

INCUBUS REMOVED.

Settlers Upon the Public Domain in Santa Cruz Valley Making Final Proofs.

In the advertising columns of THE OASIS there are running now ten or a dozen notices of settlers on the public domain, that final proofs will be made at given dates upon their homestead entries. Most of the entries included in those notices are upon rich and fertile lands in the valley of the Santa Cruz river which have been occupied by the entrymen many years and their entries accepted at the land office long years ago, but suspended pending adjudication of the land grant titles which have been a cloud upon this portion of Arizona through more than a half century. Beside the claimants now advertising to prove out there are many more to follow who in the near future will make application to make final proof; and it is anticipated that there will be considerable business of that kind within the next few months, final settlement of the Baca Float grant against the grant claimants having been the means of restoration, so it is stated, of some forty entries or more that had been suspended. For convenience of the settlers and their witnesses the proofs are taken before the clerk of the district court in Nogales, and the papers sent to the land office at Phoenix, where they are examined and approved, final receipt being given, which is considered tantamount to title. With approval of the register and receiver of the land office at Phoenix the proof papers are sent to the general land office at Washington, and unless there be a contest patent issues in due course. As all the entries to which reference is made are undisputed, owing to the long continued residence of the settlers, there are no contests, and patents will issue in the regular course of business in the general land office at Washington.

Among those now advertising to make proof are George W. Atkinson, Joseph E. Wise, Catherine H. Wise widow of Morgan R. Wise, Antonio Moreno, Francisco Q. Acevedo, and Douglas W. Cumming for the heirs of David J. Cumming—all of Calabasas, Arizona; Demetrio Barrios and Jesus Arviso of Tubac; Joaquin S. Acevedo, Cornelio S. Acevedo and Santos Abila of Nogales. The filings of Mr. Atkinson and Mr. Wise are of very long standing. During nearly thirty years Mr. Atkinson has occupied the land for which he now makes his final proof, and Mr. Wise has been upon his land nearly as long. The other claimants have been occupants of the lands they claim during periods varying from ten years upward. And all around them are friends and neighbors of many years standing who are preparing to make application for final proofs upon their homestead entries, which would have been done long ago but for the suspension of their entries on account of the various land grants, now, happily, all cleared away.

And the history of the various land grants that have clouded so

long one of the fairest portions of the territory of Arizona, is very interesting, and the struggles of the settlers to clear them away make readable chapters in the history of the country. Among the grants that have served to deter the settlement and improvement of the Santa Cruz valley have been the Santa Rita grant, the Calabasas and Tumacacori grants and the Baca Float No. 3. When they went upon the public domain and made their entries the settlers were satisfied that the grants were invalid, but it took them long years to prove them so; and in some cases they had to fight the grant titles through the court of Private Land Claims and into the Supreme Court of the United States. And when one grant was cleared away another was sprung, which had to be fought to a finish, as was the case with the Calabasas and Tumacacori grants when the Santa Rita was out of the way; and when the Supreme Court sustained the land court in rejection of the Calabasas and Tumacacori grants, the Baca Float was sprung, hanging as a menace over the valley a number of years, to be cleared away finally in this year of Our Lord 1908, by a ruling of the Secretary of the Interior Department at Washington.

All of the grants named had a color of title, but it was not good in the United States, to establish which fact judicially was a necessity. Some were like the Nogales de Elias grant upon which are situated the two towns of Nogales. That was granted by the state of Sonora in 1848, when all the region south of the Gila river was subject to the sovereignty of the republic of Mexico. The state of Sonora had no right to make grants of land out from the public domain of Mexico; but it did so. In 1855, or thereabout the Mexican government prohibited explicitly the granting of public lands by the state of Sonora; but to avoid friction and trouble such grants as had been made by the state were validated by the general government. However under the Gadsden treaty of 1853 sovereignty to the territory south of the Gila river to the present international boundary was ceded by Mexico to the United States. When Mexico validated the Sonora grants in 1855 the point was made that such validation could not extend beyond her sovereignty at the time of the act of validation. And that was the point on which the land court and the Supreme court of the United States decided against grant claimants in several instances.

Then when all the other grants were out of the way came the Baca Float grant. That was a grant made by an act of Congress, in the early 60's, while Arizona was yet a part of New Mexico (as has been explained in THE OASIS heretofore.) It seems that at that time one Luis Maria Baca had some sort of a claim upon the same area embraced in the community grant owned by the municipality of Las Vegas, New Mexico; but that the community grant was paramount. To satisfy the Baca claim without disturbing the community in their rights Congress enacted that the

heirs of Luis Maria Baca should be entitled to locate anywhere upon public domain within the territory of New Mexico four tracts of land that should equal jointly the area of the Las Vegas grant. A provision of the act specified that the lands taken should be such as were unclaimed and known to be non-mineral, and that the locations made should be approved by the surveyor general of New Mexico. One of the four grants was located with its initial point the Salero peak in the Santa Rita mountains, a range whose peaks, among the loftiest in Arizona are conspicuous objects in the landscape from whatever part of Santa Cruz county they are viewed. At the time this location was made the surveyor general of New Mexico failed to approve it as required by the act, giving as a reason therefor the remoteness of the region from Santa Fe, the capital, and the hostility of the Indians rendering access and an official visit almost impossible; but he did state that it was understood that the tract selected was unclaimed and without mineral. Yet at that same time the Calabasas and Tumacacori grants covered a part of the tract applied for, and in the Santa Rita mountains hardy miners had been operating many years. In a little graveyard not far from the foot of Salero peak are several headstones which recite that the men whose last resting places they mark were killed by Apaches in the years immediately preceding the location of the Baca float grant to cover the very ground where they lie, and there were living a few years ago men who testified in the inquiry by Surveyor General Ingalls that in 1861-2 they were associated in mining operations in the vicinity with the men lying beneath the headstones mentioned, and that the entire region had been known through many years as being very rich in its mineral resources. Knowing all these facts and knowing the conditions of the Baca Float grant the settlers along the Santa Cruz never deemed that it could or would be made to cause trouble. But after all the other grants had been cleared away and it seemed that there could be no further excuse or reason for further postponement of acquisition of patents to their lands there came the unwelcome information that there had been made a deposit to defray the cost of a survey of the grant, and that the claimants were taking steps to carry out the intention of the locators of the grant away back in the early 60's. Once more the settlers aroused to action and took steps to controvert the efforts of the grant claimants. Through their efforts the general land office was induced to enter into an investigation of facts with regard to the grant having been located in compliance with the act of congress creating it, and the U. S. surveyor general of Arizona, Major F. S. Ingalls, was instructed to take testimony upon those points. Major Ingalls visited Nogales and the entire region covered by the grant claimants, beside examining witnesses elsewhere and was busily engaged many days in

taking testimony of old residents mining men, native citizens, army officers and others familiar with the history of the region. His report was voluminous, and demonstrated without cavil that at the time the Baca Float grant was located in the region it was attempted to cover, the country was known to be mineral, and the unadjudicated claims of the Calabasas and Tumacacori land grants covered a part of the region and placed those lands within the inhibition of the act of congress creating the grant. Upon that report the Commissioner of the General Land Office rejected the grant, and upon appeal to the Secretary of the Interior the rejection was confirmed.

The decision of the Secretary of the Interior removed the last obstacle in the way of granting patents to the settlers who had awaited so patiently through so many years, and as stated in the beginning of this article they are now making applications and having dates set for making final proofs. Within a very few months all the long suspended entries along the valley of the Santa Cruz will have been completed and final receipts issued. The benefits that will result to Santa Cruz county and to Nogales will be great. With their titles in the air, as it were, there was little or no inducement to the settlers to improve their properties, nor were they taxable. With their land patented the owners will gladly avail themselves of every opportunity to improve their farms, and the addition of the values of the lands and increased improvements to the tax roll of Santa Cruz county will swell that in an appreciable degree. Heretofore the settlers have made as little improvement as possible and gotten along in the best way they could with that little. They felt that they did not care to erect substantial buildings and fences and install other valuable improvements to have them taken away by some successful grant claimant. With that menace removed there will be extensive and valuable improvements installed all along the valley. And there are other lands that will be entered and improved by new settlers. The removal from Santa Cruz county of the great incubus of the land grants described herein is a matter for congratulation to all the people of this region, and it will be the marker of a great step in advance in the development of the resources thereof.

Beside the restoration to entry and proof of the valuable lands in the Santa Cruz valley the Interior Department is restoring suspended entries in the eastern part of Santa Cruz county on the west slope of the Huachuca mountains, which is embraced within the limits of the Garces National Forest. In this issue of THE OASIS there is an advertisement of the Interior Department giving notice of two such restorations, and within the past six months there have been several such restorations advertised in these columns, upon some of which final proof has been made. All the entries made over there cover very fine lands and their improvement and cultivation will benefit Santa Cruz county materially.