

PASSWORD



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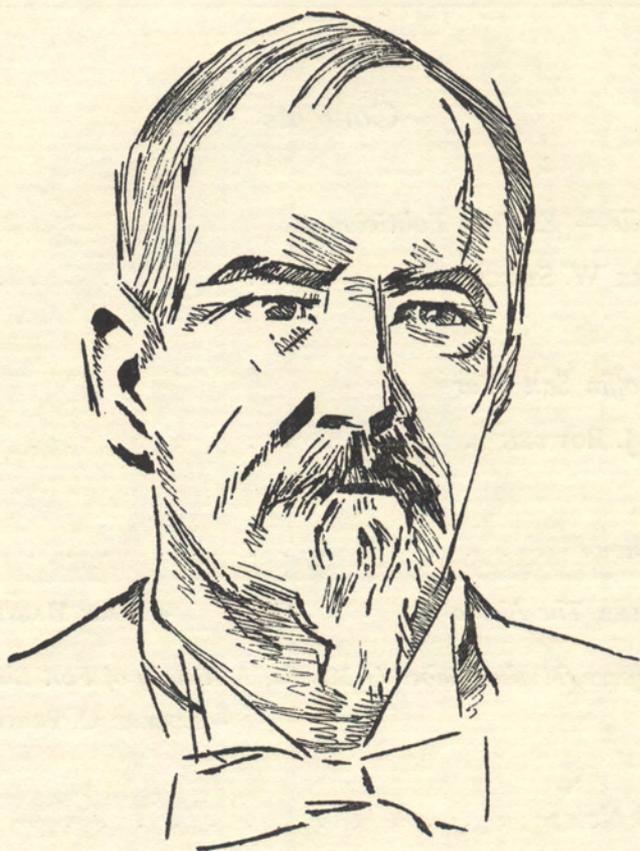
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W. W. MILLS — EL PASO POLITICIAN

by REX W. STRICKLAND

[EDITOR'S NOTE: This article was written as an *Introduction* for the book soon to be published by Carl Hertzog in collaboration with Tom Lea, who did 24 illustrations, and Rex Strickland, who has annotated the original edition with 136 footnotes and extensive Appendix material. The new book is based on a reprint of *Forty Years at El Paso — 1858-1898* which is now so rare that it commands a price of \$50 a copy in good condition. This is the "saltiest" book ever written about El Paso, but the author, W. W. Mills, was opinionated and minus a few facts. The Notes by Dr. Strickland tell what Mills left out, or the "other side of the story" and the drawings by Tom Lea contribute atmosphere of the '60's and '70's which are not so well known as the '80's (when the railroads came). Members can order this book in the trade edition at \$7 but there will also be a special edition for the collectors at \$100 per copy. This includes a 25 x 17 print of "Downtown El Paso in the 1860's — San Francisco and El Paso Streets" by Tom Lea, numbered and signed by him — limited to 100 copies. The special edition will be on different paper, in different binding, and boxed. Release date for both editions has been tentatively set for early September.]

WILLIAM WALLACE MILLS, second child and second son of James P. Mills and Sarah Kenworthy, was born at Thorntown, Indiana, February 10, 1836. He came to El Paso toward the end of December, 1858, following his elder brother, Anson, who had arrived in the previous May. Both he and Anson regarded themselves as early settlers at the Pass of the North, yet in reality, in comparison with Simeon Hart, Hugh Stephenson or James W. Magoffin, they were Johnny-Come-Latelies. But once they had reached the adobe town by the Rio Grande they lost no time in making their presence known: neither man was hampered by an inferiority complex. In a society that looked with scorn upon the four-flusher or the coward, Anson and W. W. Mills won an acceptance for themselves among the forerunners in the valley community. Anson left El Paso during the stormy days of the Civil War and Reconstruction but W. W. stayed, stayed to brawl with his enemies and to use the courts to build up his holdings.

Mills was a cross-grained and opinionated man, self-assured and egotistical. In a society that valued physical courage, he faced up to dangerous men addicted to mayhem and murder without loss of prestige in the community. Perhaps, in the larger sense, his courage was essentially moral in character informed by reason rather than emotion. He went armed in the custom of the times and place but

throughout his residence on the frontier he never had occasion to resort to gun play. This restraint furnishes, one believes, a pertinent comment on the *mores* of the border: desperados and toughs sometimes murdered men who were not of their kind but, on the whole, the men who died by the gun had lived by the gun. Old El Paso had its share of desperate men, gamblers, ne'er-do-wells, refugees from older frontiers and a few just plain bad men, but these confined their homicidal bent to their fellows in iniquity. Mills possessed an innate dignity which fenced him against the gratuitous insult; he had enemies, of course, but with one notable exception (Albert Kuhn) they lived by a code a notch above the Law of the saloon, the gambling hall and the bordello. They settled their differences in suits at law rather than in shooting affrays, in the arena of political activity rather than by the pistol and Bowie knife. Not that the *code duello* was entirely neglected: in 1858 Samuel Magoffin and Henry Gillett exchanged shots on the field of honor with damage to neither participant.

Literacy was a quality more characterized by its absence than its presence on the frontier, a dictum not entirely borne out among the residents of El Paso of the 1850's. For the mud town by the river had more than a proportionate share of educated men, men capable of expressing their observations and thoughts in a readable manner;¹ unfortunately time has dealt unkindly with their writings and we have but one chronicle extant, or, at least, available, namely W. W. Mills' *Forty Years at El Paso*. This account of the turbulent days at the Pass of the North fills a gap in history though it is significant as much for its omissions as for the events that it records.

W. W. Mills was not a sedate man nor one who made forgiveness a virtue. When he was old and should have mellowed he told Anson, "I do not know that my enemies are reconciled to me, but they are *dead*, and that is better, or at least *safer*." But he was not above the niceties of friendship as his relationship to Ben Dowell and P. T. Herbert amply show. A man may be known by the friends he has made but Mills' activities were emphasized by the enemies he counted.

Forty Years at El Paso is not always strictly accurate. It was written in its author's old age from recollections which with the years

grew somewhat fuzzy at the periphery. It is true the memories are buttressed at times by reference to documents, but hearsay or prejudice colored some of the accounts. W. W. Mills was human, all too human; he was never cold or remote and across his pages flame old hatreds and unforgiven injuries. Here is the true worth of the book: it is not a literary exercise but a man's soul laid bare.

Of the men who came to El Paso in the 1850's W. W. Mills was almost the last left when he died in 1913.² Never given to self-deprecation, he was, by his account, a man of raw courage, intellectual attainment and waspish disposition. Above all, he was articulate, even bumptiously so, and he left a salty, highly individualized book telling his story as he saw it. No doubt there were many of his contemporaries who suffered at his biased recollections but none refuted him safely during his life nor left a memoir to damn him after his death. The story of his forty years at El Paso remains the most complete account of the place during its formative years and, with allowances for Mills' tendency to put himself centrally in the narrative, it needs only some correction and clarification to stand as the best presentation of life in the harum-scarum frontier community.

Mills lived to be old — he was seventy-seven at the time of his death — and eccentric; he wore socks that did not match and went on monumental binges. The fire had burned out in 1913 when he died in Austin, his mind clouded. The great figures of ante-bellum El Paso were all gone by then: Simeon Hart, James Magoffin, Hugh Stephenson, Ben Dowell, Josiah Crosby, the Gilletts, only Joseph Magoffin lived on to 1923. Gone, too, were most of the men who had come with Carleton: Albert Fountain, Albert French and J. A. Zabriskie; dead, also, were his gracious friends of old El Paso del Norte — Mariano Samaniego, Inocente Ochoa, Juan Zubiran and Alejandro Daguerre. "Now the old giants are gone we little men live where heroes once walked the inviolate earth."

But back to the beginning of Will Mills' activities at the Pass of the North: during the longest night of the year (1858) he and his brother, Anson, had stumbled through the darkness to come to the Rio Grande as the first light silvered the gaunt cottonwoods along



Anson & W.W.
at the Rio

its margin. In response to a letter from Anson who had reached El Paso in the previous May the younger Mills joined W. S. Scurry's boundary survey party at the Horsehead Crossing on the Pecos. Presumably he came by the way of the Butterfield Overland Mail from north Texas where he had taught a three-months school at Pilot Grove, Grayson County, during the summer. Moving westward across the Trans-Pecos the surveyors failed to find water at the Hueco Tanks; Colonel Scurry suggested that the brothers could make the journey to El Paso afoot more easily than could horsemen riding worn-out animals. They took the assignment and finished the twenty-six mile trip in a night's walk.

Brief was Will's first sojourn at El Paso; before the year ran out he went to Fort Fillmore to clerk in the store of George Hayward and William McGrorty, post sutlers. In default of evidence, we may assume that he spent an uneventful year at Mesilla, a year in which the greenhorn boy learned much from his associates concerning the ways of the frontier: the humdrum of garrison life with its monotony broken from time to time by forays against the elusive Apache, the drama of the stage's arrival, the talk of men old and wise in the routine of the far country.

At the end of 1859 he returned to El Paso to take a job in the mercantile establishment owned by Vincent (Vicente) St. Vrain and Henry J. Cuniffe, a rare combination of French shrewdness and Irish humor. St. Vrain was the youngest of a family long famous in the commerce of the prairies and Cuniffe was a forehanded man from Galway. As a capable and trusted employee, Will was sent twice with a train of goods for the company's store at Santa Rita del Cobre; on the second trip he met with Jacob Snively, Walter Taylor and John Saunders who told him about their recent discovery of placer gold in the arroyos at Pinos Altos.

William Mills was not distracted from merchandising by the lure of quick riches though his brother, Anson, went off to the diggings for a short time. There he found some gold to be had by the use of muscle and sweat but discovered surveying equally lucrative and less exhausting.³ Soon, he too, was back in El Paso to take part in the acrimonious political wrangling of that turbulent year, a year

quiet enough for men who could keep their mouths shut about the issues of slavery and secession and presidential elections.

The Mills brothers were never reticent men and they let it be known that they were opposed to slavery and secession (though they were not abolitionists): few indeed were the Union partisans at El Paso — Mills lists a half dozen; besides Anson and W. W. Mills there were Henry Cuniffe, Vincent St. Vrain, Samuel and Joseph Schutz and Dr. Joseph Nangle. Taut nerves and tense emotions gave ample opportunity for outbursts of temper but El Paso has no record of violence brought on by intolerance of opinion. Mesilla had its affrays in its sandy streets yet El Pasoans did not get beyond the cocking of pistols and the whetting of knives.

Not more than four or five men cast their votes against the secession of Texas, February 23, 1861; the Mills brothers, Cuniffe, St. Vrain and Nangle seem to have been those who opposed the separation. (Samuel and Joseph Schutz were not eligible to vote since they were not yet naturalized citizens.) Anson Mills soon left (on the last east-bound stage, March 8); William was left in the Southwest where at great personal risk (if we may take his word for it) he strove mightily to promote the cause of the Union. Certainly he remained in El Paso until the approach of the Second Regiment Texas Mounted Rifles under Colonel John R. Baylor rendered his further stay hazardous. In Mills' own chronicle he gives in detail an account of his activities during the turbulent summer of 1861: in June, he went to Fort Fillmore where he sought to bolster the sagging morale of the officers at the post; thence he rode courier to Santa Fé to inform Colonel Edward R. S. Canby of the state of affairs in southern New Mexico; he returned southward to discover that Major Isaac Lynde and his staff at Fillmore were lukewarm in their zeal for war; finally he came to El Paso del Norte (Juárez) which furnished him a vantage point to spy on the rebel forces across the Rio Grande.

Simeon Hart, agent for the government of Texas in El Paso, apprised of Mills' presence, sent Albert Kuhn, acting sheriff of El Paso County, to arrest the pestiferous Mills who was hustled to Fort Bliss to be put in chains by Major Edwin Waller. An old friend, P. T. Herbert, sought to free the prisoner by habeas corpus procedure but

Josiah F. Crosby, district judge, refused to issue the writ. Neither would Baylor, busy with his preparations to march against Fort Fillmore, grant him the satisfaction of a court-martial. From his prison door, July 23, Mills watched the Confederates march out toward Mesilla; the same day, although he was not to know of the affair until a copy of the *Mesilla Times* (July 27, 1861) containing the dread news was thrown into his cell, his younger brother, Emmett, and six companions were killed at Cooke's Springs by Apaches.

After a full month's imprisonment Mills with the connivance of two of his captors, James M. Craig and James McGarvey, escaped across the river. In El Paso del Norte he obtained a horse and rode to Fort Craig which he reached August 24. He remained there during the winter, 1861-62; just prior to the battle of Valverde (February 21, 1862) he was commissioned a first lieutenant by Colonel B. S. Roberts, in command at Fort Craig, but he resigned from the armed forces after the re-occupation of Santa Fé by the Federal troops at the end of April. Somewhat tardily, it would seem, he had learned that President Lincoln had appointed him, during the month of his incarceration at Fort Bliss, collector of customs for the newly created district of New Mexico. As Mills says, "In the summer of that year (1862), General Canby granted me a leave of absence for sixty days, and I visited Washington City and received from President Lincoln my commission as collector of customs along with his personal thanks and good wishes."

With the retreat of the Confederates from West Texas Mills returned to El Paso in a mood of exultation. "Few young men," he asserted, "ever came home from the perils of prison, camp and battlefield more victorious or better vindicated than did the writer to El Paso in the fall of 1862." In his copy of *Forty Years at El Paso*, the late Maury Kemp annotated with acerbity, "Nobody ever knew of his war record." In reality, though W. W. Mills was no valorous knight in the field of battle he could lay claim to a short if undistinguished career as a soldier. One, however, cannot escape the feeling that his own appreciation of his talents far outran his actual performance as a soldier, politician or business man.

The El Paso to which Mills returned was well nigh deserted.

When the Confederates retreated from the valley, the southern sympathizers left, some to the eastern part of Texas and others across the river to Mexico; the native population had refuged earlier in the valley towns of northern Chihuahua. Now with the arrival of elements of the California Column under Carleton, the Latins began to drift back to San Elizario, Ysleta and El Paso; the vacuum in business and trade created by the departure of the Confederates was filled by newcomers: Albert French, Joseph Smith, J. A. Zabriskie, Nathan Webb, Albert Fountain, John Evans, George Rand, Charles Kerber *et al*, who with Mills, Henry Cuniffe and Ward Blanchard set up the reconstruction county government.

As we have seen, Mills was made the collector for the newly constituted customs district of New Mexico which by political legerdemain was made to include Trans-Pecos Texas.⁴ The carpet-baggers manned the courts of El Paso County and indulged in a dizzy round of judicial skullduggery calculated to use the courts of New Mexico to sequester the properties of the ex-Confederates assuming in some way not apparent to the layman that the inclusion of El Paso in the New Mexico customs district conferred jurisdiction over west Texas upon the territorial courts.⁵

Mills probably did not approve of a universal exploitation of treason though, always the opportunist, he was quite ready to take advantage of the political chaos to revenge himself upon the men whom he felt responsible for his arrest and imprisonment in 1861. Particularly he fed fat his ancient grudge against Simeon Hart, who, it will be remembered, sent Albert Kuhn to abduct him from the alien soil of El Paso del Norte. The tortuous course of litigation from the day which saw Mills obtain a judgment in the sum of \$50,000 for false arrest until the final outcome of the case in favor of Hart is only partially explained in the memoir. Court records, however, are available to the reader who may wish to trace the full course of the seven years' legal battle.⁶ On the other hand, Mills was not vindictive in his attitude toward repentant ex-Confederates as is shown in his kindness to Ben Dowell. Indeed, he was instrumental in saving Dowell and Hugh Stephenson from the loss of their properties in the confiscation proceedings of December, 1865.

Thomas Jefferson once remarked, "It seems that the smaller the society the bitterer the dissensions into which it breaks."⁷ This dictum is amply exemplified by the course of affairs in *post-bellum* El Paso. The Republicans, as long as they were able to control the electorate by the exclusion of southern sympathizers from the suffrage, carried out their drastic reconstruction policies locally as well as statewide. But the victors soon split over the spoils. Mills, who once boasted that he was the party "boss" in El Paso County for a decade, 1862-1872, was challenged by the newcomers, S. B. Newcomb, B. F. Williams, Albert Fountain and Dwight C. Marsh. His known friendship for men who had been Confederates made him a target for the attacks of scheming, unscrupulous and ambitious office seekers.

His role in the constitutional convention of 1868-1869 (in which he represented El Paso County) led to his political undoing; he was a moderate (middle-of-the-road) Republican following the leadership of A. J. Hamilton and Colbert Coldwell in opposition to Morgan C. Hamilton and E. J. Davis. That the reconstruction of Texas was not completely punitive in nature was due to the heroic efforts of A. J. Hamilton, Coldwell, Mills and like-minded delegates who by "parliamentary skill managed to defeat the drastic disfranchisement clause favored by the Radical majority in the convention."⁸ Outmaneuvered by the Moderates, nevertheless the Radicals had their small revenge locally: they were able to have Mills removed from the collectorship of the customs.⁹ His place was assigned to Dr. Dwight C. Marsh who had recently come to El Paso from Michigan via Seguin.¹⁰ Incidentally, Henry Cuniffe had been succeeded as consul to El Paso del Norte (Juarez) by George Edgerton.

Nor was Mills successful in his race for a seat in the Texas house of representatives in November-December, 1869. It would appear that Mills received a majority of the votes cast but was counted out in favor of Albert Fountain by Lieutenant Varney who supervised the election under the military government then existent in Texas. Actually Mills did not campaign personally for the office; he was in Austin assisting Hamilton in his race for governor. Perhaps it should be said here that Mills was Hamilton's son-in-law, he had married Mary Hamilton, the governor's eldest daughter, February 8, 1869.

Mills' relations with Albert Fountain ran the gamut from patronizing assistance, growing distrust, hot tempered animosity to cold hatred. The years have drawn the mantle of oblivion over the real cause of the ill will between the two though each died unforgiven by the other. Mills thought of himself as a Texan; Fountain, a New Yorker by birth, had come to the Rio Grande with Carleton from California. Mills gave Fountain a clerkship in the customs office and was repaid by personal disloyalty (he believed). When Mills was "suspended" from the customs office he charged his removal to the connivance of Fountain, Williams, Marsh and W. M. Pearson. This is not the place to trace further the charges and counter-charges voiced by each man toward the other; it suffices to say that Fountain went to Las Cruces in 1874 leaving the political cockpit to Mills, Louis Cardis and Charles Howard. Cardis had succeeded to Mills' leadership of the Republican party. Howard redressed the balance in 1877 by killing Cardis; the mob at San Elizario murdered Howard. Anyway, the Democrats were winning control of the county's affairs from the carpet-baggers and spoilsmen and though Mills labored as county chairman of his party to resurrect the G.O.P. the times were against him — the sands had run out in the glass.

Mills was not in the area during the Salt War, in 1877; as he tersely says, he was away during the month of December. Just what his attitude in the affair might have been we can guess partially from his account of it — he was not sympathetic toward John G. Atkinson (he was killed on "*general principles*"); it was not an armed invasion but an uprising of the valley inhabitants against the tyranny of designing men intent upon depriving them of salt from the slopes of the Guadalupe. Cardis had been his friend and successor but Howard had been his friend and served as his attorney, friend, that is, before he showed a tendency to associate with Fountain. Whoever was with Fountain was against Mills — that was his philosophy. That Mills had a premonition of the coming trouble cannot be proved; that Mills was a far more cautious man than his recollections portray is certain. We can only say he was away and he chose to play down the violence and rapine that accompanied the *emeute* at San Elizario.

Repudiated by his party's leadership he had to be content with

crumbs from the political table; he served briefly as assistant United States marshal during James A. Garfield's administration. What constituted the source of his livelihood is not clear. William Coldwell said of him, "He never craved and never acquired wealth but lived and died possessing more than was necessary for his wants."¹¹ He is listed in the El Paso city directories of the 1880-1890's as a farmer or horticulturist but there is little indication that he operated on a large scale. His residence was 103 San Francisco Street, between Leon and Chihuahua. There Mary Hamilton Mills graciously presided over the household directing her energies not only to domestic duties but taking time to organize El Paso's first Literary Club in 1894. Only a few blocks from the noise and violence of the Gem, Coney Island and Wigwam saloons, the house on San Francisco Street was an island of peace in the midst of a turbulent world.

His enemies dead, William Mills at length received the political reward his zeal and loyalty to his party deserved. He was appointed to the Chihuahua consulate, October 1, 1897. As consul, his actions in Chihuahua revealed something of the disputatious Mills of earlier days. He carried on a campaign of tweedle-dee and tweedle-dum with the consul at Juarez over the extent of their respective consular jurisdictions. On one occasion the American colony in Chihuahua signed a petition criticizing Mills' want of courtesy toward Don Luis Terrazas, governor of the state, at his inaugural reception. Really Mills just did not attend the function nor did protocol require him to do so; but some days later he with the most distinguished members of the colony resident in Chihuahua called upon Governor Terrazas who received them in the most cordial manner.¹²

In March, 1907, Mills resigned his position as consul — he was growing old and he was sick — terminating his association with the area with which he had been connected for almost a half century. With his wife he went to Austin to live; we have the record of one visit to El Paso during September-October, 1910, when he and Mary spent a month there.

Mills died on February 10, 1913, the seventy-seventh anniversary of his birth. Of the two El Paso newspapers only the *Herald* chronicled his passing; Juan Hart, editor of the *Times* had his petty revenge

upon his father's old enemy — his journal simply neglected to print a line about the pioneer's death. Mills' gentle Mary lived on until 1932.

A last and generous appraisal of William Wallace Mills was spoken by his intimate friend, William M. Coldwell, who said when he learned of his death,

He took an important and conservative part in the reconstruction of Texas. If his advice and that of men like him had been followed, there would have been no carpet baggism in Texas, and the very name Republican would not now insure the defeat of a candidate at the polls.

He served as United States consul at Chihuahua with honor to himself and great advantage to his country until 1907, when to the regret of the state department, failing health compelled him to resign. The death of Mr. Mills leaves Joseph Magoffin as the last representative here of the men who were conspicuous in this city in the years preceding the civil war. He was in El Paso and helped to greet the incoming railroads, which has made a city of a stage stand. During the years which followed he was always a consistent and outspoken Republican, though receiving no recognition from the dispensers of Republican patronage.¹³

Thus ends the saga of a man who aspired to greater flights than he was able to accomplish; a man who for all of his egotism and pride deserved more at the hands of his fellows than they gave him.

REFERENCES

1. One recalls Henry Dexter, Anson Mills, W. W. Mills, Josiah Crosby, P. T. Herbert and A. B. O'Bannion at once; there were others like Simeon Hart, Hugh Stephenson and James W. Magoffin who have left evidence of their ability to write clearly.
2. His brother, Anson, lived until 1924; Joseph Magoffin died in 1923.
3. Anson Mills, *My Story*, p. 57.
4. Created by an act of Congress, approved March 3, 1863, attaching El Paso County to the district.
5. The reader wishing to explore this judicial chicanery further will do well to consult Edward D. Tittman, "The Exploitation of Treason," *The New Mexico Historical Review*, IV, April, 1929, pp. 128-145.
6. Records of the District Clerk, El Paso County, Texas, *Minute Book A-L*, p. 46; *Simeon Hart vs. William W. Mills*, 31 Texas 304; *Simeon Hart vs. W. W. Mills*, 38 Texas 513; *United States, Appellant, versus Simeon Hart*, 18 Law Ed. 914.
7. Jefferson to Williams, November 1, 1807, *Territorial Papers of the United States*, Vol. V, p. 573.
8. Randall and Donald, *Civil War and Reconstruction*, 621.
9. *Weekly Austin Republican*, June 16, 1869.
10. *San Antonio Herald*, Sept. 15, 1870.
11. *El Paso Herald*, Feb. 17, 1913.
12. *El Paso Herald*, July 30, 1903, citing the Chihuahua *El Norte*, July 24, 1903.
13. *El Paso Herald*, February 11, 1913.

THE MAGOFFIN SALT WAR

by J. J. BOWDEN

COMMON SALT, a fundamental necessity so vital to existence, played an important but somewhat obscure role in the development of the American frontier. Not only did salt contribute to the health and well-being of man and his animals, but it was indispensable in the curing of meat and dairy products. On the western frontier the mineral most sought after was not gold but salt. Thus, the discovery and location of saline deposits became a matter of principal concern to the pioneer who, due to a lack of transportation facilities, was dependent largely upon local sources.

The problem of securing salt was never serious at El Paso del Norte, for there were two extensive deposits in the vicinity. The farthest but most accessible deposit was a group of salt lakes which were located approximately one hundred and sixteen miles due north of El Paso, Texas, east of the San Andres Mountains and northwest of the White Sands. The Salina de San Andres¹ was the most valuable of these lakes, for its water was heavily saturated with sodium chloride. The other major deposit was the famous Guadalupe Salt Lake located at the foot of the Guadalupe Mountains.

So essential were these salt beds to the isolated frontier communities in the El Paso area that when speculators acquired the lands upon which these salines were located and attempted to prevent their inhabitants from gathering salt, at least two armed conflicts resulted. The history of the San Elizario Salt War of 1877 has been the subject of a number of scholarly works,² but the story of the Magoffin Salt War of 1854 has never before been told.

Under Spanish Law, the title to all mines and minerals, including salt, was traditionally reserved by the government as a prerogative of the sovereign. The King had the power to grant lands, water or minerals, either together or separately. The struggling provinces of New Spain were so completely dependent upon their local *salinas* that King Philip III on September 3, 1611, directed Francisco de Urdinola, Governor of Nueva Viscaya, to observe his Royal Decree granting the inhabitants of the Indies the right to gather salt free of charge or tax.² This shows that all salt deposits in New Spain were reserved for the benefit of all men until there was a specific Royal Grant conveying such rights. Mexico continued this policy of reserv-

¹For one account see Albion Smith, "The Salt War of San Elizario," *PASSWORD*, Vol. I, No. 1 (February, 1956), pp. 4-7. [Editor's note].

ing salt deposits for the unrestricted benefit of the general public after she gained her independence in 1821.

The Salina de San Andres was first discovered in 1824.³ At that time the lake was located in the Mexican territory of New Mexico. Shortly after its discovery, the inhabitants of El Paso del Norte constructed a wagon road along the east side of the mountains to the lake and commenced taking salt from the new *salina*.⁴

The hostility of the Indians and the privations encountered upon the trail tended to limit the amount of salt taken from the lake to the actual domestic needs of the residents of the area. In order to mitigate the dangers and hardships of the trip into the heart of the Apache country, the citizens of the several settlements along the Rio Grande united several times each year in order to form salt gathering expeditions. Such expeditions generally consisted of a caravan of twenty-five to thirty ox-drawn *carretas* and approximately one hundred well-armed men. The best time to gather the salt was during the dry season. As the water in the pond evaporated and receded, a thick crust of pure fine salt was left along its shores. It was a simple matter to rake up the salt and load it into a *carreta* for transportation.⁵

After the establishment of the Doña Ana Bend Colony in 1843, its inhabitants constructed a salt road and also commenced taking salt from the Salina de San Andres. The Doña Ana Bend Colony salt road ran east from Las Cruces, New Mexico, through the San Andres Pass and joined the El Paso salt road just south of the Ojo de San Nicolas.

Meanwhile, the east Texas colonists had successfully revolted against Mexico and formed the Republic of Texas. On December 19, 1836, the Texas Legislature declared that the Republic's southwestern boundary was located in the center of the principal stream of the Rio Grande River.⁶ Although the murky waters of the Rio Grande had long played a prominent role in the history and settlement of the southwest, they had never demarked the location of a political boundary. By claiming the river as its boundary with Mexico, the Republic of Texas asserted *de facto* jurisdiction over a vast amount of territory which was actually embraced within the limits of New Mexico, Chihuahua, Coahuila, and Tamaulipas. Mexico, on the other hand, vehemently denounced Texas' spurious claim to the lands lying between the Nueces and Rio Grande Rivers, even after Texas had joined the Union. The controversy finally precipitated the Mexican War when Mexico attempted to prevent General Zachary Taylor from occupying the disputed territory.

Possibly the most spectacular victory in the entire war was General Stephen W. Kearny's bloodless conquest of New Mexico on August 17, 1846. James W. Magoffin⁷ deserves much of the credit for this remarkable achievement, for he personally persuaded Governor Manuel Armijo and Colonel Diego Archuleta to surrender without a fight.⁸

Yielding to the demands for the fulfillment of American manifest destiny, Mexico signed the Treaty of Guadalupe Hidalgo on February 2, 1848, whereby Mexico accepted the Rio Grande boundary and ceded its New Mexican and California territories to the United States. Although the Treaty settled the international phase of the boundary dispute, the military government of New Mexico, which had been established by General Kearny, was reluctant to recognize Texas' dubious claim to the outlying territory embraced within its fanciful boundary. While it was generally conceded in high governmental circles that the lands east of the river rightfully belonged to Texas, the fact remained that the Federal Government had actual possession and supervision over the Santa Fé area.

In order to bolster its claim, Texas took prompt steps to extend its civil and political jurisdiction over the lands lying east of the river in the Upper Rio Grande Valley. On March 15, 1848, the Texas Legislature passed an act creating Santa Fé County with the following boundaries:

Beginning at the junction of the Rio Puerco with the Rio Grande, and running up the principal stream of said Rio Grande to its source, and thence due north, to the forty second degree of North latitude; thence along the boundary line as defined in the treaty between the United States and Spain, to the point where the hundredth degree of longitude west of Greenwich intersects Red River; thence up the principal stream of said Red River to its source; thence in a direct line to the source of the principal stream of the Rio Puerco, and down the said Rio Puerco to the place of beginning.⁹

Other provisions were speedily enacted granting the county right to have the same local officials and courts as other counties of the State, establishing the county seat at Santa Fé, creating a separate district court for the new county, and giving its residents a representative in the Texas House. However, Santa Fé County was attached to the Bexar Land District and its County Court was prohibited from issuing land certificates.¹⁰

Spruce M. Baird¹¹ was appointed judge of the newly created Eleventh Judicial District Court. In addition to his judicial duties he was instructed to organize formally the new county and to supervise the transfer of civil jurisdiction from the Federal Military

Government to locally appointed Texas Civil authorities. Baird arrived in Santa Fé on November 10, 1848, and presented his credentials and instructions to Colonel John M. Washington, the Commanding Officer at Santa Fé and ex-officio civil and military governor of New Mexico. Colonel Washington firmly but politely advised Baird that he had no intention of relinquishing his jurisdiction over the region until ordered to do so by the President or Congress. Baird in turn notified Washington D. Miller, Secretary of the State of Texas, that he would be unable to organize the new county until the two sovereigns had settled this confusing jurisdictional question.¹²

Pending further instructions from Austin, Baird proceeded to conduct a private investigation into the natural resources of the new County. Upon discovering the extent that the inhabitants of the Santa Fé and El Paso regions depended on their respective *salinas* for salt, he entered into a partnership with William McNess, J. J. Bowdry, Thomas Rowland, William O. Ardinger, G. H. Peacock, A. C. Thomas, and C. W. Boyers for the purpose of exploiting the salt resources located between the Pecos and Rio Grande Rivers. On December 7, 1848 the partners addressed a petition to Secretary of State Miller requesting a salt lease be issued to them covering two separate saline deposits.¹³ The petition pointed out that while the deposits belonged to the State and offered a potential source of badly needed revenue, the New Mexicans and Indians were taking salt from the *salinas* tax free. They entreated that the lease be issued for a term of ten years with a five per cent royalty payable to the State upon the net proceeds only during the last five years of the lease. Due to the fact that the salt lakes were located in the heart of the Indian country and would require a substantial capital investment in order to develop and defend the operation, they believed that they should be allowed to work the deposits "royalty free" during the first five years. In his letter transmitting the petition, Baird requested that if it should develop that the Governor did not have the authority to make the lease that it be issued to them, notwithstanding such defect, subject to the subsequent confirmation by the legislature.¹⁴

Miller referred the petition to Attorney General John W. Harris on March 14, 1849, requesting his legal opinion as to whether or not the Governor had authority to enter into the proposed contract. On the 12th of the following month, Harris advised Miller that he was unable to find any provision in the constitution or the laws of the State empowering the Governor to issue such a lease.¹⁵ Miller promptly informed Baird that Governor Woods desired to encourage

the development of the State's natural resources, but that he was not vested with the requisite authority to grant the concession. Miller advised Baird that if he desired to submit a bill which would authorize the leasing of the State's mineral rights, the Governor would be happy to present it to the Legislature at its next session in November 1849.¹⁶

The adverse tidings contained in Miller's letter undoubtedly discouraged Baird. He had hoped that the Governor would grant the request as partial consideration for the hardships he was forced to endure while in the service of his State. He also direly needed the income which the salt monopoly would have afforded him in order to maintain himself in the politically hostile and culturally foreign territory. There was nothing he could do, however, but to advise Miller that he desired to have the proposition presented to the legislature at its next meeting. Finding both his public and private interests frustrated, Baird settled down to live in the old and picturesque capitol of New Mexico. He supplemented his meager salary as a West Texas Judge by operating a mill and practicing law before the New Mexico territorial courts.¹⁷

Just four days prior to the issuance of his opinion opposing the granting of the salt lease, the Attorney General filed a suit in the name of the State against John Delesdenier in an effort to recover a 21.16 acre tract of patented land located on Galveston Island.¹⁸ The State contended that the patent was wholly void because it had been issued in violation of the law prohibiting the location of certificates on islands and mineral lands. It seems that Delesdenier's tract was a part of a 18,215 acre block of land which had been patented to Levi Jones and Edward Hall on November 28, 1840, by virtue of the location of a number of certificates which were issued pursuant to the act of December 10, 1836.¹⁹ This act authorized the President to raise \$20,000.00 by selling land scrip, but expressly reserved all islands belonging to the Republic for the use of the government. Delesdenier argued that the several acts reserving islands and mineral lands from location had been repealed by the act of December 14, 1837.²⁰ The last clause of the 39th section of this act, which was entitled *An Act to Reduce Into One Act and to Amend the Several Acts Relating to the Establishment of a General Land Office*, provided:

All laws heretofore enacted on the subject of public lands shall be and they are hereby repealed.²¹

The case was submitted to a jury on this issue and it returned a verdict in favor of the defendant. A formal judgment was rendered

by the Court pursuant to this verdict on July 5, 1849. The State filed a motion for a new trial on the grounds that the verdict was contrary to the law and evidence. The motion was overruled by Judge Joseph C. Megginson, and the State appealed.²²

The District Court's decision led many persons to believe that the State's policy of reserving the mineral estate under its lands had been judicially abrogated. One such person was Benjamin E. Edwards.²³ As one of the leading land lawyers of Bexar County, Texas, Edwards was in an excellent position to take immediate advantage of the opportunities afforded by the decision.

When it was announced that the government planned to construct a new wagon road to El Paso which would connect with Cooke's wagon road, "California fever" hit San Antonio. Colonel Joseph E. Johnston and his construction crew left San Antonio on June 3, 1849 and commenced the construction of the new trail along the Whiting-Smith or southern route. Following closely behind Johnston were Major Jefferson Van Horn with his troops and supplies for the new garrison which was to be established at El Paso, together with a large caravan of forty-niners.²⁴ One of these gold seekers was Benjamin E. Edwards who had abandoned his law practice and planned to join his father at San Francisco. Although not an official member of the Fremont Association, he traveled with that group to El Paso.²⁵ It is not known precisely how Edwards learned of the Delesdenier decision, but one of the army express riders²⁶ who continuously carried mail and dispatches to and from the El Paso expeditionary force probably appraised him of it.

Edwards, who was unquestionably familiar with Judge Baird's petition and report pertaining to the potential value of the salt reserves located between the Pecos and Rio Grande Rivers, was particularly interested in appropriating the Salina de San Andres. Based on the District Court's decision in Delesdenier's case, he believed that if he could secure the location of a Texas land certificate on the saline, the General Land Office would have no choice but to patent the land. In this respect Edwards was indeed fortunate, for he owned a Second Class Headright Certificate²⁷ which Johnston's guide, Richard A. Howard,²⁸ who was also a Deputy Surveyor of the Bexar Land District, could locate upon the lands covered by the salt lake. Howard apparently agreed to locate the certificate in exchange for an interest in the tract.

Upon arriving at El Paso, Edwards and Howard expeditiously proceeded to locate the certificate upon the Salina de San Andres and survey the precise 640 acres of land to be covered by Edward's

entry. Howard's field notes reveal that the survey was commenced on September 8, 1849, at the southwest corner of Moses Hughes Survey No. 1, which was located at a stake set on the north bank of the river at the Chihuahua Ford. He ran thence North $3\frac{1}{2}^{\circ}$ East 116 miles and 1,140 *varas*^o to a stake and mound set for the southwest corner of his survey of the Salina de San Andres. He ran thence North $1\frac{1}{4}^{\circ}$ East 1,900 *varas* to a post on the bank of the Arroyo Salado; thence South $88\frac{3}{4}^{\circ}$ East 1,900 *varas* to a post; thence South $1\frac{1}{4}^{\circ}$ West 1,900 *varas* to a stake and mound; and thence North $88\frac{3}{4}^{\circ}$ West 1,900 *varas* to the place of beginning. The tract was designated as Survey 16. James B. Roberts and James R. Shipman²⁹ served as his chain carriers.³⁰

Having successfully completed this important assignment, Howard returned to El Paso in time to accompany Colonel Johnston on a reconnaissance of the Rio Grande Valley which extended from the lower end of the San Elizario Island up to Doña Ana.³¹ Howard took advantage of this opportunity to locate numerous additional land certificates on some of the choicest tracts in the El Paso and Mesilla valleys.³²

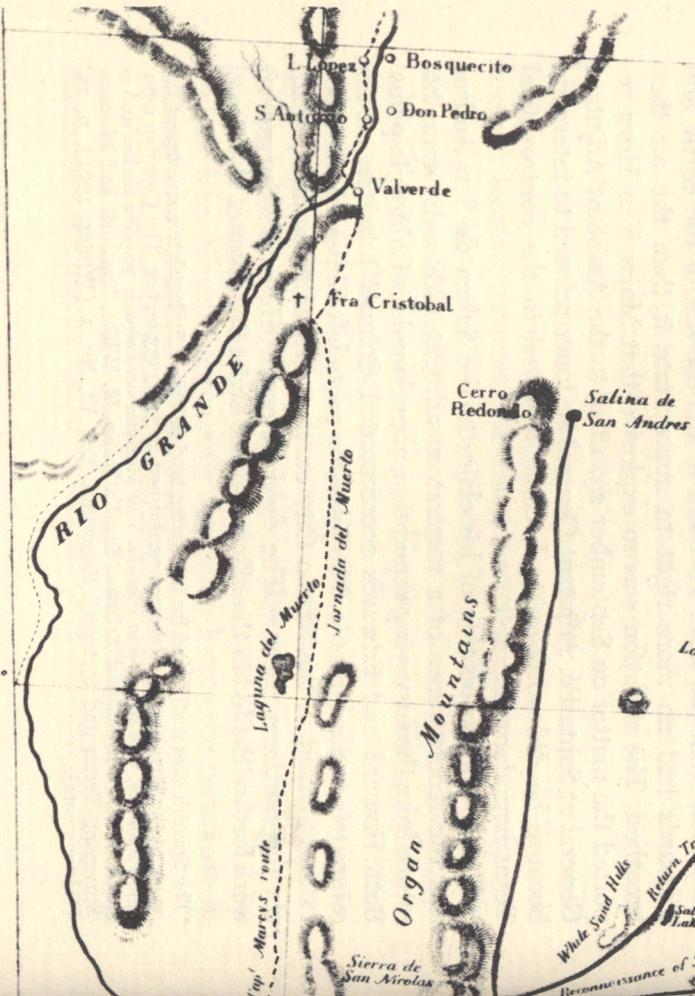
When the local inhabitants learned of Howard's activities, they were highly perturbed. They were especially incensed when they were informed that Edwards proposed to charge them for the salt they took from the lake. To them it was the salt of the earth, and Edwards had no more right to appropriate it than the air they breathed. The situation was so explosive that Major Van Horn reported the matter on September 23, 1849, to the Assistant Adjutant General at Santa Fé. Adjutant General R. Jones refused to intercede because he did not care to become involved in the controversial Texas boundary dispute.³³

Due to the acquisition of his claim to the Salina de San Andres and the reoccurrence of a respiratory ailment, Edwards, upon his return from the surveying expedition, abandoned his California plans. Both Howard and Edwards accompanied Colonel Johnston on his return trip to San Antonio. The Johnston party left El Paso on October 11 and arrived in the Alamo City on the 23rd of November, 1849, via the northern route.³⁴ The field notes for Howard's Survey 16 were forthwith filed in the office of the District Surveyor of the Bexar

^oThe Spanish *vara* is still used for measuring land in Texas. By legislative enactment the value of the Spanish *vara* has been established as 33.33333 inches. The Castilian *vara*, 33.372 inches, was adopted in Florida. The Mexican *vara* equals 32.9882 inches and is used in New Mexico and Arizona. See Katherine H. White, "Spanish and Mexican Surveying Terms and Systems," *PASSWORD*, Vol. VI, No. 1 (Winter, 1961), p. 25. [Editor's note].

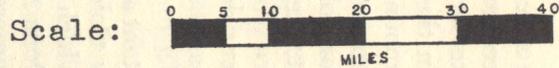
34°

33°



A Portion of the Map
Showing the
Military Reconnaissances in 1849

(31st Cong., 1st Sess.,
Senate Ex. Doc. No. 64)



Land District. Finding the survey to be proper and correct, District Surveyor James S. McDonald recorded the field notes in his records on November 30, 1849.³⁵

Two other entries had previously been filed in the Bexar Land District covering the Salina de San Andres on October 13, 1849. The first was filed by B. M. Browder, Zenas Nash, and Chester B. Stark for 640 acres by virtue of Certificate No. 304 issued by the Galveston County Board of Land Commissioners to the heirs of James Priestly as the unlocated balance due on Priestly's Second Class Headright Certificate No. 364. The second entry was also for 640 acres and was filed by W. G. Crump by virtue of the unlocated 320 acre balance due on both Bexar Second Class Headright Certificate No. 393 issued to Felipe Rivas and Bexar Third Class Headright Certificate No. 26 issued to John C. Hays.³⁶

Confronted with the discouraging possibility of having his prodigious efforts frustrated by these senior entries, Edwards had no alternative but to acquire both of these adverse interests and consolidate the three claims to the saline. By Warranty Deed dated May 10, 1850, W. G. Crump, B. M. Browder and Zenas Nash, the sole owners of the adverse entries, conveyed their respective interests to Edwards for \$10,000.00.³⁷ As a part of the compromise, Edwards conveyed an undivided 16-2/3% interest in his entry to Zenas Nash for \$2,000, an undivided 19-2/3% interest to B. M. Browder for \$3,000, and an undivided 13-2/3% interest to William G. Crump for \$2,000. Out of his remaining one-half interest, Edwards sold Howard an undivided 3/16ths interest in the tract for \$300.³⁸

Having surmounted the obstacles raised by the several conflicting entries, Edwards proceeded to file a certified copy of Howard's field notes, the original Flores Headright Certificate, and a copy of a deed whereby Flores assigned the land certificate to Edwards. Accompanying these documents was a formal application requesting a patent be issued to him for the 640 acres of land embraced within the boundaries of the location and survey.³⁹ However, due to the serious legal questions raised in the State's pending appeal in the Delesdenier case, Major Robert S. Neighbor's pledged⁴⁰ that the Land Office would be closed against all locations in the El Paso area until the claims of the local inhabitants were investigated and the obscure prohibition contained in the Act of February 11, 1850 interpreted.⁴¹

Almost simultaneously the Texas Boundary Dispute flared up as a grave sectional issue. On the 7th of August, President Millard Fillmore pungently called the crisis to the attention of Congress. He recommended that the dispute be promptly settled by either a com-

pact between the United States and Texas or a judicial decision in order to avoid the outbreak of armed violence in New Mexico. The President strongly urged Congress to expedite a compromise by offering Texas a reasonable indemnity for the surrender of its inchoate title.⁴² In response to the President's message, Congress passed the Texas Boundary Act providing for the purchase of Texas' claim to the disputed territory lying northwest of a line running west from the intersection of the 100th meridian and the 36°30' parallel to the 103rd meridian; thence south to the 32° parallel; and thence west to the Rio Grande, for \$10,000,000.00.⁴³ The act was approved by the President on September 9, 1850, and was accepted by the Texas Legislature on November 25, 1850.⁴⁴ By Executive Proclamation dated December 12, 1850, the President declared the act of September 9, 1850, to be in full force and operation.⁴⁵ The Act of September 9, 1850, also created the territory of New Mexico. The territory included the southeastern portion of the Mexican cession under the Treaty of Guadalupe Hidalgo and the acreage purchased from Texas. Subsequent to the 12th of December, 1850, the Salina de San Andres was unquestionably a portion of the territory of New Mexico.

Anticipating the probable acceptance of the Federal Government's offer to purchase the Santa Fé Territory, the owners of Survey 16, in a desperate move, caused their claim to be included in a special relief bill which was introduced in the Texas Legislature. The bill provided for the relinquishment of all of the state's right, title and interest in, among other tracts, Survey 16 in Block 15 of the Bexar Land District, and directed the Commissioner of the General Land Office to issue patents covering such lands. This bill passed both houses and was signed by the Governor on December 2, 1850.⁴⁵ Although the Texas Boundary Act had been adopted by Texas prior to the passage of Relinquishment Act of December 2, 1850, it had not been officially accepted and declared to be in effect by the Federal Government until the 12th of December. After the passage

⁴²This was part of the Compromise of 1850 which many historians believe saved the Union. Texas in accepting the 10 million dollars relinquished her claim to about 67,000,000 acres of land. One-half of the sum was paid in 1852 in U. S. bonds bearing 5 percent interest. The remaining 5 million dollars plus \$2,750,000 Congress appropriated in 1855 to reimburse Texas for money expended on defense against the Indians, was distributed by the United States Treasury among the creditors of Texas who would sign a full release. Thus Texas' debt of \$10,078,703.21 which had been secured by custom receipts was paid at a ratio of 77 cents on the dollar.

In 1852, out of the 5 million dollars in bonds, Texas paid \$2 million dollars to creditors whose claims were unsecured. Thus with the Compromise of 1850 and succeeding congressional legislation Texas was free of debt and with a treasury balance of 3 million dollars. [Editor's note].

of the Relinquishment Act of December 2, 1850, only the ministerial act of issuing a patent to Edwards remained to be performed. However, the Commissioner of the General Land Office again refused to patent the survey. The following notation is found on the General Land Office's file jacket pertaining to Edwards' claim:

This claim cannot be patented unless under a decree of the District or Supreme Court. At the date of the act, the State of Texas had no control over the territory ceded to the United States by a previous act and could not have been intended such a result — SMYTH.⁴⁶

In response to a petition by B. E. Edwards, Congressman Volney E. Howard of San Antonio, Texas, introduced a bill in the United States House of Representatives on February 12, 1852, for the confirmation of Edwards' claim. The bill was referred to the Committee of Private Land Claims on the same day for its recommendation. The bill apparently died in committee.⁴⁷

Eager to make a commercial success of their enterprise, the proprietors of saline had in the meantime entered into a salt lease with Juan Maria Ponce de Leon,⁴⁸ one of the most enterprising and influential citizens of El Paso del Norte. The lease was dated August 23, 1850, and authorized the lessee to extract salt from the premises for a period of two years. The lessee was required to pay a royalty of One Dollar for each *fanega*^o of salt taken from the Salina de San Andres.⁴⁹ In less than eight months, Ponce de Leon assigned the lease to B. M. Browder, subject to the reservation by Ponce de Leon of 1/3 of all salt produced from the land free of all costs.⁵⁰

After the lease expired on August 23, 1852, it is not clear whether the lands were leased to James W. Magoffin or whether he just managed the lands as agent for the several owners. However, it is clear that he had some type of interest in the tract.⁵¹

It seems that after Magoffin became interested in the tract, he attempted to levy a fee for the privilege of gathering salt from the Salina de San Andres. Because it was impracticable to maintain the large permanent armed force at the lake which would be necessary to protect the life of the tribute collector, Magoffin's scheme met with little success. The crafty inhabitants of both sides of the river found it relatively simple to evade Magoffin on their return trips from the lake. However, on several occasions, Magoffin learned of departure of salt expeditions in time to go to the lake and prevent the uncompensated taking of the mineral. Such encounters invariably

^oThe term *fanega* is used "to denote amounts of produce in bushels after it has been gathered from the land, one *fanega* equals about one and one-half bushels." See Katharine H. White, cited above. [Editor's note].

created a great deal of friction between the two parties. Magoffin contended that the taking of the salt without his consent amounted to criminal larceny, while the *salineros* sincerely believed that they were merely exercising their ancient rights. This irreconcilable controversy finally culminated in the outrage known as the Magoffin Salt War.

Early in January 1854, Magoffin was informed that a large number of citizens of Doña Ana County, New Mexico had recently departed for the *salina* in order to gather their usual winter supply of salt. He called upon the sheriff of El Paso County, William Ford, to prevent the New Mexicans from "stealing" the salt from his New Mexico property. Ford promptly formed a posse comprised of seventeen Americans, an Englishman, and ten Latin Americans. Armed with a howitzer and fortified by several rounds of "Pass Brandy," the posse left El Paso during the dead of night. It followed the El Paso salt trail across the state line to the San Augustine Pass, which was reached by the next afternoon. Here the posse settled down to await the return of the convoy.

After waiting some two or three days, the posse broke camp and proceeded north along the salt trail past Ojo de San Nicolas to the Chinos water holes.⁵² A day or two later the salt caravan was finally sighted at three o'clock in the afternoon. It consisted of twenty-six *carretas* and one hundred twenty-five men. The posse rode out and intercepted the train some two miles north of its camp. When the sheriff presented the warrant for their arrest, the New Mexicans laughed and refused to surrender. They boasted that they would die rather than give up the salt or go to Magoffinsville to answer for their deeds. After a wordy wrangle, the posse withdrew to its camp where preparations were made to prevent the teamsters from watering their animals at the Chinos ponds.

The short winter day was almost over and twilight rapidly fading when the New Mexicans finally arrived at the *paraje* and commenced unyoking their oxen. Sheriff Ford quietly ordered his men to surround the caravan and restrain the thirsty oxen. This maneuver proved highly effective, for the New Mexicans apparently had not anticipated such action. When the *salineros* discovered their plight, they commenced shouting "*Cuidado! Cuidado!*" but by then it was too dark for the organization of any effective resistance. During the ensuing confusion, someone fired a shot. For the next ten minutes there was a spirited exchange of gunfire by both sides. In order to equalize their numerical disadvantage, the Texans brought the six pound cannon into play, and as one of the participants wrote: "Hell

was to pay." After the third murderous blast of grape shot had passed through their ranks, the New Mexicans fled the battlefield abandoning their salt, carts, and oxen. The victorious Texans rounded up one hundred fifty-two head of oxen and beat a rapid retreat that very night across the border to the safety of Texas, without even awaiting to ascertain the results of their dastardly deed.⁵³ The *carretas*⁵⁴ together with their precious salt cargoes were left unattended but intact upon the desolate plains. Later one of the members of the posse in an account of the Magoffin Salt War with typical frontier assurance calmly announced:

I think this trip will prove to them that they cannot go to the lake without having to fight for the salt.⁵⁵

The illegal seizure of their domestic animals caused considerable hardship to the citizens of Doña Ana County. Being primarily poor farmers, they were completely dependent upon their crops for a livelihood. Without their oxen, it was next to impossible for the aggrieved parties to prepare their fields for the planting of the spring crops. Many of the New Mexicans advocated an immediate attack upon Magoffin's Rancho in order to recover their livestock. However, the prompt institution of criminal proceedings by the New Mexican officials probably prevented retaliatory mob violence which could easily have erupted into an interracial incident similar to the one which occurred at San Elizario in 1877.

James Magoffin was indicted by the Grand Jury for Doña Ana County on a charge of assault with intent to kill.⁵⁶ He, together with Samuel Magoffin, Frederick A. Percy, William Wallace, Jeremiah Snider, Gabriel Valdez, William Garner, James Loya, John Ream, Jr., and Pedro Cisona, was also indicted by the Grand Jury on a charge of unlawful assembly.⁵⁷ In response to the indictments, criminal suits were filed by United States Attorney W. W. H. Davis in the United States District Court for the Third Judicial District of the Territory of New Mexico, and thereafter warrants were issued for the arrest of the defendants.⁵⁸ The Governor of New Mexico, David Merriwether, assisted by requesting the extradition of James Magoffin from Texas.⁵⁹

The pressure of the political repercussions and the threat of criminal prosecution prompted Magoffin to surrender the animals to their rightful owners and to make full restitution for all damages arising as a result of the skirmish.⁶⁰ Having failed to obtain personal jurisdiction over the defendants and in view of Magoffin's having satisfactorily settled the complaints of the injured parties, the Court granted a request by William Claude Jones, the United States

Attorney, for decrees of *nolle prosequi* in both of the suits in 1856.⁶¹

In an effort to discourage future interferences with ancient traditional right of New Mexicans to gather salt free from all salines located within New Mexico, a unique act was passed by the territorial legislature in 1854. This special statute reads as follows

Whereas, by the laws of Spain, and by the laws of the Republic of Mexico, free and common use was granted to the people of New Mexico, and to the people of all the states and provinces of said republic, of all salt lakes within their respective limits, precluding all individual right of control over the same; and that the people of this territory have freely exercised that right from its earliest settlement; and that the same has been guaranteed to them by the treaty between the United States and the Republic of Mexico;

And, Whereas, one James Magoffin, a citizen of the state of Texas, has set up a fictitious claim to the San Andres Salt Lakes in the southern part of this territory, and has attempted, forcibly, to prevent the citizens of this territory from taking salt from the same, and while engaged in the peaceable exercise of this right, has attacked them with bodies of armed men, fired upon, and wounded them, destroyed and carried off their property, and committed other acts of wrong and outrage against them;

And, Whereas, it is the duty of the legislative assembly of this territory, by proper laws to protect its citizens in their just rights of property and person; Therefore

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. That all the salt lakes within this Territory, and the salt which has, or may accumulate on the shores thereof, is, and shall be free to the citizens, and each one shall have power to collect salt on any occasion free from molestation or disturbance.

Section 2. If any person or persons shall prevent any other person or persons, or shall attempt to prevent them from gathering salt, or going for, or returning with it, or shall arm or embody themselves for any or either of the above purposes, or shall molest or disturb, hinder or annoy any person or persons gathering salt, or going to, or returning from any salt lake, or shall interfere with the salt gathered, or the animals, carts or wagons, or any other mode of conveyance or transportation, shall be deemed guilty of felony, and punished by confinement in the county jail, or territorial prison, not less than two, nor more than seven years, or by fine of not less than one thousand dollars.

Section 3. That this act shall take effect and be in force from and after its passage.⁶²

This statute, insofar as it attempted to authorize the free gathering of salt from privately owned lands, would probably be unconstitutional on the grounds it permitted the confiscation of private property without due process of law.⁶³ However, as long as the Edwards claim remained unconfirmed, its owners were in no position to attempt to

prevent the free gathering of salt from the Salina de San Andres.

As could be expected, the claimants' next move was the resubmission of the claim to Congress for confirmation. In response to a new memorial filed by Edwards, Senator Judah P. Benjamin of Louisiana introduced a bill⁶⁴ in the 34th Congress for the recognition of the inchoate title. The bill was referred to the Senate's Committee on Private Land Claims on August 14, 1856. The Committee in its report⁶⁵ dated February 3, 1857, recommended the passage of the bill without amendment. The bill was passed by the Senate but killed in the House of Representatives on March 3, 1857, when a motion to suspend the rules in order to move the bill from the Speaker's table failed to carry.

A similar bill⁶⁶ was introduced in the 35th Congress by Senator Benjamin. The bill was again favorably reported out of committee⁶⁷ and passed the Senate on May 20, 1858. Next it was forwarded to the House where it was referred to the House Committee of Public Land Claims. The Committee adopted the Senate's report and recommended⁶⁸ the passage of the bill without amendment, but no further action was taken on the bill.

Later the bill⁶⁹ was once again introduced by Senator Benjamin in the 35th Congress. It, too, was favorably reported⁷⁰ out of committee and passed the Senate only to die in the House after having been committed to the House Committee of the Whole on February 8, 1861.

The outbreak of the Civil War forced the temporary abandonment of further efforts by the southern claimants to secure Congressional recognition of their title to the New Mexican lands.

Meanwhile, the war had greatly increased the demand for salt in the El Paso area. What the Yankee army posts would not buy could always be bartered to the San Antonio and Chihuahua traders. Also, any "salt money" which the local inhabitants could earn would help offset the damages caused by the spring flood of 1862, which had been unusually heavy. All this caused the inhabitants of San Elizario to construct a salt road in 1863, from their village due east to the Guadalupe Salt Lakes.⁷¹ Although the citizens of the El Paso Valley had previously utilized⁷² the Guadalupe Salt Lakes, they had gradually stopped using them after the discovery of the Salina de San Andres. Even though the Guadalupe Salt Lakes were closer than the Salina de San Andres, a trip to the former was much more hazardous, for the marauding Apaches infested the entire area between the Hueco Tanks and the Guadalupe Mountains.

After 1863, the inhabitants of the lower El Paso Valley obtained

most of their salt from Guadalupe Salt Lakes. The residents of Upper El Paso Valley and the Mesilla Valley, however, continued to draw their salt supply primarily from the Salina de San Andres. Shortly after Texas adopted Section 39 of Article VII of the Constitution of 1866,⁷³ which released all mines and mineral to the owner of the soil, Samuel A. Maverick⁷⁴ of San Antonio secured the location of two Texas Land Certificates⁷⁵ covering 960 acres of land and the salt lake known as Guadalupe Lake. Maverick's action greatly excited the inhabitants of the lower El Paso Valley until it was learned that his surveys did not cover the smaller salt lakes north of Guadalupe Lake. However, when Charles H. Howard⁷⁶ filed⁷⁷ on those lakes and the only fresh water spring in the area in the name of his father-in-law, Major George B. Zimpleman, and attempted to prevent the free gathering of salt therefrom, the Salt War of 1877 was precipitated.

Armed hostilities erupted at San Elizario, Texas on December 13, 1877, when Howard sought to sequester some eight hundred bushels of salt which had been taken from the Zimpleman Lake without his permission. Howard's actions so enraged the local citizens that an angry mob of approximately four hundred Latin Americans from both sides of the river attacked the Texas Ranger quarters where Howard and most of the Anglo-Americans of San Elizario had taken refuge. After a five day siege the small force of rangers and private citizens surrendered to the mob. Thereafter, Howard and two of his friends were summarily and brutally executed.⁷⁸ Although indictments were returned against several members of the mob, no one was ever punished for this international incident. The Salt War of 1877 did, however, serve to convince the humble Latin Americans of the El Paso Valley that their traditional privilege to gather salt free of charge would not be recognized and protected under the Treaty of Guadalupe Hidalgo. Thereafter, the *salineros* resigned themselves to pay for the salt which they gathered from privately owned salt lakes.

Meanwhile, the interest created by the radical change in Texas property law and the appropriation of the Guadalupe Salt Lakes caused the revival of the dormant claim to the Salina de San Andres.

In response to a memorial submitted by Benjamin E. Edward's widow and devisee, Susan H. Kearney, the following bill⁷⁹ was introduced in the United States House of Representatives on November 6, 1877, by Congressman Gustave Schleicher of Texas:

An Act to confirm the title of Benjamin E. Edwards, his heirs, assigns or legal representatives, to a certain tract of land in the Territory of New Mexico.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That Benjamin E. Edwards, his heirs, assigns, or legal representatives, be, and are hereby, confirmed in the title to six hundred and forty acres of land, situated in the Territory of New Mexico, being the tract of land located by virtue of a certificate numbered four hundred and forty-four, of the second class, issued by the board of land commissioners for the County of Bexar and State of Texas, to one Andrew Flores and dated the sixteenth day of August, Anno Domini eighteen hundred and forty-seven, and the same tract of land for which a patent was authorized to be issued by the act of the legislature of the State of Texas, entitled "an act to require the commissioner of the General Land Office to issue patents for lands therein named," approved December second, eighteen hundred and fifty, and which is more particularly described in the plat and field notes accompanying the survey thereof, executed by R. S. Howard, deputy surveyor, and approved on the thirteenth day of November eighteen hundred and forty-nine, which said survey is numbered thirty-eight, in section numbered fifteen, in what is now of record in the office of the Commissioner of the General Land Office in the State of Texas.

Section 2. That the commissioner of the General Land Office, upon the receipt of the proper plat and survey, shall cause a patent to be issued to said Benjamin E. Edwards, his heirs, assigns or legal representatives, for the lands hereby confirmed: PROVIDED, HOWEVER, That such patent shall be construed as a relinquishment only of the title on the part of the United States, and shall not affect the rights of any third person.

The bill was referred to the House Committee on Private Land Claims, which recommended the passage of the act without amendment. Acting upon this favorable recommendation, the House passed the bill on April 5, 1878. The Senate passed the bill on May 29, 1878, and President Rutherford B. Hayes signed the Act on June 6, 1878.⁸⁰ Thus, after the lapse of more than a quarter of a century the United States Congress finally recognized the title to one of two claims⁸¹ which were based upon titles emanating from the State of Texas.

Even with the Congressional confirmation of their claim, the trials and tribulations of the owners of the Salina de San Andres were still not over for the Commissioner of the General Land Office refused to patent the tract pending the execution of an official resurvey of the lands. On April 13, 1882 George C. Reed, Deputy United States Surveyor, was instructed to survey the tract. The survey was made during the months of April and May and was returned to the Surveyor General of New Mexico for his approval on July 5, 1882. The Surveyor General accepted the survey on August 5, 1882. The tract, as resurveyed, is commonly known as the Benjamin E. Edwards Grant No. 127 and is officially described as Lot 37, Township 12 South, Range 6 East, New Mexico Principal Meridian. The tract as resur-

veyed contained only 626.79 acres instead of the 640 acres originally called for in Howard's original survey.⁸²

Pursuant to the Act of June 6, 1878, President Chester A. Arthur issued a patent for the tract to Benjamin E. Edwards, his heirs, assigns and legal representatives, on October 8, 1883. The patent was transmitted by the General Land Office to the Surveyor General on October 27, 1883, with specific instructions to deliver the patent to the party entitled to same only upon receipt of the sum of \$681.66, which represented the cost of surveying and plating the tract.⁸³ It is indeed ironic to learn that after thirty-four years of persistent efforts to secure a clear and absolute title to the Salina de San Andres, the owners defaulted on the payment of the surveying fees and, therefore, the patent was never delivered. It is still being held in Santa Fé, New Mexico, pending the payment of these fees.

The owners of the tract lost interest in the saline after the arrival of the railroad at El Paso in 1881. With the advent of the railroad, salt became dirt cheap. The humble *salineros* found it was no longer worth the effort necessary to gather and transport the salt from the local deposits let alone pay even a nominal fee for the privilege. By the time the owners of this historic salt lake were in a position to challenge the validity of the New Mexican Act of 1854, the incentive to do so had completely dissipated.

The history of the Salina de San Andres tends to highlight the conflicting theories of property rights so prevalent in the southwest. The Civil Law system of the former sovereigns of Spain and Mexico frequently clashes violently with the principals of the Anglo-American common law. Today with the accelerated growth and development of the southwest, disputes are continually arising over the ownership of water, minerals and land. The end of such disputes is not in sight. In order to understand and appreciate these problems, a knowledge of our Spanish and Mexican heritages is essential. Until there is a clearer understanding of the background of the ancient and traditional civil law property rights of the southwest, there is always the possibility that an aggrieved party will take the law in his own hands, and a senseless incident such as the Magoffin Salt War of 1854 or the Costillo County, Colorado, incident of 1961⁸⁴ will result.

REFERENCES

1. The Salina de San Andres is located between Sections 11, 12, 13 and 14, Township 12 South, Range 6 East, N. M. P. M., Sierra County, New Mexico.
2. Charles Wilson Hackett, *Historical Documents relating to New Mexico, Nueva Vizcaya, and Approaches thereto, to 1773* (3 Vols., Washington, D. C., 1926), II, p. 95.
3. *House Executive Documents*, 45 Cong., 2nd Sess., Document No. 93, p. 68.
4. O. E. Meinzer and R. E. Hare, *Geology and Water Resources of Tularosa Basin, New Mexico, and Adjacent Areas* — U. S. Geological Survey, *Water Supply Paper No. 343* (Washington, 1915), p. 16.
5. Josiah Gregg, *Commerce of the Prairies* (Norman, 1954), p. 124; and Grant Foreman, *Marcy and the Gold Seekers* (Norman, 1939), p. 351.
6. H. P. N. Gammel (Comp.), *The Laws of Texas* (10 Vols., Austin, 1898), I, p. 1193.
7. James Wiley Magoffin, son of Beriah and Jane McAfee Magoffin, was born in Harrodsburg, Kentucky in 1799. Some time before 1825 he became a Santa Fé trader. Ordinarily he made one or two trips a year from Chihuahua via Santa Fé to St. Louis. In 1830 he was appointed the first United States Consul for the State of Chihuahua, Mexico. During the same year he married Maria Gertrudis Valdez who was related by marriage to Governor Manuel Armijo. Shortly before the Mexican War, Magoffin moved his family to Independence, Missouri where his wife died in 1845. After the outbreak of the War, he offered his services to the army. Due to Magoffin's knowledge of the southwestern country and his influence over the Mexican people, Senator Thomas Hart Benton secured his appointment as a special aid to General Kearny. After his services in the conquest of New Mexico, Magoffin attempted to secure the peaceful surrender of Chihuahua to Colonel Alexander W. Doniphan. However, before he was able to make the necessary arrangements, he was detected and imprisoned as a spy. His life was spared as a result of Doniphan's prompt seizure of Father Ramon Ortiz as a hostage in retaliation for his arrest. The government paid Magoffin \$30,000.00 as a full settlement for his services, sufferings and personal losses during the War.
After the War, Magoffin settled at Magoffinsville, Texas, now a part of the City of El Paso, where he continued to engage in many mercantile enterprises. He played an active role in the Civil War on the side of the Confederacy. He died on September 28, 1869, in San Antonio, Texas at the age of 73. Stella A. Drumm, *Down the Santa Fé Trail* (New Haven, 1926), pp. XVIII-XX; Walter Prescott Webb and H. Bailey Carroll, *The Handbook of Texas* (2 Vols., Austin, 1952), II, p. 130; and *San Antonio Express*, September 29, 1869.
8. William A. Keleher, *Turmoil in New Mexico* (Santa Fé, 1952), pp. 19 and 33.
9. H. P. N. Gammel, *The Laws of Texas*, III, p. 95.
10. *Ibid.*, pp. 95-6.
11. Spruce McCoy Baird was born on October 8, 1814, in Glasgow, Kentucky. He taught school on Samuel Perrin Browdry's Kentucky plantation prior to moving to Texas. He lived at Woodville and San Augustine prior to opening a law practice at Nacogdoches. On May 27, 1848, he was appointed Judge of the Eleventh Judicial District Court by Governor George T. Wood. After Texas sold its claim to its northwestern territory to the Federal Government in 1850, Baird was left without a job. However, he elected to remain in New Mexico and practice law. In 1852 he was appointed to the position of Indian Agent to the Navajo. He was appointed Attorney General of New Mexico in 1860, but resigned one year later to become supporter of the Confederate cause in New Mexico. He withdrew to Texas with the Southern Forces in 1862. In Texas Baird received a colonelcy and given command of the 4th Regiment of the Arizona Brigade. For the remainder of the war he served on the Northwest Frontier. After he left New Mexico he was indicted for high treason and his beautiful ranch south of Albuquerque, which was known as *El Rancho del Camino Tejano*, was confiscated for the remainder of his life. He was paroled in July 1865. After the war he moved to Trinidad, Colorado, where he engaged in the private practice of law. He was married to Emmacetta C. Bowdry of Kentucky in 1848. He passed away on June 5, 1872 at Cimmaron, New Mexico. Clarence Wharton, "Spruce McCoy Baird," *New Mexico Historical Review*, XXVII, pp. 300-314.

12. William Campbell Binkley, *The Expansionist Movement in Texas* (Berkeley, 1925), p. 160.
13. Although the salines were not named, the petition undoubtedly had reference to La Salina de San Andres and a salt lake known as La Salina was located in the Estancia Valley.
14. *Journals of the House of Representatives of the State of Texas* (Austin, 1849), pp. 232-234.
15. *Ibid.*, p. 240.

There is no disputing Texas' ownership of mineral estate in and under all of the lands under its jurisdiction prior to the Constitution of 1866. The Constitution of 1836, by reference, had adopted the Mexican mineral policy and all other valid Mexican laws then in force which were not inconsistent with the other provisions of the Constitution. When the Common Law was adopted in 1840, the Legislature affirmatively evidenced its desire to continue to protect the Republic's mineral rights by providing that the Common Law would not supersede the former laws relating to the reservation by the sovereign of islands, salt lakes, licks and salt springs, and mines and minerals of every description.

Although the Legislature had a general knowledge of the antiquated Spanish Mineral Ordinance of 1783, it failed to pass any new legislation on the subject. The only mineral legislation enacted prior to constitutional relinquishment of 1866, was a special act which authorized the Colorado Mining Company to work the gold, silver and lead mines located on any lands then or thereafter owned by the company. The act permitted the company to work the mines for a term of ten years subject to the payment of a royalty to the State equal to 5 percent of the gross proceeds.

Both Spain and Mexico had freely disposed of the surface estate under lands containing known mineral deposits. If the mineral rights were subsequently leased, the lessee was liable to the surface owner for any damages to the surface estate and improvements thereon resulting from the mining operations. It was widely believed that this policy was changed by a proviso attached to a special relief act passed by the Texas Legislature on June 3, 1837, which provided that "no land granted by this government shall be located on salt springs, gold or silver mines, copper or lead, or other minerals or any island of the Republic." H. P. N. Gammel, *The Laws of Texas*, I, pp. 1077 and 1289; and II, pp. 178 and 710.

This was the status of the Texas Mineral Law when Baird and his associates applied for their salt lease. A literal reading of the Special Relief Act of June 3, 1837, would preclude them from locating a land certificate on lands covered by the two salt lakes. The only apparent way by which the association could legally mine or gather the salt from the lakes would be under a special legislative act.

16. *Journals of the House of Representatives of the State of Texas* (Austin, 1849), pp. 240-241.
- A perusal of the *Journals* of the Third Legislature of the State of Texas does not indicate that such a bill was introduced. The decision of the Galveston District Court in the case *State vs. Delesdenier* (*infra.*) undoubtedly accounts for Baird's failure to secure the introduction of a special mineral leasing bill.
17. Kenneth F. Neighbors, "The Struggle over the Upper Rio Grande Region in 1850," *The Southwestern Historical Quarterly*, LXI, p. 439.
18. *State of Texas vs. John Delesdenier* (MSS., Records of the District Clerk's Office, Galveston, Texas), Cause No. 384.
19. John Sayles and Henry Sayles, *Early Laws of Texas* (3 Vols., St. Louis, 1888), I, p. 212. This act is also found on page 1136 of Volume I of Gammel's *Laws of Texas*; however, Gammel made an error in compiling the act. He states that "all lands" instead of "all islands" were reserved.
20. H. P. N. Gammel, *Laws of Texas*, I, pp. 1404-1418.
21. *Ibid.*, I, p. 1417.
22. *Minute Book* (MSS., Records of the District Clerk's Office, Galveston, Texas), II, p. 109.

On appeal the Supreme Court of Texas reversed the District Court and held that the repealing clause of the 39th Section of the Act of December 14, 1837, was limited to such laws as were embraced within the purview of that act. The Court noted that if the literal expressions contained in the Act of December 14, 1837,

were not limited that absurd, unjust and inconvenient consequences would surely result, including the repeal of the law providing for the issuance of bounty warrants to the heroes of the Revolution. Continuing the Court pointed out that its conclusions were supported by the Act of January 20, 1840, whereby the State adopted the Common Law and repealed all of its former laws, except those pertaining to the government's reservation of all islands and mineral rights. Concluding the Court held that the lands in question were not subject to appropriation by individuals and, therefore, the patent was void. *State vs. Delesdenier, Texas Reports* (St. Louis, 1881), VIII, p. 217.

The decision in the Delesdenier case was subsequently modified in the cause styled *Cowan vs. Hardiman*. In that case the Supreme Court held that the legislature had not prohibited individuals from locating and appropriating lands containing minerals or salines, but had merely reserved the mineral estate located thereunder together with an easement for extracting the minerals. *Cowan vs. Hardiman, Texas Reports* (St. Louis, 1881), XXVI, p. 217. This decision clearly shows that Texas continued to follow the mineral policies established by her predecessors.

The resentment and confusion occasioned due to the State's reservation of all mineral rights resulted in the relinquishment of such rights to the owners of the soil in 1866. For a concise history of the evolution of the relinquishment of the State's mineral rights under the Constitution of 1866, see Wallace Hawkins, *El Sol del Rey* (Austin, 1947).

23. Benjamin Elisha Edwards, son of Dr. Benjamin F. Edwards and Eliza Green, was born at Russellville, Kentucky on August 5, 1825. In his youth, his parents moved to Alton, Illinois and later to St. Louis, Missouri. He studied law at Springfield, Illinois, with his cousin Benjamin S. Edwards, the son of Ninian Edwards, the Territorial Governor of Illinois. Due to failing health, Edwards decided to move to San Antonio, Texas, in 1846. Soon after he arrived he opened a private school and commenced studying the Texas statutes. Next he served as Deputy County Clerk of Bexar County from May 1847 to November 27, 1848. During the next few years he engaged in a number of interesting occupations. These included Assistant Quartermaster for the Army, Surveyor, rancher, land speculator and attorney. He owned a considerable amount of property in Texas including the famous Culebra Ranch which is located eighteen miles west of San Antonio. He married Susan Mudge in New Orleans on December 25, 1852. During the summer of 1858, he drove a large herd of horses and mules to Illinois. Before he could return to Texas, he died in Madison County on October 10, 1858. He was survived by his widow and two sons, Frank Mudge Edwards and Willis Green Edwards. *Benjamin E. Edwards Papers* (MSS., Records of the Texas Archives, Austin, Texas), and Frederick C. Cabot, *With the Makers of San Antonio* (San Antonio, 1937), p. 346.
24. *Senate Executive Documents*, 31st Cong., 1st Sess., Documents No. 64, 26 and 41; William H. Goetzman, *Army Exploration in the American West* (New Haven, 1959), p. 231.
25. *Benjamin E. Edwards Papers* (MSS., Records of the Texas Archives, Austin, Texas), Benjamin E. Edwards to Julia M. Edwards, July 14, 1849, and Jose Policarpo Rodriguez, *The Old Guide* (Dallas, N.D.), p. 38.

The Fremont Association was a group of New Yorkers which were guided to California by Colonel Jack Hays. The Association was formed on March 17, 1849, and sailed from New York on the 3rd of April aboard the packet ship, *Benjamin R. Milam*. The group debarked at Port Lavaca on April 28th. It regrouped near San Antonio on June 16th. The Association hurriedly caught up with the Johnston and Van Horn group and travelled with the military forces to El Paso. It followed Cooke's route to California via the Tucson cut-off. George P. Hammond and Edward H. Howes, *Overland to California* (Berkeley, 1950).

26. George P. Hammond and Edward H. Howes, *Overland to California*, p. 67.
27. Second Class Headright Certificate No. 444 was issued to Andres Flores, a single man, on August 16, 1847, by the Bexar County Board of Land Commissioners after he had satisfactorily proved that he had migrated to Texas previous to October 1, 1837, resided in the Republic for three years, and performed the duties of citizenship. The action of the Board of Land Commissioners was attested by the County Clerk and *ex officio* Clerk of the Board of Land Commissioners by Ben E. Edwards, Deputy. Andres assigned the certificate to Benjamin E. Edwards on the day follow-

- ing the issuance. *Senate Miscellaneous Documents*, 45th Cong., 3rd Sess., Document 81, Pt. 2, p. 1057.
28. Richard Austin Howard was born in Maine in 1824. He entered the United States Military Academy from Mississippi on July 1, 1840, but was discharged for deficiency in Philosophy on July 13, 1844. Shortly thereafter, we find him as a Deputy Surveyor for the Bexar Land District. The records of the General Land Office reveal that he did a considerable amount of surveying work along the Nueces, Llano and Rio Grande Rivers in the late forties and early fifties. He also served as a guide on a number of early expeditions into the territory between San Antonio and El Paso. He was a partner with Samuel A. Maverick in a number of land deals. Howard owned a considerable amount of Texas property at the time of his death, which occurred on December 4, 1866 at Beauregard Station, Mississippi. J. D. Freeman to J. J. B., July 5, 1958.
 29. Captain James R. Shipman was the leader of the group of forty miners known as the Pine Bluff Company which accompanied Major Van Horn to El Paso. Hammond and Howes, *Overland to California*, p. 168.
 30. *Field Notes Record* (MMS., Records of the Bexar County Clerk's Office, San Antonio, Texas), A-5, p. 257.
 31. *Senate Executive Documents*, 31st Cong., 1st Sess., Document No. 64, p. 27.
 32. Howard located seven consecutive surveys (Surveys 17-23) on the Rio Viejo for Samuel Maverick. The first of these surveys was commenced at a point 1½ miles east of the Town of San Elizario on the Rincon de Sefa at the Padre's crossing. Survey 36 for 320 acres was made for Edmond Williams and embraced the old Padre Silver Mine. Surveys 34 and 35 for a labor and a league of land respectively were made for John McMullen. Survey 34 was commenced on the Rio Grande at a point 1½ miles south of Alamito. It is rumored that Howard may have located other surveys in the El Paso and Mesilla Valleys, especially on the Doña Ana Bend Colony Grant. *Records* (MSS., Records of the El Paso County Surveyor's Office, El Paso, Texas), A, pp. 9-19.
 33. *Senate Executive Documents*, 31st Cong., 1st Sess., Document No. 56, pp. 3 and 4.
 34. *Senate Executive Documents*, 31st Cong., 1st Sess., No. 64, p. 26.
 35. *Field Notes Records* (MSS., Records of the County Clerk's Office, San Antonio, Texas), A-5, p. 257.
 36. *Deed Records* (MSS., Records of the Bexar County Clerk's Office, San Antonio, Texas), H-1, p. 428.
 37. *Ibid.*, I-1, p. 109.
 After Edwards, Crump, Browder and Nash had compromised their differences, the Priestly, Rivas and Hays certificates were lifted and subsequently located elsewhere. The Priestly certificate was subsequently located in Bandera County and the Rivas certificate was located in Bexar County. Jerry Sadler to this writer, May 3, 1961.
 38. *Ibid.*, I-1, pp. 111-118.
 39. *File No. Bexar 2-398* (MSS., Records of the General Land Office, Austin, Texas).
 40. Due to concerted resistance by the U. S. Military officials and local inhabitants of the Santa Fé area, every effort by Texas to organize its far western territory was thwarted. Such reversals prompted the Texas Legislature to reappraise its interior policy. On December 31, 1849 an act was passed creating three new counties — Presidio, El Paso, and Worth — out of the southern portion of Santa Fé County. Major Robert S. Neighbors was appointed Commissioner with authority to organize the four counties by laying them off into convenient precincts and holding elections for county officials. Neighbors decided to organize El Paso County first. Upon arriving at San Elizario, the County seat of El Paso County, Neighbors was confronted with the persistent complaint that Texas sought to deprive the inhabitants of that area of their inalienable salt rights and vested titles. In order to mollify the fears and apprehensions of this portion of the State's citizenry, Commissioner Neighbors, on his own initiative, pledged that the Land Office would be closed against all locations in the El Paso area until their land claims were investigated. On March 23, 1850, he notified Governor Bell that in order to contend successfully with the prejudices created against Texas as a result of Howard's surveying activities, he was

compelled to issue the pledge. He advised the Governor that he believed if his pledge were honored by a law under the seal of the State that it would securely bind a large portion of the local inhabitants and most influential men in the territory to the State. After issuing the pledge, Neighbors was able to organize successfully El Paso County. *Appendix to the Journals of the Senate of the Third Legislature, State of Texas, Second Session* (Austin, 1850), p. 4.

[Editor's note: For an article and map on El Paso County, see Richard K. McMaster, "The Evolution of El Paso County," *PASSWORD*, VIII, No. 3 (July, 1958), p. 120 *et seq.*]

41. On February 8, 1850 the Legislature passed an act providing for the appointment of a Board of Commissioners to investigate Spanish and Mexican land titles in, among other counties, Santa Fé County. Pursuant to this act the Bourland-Miller Commission proceeded to investigate such titles in the lower Rio Grande Valley. In order to protect the claimants of the grants pending their investigation by the Bourland-Miller Commission, the legislature passed the act of February 11, 1850 which prohibited the Commissioner of the General Land Office from issuing patents to any land located by virtue of any warrant, certificate or survey covering lands located within any of the counties named in the act of February 8, 1850, except Kenny County, until after the 1852 regular session of the legislature. H. P. N. Gammel, *The Laws of Texas*, III, pp. 144 and 177.
42. *House Executive Documents*, 31st Cong., 1st Sess., Document No. 82, pp. 4-6.
43. Hubert Howe Bancroft, *History of the North Mexican States and Texas* (2 Vols., San Francisco, 1886-1889), II, pp. 399-401.
44. *House Executive Documents*, 46th Cong., 3rd Sess., Doc. No. 47, pp. 1099-1100.
45. H. P. N. Gammel, *The Laws of Texas*, III, p. 853.
46. *File No. Bexar 2-398* (MSS., Records of the General Land Office, Austin, Texas).
47. *House Journal*, 32nd Cong., 1st Sess., p. 340; and *Memorial of B. E. Edwards* (Records of the U. S. House of Representatives, General Services Administration, Washington, D. C.), Record Group 233; and Buford Rowland to this writer, November 1, 1961.
48. Juan Maria Ponce de Leon was probably the wealthiest and most influential man in El Paso del Norte. In addition to valuable land holdings and farms on both sides of the river, he had a virtual monopoly over the mercantile and transportation activities of the area. He held several local political positions at El Paso del Norte, including Jefe Politico and Secretary of the Ayuntamiento. He died on July 1, 1852, and was survived by his widow, Dolores Zazaya Ponce de Leon, and a daughter, Maria Josefa Anastacia Varela. J. J. Bowden, *El Rancho de Ponce* (MSS., Master's Thesis, Texas Western College, El Paso, Texas), p. 15; *The El Paso Herald*, November 23, 1906 and July 11, 1909; and Webb and Carroll, *The Handbook of Texas*, I, p. 484.
49. *Deed Records* (MSS., Records of the El Paso County Clerk's Office, El Paso, Tex.), A, p. 119.
50. *Ibid.*, p. 185.
51. The account of the Magoffin Salt War contained in the February 2, 1854, issue of the *New York Daily Times* states that James W. Magoffin set up a claim to the salt lake under a Texas Headright Certificate. Magoffin's claim was undoubtedly derived through and under the Edwards' entry.
52. The exact location of the Chinos water holes or ponds can not be determined at this late date. They have long since ceased to exist under that name. The Superintendent of the White Sands National Monument recently questioned several of the "old timers" of that area regarding their location, but they did not know of any local water hole by that name. The records of the United States Geological Survey and the Office of the Cadastral Engineer do not contain any reference to the Chinos Ponds. There is a good possibility that the "wet weather lake" now known as Lake Lucero, located in Townships 18 and 19 South, Range 5 East, N.M.P.M. is in fact the Chinos Ponds. Forrest M. Benson, Jr. to this writer, August 14, 1961; John A. Anderson to this writer, August 14, 1961; and Clarence E. Bilbray to this writer, September 19, 1961.

53. The Texan's version of the Magoffin Salt War is found in the January 24, 1854 issue of the *Texas State Gazette*. The narrator states that he later heard that three of the New Mexicans were missing and several mules and oxen were killed. The New Mexican account of the skirmish is contained in the February 7, 1854 issue of the *New York Daily Times*. Here it is stated that the Texans wounded one man, killed four mules and several oxen, and drove off one hundred sixty-three oxen.
- Short newspaper accounts of the Magoffin Salt War are also found in the January 27, 1854 issue of the *Telegraph and Texas Reporter*; the January 12, 1854 issue of the *San Antonio Ledger*; and the January 14, 1854 and February 18, 1854 issues of the *Santa Fé Weekly Gazette*.
54. On page 52 of her delightful little book, *Tales of the Tularosa* (Alamogordo, 1953), Mrs. Tom Charles tells of how the late Watson Ritch found an old hand-hewn ox cart at the north end of the White Sands National Monument. It seems that the cart, which had been buried in the sand for years, was uncovered over night by a wind storm. She poses the following questions in connection with the discovery: How long had it been there? Where did it come from? A possible answer to these perplexing questions is that the cart was a part of the salt train attacked by the Texas posse early in January, 1854. During the battle the animals drawing this cart stampeded only to become lost and subsequently buried in the ever shifting white sands. The cart was found in 1936 in the NE/4 of Section 2, Township 16 South, Range 4 East, N.M.P.M. Forrest M. Benson, Jr. to this writer, August 14, 1961.
55. *Texas State Gazette*, January 24, 1854.
56. James Magoffin was apparently indicted under Section 7, Article III: Crimes and Punishment of the Kearney Code. This section reads as follows:
- Every person who shall be convicted of shooting or stabbing another on purpose, or of assaulting or beating another with a deadly weapon, with intent to kill, maim, ravish or rob such person, or to commit any other crime, shall be imprisoned not exceeding seven years nor less than two years. *New Mexico Statutes — 1953* (12 Vols., Indianapolis, 1953), I, p. 322.
- The crime charged in the indictment was a felony. Magoffin's name was spelled "MaGoffin" in the indictment. *Records of the United States District Court for the Third Judicial District of the Territory of New Mexico — County of Doña Ana, May 1854 - November 1856* (MSS., Records of the District Clerk's Office, Las Cruces, New Mexico), p. 17.
57. The indictment was apparently brought under Section 10, Article III: Crimes and Punishment of the Kearney Code. This section reads as follows:
- If three or more persons shall assemble together with intent to do any unlawful act against the peace, and to the terror of the people or having lawfully assembled, shall make any movement or preparation to do such act, they shall on conviction pay a fine not exceeding Fifty Dollars and not less than Five Dollars each. *New Mexico Statutes — 1953*, I, p. 323.
- James and Samuel Magoffin's names were spelled "McGoffin" in the indictment. The William Wallace named therein was undoubtedly the famous frontiersman Big Foot Wallace. The defendants were undoubtedly members of Sheriff Ford's posse. The contents of the indictment are unknown for the early court records for these early years are missing. *Records of the United States District Court for the Third Judicial District of the Territory of New Mexico* (MSS., Records of the District Clerk's Office, Las Cruces, New Mexico), p. 71.
58. Territory of New Mexico *vs.* James McGoffin, *et al.* These two cases were set for trial during the May 1854, term of Court. Both were continued by the prosecuting attorney because the warrants had not been served upon the defendants. *Ibid.*
- W. W. H. Davis was the house guest of James Magoffin at Magoffinsville approximately one week prior to the opening of the May 1854 term of Court at Las Cruces. They undoubtedly discussed these two suits. W. W. H. Davis, *El Gringo* (New York, 1857), pp. 383-385.
59. *New York Daily Times*, February 2, 1854.
60. *Santa Fé Weekly Gazette*, February 18, 1854.

61. *Records of the United States District Court for the Third Judicial District of the Territory of New Mexico* (MSS., Records of the District Clerk's Office, Las Cruces, New Mexico), p. 80.
62. *New Mexico Statutes* — 1953, XI, p. 348.
63. Frank A. Hubbell Co. vs. Gutierrez, *New Mexico Reports* (St. Paul, 1934), XXXVII, p. 309.
64. *Senate Journal*, 35th Cong., Senate Bill S. 454.
65. *Senate Reports*, 34th Cong., 3rd Sess., Report No. 350.
66. *Senate Journal*, 35th Cong., Senate Bill S. 186.
67. *Senate Reports*, 35th Cong., 1st Sess., Report No. 106.
68. *House Reports*, 35th Cong., 1st Sess., Report No. 460.
69. *Senate Journal*, 36th Cong., Senate Bill S. 240.
70. *Senate Reports*, 36th Cong., 1st Sess., Report No. 103.
71. The Guadalupe Salt Lakes are located in the northeastern portion of Hudspeth County, Texas, just south of the Texas-New Mexico State line. They are approximately ninety miles due east of El Paso and seventy-eight miles east of San Elizario. They were about eleven miles southwest of Guadalupe Peak. There are two main lakes and three smaller ones. The largest and best lake is known as the Guadalupe Lake and is located primarily in Section 185, S. A. Maverick Survey. The second or northern lake is known as Zimpleman's Lake and is located primarily in Survey 339, M.E.P. & P. Ry. Co. survey, Hudspeth County, Texas.
The *Rider Map of El Paso County (1917)* shows the exact location of the old San Elizario salt road with its upper and lower branches. The road runs almost due east from San Elizario through the southern foot hills of the Hueco Mountains.
72. Caleb B. Miller in his deposition concerning the San Elizario Salt War, claimed that he was the first person who discovered the Guadalupe Salt Lakes. This was in 1862. *House Executive Documents*, 45th Cong., 2nd Sess., Document No. 93, p. 105. However, Captain R. B. Marcy, while camped near Guadalupe Peak, states that "about twelve miles south of here are several salt lakes, which our guide informed me had been formerly resorted to by the Mexicans for salt; but that since the Indians had become hostile, they did not venture to go there." Grant Foreman, *Marcy and the Gold Seekers*, p. 351.
73. H. P. N. Gammel, *Laws of Texas*, V, p. 880.
74. Samuel Augustus Maverick, son of Samuel and Elizabeth (Anderson) Maverick, was born on July 23, 1803, at Pendleton, South Carolina. He was a well educated man having received a B.A. degree from Yale College in 1825 and studied law at Winchester, Virginia. He emigrated to Texas in 1835. Shortly thereafter he joined the volunteer army. He was captured by the Mexicans on October 2, 1835 and sent to San Antonio. On December 3 he escaped and served as a guide during the siege of Bexar. As a result of having been elected as one of the four representatives from Bexar to the Convention of 1836, he escaped the Alamo massacre. He was a signer of the Texas Declaration of Independence. After the Convention adjourned, he left Texas to marry Mary Ann Adams at Tuscaloosa, Alabama, on August 4, 1836. In January 1838 he returned to San Antonio with his wife and baby where he practiced law and was very active in local and state politics. From 1838 to 1842 he was one of Colonel Jack Hay's Minute men. In 1842 he was captured by General Adrian Wall and held prisoner at Pirate Castle at Vera Cruz, Mexico. He accompanied Hays in 1848 on the famous Chihuahua Expedition to open a trail to El Paso del Norte. He invested heavily in Texas land certificates many of which were located by him in El Paso County in the 1860's. During the 1850's Maverick was treasurer of the San Antonio & Mexican Gulf Railroad Company. He died in San Antonio on September 2, 1870, and was survived by his wife and seven children. L. W. Kemp, *The Signers of the Texas Declaration of Independence* (Salado, 1954), pp. 201-209.
75. Samuel A. Maverick had purchased Bexar Bounty Certificate No. 9939 for 640 acres which had been issued to John Hynes and Bexar 3rd Class Certificate No. 574 for 320 acres which had been issued to Davis Delgado. The two certificates were located as Surveys 185, 186 and 187 for 320 acres each by Jarvis Hubble, District Surveyor for the El Paso and Presidio Land District, on October 31, 1866. The three surveys were patented to Maverick on August 4, 1869. *File Nos. Bexar B-1480 and*

- Bexar 3-6446* (Records of the General Land Office, Austin, Texas); and *Transcribed Records* (Records of the El Paso County Surveyor's Office, El Paso, Texas), A, pp. 289-291.
76. Charles H. Howard was a Missouri lawyer prior to the Civil War. He joined Wood's Regiment on August 1, 1863. He was elected Junior Second Lieutenant on December 1, 1864. He was surrendered by General Kirby Smith and paroled at Shreveport, Louisiana on June 8, 1865. He moved to El Paso, Texas in 1870 where he entered into the private practice of law. He was appointed District Attorney in 1873. Later he served as District Judge of the 25th Judicial District Court. He married Mary Louise Zempleman at Austin, Texas on December 31, 1875. He was murdered at San Elizario, Texas on December 17, 1877. Charles Frances Ward, "The Salt War of San Elizario (1877)" (MSS., Master's Thesis, University of Texas, Austin, Texas), pp. 32 and 34; and John Morgan Broaddus, Jr., "The History of the Bench and Bar in El Paso County" (MSS., Master's Thesis, Texas Western College, El Paso, Texas), p. 181.
77. Ward B. Blanchard, County Surveyor for El Paso County located three Texas Land Certificates covering 1920 acres for Major Zimpleman on July 10, 1877. The location was made in four separate surveys. Two surveys were for thirty-two acres and two for 640. These surveys are now known as Sections 335, 337, 339 and 340A, M.E.P. & P. Ry. Co. Survey, Hudspeth County, Texas. The original certificates had been issued to the Memphis, El Paso and Pacific Railroad Company and could, therefore, be located within the Texas & Pacific Reserve. The surveys were located adjacent to the Maverick Survey and covered the salt lake now known as Zimpleman Lake together with three smaller salt lakes. The only fresh water spring in the area was also located on one of these surveys. *File Nos. Bexar S-23488, S-23496 and S-24179* (Records of the General Land Office, Austin, Texas); *Transcribed Records* (Records of the El Paso County Surveyor's Office, El Paso, Texas), B, pp. 212-245; and *House Executive Documents*, 45th Cong., 2nd Sess., Document No. 93, pp. 93, 69 and 70.
78. A more detailed account of the Salt War of 1877 is contained in C. L. Sonnichsen's *El Paso Salt War of 1877* (El Paso, 1961).
79. *House Journal*, 45th Cong., House Bill H. R. 1119.
80. *United States Statutes at Large* (Boston, 1879), XX, p. 537.
81. As might be expected, the only other recognized private land claim based upon a title emanating from the State of Texas for lands located within the area ceded by Texas to the United States in 1850, also covered a salt lake. This claim arose as a result of a survey of 640 acres of land made on July 22, 1850, by Joel L. Ankrim, Deputy Surveyor for the Bexar District. The survey was made for George Paschal who by *mesne* conveyances had acquired Second Class Land Certificate No. 169 which had originally been issued to Simeon Padro by the Board of Land Commissioners for Bexar County, Texas. This survey is known as Survey No. 38 in Section 15, and embraces the salt lake known as La Salina. La Salina is located in Torrance County approximately seventeen miles southwest of Vaughn, New Mexico. The claim was confirmed by an act dated October 1, 1888. *Senate Reports*, 34th Cong., 1st Sess., Report No. 126; and Henry Volcker claim, Report No. 161 (MSS., Records of the Surveyor General's Office, Bureau of Land Management, Santa Fé, New Mexico).
82. Benjamin E. Edwards Claim, Report No. 127 (MSS., Records of the Surveyor General's Office, Bureau of Land Management, Santa Fé, New Mexico).
83. *Ibid.*
84. A misunderstanding over grazing rights resulted in a vicious assault on three *vaqueros* on Thanksgiving Day 1961. It seems that many of the citizens of Costillo County Colorado, believed that the Sangre de Cristo Grant was a community grant and, therefore, they had the right to pasture their livestock on the lands covered thereby. However, the grant had actually been granted to Stephen Luis Lee and Narciso Beaubien in 1843 by Manuel Armijo, the Governor of New Mexico. The United States Congress confirmed the grant as an individual grant on June 21, 1860. When John Taylor, the owner of a 70,000 acre tract out of the Sangre Cristo Grant, attempted to prevent a trespass by the *vaqueros*, the Thanksgiving Day fracas ensued. Frank McGee, *Here and Now*, N.B.C.-TV, December 15, 1961.

BOOK REVIEWS

THE ALAMO.

By *Walter F. McCaleb.*

(San Antonio: The Naylor Company. \$2.00. 89 pp.)

THE ALAMO is volume two of a series on Texas history written by Dr. Walter F. McCaleb. The author has written other books, including *Spanish Missions of Texas*, *Stephen F. Austin*, *The Mier Expedition*, *Conquest of the West* and is also highly respected as a teacher, lecturer and banker. His training and experiences enable him to write this historically sound account of the heroism displayed by Travis, Bowie, Crockett and the lovers of liberty at the Alamo. Dr. McCaleb sheds no new light on the epic story of the Alamo. Nevertheless, the merit of this little volume is that it is addressed in a factually accurate and dramatic style to the school children of Texas and as such fills a great need for authentic stories suitable for elementary readers. It is universally agreed that our school children should be taught to appreciate our rich heritage, but too often the stories written about our great men and women for children are more accurately described as fiction rather than biography. The reviewer hopes that additional works filling this need will be forthcoming from Dr. McCaleb and others to accept the challenge of translating difficult and complicated material in a brief, accurate, and interesting manner.

ALICE HARVEY

El Paso, Texas

MUSKET, SABER, & MISSILE: A History of Fort Bliss.

By *Richard K. McMaster.*

(El Paso, Texas, 1962. \$1.00.)

FORT BLISS is more than an El Paso institution. Indeed, it has national and even international significance because, as the author carefully points out in his introduction: "At one time or another, units of nearly every regiment of the old regular infantry, cavalry, and field artillery have been quartered at or passed through the posts at El Paso. In addition, the National Guard of twenty-two States, and detachments of many foreign armies have been trained in the El Paso area."

The author traces the military history at the Pass of the North from the Pike expedition of 1806 to July 1, 1957 when Fort Bliss was designated the United States Army Air Defence Center. Between these two dates the

reader looks in on Fort Bliss at its founding, during the Civil War, at Camp Concordia, at Hart's Mill, at Lenoria Mesa, at its present site between 1917 and 1943 when it served as a cavalry post, and from 1943 to 1956 when it served as an artillery post.

The book is enriched by a map drawn by the author and by fourteen rare photographs which include pictures of Fort Bliss "about 1865," "about 1870," at Hart's Mill, 1880-1893, and in 1915. The author also lists the units and the officers who served at Fort Bliss as well as the post commanders. There is also a bibliography of twenty-one sources. Nothing is omitted.

Major McMaster writes with authority. He is a graduate of the Military Academy at West Point and he served as an artilleryman at Fort Bliss. Furthermore, through his numerous writings on military subjects in *PASSWORD* and other historical journals he has come to be recognized nationally as an authority on the military history of the Southwest. The present book will certainly not detract from his well-earned reputation.

EUGENE O. PORTER

Texas Western College

› HISTORICAL NOTES ‹

DR. FLOYD S. FIERMAN whose article, "Ernest Angerstein — Soldier, Merchant, Accused Secessionist and Post Trader," appeared in the Spring, '62 issue of *PASSWORD* asked that the following credit be published: "I would like to designate my special indebtedness to Dr. B. Sacks, Historical consultant, Arizona Historical Foundation, Phoenix, Arizona, in the preparation of the Ernest Angerstein study. All the National Archives material appearing in the article emanated from the 'Files of Dr. B. Sacks.'"

CARL HERTZOG, Director of the TWC Press, wishes to announce that a book by your editor titled *Fallacies of Karl Marx* is now being printed. Release date has been tentatively set for early September.

CONTRIBUTORS to this ISSUE

DR. REX W. STRICKLAND is Professor of History and Chairman of the Department of History, Government and Sociology at Texas Western College. He will be remembered for his first-prize-winning article, "P. T. Herbert: Ante-Bellum Resident of El Paso," in *PASSWORD*, Vol. V, No. 2 (April, 1960). For a photograph and further biographical data see the April, 1960 issue.

J. J. BOWDEN was born in El Paso on June 20, 1927. He received his B.A. in 1948 and his M.A. (History) in 1952 from Texas Western College. Meanwhile, in 1951, he received his law degree from the University of Texas.



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Mr. Bowden is the author of the unpublished thesis, *The History of the Ascarate Grant* and of an article, "The Texas-New Mexico Boundary Dispute Along the Rio Grande," *The Southwestern Historical Quarterly*, October, 1959. He writes that his hobby is historical research on the land history of the El Paso area.

ALICE HARVEY is the wife of Dr. James Harvey, Assistant Professor of History at Texas Western College. Mrs. Harvey is also an historian in her own right. She teaches history at El Paso High School where she is Department Chairman. She is presently completing her dissertation for her doctorate in history at the University of Texas.

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