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Titles at Hot Springs, Arkansas.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 179.

TITLES AT HOT SPRINGS, ARKANSAS.

FEBRUARY 5, 1880.—Recommitted to the Committee on the Public Lands and ordered to be printed.

Mr. DUNN, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 4244.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 3549) for the establishment of titles in Hot Springs, and for other purposes, submit the following unanimous report:

The town of Hot Springs, noted for the wonderful healing properties of its thermal waters, is located in Garland County, in the State of Arkansas, in a narrow valley between the rocky ridges of one of the lateral ranges of the Ozark Mountains, a district of country difficult of access until the recent construction of a narrow-gauge railroad from Malvern to that place. Though difficult of approach, and in a district of country claimed by the Indians until after the treaty made with the Quapaws in 1818, this noted watering place was visited by invalids and others as early as 1810 and 1812. Temporary cabins were erected by visitors and those who resorted there for purposes of trade, but were then occupied only a portion of the year.

The permanent settlement of the place commenced immediately after the extinguishment of the Indian claim in 1818, and has continued to the present time, steadily increasing in population, which is at present estimated at something over 5,000. The growth of this town to its present magnitude has been accomplished under the most unfavorable circumstances, and its misfortunes are yet "clustering thick" upon it. Hitherto all so-called remedial measures seem only to bring forth fresh and ever-increasing ills. Doubts, clouds, and shadows have hung upon their claim of title, begetting a feeling of insecurity and engendering controversies and litigation that has seemed interminable. The lands upon which this town is situate have been the subject of legal contention for full forty years, and every conceivable method which professional ingenuity could devise has been resorted to to obtain, directly or indirectly, the adjudication of a court upon the rights of the parties.

No one has yet received a patent or acquired the legal title, but each of the original contestants has constantly claimed that he was the equitable owner of the property.

The first of these claims is known as the Percifull title, represented by Hale in the suit before the Court of Claims, and was a pre-emption claimed under the act of April 12, 1814, and prior inhabitancy and cultivation of the tract claimed by John Percifull.

The second is known as the Rector title, and was founded upon a

location of what was known as a New Madrid certificate, located by Samuel Hammond and Elias Rector in 1820, under the provisions of the New Madrid act of February 17, 1815. This claim was represented in the suit above referred to by the claimants Rector, McKay and Gitt, and Russell.

The third is that known as the Belding title, and was founded on a claim of pre-emption under the act of May 29, 1830, and was represented in said suit by the claimants Gaines *et al.*

The property which was so long the subject of litigation between these three sets of claimants was the Hot Springs, but the suits of the parties were not all directed to precisely the same tract of land; but a corner of each tract sued for overlapped and included the Hot Springs, which constituted the real value of the property.

It may be well to briefly review the history of these conflicting claims, and the acts of Congress under which they claimed rights.

It was claimed by the representatives of John Percifull that, as early as 1813, when the Hot Springs was only approachable by a bridle-road or foot-path, he built the first house at the springs.

Upon the trial of the cause the fact of his occupancy was not so much disputed as the character of it. It was urged by the adverse parties that he did not inhabit and cultivate, but that he only came to the springs during the summer to sell supplies to the invalid visitors who went there annually, and that they presented him with their camps, and that in this way he gradually acquired some buildings.

Congress passed the pre-emption act April 12, 1814. It provides "*that every person and the legal representatives of every person who has actually inhabited and cultivated a tract of land*," &c., "*shall be entitled to the right of pre emption in the purchase thereof.*" Percifull claimed under this act.

What is known as the "New Madrid act" was passed and became a law February 17, 1816. It provides "*that persons whose lands have been materially injured by earthquakes shall be, and they are hereby, authorized to locate the like quantity of land on any of the public lands of the said territory the sale of which is authorized by law.*"

That act also provides for the ascertainment of this fact by the recorder of land titles, for the issuance of a certificate by him entitling the holder to locate upon other public land, for the location under this certificate on the application of the claimant by the principal deputy surveyor for the Territory, for a return of the plat and location to the recorder of land titles, and for the issuance of a certificate, and then of another or final certificate of location by him to the party.

The act of April 29, 1816, created a new office, subsequently known as that of surveyor-general.

In 1818 the Indian title to this part of the Territory was extinguished by the Quapaw treaty.

In 1818 a New Madrid certificate, dated the 26th of November, and numbered 467, was issued by the recorder for 200 arpents of land in favor of Francis Langlois.

In the same month Francis Langlois released and assigned this certificate to Samuel Hammond, who in turn assigned one-half interest therein to Elias Rector on the 19th of February, 1819.

In 1819 Hammond and Rector filed their application, dated the 27th of January, 1819, under this New Madrid certificate, for entry of 200 arpents of land, "*to be surveyed in a square tract, the lines of which to be corresponding with the cardinal points, and to include the Hot Springs.*"

In 1820 James S. Conway, deputy surveyor, returned and filed his

survey, No. 2903, and plat of the location of Hammond and Rector's warrant in the office of the surveyor-general at Saint Louis.

In 1829 Ludovicus Belding occupied a house and cultivated a small plat of land as a garden at the Hot Springs. The house was owned by Percifull, and Belding entered it as his tenant. He continued to occupy and cultivate until after the 29th of May, 1830.

In 1830 Congress passed the act of May 29, which provides "*That every settler or occupant of the public lands prior to the passage of this act who is now in possession and has cultivated any part thereof in the year* 1829, *shall be, and he is hereby, authorized to enter with the register*," &c., "*a quarter-section.* It also provides that the right of pre-emption contemplated by this act shall not extend to any land which is reserved from sale by act of Congress, &c.; "*and that this act shall be and remain in force one year from and after its passage.*"

In 1832 Congress passed the act of April 20, which provides that the Hot Springs "*shall be reserved for the future disposal of the United States, and shall not be entered, located, or appropriated for any other purpose whatever*" retaining four sections in the reservation.

Acts extending the time for persons entitled to make pre-emptions under the act of 1830, and who had not made proof and entered land in consequence of the public surveys not having been made and returned, &c., were passed and approved July 14, 1832, and July 19, 1834, and July 22, 1838.

In 1838 the first public survey around the Hot Springs was made, and the lands, except as reserved, were offered for sale.

In 1838 and 1839 and continuously until 1851 the widows and heirs of both Percifull and Belding mad fruitless efforts to enter the land claimed by them respectively.

In 1851, after the Land Office had rejected the claim, Mr. Stuart, Secretary of the Interior, decided to permit the Belding heirs to make an entry *so as to place them in a position to test the claims of others to the same lands*, and accordingly, upon the payment of the price thereof, the usual certificate was issued, bearing date the 19th of December, 1851.

On June 7, 1860, Mr. Thompson, the Secretary of the Interior, decided that this entry was illegal, and directed that it be canceled.

In 1870 Congress passed the Hot Springs act, providing, among other things, "*that any person claiming title, either legal or equitable, to the whole or any part of the four sections of land constituting what is known as the Hot Springs Reservation*," &c., "*may institute against the United States in the Court of Claims, and prosecute to final decision any suit that may be necessary to settle the same.*"

Under this authority the suits were brought and the cases of all the claimants were consolidated as against the United States and decided adversely to all the claimants, the court holding that no legal entry, location, nor pre-emption of said lands had ever been made, and that the whole of the four sections was still held by the United States as a reservation under the act of 1832.

This decision was, on appeal, affirmed by the Supreme Court of the United States.

This decision terminated the litigation that, during all these long years, had raged like a consuming fire, increasing with the increase and growth of population.

From a village of temporary camps, in a remote and unsettled part of the country, approachable only by bridle-roads or foot-paths, in 1812, Hot Springs has grown to be a city of more than 5,000 inhabitants at the present time, and is now reached by railroad.

The present population of the city is largely made up of the afflicted invalids who have flocked to this great "fountain of youth" from all parts of the country. Finding relief from these healing waters, they have cast their lot there.

Nearly all claims of title to property in the place are derived from the old claimants. By many they were believed to have title to the lands they claimed, with a dispute only as to the ownership of the Hot Springs. Settlers did not hesitate to buy from them and erect costly improvements. It is estimated that the present claimants have expended nearly a million of dollars in money and labor in the purchase and improvement of the property to which they now seek title from the government, and of which they found themselves, in effect, deprived by the decision of the Court of Claims and the Supreme Court. Many of these people have expended the energies and earnings of the better part of life there in the improvement and upbuilding of property to which they felt well assured that they had good title, and were absolutely unaware of the existence of any reservation. Upon these the decision of the courts has fallen like a clap of thunder in a clear sky.

Those who knew of the existence of the reservation knew that it was not a permanent reservation set apart for any special purpose, for by the very terms of the act itself it was "*reserved for the future disposal of the United States.*"

Assuming, even, that the existence of the reservation was well known, yet it was in a *territory open to settlement*, and it was but reasonable for these settlers to regard it in the light of the well-known and long-established policy of the government to often withhold lands open to settlement from sale in order to enable settlers to enjoy the preference over speculators in acquiring homes. The policy of the government has been to aid those who went out into the wilderness to subdue it and to make homes. It has been, and should always be, its policy to offer to that adventurous and worthy class of citizens the advantage of selecting and securing in advance of the speculator the more desirable tracts of land in the new region for their homes. And the uniform policy of the Land Department yet is to retain the public lands in such a situation for a long time in order to give those who are willing to encounter the hardships and dangers of frontier life an opportunity to make selections and to settle upon them, and to make payment for them at the minimum price before any portion of such lands are offered to purchasers in general sale.

This is not only the policy as to those who inhabit and cultivate the soil for agricultural purposes, but the same wise policy obtains as to town sites upon the public lands. The act of May 23, 1844, provided for the entry of town sites at the minimum price of $1.25 per acre. This act was changed by act of March 2, 1867, which makes a few needed alterations as to the number of acres, inhabitants, &c.

Section 2380 of the Revised Statutes authorizes the President to reserve from the public lands, whether surveyed or unsurveyed, town sites on the shores of harbors, at the junction of rivers, * * * or any natural or prospective centers of population. These reserved town sites may be entered by the corporate authorities, and if not incorporated, then by the county judge of the county, at the minimum price, and held in trust for the inhabitants and occupants thereof according to their several interests.

More than one hundred and fifty town sites have been entered at the minimum rate under the provisions of this law since 1873.

These wise and just laws were in force in 1870, when jurisdiction was conferred upon the Court of Claims to try the right to lands on which

the town of Hot Springs was built, as between the claimants and the United States.

The judgment of the court was that the land in question was a reservation held by the United States "*for future disposal*," and yet belonged to the United States.

Hot Springs was an incorporated city of 5,000 inhabitants, and entitled, under the law then in force, to enter 2,560 acres of land as a town site at the minimum price of $10 per lot whenever the government should decide to dispose of that portion of the reservation upon which it was built. The government, finding itself by this judgment the owner of the homes of 5,000 of its children, should have been true to its ancient and uniform policy of tender care and protection of its citizens who had settled upon the public domain, and should have hastened to enact such measures as would render them secure in their homes and possessions. These people have not knowingly settled upon public land held in reservation. They have, in good faith, bought their land from persons who they had every reason to believe owned it; for one grantor (Rector) was able to exhibit a certificate of location, and another (Gaines) an actual certificate of entry from the Land Department of the government. Their condition, it would thus appear, should have appealed more strongly to the tender consideration of the government than the case of occupants who knowingly settle upon the public lands.

The needed remedy was simple, easy, and inexpensive to the government. An act to define the boundaries of the permanent reservation intended to be held by the government, and allowing the corporate authorities of the city of Hot Springs to enter the lands embraced in the corporate limits of the city (not permanently reserved) for the benefit of the inhabitants and occupants thereof, in accordance with the provisions of the Revised Statutes, and directing the sale of the remainder, was all that was needed to give a full measure of relief to these people, and protect the public interest in these wonderful and healing waters. But instead of this simple, humane, and economical course the voice of mercy seems to have been suddenly stifled, and the government, straightway, determined to pursue this unfortunate and long-suffering people as public enemies, because they have done innocently and ignorantly what the people of more than two hundred towns and cities have done elsewhere—settled upon the public land and built a city there.

Since this judgment was pronounced that rendered 5,000 citizens of this government houseless and homeless, every change that has been made, and every act of the government professedly for their relief, has rendered their condition, confessedly bad, still worse. The first act was to appoint a receiver to go and dispossess the people of their houses, seize them, and exact and collect enormous rents. More than $40,000 was extorted by the receiver from these afflicted people as rent for their own property and houses in one year. There is not a precedent for such action as this in the whole history of our government; and it is be hoped that this will stand as a humiliating warning, rather than a precedent for future guidance.

In 1870, Salt Lake City, with 15,000 inhabitants, previously brought under subjection to the government by the Army of the United States, at a cost of many millions of dollars, was found to be upon the public lands of the government. No receiver was asked for to go and seize Salt Lake City. On the contrary, the inhabitants were permitted to enter their town site of 5,730.45 acres at $1.25 per acre. (Sec. 2390 Rev. Stat.) The city of Denver was discovered in 1865 to be on public land held for "*future disposal.*" It was not seized by a receiver, nor sold at auction,

but allowed to enter its site of 960 acres at the same minimum rate. (Act May 28, 1864, 13 Stat., 94.) Leadville, a city of more than 30,000 inhabitants, stands to-day on public land reserved from sale. No one thinks of sending a receiver to seize it. Virginia City, Gold Hill, Petaluma, Le Grand, Baker City, and Sparta, and two hundred other towns and cities, have been built upon the public land "*held for future disposal*," and all allowed to peaceably and quietly enter their sites at the minimum rate fixed by law.

Your committee are at a loss to know why Hot Springs should have been singled out as an exception to this general rule? Why the occupants should have been dispossessed of their homes and required to pay rents for the houses which their own toil and sweat had reared? Why they were not allowed to enter even half so much land as a city site as the general law allows to other towns and cities? And, finally, why they should be charged thirty-five times as much for their lots as the inhabitants of other towns and cities are required to pay.

The act entitled "An act in relation to the Hot Springs Reservation in the State of Arkansas," approved March 3, 1877, removed the receiver and delivered what he had left of the city and substance of the people over to the tender mercies of three commissioners clothed with extraordinary powers. They were empowered to lay off and set apart a permanent reservation; to lay out the city of Hot Springs into squares, blocks, lots, avenues, streets, and alleys; to hear proof offered by claimants and occupants of said lands, and to determine the right of each claimant and occupant to purchase the same, or any portion thereof; to condemn and remove or cause to be removed all buildings or obstructions upon the reservation necessary, in their judgment, to be removed; to straighten and widen streets and alleys in said town; to lay off additional streets, alleys, and roads, and for that purpose to condemn any and all buildings that they may deem it necessary to condemn and cause to be removed; to appraise all buildings and obstructions so condemned and issue a certificate thereof; and, finally, to appraise and value the lots and lands by them awarded to claimants as well as that not awarded. For two years these commissioners have sat in judgment, with this distracted people arraigned and upon trial before them.

The entire amount of land laid off into squares, blocks, and lots, as a town, is 1,270 acres. Of this they have awarded to claimants 699.81 acres. Upon this 699.81 acres so awarded to individuals they have fixed a valuation of near $250,000, to be paid by the claimants to the government.

The report of these commissioners is accompanied by affidavits containing charges of fraud and corruption against the chief clerk of the commission and others, and gravely questioning the fairness and justice of the awards made. Memorials have also been received from the entire population, praying to be relieved from the onerous valuation placed upon the land awarded to claimants.

Your committee cannot better describe the sad condition of this unhappy people than by employing the language of their own memorial, as follows:

> And who are the people of Hot Springs that have been thus singled out, as it were, for spoliation and oppression? They are a population of 5,700 souls, as shown by ballot, and under the general statutes already quoted would be entitled to the 2,560 acres of land for their town site. They are mostly native-born citizens, representing nearly all the States of the American Union. A very large proportion have been driven here by stress of broken health, so often attended by broken fortunes. They have in many cases been relieved of their pains, but not of their poverty. Perhaps not twenty persons of all the nine hundred claimants, from whom over $200,000 are to be taken by

ass ssments, could raise $1,000 by pawning all their wordly goods outside of their Hot Springs homes. They live here seeking health, but not making wealth. Quite recently a government receiver came here and took away over $45,000 for the rent of the very houses the people themselves had built. Later a conflagration nearly destroyed the whole town. Still later a pestilence that scourged another part of the South for two seasons destroyed the only profitable business conducted at Hot Springs, by reason of the quarantine enforced. Yet this unhappy people, poor to start with, and paying originally in most cases full prices for their homes to parties who supposed they had a right to sell, exhausted by lawsuits, trying to maintain their doubtful rights, crushed at last in spirit by losing all through a decision of the Supreme Court, impoverished next by heavy rents collected by a "paternal" government, for having innocently settled upon and improved the public property, and then wasted by fire and pestilence—this people, seemingly forgotten of God and abandoned of men, are recognized as offering, in the judgment of the Hot Springs commissioners, a bonanza of cash assessments to replenish the already swollen coffers of the National Treasury! Surely there is enough in this spectacle to excite the pity of mankind.

But notwithstanding the hardships of their lot and the harshness of their usuage, your memorialists claim that through all the years of their residence at Hot Springs they have, to the utmost of their scanty means, done a Christian duty by the friendless and afflicted poor of all the States that have been perpetually thrust upon their charity. They have fed them at their doors, given them raiment, cared for them as well as possible when dying, and buried them decently when dead. No community in the United States, for its numbers, has been so sorely taxed to keep up a free hospital for the invalid paupers of all the States, and none more richly deserves at the present moment, in their appeal to Congress, the sympathy and support of all Christian societies and the benevolent hearts of the entire nation.

The citizens of Hot Springs ask simple justice and equal rights under the law. They ask that the heavy assessment on their town be remitted, and that they be placed on a footing of all other towns established on government lands by recent public law.

They might fairly and justly ask more—they could not ask less; and your committee are unanimously of the opinion that their reasonable request should be granted, and the assessment upon their lots and lands reduced to the legal minimum.

The argument has been urged that inasmuch as the acts and proceedings of the receiver and commissioners in charge of the Hot Springs affairs have involved, or may involve, the government in a considerable outlay of money, therefore such appraisement of the lands awarded to individuals should be made and levied thereon as will pay such probable expenditure. The committee are of opinion that the rents heretofore covered into the Treasury, coupled with the proceeds of the public sale of those lands not awarded to any one, and of the entrance price of the awarded lands, as fixed in this act, will fully meet such expenditure as now appears probable. But whether this be true or not, your committee fail to see the fairness or justice of taxing these people with the extraordinary expense of an unnecessary, if not improper, proceeding on the part of the government, and over which they had no control.

The settlement of titles at Hot Springs at the earliest period practicable is deemed of the utmost importance to the growth and prosperity of the town, in the building up of which, so as to furnish ample and needful accommodations to the visiting sick, every portion of the country is interested. The Congress of the United States for this reason provided that the awards of the right of entry by the commissioners should be final. The Secretary of the Interior in transmitting to Congress the final report of the commissioners transmits "also a copy of a communication filed with the commissioners on the 10th of December, 1879, and letter from the chairman transmitting the same," and adds:

The communication referred to above contains certain charges against the chief clerk of the commission, and questions the fairness of the awards made in several cases. As the Department has not the power to compel the attendance of witnesses or the production of papers, nor the means at its disposal to conduct an investigation into the charges made, I have deemed it my duty to lay the matter before your honorable body for such action as may be judged advisable.

The original act of course contemplated fairness in making the awards, and if, in point of fact, they were not so made, some remedy ought to obtain. Without investigating or expressing any opinion as to whether or not there was unfairness in making the awards, we say the bill presented provides means for such investigation in the few cases in which it may be charged, if the charges shall be sustained upon a primary hearing, as upon applications for injunctions. It provides that a revision may be had in equity of awards the fairness of which may be questioned on account of fraud, gross error, or mistake only, and the judge to whom application is to be made for a suspension of entries under the awards so charged to be fraudulent, grossly erroneous, or made by mistake, must find that a *prima facie* case is made for equitable intervention for such causes, after full opportunity has been given the adverse party to controvert the allegations and proofs of the complainant, before a suspension can be ordered, or the complainant be entitled to a further and final hearing. A very limited time is granted for such applications for equitable intervention, and all orders suspending entries, should any be made, are required to be made prior to the opening of the land office at Little Rock for entries.

These provisions will certainly prevent frivolous litigation. Should cases of fraud or mistake exist, they surely ought to be corrected; and if cases of gross error such as call for relief in equity exist, relief ought not to be denied, unless the public good imperiously demands a denial. The number of cases decided by the commission, and hurriedly as they must have been, makes it probable that error may have been committed in a few instances, which the commission itself, were it in existence, upon a rehearing, with ample time to consider, would pronounce gross. It is believed the bill is so guarded that no one can gain a standing in court whose grievances are not meritorious, and that its provisions are ample for speedy relief. It is further believed that the cases litigated under its provisions, if any, will be few in number, and for that reason not retard materially the growth and prosperity of the town.

Your committee unanimously concur in recommending the passage of the substitute herewith submitted.

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