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ARIZONA LAND FRAUD: MODEL 1880 THE TOMBSTONE TOWNSITE COMPANY

by
HENRY P. WALKER *

A LITTLE after midnight of October 27-28, 1880, the quiet of night was shattered by a spatter of gun shots along Allen Street, Tombstone, Arizona Territory. A group of young men, generally referred to as "Texas Cowboys" by a local newspaper, seemed to be letting off steam by shooting at the stars in violation of local ordinances. City Marshal Fred White sought to arrest the first cowboy he came upon and was shot down at such close range that the muzzle flash set his pants afire. Deputy Sheriff Wyatt Earp arrived on the scene and knocked the gunman unconscious. In a deathbed statement, Marshal White said that in the dark he had grabbed for the gun and he believed that it had gone off accidentally. On the basis of that statement William B. Graham, "Curly Bill Brocius," was set free. However, Fred Dodge, an undercover agent for Wells Fargo & Company, was convinced that the shooting was intentional. He pointed out that men experienced in handling the single-action Colt six-shooter invariably carried the weapon with the hammer resting on an empty cartridge case as a safety measure. When Brocius's gun was examined, there was only one empty case in the cylinder. It would seem that Curly Bill was prepared for a fight and wanted all the firepower he could carry. Marshal White had been keeping the lid on a potentially

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explosive situation and finally someone decided that he must be eliminated. This was the first killing in a vendetta of economic origin that some experts claim took the lives of at least twenty-seven men.¹

The shooting of Fred White occurred only three years after Ed Schieffelin staked out his first mineral claims in the barren hills some twenty miles northeast of Fort Huachuca. In 1878 he returned to the area with his brother Albert, an experienced miner, and Richard Gird, an assayer of good repute. The men staked out more and richer claims: the Lucky Cuss and the Toughnut. Because of Gird's reputation among Arizona mining men, this trip roused considerable interest. It was not long before other parties of prospectors arrived and staked out claims.²

The water supply nearest to the mines was a spring located about three miles to the northwest. Here the settlement of Watervale, or Gouge-eye as some miners called it, sprang up. It was not long, however, before the men began to object to walking six miles every day, in addition to putting in a hard day's work in the mines. As a result some unsung genius began to mine the miners instead of the rock. He began hauling water, for a fee, from the spring to the mines. The settlers soon moved to a new site called Richmond or Hog-em, so-called because some of the early prospectors thought that Gird had hogged all the best claims. This new location was too convenient. The settlement was on a narrow ridge on the south side of Tombstone Gulch, in the midst of a group of mines and among piles of discarded rock. In addition there was no room for expansion.

To avoid the cramped conditions of Richmond, a group of entrepreneurs, styling themselves the Tombstone Townsite Company, selected a 320-acre site called Goose Flats across the gulch from Richmond. In March of 1879, probably at the behest of the Townsite Company, Solon M. Allis surveyed and laid out the town with four named streets and twelve numbered streets at right angles. The company filed a townsite claim on April 19, 1879, at the United States Land Office in Florence and recorded it in the Pima County Recorder's office three days later.

¹*Tombstone Epitaph* (Arizona), October 28, 1880; Glenn Boyer (ed.), *I Married Wyatt Earp* (U. of Arizona Press, 1976), 82; Frank Waters, *The Earp Brothers of Tombstone; The story of Mrs. Virgil Earp* (New York, 1960), 106-107.

²Charles H. Dunning with Edward H. Peplow, Jr., *Rock to Riches* (Phoenix: Southwest Publishing Company, 1959), 87-88.

The area was described as "level and smooth and easy of access from the principal mines."³

The central figure in the Townsite Company was Michigan-born James S. Clark, who went to California in 1849 and may have been a member of the San Francisco Vigilantes in 1851. He was a speculator in cotton in New Orleans during the Civil War and became involved in some rather strange legal proceedings. In one case he attempted to regain \$10,000 which, he alleged, had been extorted from him by Colonel Harai Robinson, 1st Louisiana Cavalry and Provost Marshal of the Department of the Gulf, to obtain the release of 350 bales of cotton held by the military authorities. The Supreme Court of the United States decided that it was not a case of extortion but one of bribery. The court said: "A party who bribes an officer of the United States with money cannot maintain an action to recover it." In 1865, in association with Joseph C. Palmer, a merchant of Mobile, Alabama, James Clark & Company had 900 bales of cotton seized by the Union military government. A suit was instituted before the United States Court of Claims in 1872. The suit was denied because of the expiration of the statute of limitations in such cases.

Clark arrived in Tucson sometime in 1879 where he built an ice plant which began production in October of that year. Operation of the plant was carried on by Paul Maroney and one M. E. Clark, son of the builder. The senior Clark seems to have moved to Tombstone in the same year.⁴

Another member of the group was Joseph C. Palmer, formerly a partner in the San Francisco banking house of Palmer, Cook & Company between 1849 and 1856 when the bank failed under cloudy condi-

³Robert Alpheus Lewis, "Reminiscences," unpublished manuscript, Devere Collection, Tombstone, Arizona. William M. Breakenridge, *Hellorado, Bringing the Law to the Mesquite* (Boston, 1928), 88. "Tombstone Town-Site Claim," Land Claims Book 1, page 527, Pima County Recorder's Office [PCRO], Tucson, Arizona. Some citizens continued to live in Richmond. See George W. Parsons, *Private Journal of George W. Parsons* (New ed., Tombstone, Arizona: *Tombstone Epitaph*, 1972), *passim*.

⁴Frank Soule *et al.*, *Annals of San Francisco. Together with the Continuation, through 1855* [compiled by Dorothy H. Huggins, 1939] (New ed., Palo Alto, California: Lewis Osborne, 1966), 574. See also "James S. Clark & Co.," *House Report [HR] 2031*, 47 Congress, 2 Session (Serial 2160); "Estate of James S. Clark," *HR 2380*, 51 Cong., 1 Sess. (Serial 2813); "Estate of James S. Clark Deceased," *HR 377*, 52 Cong., 1 Sess. (Serial 3043); *James S. Clark & Co. v United States*, 11 U.S. Court of Claims 774; *Clark v United States* 99 United States Reports 493.

tions. He then was a merchant in Mobile, Alabama, in 1864 and had business connections with James S. Clark & Company. In 1879 he paid a brief visit to Tucson and planned to return and settle in September. He was reported as having great confidence in the future of the area.⁵ A third member was Thomas J. Bidwell, who had been recorder of the Cascade District in Lander County, Nevada, in 1864. A year later he was reported in the vicinity of Olive City, Arizona, on the Colorado River. He served three terms in the territorial House of Representatives and one in the Council representing Yuma County. He was a justice of the peace in Tombstone in 1879 and 1880.⁶ The best known member of the company was Anson Peacely Killian Safford, who had served two terms in the California legislature and had been governor of Arizona Territory, 1869-1877. Safford had used his Eastern connections to interest capitalists in investing in various Arizona mining ventures.⁷ The fifth member was Samuel Calhoun who, with his brother Charles, had located the Mountain Maid mining claim, which lay within the boundaries of the proposed townsite.⁸

For reasons best known to themselves, Clark, Palmer and Bidwell placed names other than their own on the townsite application. Clark, as he had done with the ice factory in Tucson, used the name of his son, Maurice E. Clark, who was then studying in Germany. Palmer used the name of his son Joseph B. Palmer, a resident of Old San Jose Mission in California. Bidwell was represented in the document by Phronia Bidwell, who has not been identified.⁹

During the spring and summer of 1879, Tombstone grew rapidly; tents, frame shacks and adobe structures soon lined the streets. One man who arrived on May 10 reported that new arrivals camped back off the

⁵ Soule *et al.*, *Annals*, 624, *Continuation*, 87-88, 90, 97; John W. Caughey, *California* (New York, 1940), 348; Noel M. Loomis, *Wells Fargo: An Illustrated History* (New York, 1968), 14, 20-21, 42, 51, 78-80, 108, 328; *Tucson Arizona Star*, May 29, 1879; *Tombstone Epitaph*, May 4, 1882. "Clark & Co.," HR 2031, 47 Cong., 2 Sess.

⁶ The *Tombstone Weekly Nugget* (Arizona) of July 15, 1880, stated that because of Bidwell's success he "incurred the enmity of many later comers to Tombstone." See also Jay J. Waggoner, *Arizona Territory; A Political History* (U. of Arizona Press, 1970), 99, 103, 505, 509-11.

⁷ *Tucson Arizona Citizen*, March 17, 1879; *Tombstone Weekly Nugget*, March 25, 1880; *San Francisco Bulletin*, May 2, 1882; Waggoner, *Arizona Territory*, 101-23.

⁸ 1880 Census, Tombstone, Pima County, Arizona Territory, microfilm at Arizona Historical Society [AHS], Tucson. *Tombstone Weekly Nugget*, March 22, 1880.

⁹ "Tombstone Town-Site Claim," Land Claims Book 1, 527, PCRO, Tucson.

streets, "first one on the ground held it, no one recognized the Townsite Co. Real Estate sold readily. Possession was the only Title but it was orderly no serious trouble til after the Gamblers and Politicians got a hold." The business district centered on Allen Street, rather than on Fremont Street as originally planned.¹⁰

Having filed their townsite claim with the land office in Florence, the company took no further steps to secure the patent. They did not pay any of the required fees nor the \$1.25 per acre — the price of land in the public domain. Despite the absence of a patent under which valid titles for town lots might be issued, a lively real estate business sprang up, probably based on quit claim deeds. By September lots were selling for \$150 to \$250, and corner lots were going for fancy prices — from \$400 up. Five months later lots near the center of the business district were going for \$1,000 to \$2,000, and 30 x 120 foot parcels at 8th and Fremont streets were bringing \$100-150. It was reported that:

Mike Gray located the townsite and went to selling town lots. If you didn't buy a lot he asked you to move. If you didn't do either, he gave you a deed to your lot for \$5.00 to pay for recording. If you didn't recognize his claim he ran a bluff as long as he could.¹¹

Tennessee-born Mike Gray had moved to Texas with his family in 1831. During the Mexican War he served as a lieutenant in the Texas Rangers. Moving to California he worked as acting sheriff of Yuba County from 1851 to 1853. Gray came to Tombstone in 1879, while his wife and daughter lived in Tucson.¹²

The Townsite Company, more commonly referred to as Clark, Gray and Company, began dealing in town lots. Safford, Palmer, *et al.* deeded to M. E. Clark lots 9 & 10 in block 17 and 9 & 10 in block 18.

¹⁰William N. Miller to Lotus M. Royalty, Tombstone, April 11, 1936, William N. Miller Biographical file, AHS. *Tucson Citizen*, May 26, 1879.

¹¹Miller to Royalty, April 11, 1936, Miller file, AHS. *Tucson Citizen*, July 16, 24, September 5, October 30, 1879. Register of Receipts, Recorder of Public Moneys, Florence Monthly Abstract Book, 1875-1881, Records of the Bureau of Land Management [RBLM], Record Group 49, National Archives. A quit claim deed merely assures the buyer that the seller has placed no incumbrance on the property. A warranty deed assures the buyer that he is getting a sound title to the property. Alfred Thomas to H. P. Walker, Boston, Massachusetts, October 31, 1978, author's file.

¹²Francis B. Heitman, *Historical Register and Dictionary of the United States Army, 1789-1903* (New ed., 2 vols., U. of Illinois Press, 1965), II, 53; *Tucson Star*, May 28, 1879. Biographical sketch, John P. Gray Collection, AHS.

Mike Gray sold one lot for \$1.00 and another for \$400. On February 4, 1880, one J. H. Brown bought a lot for \$400 and eight days later Charles Brown got two lots for a single dollar. It would appear that real estate values depended largely on some personal factor. It was noted of this boom, "if you left your property unguarded you were likely to fine [*sic*] them in the street." To protect their lots, many people took to fencing them in. As the Tombstone *Nugget* remarked: "Cross-lots and by-trails are fast closing up and now we are obliged to keep [to] the streets to gain any given point."¹³

Barely two months after filing their patent claim, the members of the Tombstone Townsite Company began a brisk business in the sale of "rights" — without a patent, rights to nothing. On July 1, 1879, Bidwell sold half of a "one-fifth undivided interest" in the townsite to Mike Gray for \$500 and the remaining half to Gray six months later for \$750. The Calhoun brothers sold out to Gray on January 9, 1879, for \$650. Safford let his one-fifth go to M. M. O'Gorman for \$1.00 on February 2, 1880. Palmer sold to James S. Clark on June 22 for a like amount. Thus, of the five original claimants only Maurice E. Clark still held his one-fifth interest. Meanwhile O'Gorman sold to J. W. Locker for \$750 after three weeks' ownership, and three days later Locker sold to John D. Rouse of New Orleans for \$2,000. The Palmer interest finally passed to John J. Anderson of New York for \$5,000. The Calhoun and Safford shares wound up in the name of Maurice E. Clark.¹⁴

Of the two new members of the Townsite Company, John D. Rouse was a lawyer with a large practice in Washington, pressing claims against the United States. Through his suits against the government, James S. Clark may have become acquainted with Rouse. John J. Anderson is an enigma. There were two businessmen of that name in New York in the 1880s; one was an author and publisher of history books and the other had a tool business. There is no indication that either had any Western business investments.¹⁵

¹³Miller to Royalty, April 11, 1936, Miller file, AHS. Various deeds, Deeds to Real Estate, Book 6, PCRO, Tucson. Tucson *Citizen*, January 23, 1880. As the files of the Tombstone *Nugget* are incomplete, many items from that paper are found only in other newspapers.

¹⁴Case 298, Records of the District Court, First Judicial District, Territory of Arizona, Clerk of Court's Office, Cochise County Courthouse, Bisbee, Arizona.

¹⁵Credit Registers, R. G. Dun & Company, Baker Library, Harvard Business School, Boston, Massachusetts; Susan B. Aborjaily to H. P. Walker, Boston, Massachusetts, July 7, 1977, author's file.

Uncertainty concerning titles to town lots on which houses, stores, hotels, and livery stables had been built bred tension in the community. In September of 1879 Charley Calhoun got the idea that someone was going to "jump" one of his lots on Allen Street. He grabbed his six-shooter and took up a position on the lot in question. After a "rather emphatic address" and the firing of two shots, he was taken into custody by the deputy sheriff. "A little too much stimulants was the only trouble," said the *Tucson Arizona Weekly Star*. In the following March a rumor ran through the land to the effect that the land office would not issue a patent "for certain lands covered by town lots." Almost at once there was a virulent outbreak of "lot jumping." All vacant lots on Allen and Fremont streets, and even part of the graveyard, were jumped. It was said that an unnamed insurance agent had jumped five lots and built cabins on them. A reporter for the *Tucson Citizen* anticipated trouble when the former occupants returned to town. During the height of the excitement "shot guns and hip-artillery were sported about, but nobody killed." Another spate of jumping occurred in mid-May. Most of the jumpers erected tents but a few heavy cabins were put up, "possibly for defense." A group of citizens tore down the tents and gave the occupants of the cabins until 8:00 P.M. to move out — or else.¹⁶

With the value of town lots skyrocketing and clear, firm titles not available, it is not surprising that citizens were prepared to defend their investments with firearms. In July of 1880 the sheriff of Pima County reported to the board of supervisors that the assessed valuation of houses and improvements was \$125,455.00 and personal property was valued at \$87,455.00. A lot of money had been invested in improvements on land of uncertain ownership.¹⁷

Probably in hopes of regulating the legal situation and to provide for home rule, a group of forty-two citizens of Tombstone petitioned the board of supervisors of Pima County for incorporation. The order incorporating the Village of Tombstone was issued on November 1, 1879, and it was ordered that an election for municipal officers be held on November 24. The first panel of officials included: William N. [A?]

¹⁶*Tucson Arizona Weekly Star*, September 11, 1879, March 11, 1880; *Tucson Citizen*, March 4, 5, 1880.

¹⁷C. M. K. Paulinson, Register, to Commissioner, General Land Office, Florence, Arizona, July 15, 1880, Old Townsites, Tombstone, Records of Former General Land Office [RFGLO], RG 49.

Harwood as mayor; Alder Randall, A. J. Cadwell, J. M. Vizina, and Ed. Schieffelin, councilmen; and Fred White, marshal. In January of 1880, in conformity with territorial statutes, another election was held. Alder Randall moved up to mayor and Mike Gray was elected to the council.¹⁸

The incorporated status was important to obtaining a townsite patent. There were three conditions under federal law under which a patent could be issued for a townsite on the public domain. If the land was uninhabited, an individual or group could pay for surveying the site and pay \$1.25 per acre for 320 acres. If the land was already occupied but the settlement was not incorporated, the patent could be issued to the probate judge of the county on proper payments being made. In the case of an incorporated community, the patent would be issued to the mayor. The land was to be held in trust for the occupants, but the regulations directing the execution of the trust were left to the legislative authority of the state or territory.¹⁹

In March or early April of 1880, the Townsite Company provided the money, and the mayor and common council on April 18 entered a claim for the townsite patent, paid \$70 for the survey and \$400 for the land. The Townsite Company left nothing to chance. James S. Clark was in Washington during much of the time that the application for patent was under consideration, and he retained the services of the law firm of Drummond and Bradford. The lawyers presented a petition dated May 10, 1880, by a group of sixty-one persons, including the elected officials, to J. A. Williamson, Commissioner of the General Land Office. The signers all claimed to be actual owners and bona fide "possessors and occupants of lots in the Town of Tombstone . . . having in good faith made improvements on our several lots relying on perfection of our titles by patent from the United States upon application therefor by the Mayor of the municipality." They urged issuance of the patent, despite the claim that the land was mineral: "This effort has been so

¹⁸ "Petition to Incorporate Town of Tombstone," folder 1879, Vol. 17, Pima County Records; "In the Matter of the application of John A. Allen, M. Gray, Andrew Snodgrass and Thirty-eight others to incorporate . . . the village of Tombstone," folder 3, Miscellaneous Papers, Board of Supervisors, 1867-1899, Vol. 20, *ibid.*, Special Collections [SC], University of Arizona Library [UAL], Tucson. Tucson *Weekly Star*, September 4, October 9, November 6, 27, 1879; January 8, 1880.

¹⁹ "Entry of Town Authorities in Trust of Occupants," *United States Revised Statutes* (1878), Section 2387, 437.

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far successful as to incite lawless men to possess themselves of lots owned and improved by *bona fide* citizens." The company's delay of one year, between filing the townsite claim and providing the city with the necessary funds, was crucial. During this period many people moved into town and invested money in improvements seemingly without giving thought to the ownership of the town lots.²⁰

The question of mineral land arose from the fact that the site, as surveyed by A. J. Mitchell on March 20, 1880, and approved by John Wasson, the territorial surveyor, overlay completely, or in part, five mineral claims: Vizina, Goodenough, Gilded Age, Way Up, and Empire. These claims were some of the seeds of future trouble.²¹

The *Tucson Citizen* reported on April 10, 1880, that it had it on good authority that the incorporators of the village had received a title to the townsite. The paper went on to say that this would be good news to those who had purchased lots from the Townsite Company, but that lot jumpers would not receive the news with any enthusiasm. It added: "This will settle the land question in Tombstone, and will be of incalculable benefit to the future prosperity of the town."

The *Citizen* was overly optimistic. Without waiting for the patent to be granted, Mike Gray as justice of the peace tried on May 5 with several armed assistants to eject one Hatch from the lot opposite the post office. A crowd soon gathered supporting Hatch. Gray and his minions made a flourish of pistols and then retired from the arena. Just the day previous, Gray had offered that same lot to the cashier of Hudson & Safford's Bank for \$1,500. George W. Parsons, inveterate diarist and speculator in town lots, noted that as Gray had no patent, he could not give good titles to town lots.²²

Probably as a result of the excitement on the fifth, a mass meeting was held on the eighth. A letter in the *Tombstone Epitaph* of that date signed J. C. K. commented that it was time the citizens took some active steps: "When a citizen is forcibly ejected from his own premises by brute force and shot gun persuasion, we think surely the sooner some

²⁰ Abstract of Land Sold, Florence Monthly Abstract Book, 1873-1881, RBLM. Alder Randall *et al.* to J. A. Williamson, May 10, 1880; Drummond & Bradford to Williamson, May 28, June 27, 1880, Old Townsite files, Tombstone, RFGLO. *Tombstone Weekly Epitaph*, September 4, 1880.

²¹ Plat in Map Division, National Archives.

²² Parsons, *Private Journal*, 44.

active measures are taken to prevent such lawlessness the better it will be for all concerned. One or two more such disturbances as that which occurred a few days ago will undoubtedly result in something more serious."

To make confusion doubly confounded, in early June of 1880 a group of men staked out a new townsite which they named New Boston. This new site lay over some of the mining claims east of the main part of Tombstone and also overlay part of the Tombstone townsite. Some 500 lots were laid out and it was claimed that perfect titles could be given. The *Epitaph* remarked on June 19 that the "old Tombstone Company" would remove New Boston without the use of "artillery" as it would obstruct some of Tombstone's streets. By July 10 the same paper was reporting the sale of forty-three lots and the reservation of ten more. Three houses had been built, two more were under construction and twenty-three lot holders were awaiting lumber shipments. By early August it was reported that nearly all the lots had been sold at "high figures" and the site was "rapidly being built over." Tombstone's marshal was sent to be sure that none of the buildings of New Boston obstructed any of the streets of Tombstone. The marshal tore down some fences at the intersection of Allen and 9th streets. New Boston soon dropped from the news. It is hard to tell whether it was a form of harrassment of the Tombstone Townsite Company or simply an attempt to turn a fast dollar.²³

Still without a patent, the common council on May 22, 1880, deeded to J. B. Palmer, M. E. Clark, J. D. Rouse and M. Gray, as owners and occupants, some 2,168 town lots out of a total of 2,394. The remaining 226 lots had already been deeded to other persons such as J. W. Locker, one of the interim holders of a one-fifth interest in the townsite.²⁴

The reaction in town was slow. Randall's deed to the company was kept secret until August 1 when it became known by accident. A remonstrance was then drawn up, addressed to the United States Land Office in Florence by five men who claimed to be a committee "to act in behalf of the residents and actual occupants of lots in said village." They

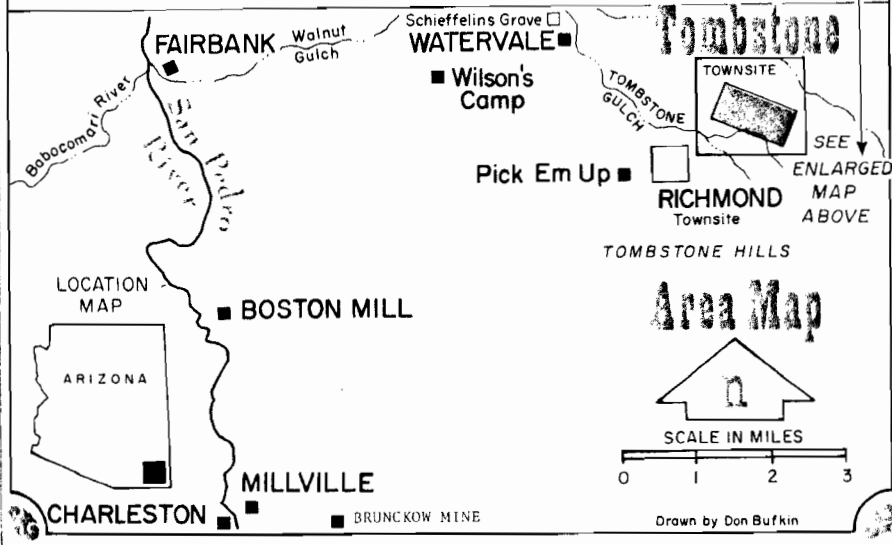
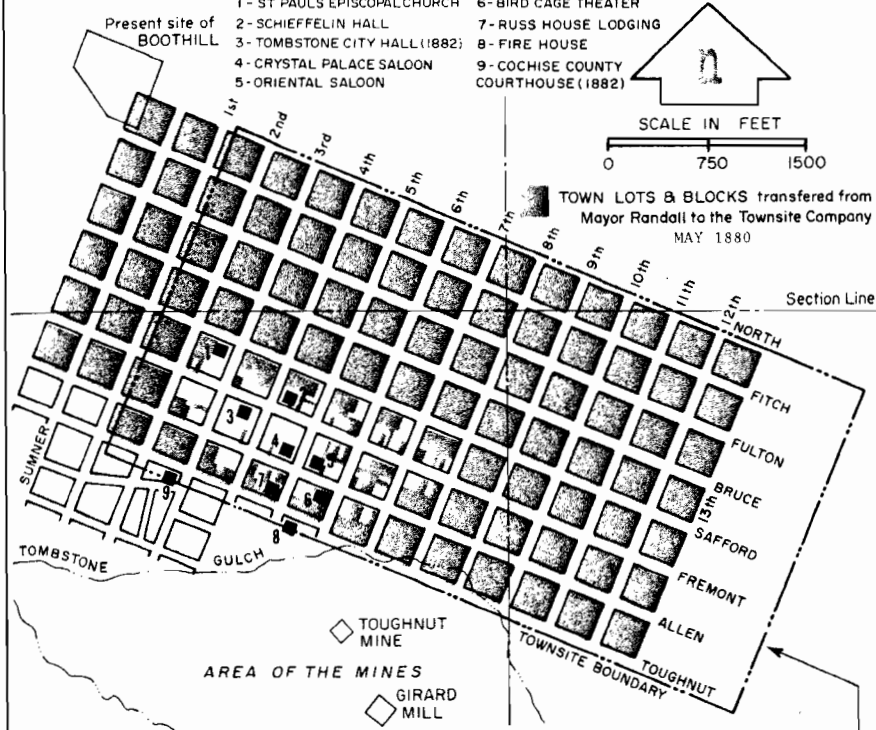
²³*Tombstone Weekly Epitaph*, June 5, 19, July 3, 10, August 14, 1880; *Tombstone Epitaph*, August 8, 12, 1880.

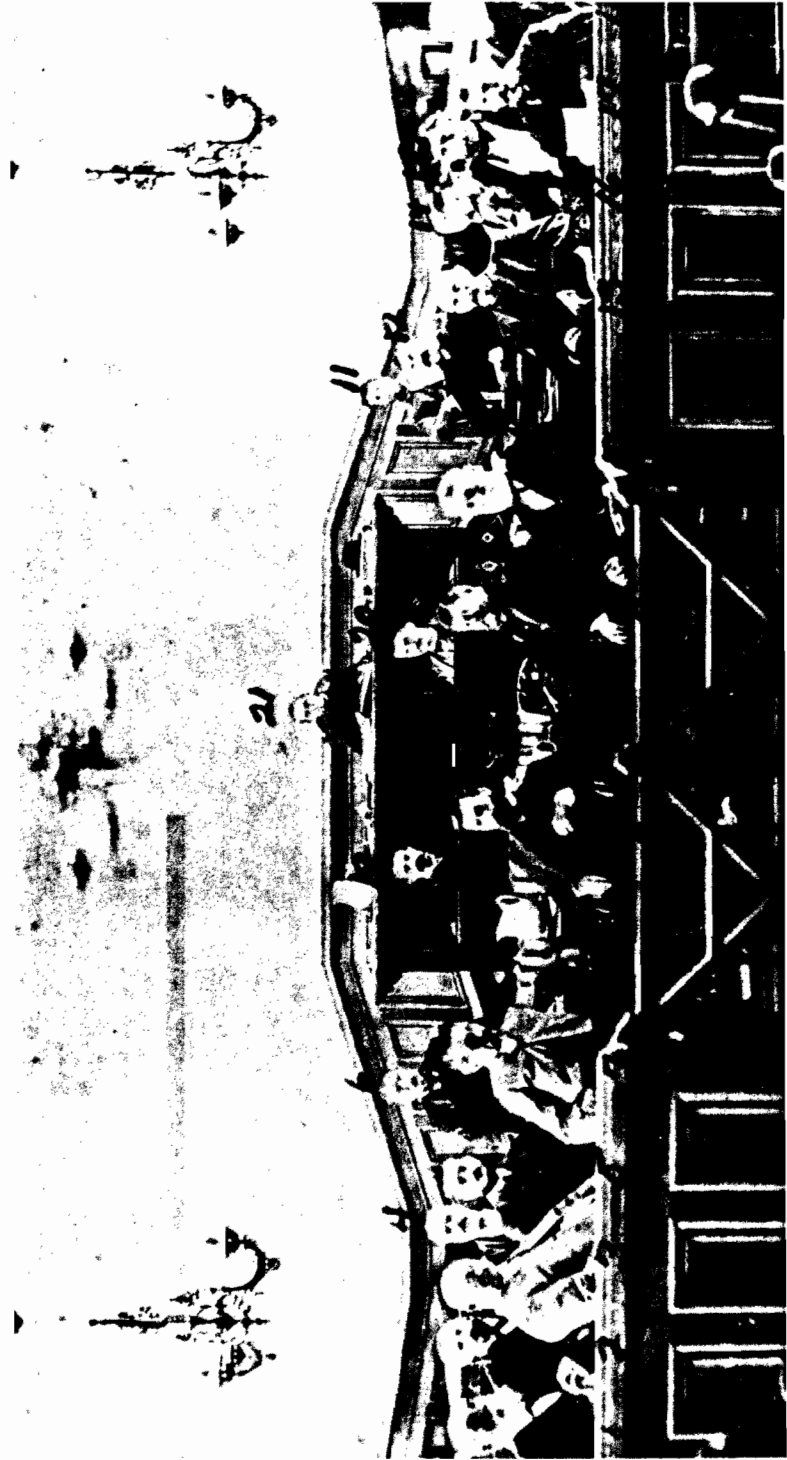
²⁴"Indenture . . . between the Common Council . . . of the Village of Tombstone . . . and J. B. Palmer *et al.*," Deeds of Real Estate, Book 7, 99-102, PCRO, Tucson.

TOMBSTONE, A.T.

Legend - Tombstone Sites

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| 1 - ST PAULS EPISCOPAL CHURCH | 6 - BIRD CAGE THEATER |
| 2 - SCHIEFFELIN HALL | 7 - RUSS HOUSE LODGING |
| 3 - TOMBSTONE CITY HALL (1882) | 8 - FIRE HOUSE |
| 4 - CRYSTAL PALACE SALOON | 9 - COCHISE COUNTY COURTHOUSE (1882) |
| 5 - ORIENTAL SALOON | |





Tombstone Bar Association circa 1883. JAMES S. CLARK (1) and JAMES REILLY (4) were involved with the local townsite problems. — *Arizona Historical Society*.

claimed that Clark, Palmer, Rouse and Gray had conspired with Mayor Alder Randall to obtain a patent and for Randall to sign over the townsite to his associates. Wells Spicer, the lawyer who drew up the remonstrance, advanced the claim that the Arizona statute which said that the persons who selected and laid out the townsite, and their assigns, "shall be deemed occupants thereof, and the lots embraced therein" was unconstitutional. It conflicted with the general statutes of the United States in that it tried to divest the actual occupants of their right to preempt the lots and to give the townsite to a group of speculators. Lots were said to be selling for \$50 to \$300 for the benefit of the speculators.²⁵

Appended to the remonstrance was a petition addressed to the Commissioner of the General Land Office bearing the signatures of 259 residents and property owners of Tombstone. Petitioners stated that they had made valuable improvements on their lots, dwellings, stores and business houses. They said that if the patent was granted to Randall it would result in long and expensive litigation, too expensive for many of the occupants who might therefore lose their homes. There would be much confusion "and perhaps bloodshed." They sought to have the commissioner refuse the patent to Randall and give the actual occupants a chance to apply for entry and patent through the probate judge of the county, as allowed by statute for an unincorporated community.²⁶

Accompanying the papers from the actual occupants were protests by Edward Field of Tombstone and W. S. Sanford & Company of New York City, owners of the Gilded Age Mine, which underlay the townsite. They claimed that the townsite patent should not be issued as it covered mineral land. Field claimed he had been in possession since December of 1878, but that in September of the following year he had been forcibly ejected by "certain parties claiming to hold the same for town-site purposes; that said parties have attempted to convert the same to their own use for speculative purposes and have sold nearly all the valuable town lots . . . and converted to their own use the monies paid therefor."²⁷

Under United States mining law, the locator of an unpatented

²⁵Wells Spicer to Williamson (telegram), July 30, 1880, Old Townsite Files, Tombstone, RFGLO. Coles Bashford (comp.), *Compiled Laws of the Territory of Arizona* (Albany, New York: Weed, Parsons and Company, 1871), Section 11.

²⁶Petition to Williamson, Old Townsite Files, Tombstone, RFGLO.

²⁷Edward Field to Register and Receiver, Land Office, Florence, Arizona Territory, April 29, 1880, *ibid.*

mining claim had no right of ownership of the surface. As interpreted by the courts, the law went on to say: "A townsite patent, when issued, will not deprive a person of any right existing at the date of the townsite under any valid mining claim." Thus the rights of the locators of the five claims which initially fell, in whole or in part, within the boundaries of the townsite were in no way abridged when the townsite patent was finally issued. In addition, a townsite patent did not deprive the Department of the Interior of jurisdiction to issue a patent for a mineral claim underlying the townsite. The law specified that in a contest between a mining claim and a townsite patent, the mineral claimant had to show that his claim contained minerals "of such extent and value as to justify expenditures for the purpose of extracting such mineral" if he wanted his claim excepted from the townsite patent. Once a mining patent was issued, settlers within the surface limits were left without legal or equitable rights, "and they are not entitled to compensation for their improvements under local statutes." By 1882 almost the entire area of Tombstone had been blanketed by some thirty mining claims. Most of these probably had been staked out more for nuisance value than for mineral value.²⁸

Field's trouble with the Townsite Company developed in September of 1879 when he began to sink a shaft in sand and gravel on the Gilded Age. As there was no ore in the shaft, the "town agent" — presumably Mike Gray — had Field arrested as a trespasser. The case was bound over to the district court. Meanwhile Field offered to give town lots within the claim to anyone who desired such property. The *Nugget* remarked: "As a controversy it has done no little damage in retarding building improvements in that locality, as those who purchase ground don't care to buy a law suit also."²⁹

Field filed suit against Gray *et al.* in March of 1880, to establish ownership of the surface of the Gilded Age. On May 10 Judge Charles G. W. French ruled in favor of the plaintiff. He said that the claim was located for mining purposes and that the defendants had no right or title. The *Prescott Democrat* remarked that Field "is now one of the most prominent and best hated men in the camp," that squatters had to come to his terms and this involved nearly one-third of the settlement.

²⁸A. H. Ricketts, *American Mining Law with Forms and Precedents* (San Francisco: Division of Mines Bulletin 98, January 1931), 79-82, 352-53.

²⁹*Tucson Weekly Star*, September 11, 1879; *Tucson Citizen*, September 7, October 4, 1879.

Field had his claim surveyed in June and applied for a patent in July. However, the patent was not issued until April of 1884. Meanwhile, despite Judge French's ruling, the mayor, acting under an ordinance of the common council, was issuing deeds for town lots on the surface of the claim.³⁰

While the problem of the Gilded Age was before the courts, the Vizina Consolidated Mining Company presented the county with lots 2 and 3 in block 1, which lay within its claim, on which to build a city hall. Clark, Gray & Company commenced a suit against the mining company to gain control of blocks 1 and 2 and part of block 3. The *Epitaph* saw this as an attempt to force the county "to go up town where they would have to pay higher prices." It also saw it as an attack on the surface rights of a valid mining claim which had been located long before the settlement had moved from Richmond to Goose Flats. These lots stood vacant for several months, but in early August D. F. Mooney, John Doe, Richard Roe, and John Smith tried to jump the lots. Councilman Godfrey Tribolet put men to fencing the lots. Mooney and his party showed up armed to the teeth, but Mrs. Mooney convinced her husband to go home with her. In a very prompt trial, the jury brought in a verdict favoring the city.³¹

Meanwhile in Washington the application for townsite patent plodded slowly through bureaucratic channels. On June 25 Commissioner Williamson stated that a proviso would be inserted in the townsite patent to the effect that "all others having mining rights within the limits of the townsite will be fully protected in all the rights guaranteed them by law." He also stated that it was not for his office to decide any question concerning the manner in which the trust was handled. Congress had left that to territorial regulation and the matter would have to be settled in the courts. A hearing in the case of *Field v. Gray* was denied.

Williamson finally issued the Tombstone patent on September 22, 1880. Three days later he forwarded the papers connected with his decision to Secretary of the Interior Carl Schurz. He reiterated his opinions refusing a hearing and held that the "protestants had no right of appeal," as granting or refusing a hearing was entirely within the discre-

³⁰Tucson Citizen, May 10, 1880; Tucson Weekly Star, March 25, May 12, 1880; Tucson Star, March 26, June 3, 1880. Record of Mines Patented, RBLM, Phoenix, Arizona.

³¹Tombstone Epitaph, May 15, August 5, 1880.

tion of the commissioner. As Schurz had entered the case, Williamson ordered that the patent be returned to his office. Mayor Randall complied on October 5. The *Epitaph* reported that "the Tombstone patent is 'swinging round the circle.' Arriving in the city by yesterday's mail . . . it is now on the return trip to the Interior Department."³²

Secretary Schurz replied to Williamson on October 12, pointing out that the patent had been issued prematurely, and delivered to the attorneys for the Townsite Company on the following day, despite the fact that there was an appeal pending. He agreed that the Department of the Interior had no "authority or jurisdiction to enforce a proper execution of the trust." As for the complaint of the mine owners, the patent contained provisions which protected the locators. Schurz dismissed the case.³³

On receiving the rumor that the patent was on its way, the Tombstone Townsite Company let no grass grow under its feet. The principals met on September 27 and decided to "extend to lot owners the same terms and conditions that were offered them eight months since." The *Epitaph* was assured that there was no disposition to punish or prosecute anyone.³⁴

Six days later the *Epitaph* carried a letter from "Many Citizens" that claimed that Mayor Randall had received the patent "as trustee IN TRUST FOR THE ACTUAL OCCUPANTS OF LOTS." The trust was not for men living in New Orleans or California. It was well known that a deed had been made and was on record conveying over 2,300 town lots to the Townsite Company. The letter claimed that the deed was "absolutely void" as it had been issued before the patent which created the trust; that the patent was issued in the name of the town, not of the trustee; and that it was "a fraud on the right of the actual occupants." The writer advised all occupants to apply to the current mayor for a deed and if he did not comply then take legal action.³⁵

Apparently annoyed at the delay over the matter of real estate

³²Tucson *Star*, July 10, 1880; Tucson *Weekly Star*, July 15, 1880; *Tombstone Epitaph*, July 25, October 8, 1880. Williamson to Carl Schurz, Washington, September 25, 1880, Letters Sent, Division G, Records of the Department of the Interior [RDI], RG 49. D. S. Sanford to W. C. Hill (telegram), October 8, 1880, Old Townsite Files, Tombstone, RFGLO.

³³Schurz to Williamson, Washington, October 12, 1880, Letters Received, File 68536 - 1880, RDI.

³⁴*Tombstone Epitaph*, September 28, 1880.

³⁵*Ibid*, October 3, 1880.

rights, Justice of the Peace James Reilly appropriated a vacant lot on Fremont Street. In the first day he nearly completed the erection of a building and on the next day moved his office into it. The lot in question was next door to the office of James S. Clark, who happened to be out of town. When he returned on October 1, according to the *Epitaph*, Clark "smiled grimly while looking at Judge Reilly's new office on his pet lot."³⁶

On October 13 the *Nugget* said:

We received last evening two anonymous communications evidently for publication, warning certain parties now in this city to leave town before a certain date, or the peaceful citizens of Tombstone would not be responsible for their safety. Evidently the vigilantes are organizing.

Clark published a notice in the *Epitaph* of the twenty-fourth warning all persons not to buy or negotiate for his lots in blocks 17 and 18, "Said lots having been duly deeded to me by the Mayor of Tombstone." In the same issue, James Reilly said: "Please take note that the M. E. Clark, in whose name the above notice is published, has never been in this Territory, nor can I find, after diligent inquiry, one creditable person who has ever seen him or her." Still another item stated that Randall had deeded occupied as well as unoccupied lots before the patent had been issued. It was in the midst of this tension and threats of violence that Marshal Fred White was gunned down and Virgil Earp was appointed acting city marshal.³⁷

The patent finally reached town on November 5, 1880, addressed to James S. Clark, rather than to Mayor Alder Randall. A committee of citizens waited on His Honor the next day. The mayor had to admit that he did not have the patent, but indicated that he was inclined to re deed to Clark, Gray & Company that which he had deeded before without any authority. He did, however, agree to confer with the council before issuing the new deed. A big protest meeting was held that night at the corner of 5th and Allen streets, complete with lanterns and a bonfire. There were a number of speeches and some fear was expressed that the mayor might flee the town.³⁸

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³⁶*Ibid.*, September 30, October 1, 2, 1880; *Tombstone Nugget*, October 14, 1880. Case 615, Records of the District Court, Cochise County Courthouse, Bisbee, Arizona.

³⁷*Tombstone Epitaph*, October 28, 1880.

³⁸*Ibid.*, November 6–8, 1880; Parsons, *Private Journal*, 99. *Tombstone Nugget*, November 6, 7, 1880.

After the meeting Councilman Harry Jones met with the executive committee of the Citizens' League. He made "a complete exposé of the frauds attempted and perpetrated by the Mayor and his crowd." An example was given: attachments had been issued against Randall for nearly \$1,000 and his saloon property had been seized. Randall claimed that the property was not his and, as mayor, deeded it to Clark, Gray & Company. The company in turn transferred it to a friend of Randall's who would return it when the right time came. Jones quoted the mayor as saying: "There's more sugar in the other crowd." Randall was to get \$2,000 and Jones \$500. That same night Jones telegraphed to the committee from the Tucson road that the mayor was also on the road. Parsons noted in his journal: "So after all — he has become scared — afraid of hemp — and left." Actually Randall had gone to Tucson, the county seat, to record the townsite patent.³⁹

The *Epitaph* commented on November 9: "The deed is made and Tombstone has been handed over to the scheming speculators. The fatal step was taken about 11 o'clock yesterday, since which time the Mayor has not been visible to the public eye." The paper also noted that the loss to the city treasury in unpaid legal fees would run between \$100,000 and \$200,000. Although there had been numerous transactions in real estate in the past year, not a cent had been paid into the treasury. This meant that all municipal improvements would have to be provided for by taxes. The committee that had waited on the mayor on November 6 was greatly disgusted to learn that Randall had ignored his pledge to confer with the council before issuing the deed to the Townsite Company.

At a mass meeting on November 12, John P. Clum, editor of the *Tombstone Epitaph*, branded the *Nugget* as the mouthpiece of the Townsite Company. He reported the case of certain men who had filed claims for and improved on two lots. Gray had delivered to them deeds for two different lots which had previously been bought from Clark, Gray & Company. When the men asked for deeds to the lots on which they had built, Gray told them that those lots had been deeded to other parties. He also cited the case of a working woman who was told that she had paid the wrong parties for her lot. The *Nugget* sought, on the following day, to refute the cases mentioned by Clum and said that if he did not give the name of the working woman he would be a "condemned

³⁹ Parsons, *Private Journal*, 99.

falsifier." Clum sent over an unsigned copy of the woman's letter. The signature on the original had been witnessed and, with the woman's permission, the letter had been shown to the executive committee of the Citizens' League.⁴⁰

In the week following this meeting, nearly \$1,000 had been subscribed toward the Citizens' League fund. The *Nugget* considered it a good sign for a return to quiet that a number of those prominent in the anti-townsite agitation had refused to contribute to the fund. The executive committee retained the law firms of Haynes & Lucas of Tucson and Hunsaker & Davis and a Mr. Burke of Tombstone to "get this matter before the courts defeating Fraud and securing legal and complete title to our homes and places of business." The *Nugget* reported an interview with Mike Gray in which he said that it would be cheaper to pay for a deed from the Townsite Company than to retain a lawyer to take the case to the Supreme Court. The *Epitaph* replied: "From the same line of argument you are to believe that it is better to allow a thief to rob you than to go to the expense of prosecuting him."⁴¹

The *Epitaph* of November 21, 1880, commented that an instrument drawn by "Judge" James Buell was a curiosity:

The cool manner in which the instrument sets forth that M. E. Clark and J. B. Palmer are residents is refreshing. The hot haste of the first villain in this plot to immediately convey to John J. Anderson, of New York, his portion of the spoil and the fact that his hopeful son, who is "doing" Europe in the interests of the citizens of Tombstone, comes in for two-fifths, are glaring evidences of a cobweb of fraud. . . .

Violence was again narrowly averted on November 16. When the workers arrived at the shaft of the Gilded Age Mine, they were confronted by a man armed with a shotgun who said he was put there by J. S. Clark, agent for the Townsite Company. "Beaten twice in court by Mr. Fields," the *Epitaph* remarked, "the townsite sharks still seem disposed to scoff the law and urge the inhabitants on to violence by their acts." Field went to Tucson "looking for his rights." While he was absent a cabin was built over the mine shaft by the "opposing party."⁴²

⁴⁰*Tombstone Epitaph*, November 13, 14, 1880.

⁴¹*Ibid.*, November 13, 16, 17, 1880; *Tombstone Nugget*, November 20, 1880.

⁴²*Tombstone Epitaph*, November 17, 1880; *Tombstone Nugget*, November 19, 1880.

Late in November Clark, Gray & Company put out a circular offering for sale eighty-one unbroken blocks and many odd lots. They claimed to be the "only parties authorized to negotiate the sale of any lots herein described." In response the *Epitaph* started the "People's Corner" so that citizens "whose title to town lots are questioned by Gray and Clark can advertise the same in this column gratis." In the first two days, eight citizens took advantage of the column, including Clum, Sorin & Reppy, publishers of the paper. They stated that they had obtained their lot from an agent of Safford in April of 1880, and that a fraudulent deed had been issued to James Buell "after occupation by us." Many paid notices also appeared warning people not to deal with Clark, Gray & Company for specific lots claimed by citizens.⁴³

At the same time, Clark, Gray & Company issued a warning:

All tenants occupying houses built by squatters upon the lots owned by Clark, Gray & Co., are cautioned not to pay rents to pretended owners, as we intend collecting rents from all tenants on our lots from the 1st of December, 1880. You are respectfully called to make arrangements.

The *Epitaph* reported that Clark had inferred, in what may have been a veiled threat, that he had the names of all those who had signed the petition sent to Washington, also a copy of every letter written.⁴⁴

The Citizens' League finally went into action by filing a suit against the mayor and common council and Clark, Gray *et al.* Pending conclusion of the case, a temporary injunction was issued restraining the defendants from concluding any further deals in real estate.⁴⁵

A rumor cropped up in early December that Clark, Gray & Company would probably try to take advantage of the absence of Judge Reilly in Tucson to move his house off its lot. George Parsons was appointed by the Citizens' League to guard the house. Parsons thought that the company might try this trick "in advance of an injunction restraining them by Monday from doing anything in the townsite matter." Next day, Clark and Gray, with a force of about twelve working — and reputed fighting — men led by one "Texas" pulled down the fence and moved the house part way into the street. A. C. Lowry, the only occupant at the

⁴³ *Tombstone Epitaph*, November 28, 30, December 1-8, 1880; *Tombstone Nugget*, December 15, 1880.

⁴⁴ *Tombstone Nugget*, December 3, 1880; *Tombstone Epitaph*, December 3, 1880.

⁴⁵ *Tombstone Nugget*, December 9, 1880; *Tombstone Epitaph*, December 8, 1880.

time, asked for help from Marshal Ben Sippy. The marshal stopped the proceedings, though, as Parsons noted, it "looked like a grand row at one time." A group of men seized some timbers and ran the house back off the street.⁴⁶

That night Parsons, Lowry and a third man spent the night in the house equipped with arms and a police whistle. On the following day, it was rumored that Clark, Gray & Company were planning to move a house onto the back of Reilly's lot, so that the latter's house could not be moved all the way back to its original position. A party of volunteers soon pried the house back into place. Later Parsons was told that there were ten men with loaded shotguns ready to support the volunteers if needed. Also they had brought some rope. Parsons commented that "at last it looks as though the people would assert their rights."⁴⁷

The *Nugget* had a slightly different version: "Marshal Sippy, after the obstruction had been permitted to remain twenty-four hours, came upon the ground with help and put the building back in its place." Sippy was later commended by the *Epitaph* for demonstrating that he was "in sympathy with law and order and that he is not afraid to assume a little responsibility in a case of emergency." In the same issue the paper reported: "One feature that came to light yesterday, which may cause surprise, is that the gang have a permit from the Mayor to carry concealed weapons." Two weeks later Reilly entered suit against Clark, Gray & Company, claiming \$300 in damage to his house. The court awarded Reilly \$283 and costs.⁴⁸

With municipal elections scheduled for January 4, 1881, action shifted to the political arena in late December of 1880. The matter of the Townsite Company was the main, if not the only, issue. The Citizens' League supported John P. Clum for mayor and four businessmen for the council. The *Epitaph* hoped that Ben Sippy would be reelected as marshal without opposition. The paper pointed out that he had on occasion acted to protect the citizens from the highhanded operations of Clark, Gray & Company. The Citizens' League won by large margins.⁴⁹

⁴⁶Parsons, *Private Journal*, 105-106. *Tombstone Epitaph*, December 4, 6, 1880; *Tombstone Nugget*, December 5, 1880.

⁴⁷Parsons, *Private Journal*, 106.

⁴⁸*Tombstone Nugget*, December 5, 1880; *Tombstone Epitaph*, December 5, 16, 1880; January 4, 1881.

⁴⁹*Tombstone Epitaph*, January 4, 1881; Parsons, *Private Journal*, 111, 113-14. Minutes of the Common Council, January 6, 1881, *Tombstone*, Vol. 1, copy in SC, UAL.

The case of *Edward Field et al. v. M. Gray et al.* finally came to judgment by the Arizona Supreme Court in April of 1881. The court affirmed the lower court decision and ordered Sheriff John Behan to put Field in possession of lots covered by the title of the Gilded Age Mining Company. The *Epitaph* commented that "wherever the Colonel has received kind treatment at the hands of the jumpers he is using them very leniently." Nevertheless, there was considerable excitement in town. Field was threatened with "pictures of coffins, bloody hands, gallows, etc." and was shot at once or twice. He kept a low profile and went out for air only with a bodyguard. Within a few days the tension eased. On Sunday, May 8, there was a meeting of the settlers on the Gilded Age claim. All the speakers praised Sheriff Behan. While this case settled the fight between Field and Gray, it left pending the matter of the rights of those who had improved lots within the claim.⁵⁰

As editor of the *Epitaph*, Mayor Clum had waged war against the Tombstone Townsite Company. Some months after his election, he published instructions to the inhabitants setting forth the manner in which they might apply for a mayor's deed. Among other stipulations, a fee of \$10.00 per lot was to be paid into the city treasury. There was a minor rush for the new deeds. Prior to issuance of the deeds, all cases were turned over to the city attorney for investigation.⁵¹

Clum's action did not end the struggles in the courts. In the case of *M. E. Clark v. A. C. Welch et al.*, the judge declared that the deed of November 11, 1880, from Randall to Clark *et al.* was fraudulent and void as to lot 10, block 17. In the case of *Clark v. Hatch* before the district court, Mike Gray stated that he was the agent for M. E. Clark, but was not acquainted with that person: "Never saw him, he is now in Europe at school; was in Europe on November 11, 1879." He understood that the plaintiff was a minor. The court ruled out the testimony that plaintiff was not a resident. The jury was unable to reach a verdict and was dismissed.⁵²

Another suit was started which some thought to be the best and quickest way to reach a final decision. A complaint was lodged by two

⁵⁰ 1 Arizona Reports 404. *Tombstone Epitaph*, April 14, 15, May 8, 10, 1881; *Tucson Weekly Star*, April 21, 1881. Parsons, *Private Journal*, 141-42.

⁵¹ *Tombstone Epitaph*, October 18, 1881.

⁵² *Ibid.*, May 26, 27, 1881. Case 80, Records of District Court, Cochise County Courthouse, Bisbee.

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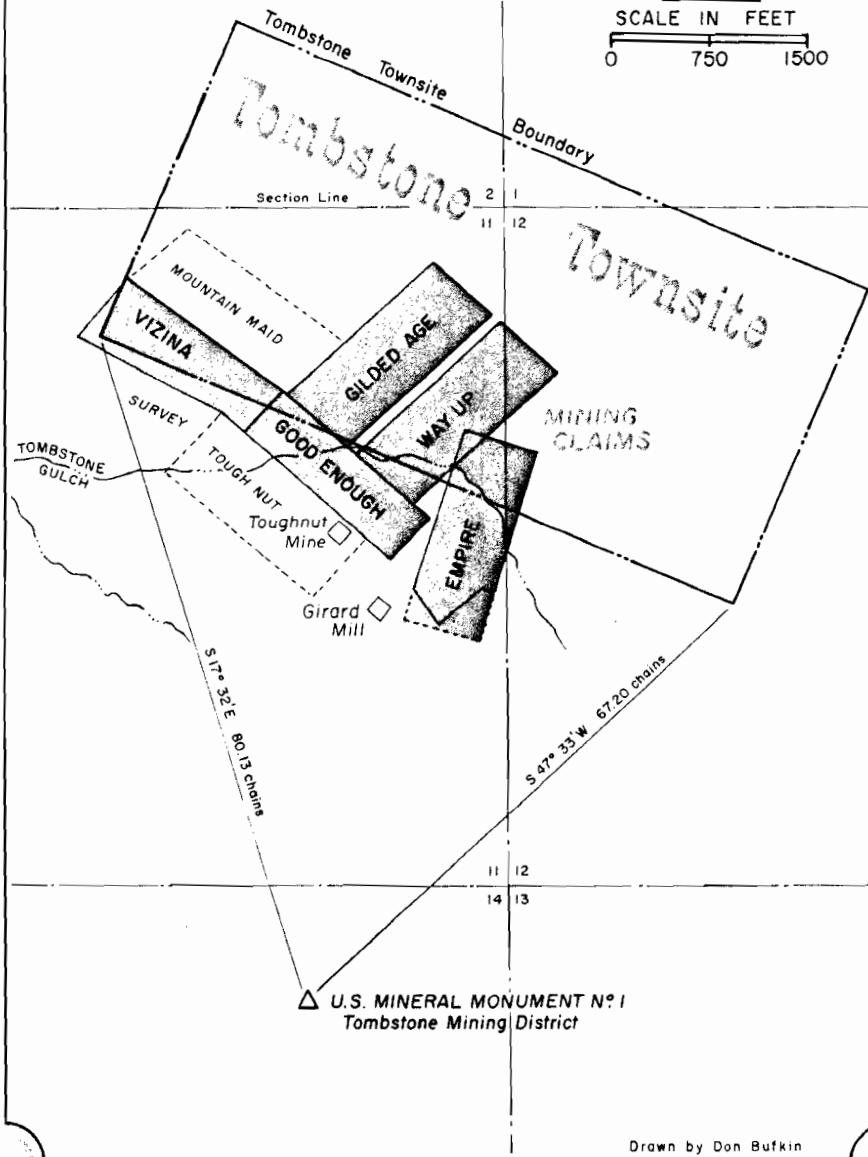
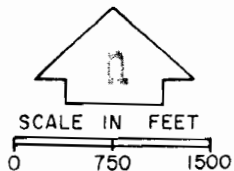


(above) Tombstone circa 1881 looking north. (below) Allen Street in Tombstone in early 1880s. — Arizona Historical Society.



TOMBSTONE, A.T.

Boothill Cemetery



Drawn by Don Bufkin

attorneys that charged Alder Randall with felony and malfeasance in office by executing the deed to the Tombstone Townsite Company. Bail was set at \$1,000 and Randall seems to have had trouble raising the money. A rumor ran around town that the ex-mayor was all packed and ready to skip town.⁵³

During the examination before Judge Wells Spicer, Harry B. Jones, a former member of the common council and deputy sheriff, refused to answer many questions on the grounds that he might incriminate himself. Another former councilman testified that the council did not authorize the mayor to sign the deed. Mike Gray claimed that all he knew about the matter was the routine issuance of the deed as village clerk. James S. Clark explained that he directed his attorneys in Washington to send the patent to him, as he had paid \$400 for the land and had paid the attorneys' fees. He added: "After I received it [the patent] I got a deed from the Mayor for all the lots that belonged to me except what I had given away and sold. I have always considered that myself and associates owned all the lots included in the patent." Randall said that he signed the deeds on the advice of an attorney, James Buell, and that no one gave him anything as an inducement to sign. Buell received a \$1.50 fee for each deed. Randall claimed that he did not know that Buell was attorney for Clark, Gray & Company. Judge Spicer dismissed the case. He felt that the mayor had committed a great wrong, but he could find no law that made it a crime.⁵⁴

The question of surface rights on several mining claims flared again in June. The Mountain Maid Mining Company of San Francisco announced a plan to settle with the squatters on that part of its claim that underlay the western portion of the townsite. There was an immediate flurry of interest in deeds for parcels on the surface, and a law firm sought copies of all titles starting with ~~the~~ the deed from the Calhoun brothers to Mike Gray. At the same time the settlers on the Gilded Age organized and raised \$300 to prosecute a case against Field. It would seem that the decision of the Arizona Supreme Court was not good enough for certain Tombstone citizens.⁵⁵

⁵³*Tombstone Epitaph*, May 29-31, June 2, 6, 1881.

⁵⁴*Ibid.*

⁵⁵*Tombstone Epitaph*, June 2, 1881; *Tombstone Weekly Epitaph*, June 6, 1881. Lewis & Berry to Recorder of Pima County, June 2, 4, 5, 1881, Charles R. Drake Collections, AHS.

Tempers continued to run hot. On the morning of June 3, there was a "personal altercation" between James S. Clark and Edward Field. Both men had reputations for tempers with very short fuses. According to the *Tucson Citizen*, Clark was assisted by Judge H. C. Dibble in a "war of missiles . . . in which water pitchers, sugar bowls, goblets and brandy bottles were hurled . . . with gentlemanly vengeance. The aggressive parties were fined \$25 each." Field was ejected from the restaurant "with slight damage to his upper works. Fortunately, no shooting was allowed and no serious damage resulted," according to the *Epitaph*.⁵⁶

In the midst of this tension, on June 6, Ben Sippy, chief of police, was granted two weeks' leave of absence and Virgil Earp was appointed acting chief during Sippy's absence. Almost at once ugly rumors began to circulate that Sippy had absconded with \$1,000, though the judge of the police court affirmed that Sippy was on leave and the auditor said that his accounts were all in order. On the fourteenth there was a report that Sippy had been seen in Lamy, New Mexico, eastbound on the railroad. The *Epitaph* conceded that the rumors might be correct. Some historians feel that Sippy's skeleton is lying in the bottom of an abandoned mine shaft. He had sought to protect the citizens of Tombstone from the grosser attacks of the Townsite Company.⁵⁷

A fire consumed much of the business district on June 22, 1881. For several days thereafter, Acting City Marshal Virgil Earp was busy preventing lot jumping. After consultation with the mayor and council, Earp announced that all real estate holdings would be the same as before the fire, leaving the final decision as to ownership to the courts. By early August the burnt district had been almost completely rebuilt.⁵⁸

Typical of the problem faced by the ordinary citizen in securing firm title to city lots was a case reported in June of 1881. On the sixteenth settlers on the surface of the Silver Belt, Banner, and Doughnut claims were told that they could lease the surface for ninety-nine years "at low rates upon immediate application to THOMAS FITCH." In the same issue of the *Epitaph*, James S. Clark warned the same settlers that the surface rights belonged to the Townsite Company. Still another notice warned the public not to purchase or lease any of the surface of the

⁵⁶ *Tombstone Epitaph*, June 4, 1881; *Tucson Citizen*, June 12, 1881.

⁵⁷ Minutes of the Common Council, June 6, 1881, Tombstone, SC, UAL. *Tombstone Epitaph*, June 11, 14, 1881.

⁵⁸ *Tombstone Epitaph*, June 23, August 4, 1881.

Doughnut from Thomas Fitch, as two other men owned two-thirds of the claim. Fifteen days later Thomas Ogden claimed ownership of the Banner, Silver Belt, Huron, and Standard and warned about buying from squatters. At the same time Clark repeated his claim to the surface and stated that "Said mining claims are mere fictions."⁵⁹

Lawsuits continued to flood the courts. Field and his partner filed a suit against at least nine squatters on the Gilded Age to establish surface rights. A year later the case was still before the courts and the defendants numbered thirty-four. The Vizina Mining Company also filed suits against squatters on its claim. The *Epitaph* on November 30, 1881, remarked: "Judge [W. H.] Stilwell yesterday, did the best day's work for the prosperity of Tombstone, that has been done by any one man since the foundation of the city." The judge had held that the locator had right to the surface and that ignorance of the law was no excuse. The paper advised its readers not to waste money on lawyer's fees. It hoped that this decision would end the threats of violence and the filing of many suits and cross-suits.⁶⁰

The Townsite Company reacted to Clum's mayor's deeds. On October 31 the case of *John D. Rouse, Maurice E. Clark, and John J. Anderson v. John P. Clum, Mayor of Tombstone* was filed in district court. After reciting the history of transfers of claims, or "rights," and the issuance of deeds, the plaintiffs claimed that Alder Randall had fully discharged his trust when he delivered the deed to them. They stated that Clum had violated the law when he issued mayor's deeds, as no trust remained in the mayor. An injunction was issued forbidding Clum to execute any more deeds pending a full hearing. This complaint was finally dismissed on December 3, 1884.⁶¹

Also in late 1881 Anderson, Rouse and Clark brought suit against Field and his partner claiming that the defendants had no right to the surface of the Gilded Age. It was stated that defendants' actions had depreciated the value of the Townsite Company's title. The plaintiffs sought \$50,000 in damages. In addition, the defendants were reported to have leased city lots on the mineral claim, and plaintiffs sought \$20,000 in illegally collected rents. They also sought an injunction

⁵⁹ *Ibid.*, June 16, July 1, 2, 1881.

⁶⁰ *Ibid.*, November 15, 16, 30, 1881; *Tombstone Nugget*, December 13, 1882.

⁶¹ Case 298, Minute Book 3, Records of the District Court, First Judicial District, Cochise County Courthouse, Bisbee.

forbidding any further leasing or sale of city lots. The defendants claimed possession on December 19, 1878, long before the townsite patent was issued. The plaintiffs finally withdrew the suit on September 25, 1884.⁶²

With the approach of the annual municipal election, the *Epitaph* of December 9, 1881, urged the voters to vote only for city officers "who are disposed to construe the townsite patent literally — that it was issued to the mayor in trust for the occupants — 'occupants' being those who have improved and made their homes in this city, and not residents of New Orleans or Germany." The Citizens' League decided that as both candidates for mayor had expressed opposition to the Townsite Company, it would publish no preference.⁶³

Opposition to the Townsite Company seems to have become rather dangerous in late 1881. On December 14 there was an attempt on the life of Mayor Clum. Wells Spicer received a threatening letter. Marshal Virgil Earp was bushwhacked on Allen Street on the night of December 28. Though he survived, Earp's left arm was so crippled as to be useless thereafter. Another officer of the law, Morgan Earp, was shot to death from ambush on the night of March 18, 1882.⁶⁴

The election of January 3, 1882, brought in an entirely new group of officials, all of whom had expressed opposition to Clark, Gray & Company. Mayor John Carr, in his inaugural address, pointed out that uncertainty of titles to city real estate retarded the growth of the city and the matter should be settled in the courts. He added: "I think the city the proper party to begin suit for the recovery of her endowed rights."⁶⁵

The new officials were presented with a serious problem when the city health officer on February 23, 1882, called attention to numerous pools of stagnant water within the city. A sewers committee was appointed which found that, because of existing conflicts over real estate, the people were not ready or willing to assume the cost of construction. They feared that such work might be solely for the benefit of Clark,

⁶²Case 287, Cochise County Court Records, Box A, AHS. *Tombstone Epitaph*, December 1, 1881.

⁶³*Tombstone Epitaph*, December 28, 1881.

⁶⁴Parsons, *Private Journal*, 200–201. *Tombstone Epitaph*, December 16, 18, 20, 29, 1881.

⁶⁵Council minutes, Tombstone, January 9, 1882, Vol. 1, SC, UAL. *Tombstone Epitaph*, January 18, 1882; *Tombstone Weekly Epitaph*, January 23, 1882.

Gray & Company and not for themselves. The report was received and the committee was discharged.⁶⁶

A committee of the common council met with the city attorney in April of 1882, to consider legal action in the matter of real estate within the city. A group of attorneys "in the interest of the citizens" had asked that the city not interfere as they had commenced action in the district court which they thought would "bring the matter to a final issue during the May term of said court." Addressing the council, Mark Hayne argued that Randall's deed was "without authority and void" and that the patent was issued, not for a company, but for the "use and benefit of the inhabitants of Tombstone." James S. Clark was present and stated that in every instance the courts had sustained his rights. The city attorney recommended no action by the city as that would simply add another case to the court calendar.⁶⁷

At a special meeting two days later, with Clark and his attorneys present, the council decided not to contest the title to vacant lots and noted that many of the largest property owners had already purchased titles from Clark, Gray & Company. The *Epitaph* felt that the action of individuals, either in the courts or by purchase from the Townsite Company, would settle the "vexed question of titles."⁶⁸

J. S. Clark immediately published the following notice:

To Settlers on Lots in Tombstone

Now that the city authorities have decided they have no title to lots in Tombstone, I wish to notify all settlers on lots who have not my title to come forward and make arrangements, as they can now secure deeds to lots for less money than they can employ any lawyer to defend them. I will wager the sum of \$5000 with any person (and deposit said amount in bank) that the Supreme Court of the United States will sustain all suits relative to these cases, notwithstanding certain lawyers are willing to take cases and guarantee their clients (for a sum of money) they can win them. I am desirous to find some monied man that thinks I am wrong.

⁶⁶Council minutes, Tombstone, February 23, March 1, April 5, 1882, Vol. 1, SC, UAL.

⁶⁷Council minutes, Tombstone, April 12, 1882, Vol. 1; April 14, 1882, Vol. 2, SC, UAL. *Tombstone Weekly Commercial Advertiser* (Arizona), April 14, 1882; *Tombstone Epitaph*, April 13-15, May 8, 13, 1882.

⁶⁸*Tombstone Weekly Commercial Advertiser*, April 22, 1882; *Tombstone Epitaph*, April 22, 26, 1882.

A member of the council rebutted Clark's statement by pointing out that cases were already pending in the courts which would cover all the points of law. "I would further state," he added, "that it is the intention and determination of the Mayor and Council to protect the rights of the citizens in this matter as far as lies in their power to do so."⁶⁹

Ownership of the *Epitaph* changed hands on May 1, 1882, and John P. Clum left Tombstone. There are several different reasons given for his departure: that he was sold out by his partners or that he feared assassination following the departure of the Earps. The new owner, Sam Purdy, was a Democrat and there came a marked change in editorial policy, especially as regards the "Cowboy" or outlaw element. In early May Clum paid \$300 for a Clark, Gray & Company deed to lots 5 and 6 in block 35. The *Tombstone Commercial Advertiser* unfavorably compared this act with Clum's performance a year and a half before, when he harangued the populace against Clark and Gray. The paper added that though Mayor Carr had promised to redeem the townsite patent, they had heard that he also had "made his bow at the feet of Clark, Gray & Co., and made sure the title to his own land." Because of this the mayor should resign.⁷⁰

In the spring of 1882, Lucius P. Marsh of the law firm of Haynes, Marsh & Stiles published *Tombstone Town-site Brief: What right if any has the "Town-site company" to the town lots in Tombstone*. The author came to the conclusion that Clark and others paid to the corporate authorities the cost of location and of the land. He then traced the history of all transactions that had taken place. Finally he concluded that the act of the Arizona Territorial Legislature which stated that those who selected and laid out a townsite were its occupants within the meaning of the act of Congress was an attempt to construe an act of Congress and so was unconstitutional.⁷¹

At the same time there was a burst of activity in the courts. At least thirty cases were filed in short order. The *Epitaph* carried the summons in four cases against the Townsite Company to quiet plaintiffs' title to certain property. Though it took about a year and a half, the defendants

⁶⁹*Tombstone Epitaph*, April 20, 21, 1882; *Tombstone Nugget*, April 21, 1882.

⁷⁰*Tombstone Weekly Commercial Advertiser*, May 6, 1882. John Myers Myers, *The Last Chance, Tombstone's Early Years* (New York, 1950), 222.

⁷¹Lucius P. Marsh, *Tombstone Town-site Brief*, AHS.

were ultimately ordered to make quit claim deeds to plaintiffs in at least three of these cases. In one case a plaintiff was granted a quit claim deed on the grounds that he had been in possession prior to the date of the patent. In two cases, the judge went so far as to declare the Randall deed to be fraudulent.⁷²

The case of *Gray et al. v. Field et al.*, better known as the Gilded Age case, at long last came before the Supreme Court of the United States in July of 1882. Unfortunately, the case was not decided on its merits. The court found for the defendants and allowed them to recover costs of \$32.75 because the plaintiffs had failed to have their cause filed and docketed according to the rules of the court.⁷³

Another potentially explosive situation passed in October with a flourish of arms, which the *Epitaph* called "A Speck of War." The town lot question had lain dormant for some time until J. S. Clark built the foundation wall for a large business block on the corner of Fifth and Fremont streets. James Reilly had claimed and occupied part of that ground for approximately two years. Reilly had been burned out in the second great fire (May 25, 1882), and to hold the land had pitched a tent on it. He waited until a five-foot wall had been erected on Fremont Street. He then belted on a pair of 45s, took a shotgun and, with a group of men, cut a doorway through the wall. The paper noted that there was "lively talk" between the claimants but nothing more lethal. A warrant was sworn out in the name of M. E. Clark for the arrest of Reilly on a writ of unlawful detention of lot 9, block 18. The jury decided that Reilly was guilty as charged. The case of *Reilly v. Clark* to quiet title to the lot was still pending in the courts. The paper assumed that Reilly would appeal this latest decision.⁷⁴

Clark's motto must have been "Never say die." In November of 1882 he published another notice advising the populace that the townsite owners would make deeds for less than it would cost to litigate in

⁷²Territorial cases 408, 418, 422, 429, 431, 438, 440, 444, Civil Judgments, Cochise County Superior Court, Bisbee. Unfortunately, when the county seat was moved from Tombstone to Bisbee in 1929, many of the county employees just walked out of the Tombstone courthouse leaving many records strewn on the floor. Some partial records were saved by officials, some by private individuals. The Judgment Roll in civil cases is very incomplete. The cited cases in this paragraph are but eight of approximately 120 cases listed in the index book.

⁷³*Tombstone Epitaph*, July 28, 29, 1882.

⁷⁴*Tombstone Weekly Epitaph*, October 21, 1882.

the courts: "Occupants of lots are requested to come forward and save court costs and fees."⁷⁵

Some of the mines in the Tombstone district hit water in 1883, forcing the owners to start pumping and foretelling serious trouble for the community. Two years later the Contention and Grand Central mines combined their pumping efforts, but in 1886 the hoist house and pumping station of the Grand Central burned down, and water smothered the efforts of the Contention. At the same time, the repeal of the Sherman Silver Purchase Act and the continuing outpouring from the mines drove the price of silver in New York down to \$1.00 $\frac{7}{8}$ per ounce, "the lowest point ever reached." By 1887 only two mines employing 400 men were in operation in Tombstone, a reduction of at least fifty percent.⁷⁶

Despite the serious decline in mining that set in in 1883, the struggle over town lots continued. In February of 1884, J. D. Rouse published a notice in the *Epitaph* to the effect that the Townsite Company would make a reduction of 33-50% in the price of lots to those purchasing before the next term of court. Clearly the company was fearful that it would lose more cases.⁷⁷

After five years as a mystery figure of the Townsite Company, Maurice E. Clark must have come to Tombstone, presumably to visit his father. On February 11, 1884, Dr. George E. Goodfellow and Major Francis S. Earle conducted a raffle for "M. E. Clark's horse, saddle and bridle."⁷⁸

The case of *James S. Clark et al. v. Benjamin Titus* reached the Arizona Supreme Court in January of 1885. This was a suit to recover possession of six city lots in Tombstone. The opinion of the court was that the whole case hung on the validity of Randall's deed. As the mayor held title as trustee for the occupants, "he had no power to convey the title to anyone but occupants. The Legislature of the territory had the power to regulate the manner of disposal of the lots and the execution of the trust. But there was no power to change or alter the conditions of the trust." It said that the laws were designed to prevent speculation.

⁷⁵ *Ibid.*, November 18, 1882.

⁷⁶ Dunning, *Rock to Riches*, 119; *Tombstone Epitaph*, January 14, 1886.

⁷⁷ *Tombstone Epitaph*, February 17, 19, 20, 1884.

⁷⁸ *Ibid.*, February 12, 1884.

The deed was a "legal and actual fraud which ought not to be countenanced for a moment. Any act of the legislature which would create a breach of such trust is void."⁷⁹

Although J. W. Locker had disposed of his one-fifth interest in the townsite in February of 1880, his name cropped up as signer of a notice in the *Epitaph* six years later. He notified those who had not obtained townsite deeds to see his agent Jas. S. Clark. He proposed to sell very reasonably. Prices would range from \$15 to \$50, "according to location." In another notice he said that, as there had been a great deal of controversy over raising money for the school, he had ordered Clark to pay into the county treasury ten percent of all sales.⁸⁰

Clark left Tombstone sometime in 1886 and moved to Washington to press his claims against the federal government for cotton seized during the Civil War. While he was absent, the last act of overt violence connected with the townsite question occurred on January 4, 1887, when his Tombstone residence was blown up by a two-pound can filled with giant powder (dynamite). The explosion cut loose when Mrs. Clark lit the stove. She was seriously injured, receiving several skull fractures. Several days later she was resting easy "with every hope of ultimate recovery." The Clark's two children, Maurice and Daisy, arrived a week later to stay with their mother. A month after the attempt on the Clarks, Sheriff John H. Slaughter posted a reward of \$250 for the arrest and conviction of the party responsible. As best can be told, the reward was never collected.⁸¹

The territorial legislature in 1887 tried to ease the situation by restricting claimants of town lots to four lots and by controlling the amount of land they could receive. For Tombstone this was too late.

Three cases *Reilly v. Blackmore*, *Reilly v. Berry*, and *Mountain Maid Mining Company v. Reilly* were grouped as "The Tombstone Town-Site Cases" when they reached the Arizona Supreme Court on September 1, 1887. The court held that the first mineral location of the Mountain Maid, filed in February of 1879, was so vague the land could not be identified and had to be relocated in November of 1880. The

⁷⁹ Arizona Supreme Court Calendar, January Term, 1885, Federal Record Center, Laguna Niguel, California. *James S. Clark et al. v. Benjamin Titus* (1886), 2 Arizona Reports 147.

⁸⁰ *Tombstone Epitaph*, February 18, March 5, 13, 1886.

⁸¹ *Tucson Weekly Star*, January 9, 13, 1887; *Tombstone Epitaph and Cochise County Recorder*, February 4, 1887.

patent to the mine was finally issued on August 15, 1882. As the townsite patent was issued in October of 1880, between the first and second mining location notices, it therefore was "paramount to the patent to the Mountain Maid mine." The Tombstone Town-Site Cases were appealed to the United States Supreme Court. The court dismissed the cases on April 27, 1892, "Pursuant to Rule 10." It seems that neither side had arranged to pay the fees of the clerk of court, including the printing of twenty-five copies of the briefs. The decision of the Arizona Supreme Court seemed to overturn previous decisions which held that the patent to a mining claim was paramount. The failure of the United States Supreme Court to hear the case left the whole matter in limbo.⁸²

The failure of either of the contestants to pay the fees of the clerk of court of the United States Supreme Court in 1892 would seem to indicate a marked decline of interest in the matter of town lots. From a peak population of 5,300 at the height of the boom in 1882, the number of inhabitants dropped to 1,875 in 1890 and 646 in 1900. Many of the citizens sold out for the price of a stage ticket or simply walked away from mines, homes or business establishments.⁸³

The chief combatants in the struggle over the townsite gradually disappeared from the scene. A. P. K. Safford returned east in 1880 and became involved in real estate promotion in Florida where he died in 1891. Bidwell left Tombstone in June of 1880 and died in San Francisco a month later. Palmer died in San Francisco in May of 1882. Clum moved away in the same year. By 1887 Mike Gray had taken up residence at abandoned Camp John A. Rucker in the Chiricahua Mountains. Despite occasional "puffs" in the local papers about rich ore in the Gilded Age, the mine seems to have been a failure. On August 3, 1882, the mine was knocked down in a sheriff's sale in settlement of a court judgment received by J. B. Southard against Edward Field. Field dropped from sight about the same time. Clark went to Washington in 1886 and died "almost in abject poverty" on October 3, 1889. By the time he left town, Clark was paying taxes on only twenty lots of the 2,168 originally claimed by the Townsite Company. Wells Spicer com-

⁸² *Tombstone Townsite Cases* (1887), 15 Pacific Reporter 26. *Tombstone Epitaph*, October 1, November 5, 1887, January 21, 1888. Action on townsite cases is in United States Supreme Court Reports, 36 Lawyers' Edition 859. Rules of the Supreme Court are in 108 U.S. Reports 578.

⁸³ *Tombstone Weekly Epitaph*, July 8, 1882. *Twelfth Census of the United States* (Washington, 1901), I, 64.

mitted suicide near Quijotoa, A. T., in 1887. Only James Reilly stayed on until at least 1908. It is interesting to note that when Reilly died in Long Beach, California, in 1909, he left an estate of \$100,000; probably larger than the estates of most of the mine owners.⁸⁴

Much, possibly too much, has been written about the troubles in Tombstone and their causes: political divisions, general outlawry, widespread carrying of arms, personal rivalries and vendettas. However, the basic, underlying cause of tension which from time to time exploded in violence was uncertainty over ownership of the land on which stores, hotels, livery stables and homes had been built. Some of this confusion was caused by conflict between federal land law and federal mining law, further confused by territorial legislation and by vague or contradictory interpretation of the law by the courts.

In after years, referring to the murder of Fred White, Fred Dodge said: "The thing fooled us all at the time. We didn't know how well that crowd was already organized. . . . And it's clear to me whose dirty work he [Brocius] was doing. Who had the motive? Clark and Gray!" George Parsons wrote in his journal: "People suspicious on roads. Every stranger I met mounted was cause for me to remove gauntlet so I could handle pistol freely." It is surprising that the whole matter was not referred to the ultimate court of appeal — that of Judge Lynch.⁸⁵

Epilogue

In 1908 an additional 320 acres were patented to Arioch Wentworth, mayor of Tombstone, as trustee "for the Several use and benefit of the inhabitants of the town." While this added to the acreage of the city, it did nothing to clear up the tangle that had grown up over the years from the many and varied unofficial and legal decisions about who owned the land.

The question of disposal of unsold lots within Tombstone townsite came to the attention of the state legislature in 1946. The city had 2,168 lots which it would like to sell, but for which it could not give insured

⁸⁴Gray collection, AHS. *Tombstone Weekly Epitaph*, July 17, 1880; *Tombstone Epitaph*, May 4, 1882; March 20, April 14, 1887. Deeds of Mines, Book 6, Recorder's Office, Cochise County, Bisbee; Delinquent Tax Roll of Cochise County for Fiscal Year ending 31 December 1886, *ibid.* *Great Register of Cochise County*, 1908; *Tombstone Prospector*, September 10, 1910.

⁸⁵Boyer (ed.), *I Married Wyatt Earp*, 81-82; Parsons, *Private Journal*, 211.

titles. A bill was introduced in the state senate which would allow for the sale of land acquired under the Act of Congress of 1867. The committee on judiciary held public hearings in Phoenix during September. The whole question became "one of the hottest controversial issues of the current special session." In addition to Tombstone, Tucson, Yuma, Kingman and Prescott became interested. The Southern Pacific Railroad, worrying about its right of way through Tucson, sent representatives to the hearings. A bill was enacted which gave the corporate authorities permission to sell any lots "the title of which remains in the trustee." It also stated that anyone in actual or constructive possession and who had paid taxes on a parcel for five years might apply for a mayor's deed.⁸⁶ Even today the personnel of the Cochise County Recorder's Office advise would-be purchasers of some parcels in Tombstone to obtain a mayor's deed.

⁸⁶C. C. Moore, Commissioner, General Land Office, to Laura G. Gordon, Washington, D.C. September 28, 1929, File 1352821 "K" MMM, Division K, Townsite file (Tombstone) RDI. "Clearing Titles of Lands Acquired prior to February 14, 1912," *Journal of the House Regular Session, Nineteenth Legislature of the State of Arizona, 1949* (Phoenix: Sim Printing Company, n.d.), 853. *Tucson Star*, September 16, 18, 1946; *Tucson Citizen* September 19, 1946. *1949 Session Laws of Arizona, Nineteenth Legislature*, 163-65.

