

THE HUNTER CLAIM

By EVAN S. STALLCUP

The opinion of the Supreme Court of the District of Columbia in the case of "The Pueblo Santa Rosa against Franklin K. Lane, Secretary of the Interior, et al., settles finally and definitely that the so-called "Hunter Claim," which has clouded the title to all of the property included in the Gadsden Purchase, namely, all lands south of the Gila, east of the Colorado River, and west of the Santa Cruz River, which runs a little west of Tucson, is without merit, the decision recently handed down having been on the merits of the case. The litigation is of long standing, the Supreme Court of the United States having, in 1919, handed down a decision favorable to the alleged representatives of the Indians on appeal from the decision of the Court of Appeals of the District of Columbia, which in turn had rendered a decision on an appeal from the Supreme Court of the District of Columbia.

Although no charges whatsoever of fraud or dishonesty are existent in this case, the cloud on the title to the land covered by the Gadsden Purchase is suggestive of the old Peralta-Reavis claim of ownership to the Salt River Valley. Peralta-Reavis it will be remembered, conducted a land office in Phoenix, and for a substantial consideration, gave deeds to land covered already by U. S. Patents. He was convicted and served a term in the penitentiary, and on his being released was joined by his wife, whom the romance makes a very beautiful and loyal character.

Under the treaty of Guadalupe Hidalgo—under which Mexico ceded to the United States the southern part of Arizona, which treaty is also referred to as the "Gadsden Treaty"—the property rights of Mexican citizens were agreed to be respected by the United States. The United States set up the Court of Private Land Claims to adjudicate claims of ownership under the terms of the treaty. Under the old law of the state of New Mexico, a pueblo of Indians had the right to maintain litigation under the name of the pueblo, and to a great extent was the same as a corporate entity. The Supreme Court of the United States held, in its decision, that this old law of New Mexico, passed in the '50s, was still a part of the law of Arizona, Arizona having been cut out from the original territory of New Mexico. In

1880, Colonel Robert F. Hunter secured from the head chiefs of fifteen Indian villages deeds covering about two and a half million acres. These Indian villages were known as:

San Xavier, Santa Rosa, Cacca, Coyote, Anaca, Quitacca, Quajate, Bajio, Tecelote, Tesote, Comobabi, Pissenemuch, Cnupo, El Vaji and Chune, Kakachemouk, Cubo-Ajo, Perina-Cupo-Vache and Quajuata.

The descriptions in these fifteen deeds refer to mountains, wells, rivers and the like, and cannot be said to be definite. Probably for the purpose of avoiding any legal technicalities, Hunter, at the same time, took a deed from Jose Maria Ochoa, the head-chief of all the Papago Indians, covering the whole of the Gadsden Purchase. At the same time he took from Ochoa powers of attorney, which in form were irrevocable, and gave Hunter the power of substitution. Under these powers of attorney, Hunter was to prosecute litigation establishing the title of the Indians and secure a segregation of the Indian lands from the lands of the United States. In some cases, the Indians retained a part ownership.

In 1911, Hunter made an agreement with R. M. Martin, under which Martin, as attorney, was to carry on the litigation to a successful consummation. Martin paid Hunter one hundred dollars a month for a long period of years, and a division of the land and profits was agreed upon. In 1914, the fifteen separate deeds, covering separate Indian villages, were recorded in the county recorders' offices in the counties in which the lands were situated, viz: Pinal, Pima and Maricopa. Hunter died in 1912, leaving a will and several heirs. Probate proceedings are pending in Los Angeles and in Phoenix. The heirs are not harmonious, and in a hostile proceedings in 1919, the executrix was ordered by the court to place of record the deed referred to above from Ochoa to Hunter, which described all of the Gadsden Purchase. It was this blanket deed, together with the decision of the Supreme Court of the United States, which gave some considerable credence to the idea that the titles to any land in the Gadsden Purchase were defective and subject to the demands of the Indians working through Hunter and his assigns. Real estate transactions were held up because attorneys hesitated to approve of titles based on the United States Patent.

The case of the Pueblo of Santa Rosa was taken as a test case, and the recent decision of the Supreme Court of the District of Columbia, as well as the prior litigation which went to the Supreme Court of the United States, is confined to the

Pueblo of Santa Rosa. On behalf of the General Land Office, the contention was made that the so-called Pueblo of Santa Rosa was not really a "pueblo" and did not comply with the requisites of qualifying it as a pueblo. The answer of the land commissioner was that the Papago Indians were illiterate, wholly unfamiliar with legal forms or procedure, had no definite organization nor generally recognized chief nor council nor governing body, but that the Indian villages were what is known in the Spanish law and language as "rancherias," and in the Mexican law as a "temporale." The Indian term which applies it is contended, is "oositak." It was also contended by the land commissioner that the Indians had not authorized the prosecution of the proceedings, that the powers of attorney and deeds made in 1880 were unauthorized and illegal, and that the present inhabitants had no knowledge of the litigation. The decision adverse to the Indians was based on the proposition that the plaintiff pueblo, or its Indian inhabitants, had never given authority for the institution of the suit, and further, that assuming—but without deciding—that the plaintiff is a pueblo, and assuming—but without deciding—that it did own the said lands under the Mexican Government, that it did not possess under any law, Spanish, Mexican or United States, or by any custom, usage or tradition, the power to either make a covenant, such as Luis, the head chief of the so-called Pueblo of Santa Rosa, made to Hunter, or the power to clothe Hunter with the authority to bring any kind of a suit in its name.

The "Motion to Dismiss," being a 109 page printed pamphlet, and the recent decision of the Supreme Court of the District of Columbia, consisting of 19 typewritten pages, include many interesting references to the nature of the Indian villages and their government, comparing it with that of the true pueblo. The description in the deeds are also of interest. Papago Indians had no written language, and there is great confusion in the spelling of the names. Some of the affidavits of the representatives of the Indian service show that meetings of the Indians were called in its investigation of the merits of the litigation, and that the village known to the white employees of the Indian Service as "Santa Rosa," has, with the Indians, the name "Kiacheemuk," which interpreted means, "where the cactus seed was burned." The name "Santa Rosa" was adopted to cover three villages, the other two besides Kiacheemuk being Ak Chin, meaning "where the water spreads out," and Ku Archi,—Ku meaning "big," and Archi meaning "point of big peak."

The affidavit of Frank A. Thackery shows that neither the Papago tribe, nor the individual villages, had any elected or even generally recognized chief or head man, nor any officials. Generally, each village has some one man who, by heredity or by the possession of unusual ability, is regarded as "chief." The function of such head man, or chief, is that of a leading citizen whose influence is large and whose advice is likely to be followed.

The below are exact copies of Hunter's deeds:

QUIT CLAIM DEED

Jose Maria Ochoa, Head Chief or Captain of the Papagos of Arizona and Clemente, Captain of the village of Anaca and Poso Solado in Arizona Territory, for themselves and the inhabitants of said villages,

to

Robert F. Hunter, Trustee

Rec: June 6, 1914 at 9:32 P. M.
Book 110 of Deeds, page 54
Dated: December 17, 1880
Cons: \$1 and certain other valuable and sufficient considerations
Words of Grant: quit-claim, release grant, bargain, sell, and convey

DESCRIPTION: The true and lawful owners of certain grants and tracts of land situate in the Territory of Arizona, to-wit:

Commencing at and inclusive of the Poso Solado in the Sierra Hui-Moj; thence running south a distance of 18 miles; thence west a distance of 10 miles; thence north a distance of 18 to said Sierra; thence east along the Sierra a distance of 10 miles to the point of beginning; and containing 180 square miles, more or less; reference being made to the location of said villages and the Poso Solado.

Do quit-claim, etc., the undivided one-half of all said grants and tracts of land.

To have and to hold unto the second party in trust; and to give legal force and effect to an agreement in writing, etc.,

That on demand of second party, first parties will make all and singular, such other conveyances, deeds and instruments in writing, with respect to the said grants and tracts of land hereby conveyed, as may be required by said second party, to separate and distinguish the same from all other land to whomsoever belonging; and to complete and perfect the title of the said second party.

WITNESS:

Andrew Broulet

his
 Jose Maria X Ochoa
 mark

S. Ainsa

his
 X Clementi
 mark

Acknowledged December 17, 1880, by Jose Maria Ochoa and Clementi, jointly before Santiago Ainsa, Notary Public, Pima County, Arizona Territory (Seal) "and for the uses and purposes therein mentioned."

QUIT CLAIM DEED

Jose Maria Ochoa, Head Chief of 17 villages of Papago Indian citizens of the United States and Julian, Captain of the village of Pueblo of Cacca, in the Territory of Arizona, for themselves and the inhabitants of said village and the village of Sancita,

to

Robert F. Hunter, Trustee

Rec: June 6, 1914 at 9:30 A. M.
 Book 110 of Deeds, page 55
 Dated: December 7, 1880
 Cons: \$1 and certain other val.
 and sufficient considerations
 Words of Grant: quit-claim, release, grant, bargain, sell, convey

DESCRIPTION: The true and lawful owners of certain grants and tracts of land situate in the Territory of Arizona, to-wit:

Known as the lands and grants of Cacca, commencing at a point 18 miles South of the Gila River and 21 miles from the center of said village in a northeasterly direction; thence from said point in a southerly direction 27 miles; thence west a distance of 10 leagues, or 30 miles; thence north 27 miles; thence east to the point of beginning 30 miles; containing 810 square miles, more or less and being the land owned and occupied by said Pueblo of Cacca, at the date of the cession of the Territory of Arizona, and since owned by them.

Said lands and grants being more specifically determined by the location of said village.

Do quit-claim the undivided one-half of all said grants and tracts of land, together with all easements, etc., and all the estate, right, title and interest, claim and demand whatsoever of the first parties in and to said premises. The fields under cultivation at the date hereof being excepted. **TO HAVE AND TO HOLD** unto the second party in trust; and to give legal force and effect to an Agreement in writing made, etc., that on de-

mand of second party, first parties will make, such other conveyances, deeds and instruments in writing with respect to the said grants and tracts of land hereby conveyed as may be required by said second party to separate and distinguish the same from all other land to whomsoever belonging; and to complete and perfect the title of the said second party to the same.

WITNESS: S. Ainsa P. R. Tully	his Jose Maria X Ochoa mark his X Julian mark
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Acknowledged December 7, 1880 by Jose Maria Ochoa and Julian, jointly, before Santiago Ainsa, Notary Public, Pima County, Territory of Arizona, (Seal) "and for the uses and purposes therein mentioned."