael de Aguilar had had full power to make property settlements and give possession to land, faculties granted him by the Governor and Captain General of New Mexico. All the heirs were gathered at the house of Antonio Durán y Chávez in Atrisco to discuss their father’s will. One piece of property was found to be vacant and bordered on Antonio’s lands. With the consent of the others, Antonio petitioned Rael de Aguilar for legal possession. Sánchez swore that an investment ceremony took place, and he gave a clear delineation of the boundaries: to the west, the acequia that runs
in front of the Pedro de Chávez house; to the east, the Camino Real; to the south, the lands of Nicolás de Chávez; and to the north, the same acequia where there is a crossing near a small apple tree. Sánchez Vañares Tagle ended his statement by declaring that Alfonso Rael de Aguilar did this kind of legal work in land matters all the time (cada día), and that a search of the Santa Fe archive would surely prove this. Sánchez signed his testimony on June 7, 1769, in the presence of Antonio Baca, Manuel Sáenz Garvizú, as witnesses, and of Alcalde Trébol Navarro, on June 8.

Before taking final action in the Atrisco case, Alcalde Trébol felt the need of additional testimony to strengthen or weaken the new evidence presented by Romero. Two Chávez men from Atrisco were summoned to give their views and recollections about the boundaries in dispute and the acequia. Diego Antonio Durán y Chávez, 45 years old, testified under oath that it was common knowledge that the disputed land had lain fallow until a few years ago, when Felipe Romero began to use it and later sold some of it to Ignacio Romero. Furthermore, Diego Antonio said that the acequias at present were the same as they had been from the days of his childhood. He added a damaging bit of information to the effect that Bernardo's heirs had told Jacinto Sánchez, before the 1757 purchase, that there was some doubt about the title to the disputed tract of land. He had heard José and Juan maintain that they were selling no more than the land inherited from their father as described in Fernando II's will. Ignacio Chávez, 43 years old, testified that the territory in question had been unoccupied (común de Atrisco) until recently. Felipe Romero had sold part of the land to Ignacio Romero under the 1722 title. Ignacio also swore that the Pedro de Chávez ditch had been in the same place since his own childhood.

In a final attempt to save his deteriorating legal position, José Hurtado de Mendoza accused both Diego Antonio (who was his wife's uncle and his mother-in-law's brother) and Ignacio Chávez of false testimony. Hurtado informed Trébol Navarro that Diego Antonio had been the first to advise him that land across the road
was part of the Bernardo Durán y Chávez estate, and that Hurtado "could obtain it easily, because it was in fact his." Hurtado insisted that Ignacio also knew this to be true because Ignacio had been warned not to buy the land in view of the dubious title. On June 8, 1769, Trébol put both Diego Antonio and Ignacio Chávez under oath a second time. Diego Antonio denied making such a statement. Ignacio said he knew of the disputed title to Las Ciruelas, but he did not say that the land was part of the Bernardo inheritance. As the month of June passed, Hurtado called other witnesses. Among them were two old settlers of New Mexico, Marcial Zamora and Juan de Candelaria of Albuquerque. On June 14 Zamora testified that there had never been more than one major irrigation ditch in the Durán y Chávez Atrisco holdings. That ditch had been constructed by Fernando II. Zamora could remember the acequia as far back as 1721, as well as one small offshoot of the main ditch which watered the trees of Pedro Gómez. On the same day, Juan de Candelaria, age 74, gave his statement. He had no recollection of the disposition of land in the Atrisco valley made by Fernando II’s will, but he did remember the single ditch. His statements more or less paralleled Zamora’s.

By June 23, 1769, Andrés Antonio Romero had written a final and devastating answer to the pretensions of Efígenia Durán y Chávez de Sánchez and José Hurtado de Mendoza. He pointed to the obvious fallacies and absence of proof in the demands upon his mother, who had been evicted from Las Ciruelas on April 13. He charged that Efígenia would never have initiated proceedings had it not been for the prompting of her ambitious son-in-law. As for the José Durán y Chávez sale of the heirs’ land to Jacinto Sánchez, Romero pointed out that it was the duty of the seller to give a legal description to the buyer—and Sánchez had bought only the inherited lands. On the basis of the 1722 document, Fernando II’s will, and competent testimony by Lieutenant Isidro Sánchez Vañares Tagle, and others, Romero had proved that the Las Ciruelas lands did not belong to José the seller or to Jacinto the buyer. He reviewed the evidence in his own brief, and the testimony of Diego Antonio, Marcial Zamora, and Juan de Can-
delaria, showing that the original acequia was the Pedro de Chávez ditch. This ditch was the eastern, northern, and southern property line of the Chávez. He reiterated his legal and historical proof that Las Ciruelas was to the east of the Chávez holdings. He accused Hurtado of stalling for time and obscuring the issues.

By July 1, 1769, Trébol Navarro had referred all the documents to Governor Fermín de Mendinueta. Within a week the Governor ordered Trébol to go to Atrisco, to assemble the litigants and their witnesses, and to make a map of the Atrisco area around Las Ciruelas. On July 20 the Alcalde had completed his mission and drawn up a map (plano). José Hurtado de Mendoza refused to sign it because he said that the mapmakers lacked historical knowledge of the boundaries and the original acequia!

Governor Pedro Fermin de Mendinueta handed down his decision in favor of Lucía Ana Durán y Chávez, viuda de Romero, on August 12, 1769. In an extensive commentary on the issues and the evidence, Fermín de Mendinueta declared that none of the witnesses presented by José Hurtado de Mendoza in the name of his mother-in-law, nor any of the documents, substantiated his claim that the boundaries of the Bernardo Durán y Chávez estate included Las Ciruelas. The Governor summarized the contents of Fernando II’s will, which gave the property of the Bernardo heirs as running from a line west of Las Ciruelas along an acequia to the house of Pedro Durán y Chávez, Doña Lucía Ana’s uncle. Fermín de Mendinueta decided that Fernando II’s mention of the acequia removed any doubt that Las Ciruelas remained outside of the tract. Furthermore, the Trébol Navarro map of the area proved that the Pedro de Chávez acequia was the eastern boundary of the Bernardo Durán y Chávez lands. Hurtado’s attempt to move the line to the “Arbolito” ditch was untenable and absurd. The Governor had much to say about the reprehensible conduct of José Hurtado de Mendoza. After a careful study of other Rael de Aguilar signatures in the archive, the Governor discounted Hurtado’s claim that the 1722 signature had been falsified. He pronounced the instrument of possession quite as valid as the 1757 sale docu-
ment. He even went so far as to say that a verbal contract in either case could have been binding.

He then proceeded to rebuke Hurtado for proceeding on Efígenia's behalf, when Doña Lucía Ana was defenseless and alone, neither her husband nor her son being available to advise her. This was a malicious act. For that matter, Fermín de Mendinueta took exception to the fact that all of Efígenia's pleas and briefs had been signed by Hurtado—something the Alcalde should have prohibited because Hurtado was an interested party. Hurtado's refusal to sign the July 20, 1769, map of Atrisco and Las Ciruelas earned him a sharp reprimand. His malice in sowing the lands in dispute, and delaying the proceedings until he could harvest them, spoke for itself. The Governor noted that this was not the first time José Hurtado de Mendoza had tried to obstruct justice. Undoubtedly his notorious conduct in other cases influenced the final decision with regard to Las Ciruelas.

The decision adhered to the opinion that all evidence pointed to Don Antonio Durán y Chávez as legal owner of the Las Ciruelas lands from April 27, 1722. These lands now belonged to his daughter and heir, Lucía Ana Durán y Chávez de Romero.

Apparently Hurtado de Mendoza still had Fernando II's will, or an essential part of it. Fermín de Mendinueta ordered him to remit the testament to the Santa Fe archive in order to avoid future controversy over its content and interpretation.

The Governor called the exchange agreement between Felipe Romero and Efígenia an honorable gesture on Don Felipe's part, since it was the duty of the seller to give clear title to the buyer, and Romero was making himself responsible in the event of any future contest over title.

Finally, Fermín de Mendinueta instructed Alcalde Trébol Navarro to appoint two appraisers for any crops growing on the Las Ciruelas lands in order to determine an equitable distribution of the fruits of the land during April-August 1769. He sentenced Efígenia Durán y Chávez to pay the costs of the trial for having made an unjust claim.
NOTES

1. The name Atrisco, or Atlixco, is derived from the Nahuatl “on the water.” The jurisdiction of Atrisco presumably was named after the valley of Atlixco, Puebla. Eleanor B. Adams and Fray Angélico Chávez, eds., The Missions of New Mexico, 1776. A Description by Fray Francisco Atanasio Domínguez with Other Contemporary Documents (Albuquerque, 1956), p. 154.

2. Essential to the study of the family is the meticulous work of Fray Angélico Chávez, Origins of New Mexico Families in the Spanish Colonial Period (Santa Fe, 1954), particularly pp. 18-21, 160-164. Fray Angélico reconstructs the history of the seventeenth- and eighteenth-century Durán y Chávez family from available data in religious and civil archival materials.


7. Pedro Durán y Chávez II was married to the daughter of Tomé Domínguez de Mendoza. Chávez, p. 21. Scholes (Troublous Times, p. 214-15) speculates that Tomé was able to secure Pedro's release because Peñalosa was anxious to appease the factions aligned against him before his residencia.


11. Population data for the Albuquerque-Atrisco area 1744-1776 are hard to analyze because it is never certain whether the count included subordinate settlements, shifting population within the area, and minor children. Fray Andrés Varo, the Custos of New Mexico, estimated 500
non-Indians and 200 Indians in the year 1749. E. B. Adams, Bishop Tamarón's Visitation of New Mexico, 1760 (Albuquerque, 1954), p. 43. Since Varo's estimates usually erred on the high side, and a 1750 census shows 191 families and 1312 persons for the entire jurisdiction, Adams suspects that in this case Varo did not include the subordinate settlements. Biblioteca Nacional, México, leg. 8, exp. 1. The 1760 Tamarón count for the entire jurisdiction was 270 families and 1814 persons. Adams, Tamarón, p. 43. In 1776 Father Domínguez gave a breakdown of population for the entire Albuquerque jurisdiction as 453 families and 2416 persons, distributed as follows: Albuquerque 157 families and 763 persons; Atrisco 52 families and 288 persons; Alameda 66 families and 388 persons; Valenciana 17 families and 90 persons; Tomé 135 families and 727 persons; the lower Corrales 26 families and 160 persons. Adams, Tamarón, p. 43.

12. This article is based chiefly on documents in the AGN, Tierras, vol. 934, exp. 7, ramos 1-10. For relationships between the branches of the Durán y Chávez family who were parties to the suit, see the genealogical chart. Materials for this chart are drawn from the sources used in this article. More data on Atrisco can be found in AGN, Tierras, vol. 426, exp. 3, and in Ralph E. Twitchell, The Spanish Archives of New Mexico, 2 vols. (Cedar Rapids, 1914), vol. 1, nos. 175, 176, 196, 201, and 204. No. 204 is an interesting suit against Diego Antonio Durán y Chávez in Atrisco during 1786 by fourteen plaintiffs who hoped to clarify boundaries, entrances, and exits to their Atrisco properties. See also Albert J. Díaz, A Guide to the Microfilm of Papers Relating to New Mexico Land Grants (Albuquerque, 1960), p. 21, for further Atrisco materials.


14. Hurtado de Mendoza received a severe reprimand from the church officials in Chihuahua for reprehensible conduct during the investigation.

15. AGN, Tierras, vol. 934, exp. 7, ramo 2.

16. Ibid., ramo 3.

17. According to Chávez (p. 161), Diego Antonio Durán y Chávez had gone to live with his uncle Francisco on a neighboring plot of land after his father had taken a new wife.

18. The Las Ciruelas lands were only a part of the Atrisco holdings of Don Antonio Durán y Chávez and his second wife, Antonia Baca, Lucía Ana's mother. They owned land contiguous to their La Barranca farms, and Antonia had property of her own. In 1732 she purchased from Pedro Gómez Durán y Chávez a tract to the north and west of Las
Ciruelas. Since neither Antonio or his wife left wills, the spatial distribution of the Baca-Durán y Chávez holdings is difficult to resolve. Chávez, pp. 162-63; AGN, Tierras, vol. 934, exp. 7. "The repetition of identical names among contemporaries makes it impossible to distinguish them one from another, except when a will, or some other document, provides some relationships. But there are not enough of these." Chávez, p. 164.


20. By 1769 Pedro Gómez Durán y Chávez, the youngest of seven sons of Fernando II, was the only surviving son; he is treated in some detail by Chávez, pp. 163-64. Pedro Gómez lived in Atrisco until 1732 when he sold his property to Bernabé Baca and to Antonia Baca, wife of Antonio Durán y Chávez. By 1737 he had married Petrona Martín and was living in the Rio Arriba. In 1769 he listed his residence as Tomé.


23. AGN, Tierras, vol. 934, exp. 7, ramo 5.

24. That this theory of Hurtado was not true can be documented from the Audiencia of Mexico's regulations on land titles in 1717, AGN, Tierras, vol. 188, exp. 5, and a royal instruction on land policy issued in 1754, AGN, Reales Cédulas, vol. 74, exp. 80. France V. Scholes, "Civil Government and Society in New Mexico in the Seventeenth Century," NMHR, vol. 10 (1935), p. 91, shows that the governor often delegated responsibility to lesser officials "to adjust differences concerning lands and water rights." Keleher (p. 354) states the correct view: "There is no doubt but that under the laws of Mexico [and Spain] transfers of real estate could be made by verbal contract." It is more than likely that there was not a formal instrument for the founding of many New Mexico settlements. Cf. Greenleaf, p. 13.

25. Keleher (p. 355) points out that often decades passed between the grant (verbal or written) and the ceremony of possession.


27. Romero was stretching a point. What Bernardo swore was that "he was the eldest living son."

28. Listed in Chávez (p. 281) as Isidro Sánchez Bañales.

29. "Se halló ileso y sin propiedad un pedazo de tierra."

30. "Con el vado de la acequia misma cerca de un arbolito de manzana."

31. "En virtud de un instrumento de posesión hecho por don Alfonso Rael de Aguilar."

32. AGN, Tierras, vol. 934, exp. 7, ramo 7.

33. Ibid., ramo 8.
34. See frontispiece (reproduced from AGN, Tierras, vol. 934, exp. 7, ramo 8, fol. 40) and drawing on p. 13, supra.


36. "Manifiesta no poca malicia y se debe recelar alguna conclusión."

37. "Las razones que el dicho Hurtado expone en su último escrito para no firmar el plan ... son cabalosas nacidas de un genio dócil y de una refinada malicia."

38. When the Governor cited other instances of Hurtado’s unethical conduct, he was referring to a controversy between Efígenia Durán y Chávez and María Ignacia de Sáenz Garvizú, widow of Manuel Sáenz Garvizú (see Chávez, p. 277, for data on the Sáenz Garvizú) over a flock of sheep, during May 1768 to September 1769. AGN, Tierras, vol. 934, exp. 7, ramo 10. In 1763 María Ignacia had farmed out 700 sheep and five rams to Lorenzo de Santillanes, brother-in-law of Efígenia Durán y Chávez. According to the contract Lorenzo agreed to deliver to Doña María Ignacia 200 lambs and 150 fleeces each year. He had kept the bargain until 1767, the year after Hurtado de Mendoza arrived in Atrisco and married Doña Efígenia’s daughter. Then the trouble started and Lorenzo was unable to pay for almost two years. He claimed that he had been obligated to give 500 of the sheep to Efígenia to liquidate a debt. It developed that he also cared for sheep for Efígenia on a sharecrop basis. The other 200 sheep had been lost! It became obvious that Efígenia had incorporated part of María Ignacia’s flock with that of her brother, Diego Antonio, and part with that of her son out on the Rio Puerco ranch. Manuel Bernardo Sáenz Garvizú had a difficult time locating his mother’s sheep, and José Hurtado de Mendoza employed delaying tactics, forging testimony and business documents, to help Efígenia keep possession. On three separate occasions Governor Fermín de Mendinueta had to order Efígenia to return the sheep, along with their natural increase and the yearly wool clip. Finally royal agents had to go to the various Chávez ranch sites and seize the sheep and wool on the spot. In this case the Governor also reprimanded Hurtado for obstructing the course of justice for the sake of personal profit.