6-19-1874

Letter from acting Secretary of the Interior, in answer to a resolution of the House of June 4, 1874, in relation to the Hot Springs, Arkansas

43D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { EX. DOC. No. 273.

HOT SPRINGS, ARKANSAS.

LETTER

FROM THE

ACTING SECRETARY OF THE INTERIOR,

IN ANSWER

To a resolution of the House of June 4, 1874, in relation to the Hot Springs, Arkansas.

JUNE 19, 1874.—Referred to the Committee on Private Land-Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 13, 1874.

SIR: In answer to the House resolution of the 4th instant, calling for information concerning what are known as the Hot Springs, Arkansas, I have the honor to transmit herewith a copy of the report of the Commissioner of the General Land-Office on the subject, and the accompanying papers.

I am, sir, very respectfully, your obedient servant,

W. H. SMITH,
Acting Secretary.

Hon. J. G. BLAINE,
Speaker of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., June 8, 1874.

SIR: I have the honor to acknowledge receipt from you of a resolution of the House of Representatives, dated the 4th instant. It is as follows, to wit:

Resolved, That the Secretary of the Interior be, and hereby is, requested to inform the House what title the present occupants have to the land upon which the mineral springs, known as the Hot Springs, in the State of Arkansas, are situated, and also if the title to said land is not in the United States, and if so, what legislation is necessary, if any, to enable the Government to take possession of the property.

In reply, I would respectfully submit that the question of title to this land is now being considered by the Court of Claims, where suit has been brought, under authority of the act of June 11, 1870, entitled "An act in relation to the Hot Springs reservation in Arkansas."

Hence it cannot be known what title the present occupants may have to said land until a final decision by the courts shall have been rendered, and I can suggest no further legislation as being necessary in the premises.

With the view of furnishing a brief history of this case I transmit herewith copy of letter of April 27th, 1860, from this Office to the Hon. Jacob Thompson, then Secretary of the Interior, and of January 31, 1861, to Hon. J. R. Barrett, of Committee on Public Lands, in the House of Representatives.

The papers in the case were transmitted to the Court of Claims February 14, 1871.

Said resolution is herewith returned.

I am, very respectfully, your obedient servant,

S. S. BURDETT,
Commissioner.

Hon. C. DELANO,
Secretary of the Interior.

GENERAL LAND-OFFICE,
April 27, 1860.

SIR: A motion has been made before this Office by John Wilson and Henry May, esqs., as attorneys in behalf of the heirs of Ludovicus Belding, (see their arguments, marked A and B,) for a patent upon Washington, Arkansas certificate No. 6545, for S. W. ¼ sec. 33, Tp. 2, S. R. 19 W., upon which are situated the Hot Springs.

I have the honor to submit said motion and the papers for your consideration and decision, with the following observations:

It is hardly necessary to say that this Office has no power to decide upon said motion, when it is considered that the claim of said heirs, as well as the claims of all others before him, were finally adjudicated and rejected by Secretary Stuart, as will appear from this communication to this Office, dated 10th October, 1851. I propose now to lay the motion, with the papers, before the head of the Department, the same power that exercised the final action in the case as already mentioned, together with a report comprising a brief history of the facts in the case, and the views of this Office in reference to said motion for a patent.

In this report it is not deemed necessary to go behind the action of this Office, submitting the case to Secretary Stuart, which will be seen by reference to Commissioner Butterfield's letter of 26th August, 1851, copy herewith, marked C.

If, however, the Department should desire a more full and explicit detail of the facts and proceedings in the case, anterior to the time of submitting the same to Secretary Stuart, it will be found in the paper herewith marked D, signed by George C. Whiting, esq., at that time chief clerk of the Department.

On the 10th of October, 1851, as before stated, Secretary Stuart decided that the heirs of Belding had no right to the land for which a patent is now asked, under the provisions of the act of 29th May, 1830, because that act had expired by limitation before the land was surveyed in 1838; and that they had no right under the act of 14th July, 1832, because prior to its passage, to wit, on 20th April, 1832, Congress passed an act "that the Hot Springs in said Territory of Arkansas, together with four sections of land, including said springs, as near the center thereof as may be, *shall be reserved for the future disposal of the United States, and shall not be entered, located, or appropriated for any other purpose whatever.*" In deciding against the validity of the New Madrid location and Cherokee pre-emption claims, on account of said reservation, the Secretary said that the act of 1832 "not only reserved the Hot Springs and the adjacent four sections of land for the future disposal of the United States, but absolutely prohibits, in the clearest and most emphatic terms, its entry."

He further says that "it is difficult to conceive language more explicit than this, or more positive.

"It was obviously the purpose of Congress to sever these four sections, including the Hot Springs, from the map of the public domain, and place them in such a condition that they could be re-united to it, or otherwise disposed of, only by the action of Congress."

In reference to the claim of the heirs of Belding, in virtue of the act of 14th July, 1832, the Secretary says, "that the reasons assigned against the repeal of the act of 20th April, 1832, by the act of 1st March, 1843, apply with equal force against its re-

peal by the act of 14th July, 1832." He then cites the case of Peyton *vs.* Moseley, 3 Monroe, 77, where other doctrine is held by the court sustaining his views, which applies to the question as to whether the act of reservation was repealed by the act of 14th July, 1832, as contended by the attorney of said heirs, and in this connection further remarks, that "the act of 20th April, 1832, *had express relation to the lands in which the Hot Springs were situated;* that of 14th July, of the same year, had not.

"It had reference to *persons* rather than to *lands*, and to construe its *general* language as repealing the express provisions of that of 20th April, would not be giving to both acts that operation which, in my opinion, is entirely proper, and consistent with the doctrine of the court in the case of Peyton and Moseley, and that of Gear *vs.* The United States, in 3 Howard, before referred to."

After the Secretary's decision, to wit, on 14th October, 1851, an application was made by the attorney of said heirs for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts, stating that of course, under the decision of the Secretary, they should not ask for a patent.

The application was refused by this Office, and an appeal from that action taken to the Secretary, who on the 21st November next thereafter addressed this Office a letter, stating that he had concluded that it would be proper, and in accordance with precedent, to permit the heirs of Belding to make an entry under the acts of 29th May, 1830, and 14th July, 1832, and directed this Office to instruct the register and receiver accordingly.

The Secretary qualified his decision, directing an entry as follows:

"Said entry will remain subject to the same power of revision and control by the General Land-Office and this Department, as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land."

Pursuant to this decision, the local officers were directed by letter from this Office, dated November 25, 1851, to permit the entry, under the conditions imposed by the Secretary, and the certificate No. 6545, herewith, was accordingly issued. Upon this certificate Wm. H. Ganes *et al.*, heirs of Ludovicus Belding, instituted judicial proceedings in Arkansas against John C. Hale for the possession of the land, where, after several years' litigation, the possession was awarded to said heirs by a judgment obtained in the supreme court of Arkansas, from whence the case was brought by writ of error before the Supreme Court of the United States, and has been decided by the latter against the right of Hale, sustaining the decision of the court below, as to the right of possession only, in favor of the heirs of Belding.

The attorneys of said heirs have filed in this office, as the basis of their motion, a printed brief, and the record of the decision of the Supreme Court in the case of John C. Hale, plaintiff in error, *vs.* William H. Gaines *et al.*, heirs and legal representatives of Ludovicus Belding, deceased, which are herewith presented.

The result of a very careful examination of the opinion of the court is, that we find the question of title narrowed down to the heirs of Belding and the United States, all other parties to the suit having been ruled out by the court.

It has been shown that prior to permitting said heirs to enter the land, their claim had been rejected by the Secretary, and that such is now the unrevoked judgment of the Department; that the entry, per certificate No. 6545, was permitted by the Secretary for a special limited purpose, viz, to enable said heirs to prosecute their action of ejectment for the mere possession of the land in the courts of Arkansas.

The face of the certificate itself defines, by reference to the authority for issuing it, the special purpose for which it was permitted.

Does the judgment of the Supreme Court in any way contravene or alter the decision of the Department respecting the claim of said heirs? Or do those heirs stand before the Department in the precise position they occupied before judicial proceedings were commenced? In the opinion of this Office, they now stand remitted by the decision of the Supreme Court to the same position in which they stood, (so far as the Government is concerned,) before judicial proceedings were instituted, possessing no better right to a patent on the special certificate No. 6545 now than they did then. For the court expressly declares that, "as between the titles of the United States and Belding's heirs, the State courts did not decide, but only that the outstanding title in the United States could not be relied on by the defendant in this action; nor is the validity of the entry of Belding's heirs drawn in question in this court."

The Supreme Court by its decision only affirmed the decision of the court below, and consequently there is no decision, as to the title, between the United States and the heirs of Belding.

The points presented and argued by the counsel, upon the motion under consideration, not being in the nature of exceptions to any action had by this office, and addressing themselves directly to the superior power, the Department itself, whose final action

in the premises has already been noticed, are briefly stated as follows, without comment:

John Wilson, esq., of counsel for said heirs, presents—

1st. That all claims adverse to that of the heirs of Belding, have all been rejected. That the claim of Percifull, being in contravention of the Indian right of occupancy, no pre-emption right could accrue.

2d. That the decision of the Supreme Court in the case of Hale, plaintiff in error *vs.* Gaines *et al.*, disposes of Hale's claim on every point, holding the same to be invalid and properly rejected by the State courts.

3d. That this decision relieves the land of every claim except that of said heirs; that the right given by the act of 29th May, 1830, was not limited to surveyed lands, but extends to every settler on the public lands, or his heirs who cultivated the land in 1829; and the failure to prove up within one year from 29th May, 1830, was not a forfeiture of the claim, for the reason that the land was not surveyed and because forfeiture was not declared by the act for failure to enter from such cause.

That the act of 14th July, 1832, revived the act of 1830, and all existing rights acquired under it.

That the pre-emption proof of said heirs was filed, in accordance with the requirements of the act of 1832, within one year from the approval of the plat.

4th. That the register and receiver being constituted by law a tribunal to hear and determine the facts, and having decided in favor of said heirs upon said facts, their decision cannot be impeached.

5th. That the right vested in said heirs on 29th May, 1830, has remained so vested ever since, and as an entry was ordered by the Secretary, and all the agents of the Government have acted with full authority, the action and sale are valid.

6th. The act of April 20, 1832, reserving the Hot Springs with four sections, does not legally or constitutionally apply to the tract claimed by the heirs of Belding. That Belding's pre-emption being covered by law, is a legal right, and Congress could not have intended to impair legal rights.

7th. That the decision of Secretary Stuart to the effect that the claim of Belding under the act of 29th May, 1830, not having been entered within the limit prescribed by the act was barred by the act of 20th April, 1832, reserving the land prior to the passage of the act of 14th July, 1832, has been virtually overruled by his successor, Secretary McClelland. That the Secretary, the Attorney-General, and Commissioner, entertained no doubt of the power of the Department to issue a patent for the New Madrid claim under the general confirmatory act of 1843, notwithstanding the reserving act of 20th April, 1832. The reserving act, therefore, can no more interpose a barrier to the issuing of a patent for the Belding claim, than for the New Madrid claim, with this difference, the Supreme Court has decided that the act of 1843 does not apply to this particular case; that the act of 1832 does apply to all claims under the act of 1830.

The Supreme Court having decided, however, that the New Madrid locations are void, therefore no claim exists to the land except in Belding's heirs.

The points presented and argued by Henry May, esq., in behalf of said heirs, are fully covered by those of Mr. Wilson already noticed. Henry M. Rector, esq., appearing in his own behalf, objects to a patent being issued to the heirs of Belding, and presents the following grounds of objection:

First. That the heirs of Belding have no title against the Government, but by repeated decisions their claim has been rejected; that neither the courts in Arkansas nor the Supreme Court have adjudicated the title as between the heirs of Belding and the United States.

Second. That the decisions of the Executive Departments rejecting the claim of said heirs are in no way affected by the decisions of the courts.

Third. That, in view of her own rights, it would be an act of folly for the Government to pass a title to any one till by judicial or legislative action the Executive Departments are overruled in their decision.

Fourth. That Belding's heirs, as an inducement to permit them to enter the land, expressly stipulated that they did not expect, nor would ask for, a patent; that they only desired the entry to place them on a proper footing in court.

Fifth. That there are superior outstanding equities asserted by other parties and now under consideration by the courts, and that therefore the executive authorities should withhold the legal title in *trust* until the proper owner shall have been judicially ascertained; that he, Mr. Rector, has filed a bill in the Hot Springs chancery court, asserting title to the Hot Springs under the New Madrid location of Langlois, in which the heirs of Belding have been made parties, with a prayer for perpetual injunction against the judgment obtained in the Supreme Court, and that the injunction has been granted.

Sixth. That the application for a patent should be denied, first, because there is no decision, executive or judicial, recognizing title in Belding's heirs against the United States; second, that admitting as between them Beldings have the title, still the court of chancery has so far found title in others superior to that of the Beldings.

The papers more immediately connected with the present motion and this report, and among them the argument of Henry M. Rector, esq., will be found in a separate bundle appropriately designated.

All the other papers connected with the case, consisting of testimony, correspondence, briefs, and arguments of attorneys, &c., making a very large package, are also herewith transmitted according to the schedule herewith, descriptive of each paper.

I have the honor to be, with great respect, &c.,

JOS. S. WILSON,
Commissioner.

GENERAL LAND-OFFICE, *January* 31, 1861.

Sir: In answer to your letter of the 22d instant accompanied by the petition of the heirs of Ludovicus Belding, deceased, I have the honor to state that the several claims to the lands known as the Hot Springs, including the southwest quarter of section 33, T. 2 S., R. 19 W., Washington land-district, Arkansas, have heretofore been fully considered. The heirs of Ludovicus Belding claim the right to pre-empt and to possess and enjoy as their property the above tract of land in virtue of a settlement and cultivation by Belding in 1829, in accordance with the provisions of the act of 29th May, 1830, which act required the settler to prove up and pay for his land within one year from the date of the act. Such entry was not made within the time prescribed, because the land was not surveyed before the expiration of said year. After the expiration of the year the act of Congress passed 20th April, 1832, reserved said land for the future disposal of Congress. The act of 14th July, 1832, revived the act of 1830, and this is the act under which said heirs claim.

Divers claims had been asserted before the Land-Office at Washington to this land, consisting of a New Madrid location, under which John C. Hale now claims a pre-emption under the act of 1830 called the Perciful claim, and another called a Cherokee pre-emption claim, all of which were alluded to and disposed of by the supreme court decision of Hale *vs.* Gaines *et al.*, hereinafter mentioned. In 1851 a thorough investigation was had into the merits of all the claims before the district office, and the testimony and papers were duly transmitted to this office.

In 1851 Commissioner Butterfield reported the case to Hon. Alexander H. H. Stuart, then Secretary of the Interior, who, on the 10th day of October, 1851, decided against all the claimants, including the heirs of Belding. The Secretary decided that the heirs of Belding had no right to the land under the provisions of the act of 29th May, 1830, because that act had expired by its own limitation before the survey of the land in 1838, and that they had no right under the act of 14th July, 1832, because the act of 20th April, 1832, reserved the land for the future disposal of Congress, and that therefore it could not be pre-empted under the act of 14th July, 1832.

After the Secretary's decision, to wit, on 14th October, 1851, an application was made by the attorney of said heirs for permission to make an entry of said land, in order that they might be placed in a proper position for the assertion of their rights in the courts.

The application being refused by this office, an appeal was taken to the Secretary, who directed that said heirs should make a special entry qualifying his decision, as follows, to wit: "Said entry will remain subject to the same power of revision and control by the General Land-Office and this Department as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land."

Pursuant to this decision the land-officers at Washington, Ark., permitted the entry, and certificate No. 6545 (copy herewith) was issued. Upon this certificate William H. Gaines and others, heirs of Ludovicus Belding, instituted judicial proceedings in the State of Arkansas against John C. Hale for the possession of the land, where, after several years' litigation, the possession was awarded to said heirs by a judgment of the supreme court of Arkansas, from whence the case was brought by writ of error before the Supreme Court of the United States and was decided there against the right of Hale, the said Supreme Court of the United States sustaining the decision of the court below.

In 1860 the attorneys of said heirs filed in this Office a notice for a patent on said entry, predicating their motion on the decision of the Supreme Court of the United States.

This Office, on 27th April, 1860, reported the case to the late Secretary, Hon. Jacob Thompson, with its views as to said motion, which were, in substance, that the executive was powerless to comply with the application for a patent for the reason that the land was reserved, still remained reserved, by the act of Congress, and that the special certificate of entry No. 6545 had subserved the purpose for which it was issued and that Congress alone had the power to dispose of the title to said land.

The Secretary returned the case with his letter of June, 1860, refusing to direct a patent to be issued, and directing the entry to be canceled. Before the entry was canceled, however, proceedings by bill were commenced in the circuit court for the District of Columbia, by said heirs, with a view to restrain the cancellation of said entry, &c., and the Commissioner and Secretary having been notified thereof, by the process of said court, and the case being still before the Supreme Court, by writ of error from the circuit court, the entry has remained in abeyance and now remains uncanceled.

The case is to be found in vol. 22, page 144, Howard's Reports, and grew out of proceedings, as before mentioned, in the State courts of Arkansas, based upon said entry.

The court decided in substance that it had no jurisdiction of the claim of Belding's heirs, because by the twenty-fifth section of the judiciary act of 24th September, 1798, such jurisdiction is only given in cases of this kind where the decision of the highest court of the State is against the title, and in this case the decision of such court was in favor of the heirs of Belding. This relieves the case from all conflict so far as the Executive is concerned, and, as stated in our report to the Secretary, "the result of a very careful examination of the opinion of the court is, that we find the question of title narrowed down to the heirs of Belding and the United States, all other parties to the suit having been ruled out by the court."

In his annual report for 1860, Secretary Thompson, after a brief allusion to his action in the case, recommends that the disposal of the four sections reserved (including the "Hot Springs") be provided for by appropriate legislation. (See page 3 in copy of said Report, herewith.)

In conclusion, it only remains for me to say that the opinion of the late Secretary was against the legality of this claim, which is conclusive upon this Office, but, should Congress be of a different opinion, the inclosed draught of a bill would, it is believed, accomplish the object intended in your letter.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

Hon. J. R. BARRETT,
Committee Public Lands, House of Representatives.