Calendar No. 1688

69TH CONGRESS, 2d Session } SENATE { REPORT No. 1690

VALIDATING APPLICATIONS FOR AND ENTRIES OF PUBLIC LANDS

FEBRUARY 28, 1927.—Ordered to be printed

Mr. STANFIELD, from the Committee on Public Lands and Surveys, submitted the following

REPORT

[To accompany H. R. 15018]

The Committee on Public Lands and Surveys, to whom was referred the bill (H. R. 15018) validating certain applications for and entries of public lands, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:

On page 4, after line 10, insert a new section, as follows:

SEC. 6. That when the Secretary of the Interior shall dispose, as provided by existing law, of the remaining fractional parts of theoretical sections 4, 9, and 10, in township 5 south, range 14 west, of the Indian meridian, Oklahoma, he shall extend a preference right to Tom Testerman for thirty days to take not exceeding two hundred and forty acres thereof at the highest bid.

The facts are set forth in the report of the House Committee on the Public Lands (H. Rept. No. 1668, 69th Cong., 2d sess.), which is appended hereto and made a part of this report, as follows:

[House Report No. 1668, Sixty-ninth Congress, second session]

The Committee on the Public Lands, to whom was referred the bill (H. R. 15018) validating certain applications for and entries of public lands, having considered the same, report it to the House with the recommendation that it do pass with the following amendment:

Add a new section to the bill as follows:

"SEC. 5. That mineral entry, Fairbanks, Alaska, numbered 01199, made by the Pioneer Gold Dredging Company on August 24, 1925, for the Ouellet Fraction Placer on Cleary Creek, survey number 1733, containing an area of four and six hundred and eighty-six thousandths acres be, and the same is hereby validated."

The purpose of this omnibus bill (No. 2), which was introduced at the request of the Secretary of the Interior, is to adjudicate certain applications for and entries of public lands upon which the Secretary of the Interior does not feel disposed to act without first directing the attention of Congress to certain facts involved in the different cases which he feels entitles the applicants to relief.

The letter of the Secretary of the Interior, dated December 11, 1926, to the chairman of this committee transmitting the draft of the above bill for introduction, and his letter of December 21, 1926, transmitting to the committee a proposed amendment to the bill, fully explain the circumstances involved in the various cases referred to and the same are herein set out in full for the information of the House, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, December 11, 1926.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands,
House of Representatives.

MY DEAR MR. SINNOTT: I have the honor to submit herewith, for your consideration and introduction, draft of a propsed bill for the relief of certain applicants for and entrymen of public lands whose cases I am unwilling to dispose of

without directing the attention of the Congress briefly to the following facts which, in my judgment, entitle them to the relief proposed:

On September 26, 1924, the Pacific Portland Cement Co., Consolidated, filed application for patent to the Empire mill site, survey No. 4594, embracing a tract containing 4.999 acres in the Carson City (Nev.) land district, on which the register of the local office issued final certificate August 13, 1925. On examination of the record, however, the Commissioner of the General Land Office found that the company had made this application in connection with certain patented placer claims of which it was the owner, and that as section 2337, Revised Statutes, under which the entry was allowed, provided in substance that such an entry was only allowable in connection with a lode claim, by decision of December 15, 1925, held same for cancellation. Upon appeal therefrom the company urged that the entry be permitted to pass to patent, alleging in substance in support thereof that it was the owner of a number of near-by patented placer locations containing valuable deposits of gypsum; that it is the manufacturer of Portland cement; that it had erected and in use on the tract in question an engine house, a blacksmith shop, rock-crusher house, conveyer, tram or loading house, and a compressor house, costing in all $100,000; that these improvements were installed in order to properly develop, reduce, and prepare the mineral deposits for practical utilization, and that under the circumstances the entry should not now be canceled. Upon consideration of the case the department by decision of May 29, 1926, found that the adverse decision of the Commissioner of the General Land Office was warranted under the law, but in view of the very substantial improvements above recited and the small area involved, determined to suspend action on the case with view to proposing legislative relief as now recommended.

On June 20, 1925, Clara Gruver submitted final proof in support of her desert-land entry embracing 160 acres of land in the Pueblo, Colo., land district. She named the project of the San Luis Canal Co. as a source of water supply and filed as evidence of water right a certificate to the effect that she was the owner of 100 shares of stock in that company. The proof disclosed that 35 acres were plowed and planted to clover in the spring of 1923 and irrigated; that the same area was again planted and irrigated in the fall of 1925; that no crop was produced in 1923 and none was promised for 1925 at the time the proof was made. As a result of field examination an inspector reported that the claimant owned a sufficient water right and had expended more than $3 an acre in compliance with the law, but that it was utterly useless to attempt irrigation of the land in its present condition, water being so near the surface thereof that crops could not be produced; that he was advised by parties who had lived in the vicinity of the land for over 30 years that this tract as well as a large area in that locality required such drainage. The Commissioner of the General Land Office by decision of February 23, 1926, found that while there was sufficient water right and good faith compliance with the requirements of the desert land law it was apparent that failure to produce crop was due to the water-logged condition of the land which it would be necessary for claimant to overcome by drainage. Accordingly, he held the proof for rejection but afforded claimant an opportunity to properly drain the land and submit new proof.

In support of her appeal therefrom claimant alleges that she paid $800 for a relinquishment of the land and $800 more for a water right; that she cleared the heavy brush from 35 acres, broke, prepared, and seeded it, and properly irrigated it in 1923; that she performed similar work in 1925; that she had spent more than $2,500 in the reclamation of the land; that she had duly cultivated and irrigated it in the manner contemplated by the desert land law, and that to require her to drain the land would necessitate an expenditure that she is unable to make. Upon consideration of this case the department, by letter of August 27, 1926, advised the claimant that from a preliminary examination of the case the adverse action of the commissioner appeared to have been warranted under the law, but that in view of the strong equitable features involved action thereon would be suspended with view to submitting her claim to Congress for legislative relief, as now recommended.

On October 22, 1901, Charles H. Elster made homestead entry for an area embracing 40 acres under the ordinary provisions of the homestead law, on which final proof and patent were duly issued. Thereafter, on April 27, 1918, he filed application in the local land office to make an additional homestead entry under the provisions of the stock raising homestead act for an area embracing 320 acres of land within a distance of 20 miles from the land embraced in the original entry. This application was accompanied by a petition for the designation of all of the land under the stock raising act which was duly considered by the

Geological Survey, as a result of which the area embraced in the additional entry was duly designated but was rejected as to the 40-acre tract embraced in the original entry.

Thereupon, the Commissioner of the General Land Office under date of August 23, 1920, returned the additional stock-raising application to the local officers, advising them that under the circumstances the claimant was qualified only to make an original entry under the stock-raising act for the land in controversy. These instructions, however, appear to have been overlooked by the local officers, as a result of which, the additional stock-raising application was duly allowed on October 18, 1920, in support of which claimant submitted final proof on July 16, 1925, from which it appears that substantial improvements valued at over $600 were made on the land embraced in the additional entry but that residence was continuously maintained on the original homestead entry. Accordingly, the commissioner by decision of April 9, 1926, held that while the proof showing was otherwise satisfactory, residence was required to be maintained on the additional entry, and accordingly held the proof for rejection. In support of his appeal therefrom claimant alleged that he had never been so advised; that he had maintained continuous residence on the original tract, which is less than one-half mile from the additional entry, in the belief that he was strictly complying with the requirements of the stock-raising law; that he has placed the required improvements upon and is using the land embraced in the additional entry as contemplated by that law; that he has continued to reside upon the original entry and that he could ill afford to build a second home upon the additional entry and reside thereon for the period of three years now required. On consideration of the appeal it was found that while the decision of the commissioner appeared to be warranted under the law in view of the compliance in good faith made by the claimant, he was advised by letter of September 1, 1926, that action on his appeal would be suspended with view to recommending legislative relief as now proposed.

December 30, 1890, Reginald E. Margesson made homestead entry under the provisions of section 2289 of the Revised Statutes within the Kinkaid area, embracing 160 acres of land, Alliance, Nebr., land district, upon which patent issued October 5, 1897. On September 13, 1921, he was permitted to make a stock-raising homestead entry embracing 640 acres of land within the Phoenix, Ariz., land district, upon which final proof was submitted December 5, 1924, and final certificate issued September 26, 1925. Upon consideration of the proof the commissioner of the General Land Office found that while it showed continuous residence by claimant on the land from the date of entry to date of proof, on which he had placed improvements valued at from $2,400 to $2,760, he was not qualified to make such an entry as he had perfected his original entry by five-year final proof, and also because he did not own and occupy that land at the time he made the stock-raising entry. In view of the fact, however, that it was believed that the claimant was duly qualified at the time his entry was made; that he had in good faith complied with the material requirements of the homestead law, and had extensively improved the land, the commissioner by letter of April 9, 1926, transmitted the case for consideration by the department with view to recommending appropriate legislative relief. It will be observed that had Margesson commuted his original homestead entry instead of submitting the five-year final proof he would have been qualified, under the provisions of the act of June 5, 1900 (31 Stat. 267), to make the entry in question. Finding that the record fully supported above statements as to claimant's good faith compliance with the law, he was advised by letter of April 14, 1926, that action on his present entry would be suspended with view to recommending that legislation be enacted authorizing the Secretary of the Interior to issue patent for the land embraced therein, upon payment by the claimant of the sum of $200, the commutation price of the land embraced in his original homestead entry, as now proposed.

As a justification for the legislation proposed for the relief of Waid White the following from a letter addressed to him by the department on November 9, 1926, is submitted:

"The Commissioner of the General Land Office has called the attention of the department to your two entries under the stock-raising homestead act, now Buffalo 023864 and 025036.

"It appears that on August 1, 1916, patent No. 540711 issued under your entry (Broken Bow 08402) for 160 acres in Nebraska. As the land in the patented entry is not within 20 miles of the land embraced in your entries under the stock-raising homestead act, the latter can not be treated as additional to the original

entry; and you were not qualified to make an original entry under the stock-raising homestead act. Hence the two entries referred to, under which final certificate issued July 1, 1926, are invalid.

"However, you made a statement of the original entry when you applied to make the entries in question. In view of which, and of the fact that you have complied with the law as to residence and that the improvements on the land, in addition to the house, are of the value of $565, action on the entries will be suspended and the facts reported to the appropriate committees of Congress with a recommendation that the entries be validated."

As a justification for the legislation proposed for the relief of Seth L. Iiams the following from a letter addressed to him by the department on November 13, 1926, is submitted:

"The Commissioner of the General Land Office has called to the attention of the department the entry (Lander 012440) made by you on March 11, 1921, under section 1 of the stock-raising homestead act for NW. ¼ SE. ¼, E. ½ SW. ¼, lot 4, sec. 19, N. ½ SE. ¼, S. ½ NE. ¼, NW. ¼ NE. ¼, NE. ¼ NW. ¼, sec. 30, T. 34 N., R. 93 W., sixth principal meridian (394.76 acres), under which final certificate issued July 22, 1926.

"It appears that on February 21, 1902, a patent issued to you for 120 acres purchased under the so-called timber and stone law, and that on April 2, 1913, you made a desert-land entry (Lander 06065) for 320 acres, which was later amended and relinquished in part, and was perfected under the purchase provisions of the relief act of March 4, 1915 (38 Stat. 1161). Patent issued May 12, 1921, for 280 acres.

"A person who has perfected or has pending entries initiated since August 30, 1890, under the desert-land, timber and stone, or preemption laws for 320 acres in the aggregate is disqualified from making any kind of entry under the stock-raising homestead act. It follows that your entry under that act was erroneously allowed.

"The final proof on your entry under the stock-raising homestead act, submitted June 21, 1926, shows that you had resided on the land continuously since March, 1921, and that the value of the improvements, exclusive of the house, is $1,850. In making the entry you set forth that you had made the two prior entries herein referred to. In view of which, the facts will be reported to the appropriate committees of the Congress with a recommendation that the entry be validated."

On April 3, 1925, Hans Maurice Naegle was allowed to make a stock-raising homestead entry embracing a tract of 628.46 acres in the Salt Lake City, Utah, land district. Claimant had filed this application for entry together with a petition for designation on April 28, 1923. By decision of October 13, 1925, however, the Commissioner of the General Land Office held the entry for cancellation on the ground that it had been erroneously allowed, as the land involved had been included in petroleum reserve No. 7, by Executive order of July 2, 1910, which reserve was still in force. In support of his appeal therefrom, claimant alleged in a duly corroborated affidavit, that immediately after being advised of the allowance of his entry he erected a house on the land in which he established residence with his wife and child, which he has since continuously maintained; that he has placed improvements thereon valued at over $400; that at the time said entry was allowed he was not aware that the land had been reserved; that the first he knew of this feature was upon receiving a copy of the commissioner's decision; that there are no oil wells in the vicinity of the tract, the nearest one being located about 18 miles therefrom; and that to now cancel the entry would cause him to suffer a loss that he can not well afford. In response to a request for report I am advised by the Geological Survey that it has never made a detailed examination of the area involved and has no information that would warrant a statement that this land is known to be valuable, prospectively or otherwise, for oil or gas at the present time. In addition to the above it does not appear from an examination of the tract books of the land office that any oil or gas prospecting permit has ever been filed for this or any surrounding lands. Applications for stock-raising homestead entries under the provisions of the act of December 29, 1916 (39 Stat. 862), are allowed "subject to the reservation to the United States of all coal and other minerals in the land, together with the right to prospect for, mine, and remove the same." In view of this fact and considering the showing made, the department by letter of December 3, 1926, advised the claimant that while the adverse action of the commissioner was warranted under the law, yet in view of the equities involved, action on his case would be suspended and legislative relief recommended as now proposed.

There is pending before this department the claim of David Alvillar, deceased, whose heirs have appealed from the decision of the General Land Office holding for cancellation his homestead entry 025151, Las Cruces, N. Mex., land district, embracing an area of 14 acres. This adverse action was based on the ground that this area had passed to the State of New Mexico under its school-land grant and was therefore not subject to homestead entry. In support of the appeal it is alleged that this claimant resided on the land in question for a period of more than 20 years prior to his death, paying all taxes and water charges levied or imposed thereon, and that he had placed improvements on the tract of the value of $2,000, consisting of a three-room house, two pole houses, two corrals, pump, land inclosed with a barbed-wire fence, about 200 bearing fruit trees, 10 acres of alfalfa, and about 1,000 bearing grape vines. As it does not appear, however, that Alvillar's settlement was initiated prior to the survey of the land, the action of the commissioner in holding for cancellation his entry is warranted under the law, but in view of the very substantial equities above recited it was determined before rendering judgment thereon to call the attention of the commissioner of the State land office of New Mexico thereto with view to ascertaining whether the claimant's equities might not be protected. In reply thereto he has advised the department that no objection will be offered to remedial legislation validating the entry in the event authority be given the State to select in lieu thereof an equal amount of unappropriated and unreserved public land, as now proposed.

As a justification for the legislation proposed for the relief of Jony Jones, the following from a letter addressed to him by the department on December 9, 1926, is submitted:

"It appears that Mr. Jones, who is now 76 years of age, on September 13, 1902, made homestead entry for 160 acres in Kiowa County, Okla., on which he submitted commutation proof and received patent. On March 15, 1917, believing that he was entitled to make further entry, having been so advised, he made entry under the enlarged homestead act for E. ½, sec. 26, T. 25 S., R. 35 N., N. M. M., New Mexico, and on the same day applied to make an additional entry under section 4 of the stock raising homestead act for W. ½, said sec. 26. The additional entry was allowed October 24, 1918, and on March 15, 1922, he submitted final proof on the entry under the enlarged homestead act. By decision dated August 18, 1922, the Commissioner of the General Land Office held the entries for cancellation, whereupon Jones applied to change the character of the entry under the enlarged homestead act to an entry under section 1 of the stock raising homestead act and for its amendment to describe E. ½ and SW. ¼, said sec. 26. This application was denied by the Commissioner of the General Land Office on May 20, 1926, and an appeal to this office has been filed. In his appeal Jones contends that he is entitled to the benefit of the rule announced in the case of Charles Makela (46 L. D. 509), but in this he is mistaken, as the enlarged homestead act does not apply to Oklahoma. According to the showing made by Jones, he has made his home on the land since September 1, 1917, and has improvements on the E. ½ and SW. ¼, said sec. 26, of the value of $1,000. In view of which and being convinced that he is the victim of erroneous advice by those on whom he relied, the facts will be reported to the appropriate committees of the Congress, in connection with other meritorious claims, with a recommendation that the entries as consolidated and changed in character to an entry under section 1 of the stock raising homestead act be validated as to E. ½ and SW. ¼, said sec. 26 (480 acres)."

By letter of even date I have forwarded a similar communication and recommendation to the chairman of the Committee on Public Lands and Surveys, United States Senate.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, December 21, 1926.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands,
House of Representatives.

MY DEAR MR. SINNOTT: By letter of December 11, 1926, the department transmitted copy of a proposed bill to validate certain applications for and entries of public lands which were thought entitled to remedial legislation (H. R. 15018). I now have the honor to recommend the addition of the following section at the conclusion of that bill:

"SEC. 5. That mineral entry, Fairbanks, Alaska, numbered 01199, made by the Pioneer Gold Dredging Company on August 24, 1925, for the Ouellet Fraction Placer on Cleary Creek, survey number 1733, containing an area of four and six hundred and eighty-six thousandths acres be, and the same is hereby, validated."

The material facts which induce this recommendation are in substance as follows: October 10, 1924, the Pioneer Gold Dredging Co. filed application for patent to the above placer claim alleged to have been located August 3, 1922, survey No. 1733, embracing a tract of 4.686 acres in the Fairbanks, Alaska, land district, on which the register of the local land office issued final certificate August 24, 1925. The greatest width of the claim is 190 feet and its length 1,430 feet. Upon consideration of the case the Commissioner of the General Land office by decision of April 26, 1926, found in substance that as the length thereof was more than three times its width the provisions of sections 4 and 5 of the act of August 1, 1912 (37 Stat. 242) precluded the patenting of the claim and that the proviso to section 4 of the act of August 1, 1912 (sec. 129–d, Compiled Laws of Alaska), as amended by the act of March 3, 1925 (43 Stat. 1118), afforded no relief therein, and accordingly held the entry for cancellation, from which the company has appealed.

It appears from the record and the report of a mineral inspector that the claim is located about 25 miles north of the town of Fairbanks; that it is not occupied or improved by any Indian or native of Alaska; that it contains no hot or mineral springs; that it is unreserved and has no value for reservoir or power-site purposes; that the location comprises a portion of the area of auriferous gravel deposits adjacent to Cleary Creek, and that the mineral character of these deposits has been established by extensive placer mining, gold to the value of several million dollars having been produced therefrom. It further appears from the record that the mining development within the boundaries of the location consists of two shafts sunk to bedrock and a core drill hole, 6 inches in diameter, driven to bedrock. The dumps expose the gold-bearing sands, gravels, and clays, and indicate that some underground drifting has been done. More than $500,000 has been expended for the benefit of the location. While the action of the commissioner is warranted under the law, in view of the facts above set forth and the further fact that the claim is adjoined on all sides by patented or validly located placer-mining claims, it has been determined to suspend action on this case with view to proposing remedial legislation validating the entry as now recommended.

By letter of even date I have forwarded a similar communication to the chairman of the Committee on Public Lands and Surveys, United States Senate.

Very truly yours,

HUBERT WORK.

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