

PRIVATE LAND GRANTS IN ARIZONA.

FEBRUARY 24, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MULDROW, from the Committee on Private Land Claims, submitted the following

REPORT:

[To accompany bill H. R. 4664.]

The Committee on Private Land Claims, to whom was referred the bill (H. R. 2746) to confirm title to certain private land grants in Arizona Territory, report the same back to the House with a substitute therefor, and recommend that the substitute do pass. They ask leave to submit the following report thereon :

By the act of Congress approved July 22, 1854 (10 Stats., 308), provision was made for the assurance of such property rights within the Territory of New Mexico as fell within the protective provisions of the treaty of Guadalupe Hidalgo. The eighth section of that act contains the provision referred to, and is as follows:

SEC. 8. *And be it further enacted*, That it shall be the duty of the surveyor-general, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the Territory to the United States, by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide* grants, and give full effect to the treaty of 1848 between the United States and Mexico; and, until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act.

By the act entitled "An act making appropriations for the year ending June 30, 1871, and for other purposes" (Stats., vol. 16, p. 304), it was provided that—

For surveying the public lands in Arizona, at rates not exceeding fifteen dollar per linear mile for standard lines, twelve dollars for township, and ten dollars for section lines, ten thousand dollars: *Provided*, That it shall be the duty of the surveyor-general of Arizona, under such instructions as may be given by the Secretary of the Interior, to ascertain and report upon the origin, nature, character, and extent of the claims to lands in said Territory under the laws, usages, and customs of Spain and Mexico; and for this purpose he shall have all the powers conferred and shall perform all the duties enjoined upon the surveyor-general of New Mexico by the eighth

section of an act entitled "An act to establish the offices of surveyor-general of Mexico, Kansas, and Nebraska, to grant donations to actual settlers, and for other purposes," approved July 22, 1854, and his report shall be laid before Congress for their action thereon as shall be deemed just and proper.

Under authority of these laws, and of the instructions issued thereunder by the Secretary of the Interior, the surveyor-general of the Territory of Arizona proceeded to the examination of claims, and, as others examined, has recommended for confirmation the particular claims embraced in the bill and substitute herewith reported. The commissioner upon a review of the record in each of the cases, is of opinion that the same are fairly made out, and that the confirmation ought to be made.

Out of abundance of caution, the bill embracing these cases, and also embracing another which is not included in the committee's substitute, was referred to the Secretary of the Interior with request for an expression of views thereon. Response was made to this request by forwarding to the Commissioner a report of the Commissioner of the General Land Office, which, as presenting something of the history of the cases involved, and as meeting the views of the committee, is made a part of this report, and is as follows:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 27,

SIR: I am in receipt by reference from the department of the 19th instant, for an expression of my views, &c., of a letter of Hon. H. L. Muldrow, chairman of the committee of the House of Representatives on Private Land Claims, of the 16th instant, requesting my opinion as to the validity of the following claims in Arizona, viz: "San Juan de los Boquillos y Nogales;" "San José de Sonoita;" "Rafael del Valle;" "Los Nogales de Elias," and "San Ignacio del Babocomari." Inclosing copy of a bill referred to said committee, providing for the confirmation and patenting of said claims.

In response to said reference I have the honor to report:

That previous to the commencement of the examination of the private land claims in Arizona by the surveyor-general, under the act of July 15, 1870 (16 Stat. 163), this office, with the approval and by appointment of the department, for the purpose of detecting, and preventing the allowance of, fraudulent claims, delegated to Rufus C. Hopkins, late keeper of the Spanish archives in the office of the surveyor-general for California, acquainted with the Spanish language, and familiar with the forms of proceeding in the granting of titles to lands under the Spanish and Mexican governments, to proceed to the capital of the Mexican State of Sonora, to examine the archives found there, and make transcripts and minutes of all title papers and proceedings therein, relating to grants of lands within the Territory of Arizona, and report their condition as to proper form, validity, &c. Mr. Hopkins executed the trust intrusted to him with fidelity and ability, and reported to this office numerous transcripts of grants, with accompanying proceedings; among them of the five now in question; his remarks upon each of which will be found quoted in the report of the surveyor-general upon the respective claims.

I have examined the transcript returned by the surveyor-general in each case with such care as the urgency of the request for the information desired would permit. As the original title papers not being before me, I can only judge at second-hand as to their genuineness. That is by law made the province of the surveyor-general upon the proofs presented to him. In the cases under consideration he seems to have made examinations with care and particularity; and from the documents as they appear in the transcripts and the report of Mr. Hopkins I have no doubt his conclusion that the original grant and title in each case is genuine and valid is correct.

The derangement of title in the several cases will necessarily be separately considered.

1st. As to the San Juan de los Boquillos y Nogales, four square leagues.

The record in this case is very voluminous, covering 350 pages.

The original grantees were Ignacio Elias (or Ignacio Elias Gonzalez) and Nemesio Felix.

The present claimants are Janet G. Howard and George Hearst.

The two original grantees each left numerous children, their heirs, and some of them dying, also left heirs. There is some confusion in the names of these parties interested; different persons having apparently the same name. The claimants claim to have acquired the various interests making up the whole title in the land originally granted.

There are, however, noticed the following apparent defects in the claim of title, which may or may not be real:

Francisco Maria Felix, one of the sons of Felix, the grantee, left home many years ago for the placer mine diggings in California, since which time he has not been heard of or from, and is supposed to be dead; whether he died single, or married and died, leaving issue, or is still living, is not known. His interest is possibly outstanding.

Concepcion Bustemante, a granddaughter of Felix, the grantee (daughter of a deceased daughter), married to Jesus Lopez Leon, died, leaving three children, minors. The conveyance of their interest is by Leon, their father, as their "legitimate tutor." Whether this relation was by special appointment, giving him legal power to convey for them, or recognized by general law, is not shown, and his authority does not affirmatively appear.

Mr. George Hill Howard having as claimed procured the whole title to himself, conveyed the same directly to his wife, Janet G. Howard, the consideration paid, as stated in the conveyance, being her separate property. Then Mr. Howard, in the name of himself and his wife (he acting, as stated in the conveyance, as her attorney in fact), conveyed one-half the title to George Hearst, one of the present claimants.

If, as may be presumed, the laws of Arizona authorized the direct bargain and sale between Howard and his wife, and the conveyance to her was valid, then it would seem that a formal power of attorney from her would be necessary to enable the husband to transfer her interest. No such power is shown in the record.

I am of opinion, however, that any outstanding interests there may be, will be protected by the confirmation a relinquishment or quit-claim only on the part of the United States, and subject to all valid adverse rights.

2d. The San José de Sonoita; one league and three-fourths.

Original grantee, Leon Herreros.

Present claimant, Matias Alsna.

The title documents subsequent to the original grant, produced by the claimant, show that Herreros conveyed the land claimed to Joaquin V. Elias, and that Elias duly transferred the same to Antonio Crespo.

Then follows a conveyance from Teresa Echeverria de Crespo, described as the widow of José Antonio Crespo (in her name and that of three of her children, minors), and from other children who sign for themselves, all described as children and heirs of Crespo, deceased, to Matias Alsna, the present claimant.

There is no proof showing that the grantors named stand in the relations represented to Crespo, the owner of the land claimed; nor that they are his only heirs; nor that the described widow had authority to act for the children represented as minors.

This link in the chain of the title, which otherwise appears to be regular and complete, has to be taken on trust. The surveyor-general bases his favorable opinion on the well-known character of the claimant, Alsna. The provision indicated in the foregoing case to designate the effect to be given to the confirmation will probably be sufficient protection to possible outstanding interests.

3d. San Rafael del Valle; four square leagues.

Original grantee, Rafael Elias (or Rafael Elias Gonzalez).

Present claimants, Joseph Camon, Pierre Camon, and Paschal Camon, partners, under the firm name of "Camon Hermanos."

The documents produced by the claimants, and forming the chain of title subsequent to the original grant, show that on the 25th of July, 1862, José Juan, José Maria, and Manuel Elias, the three sons, and Doña Guadalupe Perez, their mother, the widow of Rafael Elias, the original grantee (proved in subsequent judicial proceedings to be his widow and only heirs), executed a conveyance in the nature of a mortgage to Camon Brothers, in consideration of \$12,000, of thirty-two square leagues of land, including among other parcels the San Rafael del Valle; the conveyance being conditioned that for the term of three years either party, by common consent, might sell the land, the net profits of sale to be equally divided between the parties, Elias, on one part, and Camon on the other; that the parties Elias might at any time within the three years redeem the land by paying the \$12,000 with interest and expenses; that in case no sale should be made, the Camon brothers to remain in possession of the land and receive the products; and that if, within the three years mentioned, the price paid by the Camon brothers should not be repaid, they should have the right to dispose of the land as the owners thereof without taking any further proceedings.

Also, that under date of March 23, 1869, José Maria Elias and Manuel Elias, two of the sons of Rafael Elias the grantee, Guadalupe Perez de Elias, his widow (the said Manuel Elias and Guadalupe Perez de Elias, by the said José Maria Elias duly empowered), and Bernardino Lucero de Elias, widow of José Juan Elias, the deceased son of the grantee, united in a conveyance to the Camon brothers of the lands described in the foregoing instrument; this second conveyance or release being executed, as stated therein, for the reason that the former conveyance contained "a part giving faculty of redemption within three years," &c.

There is no proof accompanying this conveyance nor in the transcript of the presumption arising from the instrument itself and the unverified statement of claimants, made by their attorney, to show that José Juan Elias had deceased, Bernardino Lucero de Elias, who joined in the execution of the instrument, was widow, and no proof nor statement as to whether he left issue.

Since the receipt of the surveyor-general's report in this case, and its transmission to Congress, a protest against the confirmation of the claim to Camon brothers was addressed to the surveyor-general under date of April 3, 1880, by Santiago Ainsa, as administrator of the estate of José Juan Elias; the grounds of the protest being, that the document of July 25, 1862, executed by the widow and three sons of José Juan Elias, the original grantee, was simply a mortgage to secure the payment of the debt in three years; that the claimants never foreclosed the mortgage, which was recorded in Arizona, nor protested for non-payment, but took the subsequent deed of March 23, 1869, from the two surviving sons, the widow of the original grantee, the widow of the deceased son, José Juan Elias, who was killed in battle, dying intestate and leaving his widow, before named, and seven legitimate children, the names are given; that the property of Elias, the original grantee, descended to his widow and three sons by will, and that by the laws of Arizona no interest in the land of José Juan Elias, the deceased son, vested in his widow, it being his separate property and descending to his children; that her signature to the deed of 1869, being in the character of guardian or executrix, conveyed no interest in the land, she having no power to divest the heirs at law of their property; and that whatever the effect of the mortgage, the interest of the owners in the mortgaged property could not be divested without a foreclosure and sale.

As regards the deed of 1869, if the allegation in the protest, that José Juan Elias died intestate, leaving children, be true, it could not have conveyed their interest in the land. But recurring to the conveyance of 1862, it is seen that while it is in the nature of a mortgage and general terms a mortgage, it is something more than a mortgage, as this condition contained therein: "But if within the three years mentioned the price paid by the Señors Camon brothers shall not be repaid, they shall have the right to dispose of said lands as the legitimate owners of the same, without any need of taking any further proceedings in the matter."

This would seem to have been intended by the parties to become operative as a condition of the conveyance on failure of the grantors to pay the sum stipulated within the time prescribed. The claimants, however, apparently did not so regard it, or they would not have taken care to procure the subsequent deed. The questions involved are as should be submitted to judicial consideration and determination, upon a full presentation of the case than is made in the present record, and I am of opinion that the provision as to the effect to be given to the confirmation in regard to adverse claimants indicated in the foregoing cases, will protect the interests represented in the present case mentioned. With that reservation I concur with the surveyor-general in his opinion that the claim is valid and should be confirmed.

The protest mentioned was sent to the department by this office to be transmitted to Congress on the 24th of April, 1880. The surveyor-general, in his letter communicating the same to this office, says of it that the case was passed upon in his report "without an intimation from any quarter that such rights existed as set out in the protest."

4th. Los Nogales de Elias.

When the reference now being replied to was received at this office, the surveyor-general's record in this case had not been transmitted to Congress. The report of the surveyor-general was then in course of preparation, and it has since (20th inst.) been sent to the department to be forwarded to Congress with an expression of concurrence in the honorable recommendation of the surveyor-general as to the validity of the claim. A reference is made to said report, a copy of which is inclosed herewith.

5th. San Ignacio del Bobocamori; eight square leagues.

Original grantants: Ignacio Elias and Eulalia Elias.

Present claimants: E. B. Perrin and E. McGary and Matthew Wolfskill (the latter for an undivided one league).

The surveyor-general reports that the claimants failed to establish title in themselves, the proof of chain of title being incomplete, for which reason, and on account of the bulk of the exhibits, he has omitted them from the record. The claim, therefore, came here, and is before Congress, without proof of title except as to the original grantees, and the surveyor-general, finding the original grant regular and valid, recommends that the claim be confirmed "to the legal representatives of the original grantees."

I do not concur in this recommendation.

There is no proof that the original grantees had or have legal representative for want of such the land may have reverted to the government. In my view, a confirmation at random and wholesale, as proposed, would be improvident in the extreme. If there are parties really having title to this land by devise, descent, conveyance,

possession, or otherwise, and thus the legal representatives of the original grantees, they can certainly show by proof in what character and by what right they claim.

It would seem reasonable that confirmations in cases of this kind can only be demanded of the government by parties designated by name or style, and who can show at least an equitable right thereto by proof.

In the present case the claimants should probably have opportunity to supply the defects in the record by proofs produced before the surveyor-general, if they can do so; but in my view they are not entitled to confirmation of the claim as presented under the general designation of legal representatives.

The attention of Congress should be called to the fact (with the view to such action in the matter as it may deem proper) that the land in some of these claims is shown to be mineral in its character, and, as to such, as in the case of the San Juan de los Boquillos y Nogales, the surveyor-general recommends that the minerals be reserved.

The bill accompanying the letter referred proposes to adopt and declare final the preliminary surveys of these claims. These surveys were merely preliminary; made for the information of Congress as to the location and extent, approximately, of the lands claimed. They may be correct or greatly incorrect. They have not been examined in this office, and parties who may have interests adverse to the location of the claims as made thereby, or to some parts of such locations, have not had opportunity to be heard. It is submitted that they should be left to take the usual course, after confirmation of the claims to be examined and passed upon by this office, with right of appeal to the department for final determination. I refer to my late annual report, page 97, in which my views in relation to these preliminary surveys are more particularly set forth.

The views herein expressed suggest the following modifications in the bill proposed:

1st. In the first section, on page 2, strike out, after the words "eighty-one," in line 2^d, down to and including the words "seventy-nine," in line 33, and add to the section, after the words "land-claims," as follows:

Provided, That this confirmation of the several claims mentioned in this section, shall only be construed and held to be a relinquishment of all claim on the part of the United States to the lands within their respective limits; and shall not affect any valid adverse rights; [and if minerals are reserved, add a reservation clause to the proviso].

2nd. Strike out sections 2 and 3 as proposed, and in place thereof insert:

SEC. 2. Upon the final determination of the location and boundaries of said confirmed claims, respectively, by the Commissioner of the General Land Office, or, in case of appeal from his decision, by the Secretary of the Interior, the said Commissioner is hereby authorized and required, upon payment by the confirmees of all costs of the surveys thereof, to issue to them, severally, patents of the lands confirmed by this act, and so located, of the effect specified in the proviso to the first section of this act.

The letter of Mr. Muldrow and accompanying proposed bill are herewith returned.

Very respectfully, your obedient servant,

N. C. MCFARLAND,
Commissioner.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

The case of the San Ignacio del Babocomari, to which it is objected by the Commissioner that no deraignment of title is shown, is not included in this report and substitute bill. In the case of the San Juan de los Boquillos, the lack of a formal power of attorney from Mrs. Janet G. Howard to her husband, noted by the Commissioner, has been supplied to the committee's satisfaction.

The general suggestions on the subject of a clause for the protection of the rights of third persons, of reservation of minerals to the United States, and the final location and patenting of the several claims, made by the Commissioner, are all carried into the proposed substitute as meeting the views of the committee.