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LAND CLAIMS IN NEW MEXICO.

[To accompany bill H. R. No. 1344.]

JULY 1, 1868.—Ordered to be printed.

Mr. ORTH, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims present the following report :

On the 10th day of February, 1868, the House of Representatives adopted a resolution as follows, viz :

Resolved, That private land claims Nos. 9, 41, 42, referred to the Committee on Private Land Claims and ordered to be printed January 12, 1861; No. 44, referred to the Committee on Private Land Claims and ordered to be printed February 6, 1861; Nos. 45, 46, 47, and 48, referred to the Committee on Private Land Claims and ordered to be printed May 16, 1862, be, and the same are hereby, rereferred to the said committee, no action having been taken in said claims by the 36th or 37th Congress, with direction to report by bill or otherwise.

And pursuant to its requirement your committee have investigated the several claims named in said resolution, and now present to the House the result of such investigation.

All the lands specified in these several claims were embraced within the limits of the Territory of New Mexico.

After the cessation of hostilities between this government and the republic of Mexico a treaty of "peace, friendship, limits, and settlement" was entered into between them, dated February 2, 1848, and which is known as the treaty of Guadalupe Hidalgo.

By the boundary line between the two republics, as established by said treaty, the Territory, then known as the province of New Mexico, fell within the limits of the United States, and thence hitherto has remained part and parcel of the United States.

With the acquisition of this Territory, not only its lands but also its people (except as excepted by the treaty) were transferred to the jurisdiction of the United States, and brought under the control of our laws. But it is a well-settled principle of the law of nations that the transfer of territory from one sovereign to another, including the lands and the people who inhabit them, is understood to pass the sovereignty only, and does not interfere with the rights of private property. "The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property remain undisturbed." (See *United States vs. Percheman*, 7 Peters, 51.)

The parties to this treaty were, however, not satisfied to let the rights of their citizens rest merely upon this well-known principle of public law, but, as is usual in such cases, inserted clauses recognizing these rights and providing for their maintenance. By the eighth (8th) and ninth (9th) articles of said treaty it is provided as follows, viz :

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected.

The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution, and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

The Congress of the United States, in order to give full effect to the language of these stipulations, and recognizing the spirit in which they had their origin, passed a law approved July 22, 1854, the 8th section of which provides as follows :

SECTION 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 Gaudalupe 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 a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the 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 eighteen hundred and forty-eight, 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. (See Statutes at Large, vol. 10, page 309.)

Since the passage of this act of Congress, citizens of the Territory of New Mexico, claiming lands under Spanish or Mexican grants, have at various times filed their claims, and adduced evidence, oral and documentary, of their titles in accordance with the rules and instructions of the General Land Office. Many of these claims have been examined, reported, and confirmed, as required by law, and others, among which are those referred to your committee for examination, are yet awaiting the final action of Congress.

We have carefully examined some of these claims, and herewith present to the House the result of such examination in each individual case.

No. 41.

Claim number forty-one (41) in the report of the surveyor general aforesaid is the grant to Don Pablo Montoya.

It appears that Montoya, at Santa Fé, on the 8th of November, 1824, made application to "the territorial deputation of New Mexico," for a grant of lands therein described, and that said "deputation" in public session on the 19th day of November aforesaid, in conformity with the prayer of such application and

the laws and customs of said republic, resolved "that the same be granted to him under the conditions heretofore imposed upon other persons receiving grants upon the frontiers of the Indian tribes."

That said Montoya took possession of said lands under his grant and continued in such possession some 15 years and until the time of his death. That after his death his children, to whom the same descended, retained such possession until driven from it by the hostility of the Indians.

This grant was investigated by the surveyor general, under the act of Congress heretofore recited, and on the 20th of November, 1860, he reported his action in the premises, and "to the fullest extent recommends its final confirmation by Congress."

No. 42.

Number forty-two (42) in the report of the surveyor general is the grant to Antonio Ortiz.

It appears from the public archives that on the 18th of December, 1818, Ortiz presented his application to Melgares, then governor of the province of New Mexico, for a grant of land, reciting that, "finding himself with a large family to support, it becomes indispensable for me, in order to support it, to seek and solicit the means of which I can avail myself, and under these circumstances I pray you, if you deem it proper and consider it just, to grant me, in the name of his Majesty, (whom may God have in his keeping,) a farm on the so-called Gallinas river, &c."

This pathetic appeal had its effect on the old Spanish governor, and he referred the application to the alcalde of El Bado for report.

The alcalde, however, made an unfavorable report, mainly because Ortiz desired the lands "with privileges or prohibitions of pasture," which he (the alcalde) thought "would not only be an injury to the residents of this jurisdiction, but also to the province."

The governor, not being satisfied with this report, referred the application to the curate of Santa Fé.

The curate, after due deliberation, came to a favorable decision, stating that by means of these settlements "there will be an increase in population as well as in agriculture," and the governor thereupon, on the 30th of April, 1819, ordered the grant to issue, and also ordered the commandant of the district to deliver to him actual possession. Ortiz remained in the use and occupancy of his lands for many years, until driven therefrom by the hostility of the Indians, which cause alone prevented continuous occupancy.

After his death his heirs-at-law filed their claim for adjudication of title under the act of Congress already recited, and the surveyor general for the Territory of New Mexico, on the 21st of November, 1860, reported that "the grant is a perfect one," and recommended its confirmation.

No. 44.

Case number forty-four (44) is that of the heirs-at-law of Luis Maria C. de Baca, and known as the estate of "The Spring of the Holy Ghost."

Prior to the year 1815 this estate had been granted to the Messrs. Ortiz by De la Concha, the then governor of the province of New Mexico, but the grantees, failing to comply with the terms of the grant and the laws of Spain, but, on the contrary, "abandoning and depopulating it for more than 20 years," it was forfeited according to the royal order in such cases, and on the 23d of May, 1815, said de Baca petitioned Governor Maynez for a grant of the same to himself and his children, 15 in number.

This petition received favorable consideration and a grant in due form, and in accordance with the royal laws of the recopilation of the Indies relating to

settlements, grants, &c., was issued to said de Baca and his children, and they placed in the possession and occupancy of said estate.

These grantees continued in such occupancy, erecting a house and corrals, and extensively cultivating the lands for many years, until driven therefrom by the hostile incursions of the Navajo Indians. This claim was fully investigated by the surveyor general, who on the 12th of December, 1860, reported that "this office regards it as a *perfect claim* and recommends its final confirmation by the Congress of the United States to the heirs of said de Baca, who are the present claimants."

No. 46.

The next case, numbered forty-six, (46,) is that of the town of Cevoletta, in the county of Valencia. In this case your committee find that on the 15th of March, in the year 1800, Fernando Chacon, then governor of the province of New Mexico, received a petition from thirty citizens of the province praying for a grant of lands on which to found a town and settlement. Pursuant to the powers vested in him as such governor he granted them the place known as La Cevoletta, "on condition that they [the thirty citizens] form a regular settlement and do not abandon it under any pretext."

These conditions were kept by the said citizens until about August, 1804, when they evacuated the place on account of an attack of the Navajo Indians, and the terror inspired by such attack, and petitioned the governor for leave to abandon the same. Such request was not granted, and on the 26th of September, 1804, Chacon ordered their return to the settlement, which order they obeyed, and by themselves and their successors have maintained such possession ever since. We know of no reason why this grant should not be confirmed as recommended by the surveyor general.

No. 47.

Claim numbered forty-seven (47) is the estate of Los Luceras, and claimed by Antoine Leroux for himself and in behalf of the legal representatives of Pedro Vigil de Santillana, Juan Bautista Vigil, and Cristoval Vigil, deceased.

It appears that said Santillana and his nephews, the two Vigils, obtained a grant of said estate from the Spanish authorities as early as the 9th day of August, 1742, and entered into possession thereof immediately thereafter, erecting houses, cultivating the lands, and continuing such possession. The consideration for such grant, as appears by the record in the case, was that said Santillana had served his Majesty the King of Spain for upwards of 20 years, and his salary being insufficient to support his large family he had "to live by borrowing," from which unpleasant position the King was desirous of relieving a faithful public servant, which he did by the grant aforesaid.

Leroux is the husband of Juana, one of the heirs of Juan Bautista Vigil, and is a claimant in right of his wife.

A portion of this estate, subsequently to the original grant, by some means came into the possession of the "Indians of the Puebla of Taos," who claimed by some title unknown to your committee, and when the present claimants filed their petition, under the act of Congress already quoted, for confirmation, these Indians appeared before the surveyor general and opposed such confirmation. On the 14th of April, 1861, the Indians withdrew all opposition to the confirmation of the claim, a compromise or settlement having been made between the parties, by which the claimants, on the day last mentioned, conveyed to the Puebla of Taos the portion of said estate occupied by said Indians.

The grant was thereupon approved by the surveyor general and its confirmation by Congress recommended.

On the 18th of August, 1824, the Mexican Congress passed a decree "relating to colonization," and in the year 1828 established certain "regulations," applying the principles of said decree to the provinces of Mexico.

This decree, and the regulations founded thereon, established certain rules and forms in reference to the disposal at the public domain of that republic, among which we find, in the 12th section thereof, the following, viz :

One single person can only receive a square league of land, of 5,000 varas de regadia ; four of superficies for temporal use, and six for pasturage.

See Schmidt's "Civil Law of Spain and Mexico," page 345.

This decree, as will be seen, limits the amount of public lands to be granted to a single individual to the areal extent of 11 square leagues.

Neither of the cases which your committee hereby recommend for confirmation by Congress contain, as we are informed, more than the quantity of land as limited by the 12th section of said decree, but as all these grants date prior to the adoption of said decree and regulations, your committee conceive that they are not affected by the limitations of said decree even if they contained a larger quantity than 11 square leagues.

The claims of Gervacio Nolan being numbered thirty-nine (39) and forty-eight, (48,) being of a date long subsequent to said decree and regulations, and as your committee are informed exceeding the limits of said decree, are withheld for further investigation.

No. 45, being the claim of José Sutton, has heretofore been reported by your committee, with a recommendation that it be adjudicated in the United States courts, prior to confirmation, which report has received the favorable action of the House.

In view of the provisions of the treaty of Guadalupe Hidalgo, and the act of Congress of July 22, 1854, together with the facts in each case as herein stated, your committee recommend that the title in the cases enumerated, to wit: numbers forty-one, (41,) forty-two, (42,) forty-four, (44,) forty-six, (46,) and forty-seven, (47,) be confirmed.

Public policy, as well as justice to the individual, alike require that the rights of property should be settled and known; that titles to real estate, especially, should be clear and perfect, and where possible all clouds or defects be removed. The parties now interested in these grants are scattered over the Territory of New Mexico. Many of them are minors, unacquainted, not only with our laws and customs, but also ignorant of our language. In good faith and at considerable expense they have, in pursuance of our laws, appeared before the surveyor general of the Territory of New Mexico to prove "the origin, nature, character, and extent" of their claims, and according to instructions have surrendered, for permanent preservation among our archives, all the evidence of their titles, and hence it is but just and proper that they should be relieved from anxiety, in reference to their property, by a confirmation which has already been too long delayed.

Accompanying this report is a bill, the passage of which we recommend, which provides for such confirmation, not by granting to the claimants a fee-simple estate in those lands, but simply by way of quit-claiming on the part of the United States to the heirs of the original grantees. This is all that, in the opinion of your committee, is required under our treaty with Mexico, and all that is necessary to make a perfect title in the absence of any adverse claims; and should there be any such adverse claims the parties are left, under the proposed legislative action, to seek their remedies in the proper judicial tribunals of the country.

The bill herewith reported also provides for the issuing of a patent in each case. It is not assumed that a patent is at all necessary in order to confer or confirm title in these cases, for we are aware that our Supreme Court has decided that confirmation by act of Congress, and approved survey under it, are sufficient

evidence of title without any patent; but we believe it due to these claimants, whose original title papers have heretofore been surrendered to our government, that they should not be put to the trouble of providing, each for himself or herself, a copy of the treaty of Guadalupe Hidalgo, of the act of Congress of July, 1854, of the act of Congress confirming such title and the survey under it, in order to feel assured that the lands which in some of these cases have been in the possession of these claimants or their ancestors for 100 years, is really their property. As American citizens they are entitled to a simpler evidence of title, and such as is given to our citizens who acquire real estate from the government by the various modes provided by our laws.

In some of the acts heretofore passed, in reference to lands under said treaty with Mexico, patents have been required to be issued, while in others this has been overlooked; hence we provide furthermore in this bill that in all cases in which confirmation has been had, without the issuing of any patent, such patents shall be issued, thus placing all claims under said treaty upon an equal basis.

Your committee therefore recommend the passage of said bill, and ask to be discharged from the further consideration of the subject.