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HEIRS OF DON JUAN FILHIOL.

JULY 27, 1894.—Laid on the table and ordered to be printed.

Mr. TERRY, from the Committee on the Judiciary, submitted the following

ADVERSE REPORT:

[To accompany H. R. 5160.]

The Committee on the Judiciary, to whom was referred House bill 5160, have had the same under consideration, and submit the following adverse report:

As the subject is one of importance, it is deemed best to make a full statement in regard to it.

The effect of the proposed legislation is two-fold: It is a waiver of the sovereignty of the United States to permit a suit in behalf of private parties, and also a waiver, in effect, of the statute of limitations, or the equity doctrine of state claims so far as it may relate to the claims of the heirs at law of Don Juan Filhiol to 1 square league of land, embracing the Hot Springs in the State of Arkansas. It refers these claims to the Court of Claims, and empowers that court to hear and determine the same upon a petition in the nature of a bill in equity, to be filed within ninety days from the passage of the act, and to vest the court with the necessary power to give full relief in the premises, with the right of appeal, etc., to the Supreme Court of the United States.

The question is should such waivers be made in this case? It may also be asked whether the Court of Claims or the Federal court of the district in which Hot Springs is situated should be vested with power to litigate this matter, in case it were deemed proper to make such waivers. But as the committee is of the opinion that such waivers should not be made it is not considered necessary to discuss that question.

It seems necessary in the first place to take a brief historical view of the Hot Springs property, and to consider to what extent the rights and interest of private parties would now be affected by the proposed indulgence, as well as the present rights of the Government and the country at large.

It can not be contended that the statute of limitations should be lightly waived. The whole object of such statutes is to settle disputes after reasonable opportunity has been enjoyed by all parties to prove their rights, and thus to give repose to property and claimants. The wisdom and justice of this policy is too well settled to admit of discussion.

From the early part of this century down to 1876, the Hot Springs property was the subject of much contention in Congress, in the courts, and before the various departments of the Government. The curative

properties of the waters of those springs have long been known to be remarkable, and for many years they have been resorted to by multitudes of the afflicted from all parts of this country and from all over the world. The Government now maintains a hospital there for the benefit of those who are disabled on land or sea in the discharge of military service. But so long as the title to the property was unsettled there was constant strife between claimants and inadequate provision for the requirements of business, and for the accommodation of the afflicted. No improvements or investments could be made, except of a temporary character, until the question of title was settled, and also until it was known what would be the future policy in regard to the disposition of the hot water.

In order to settle, if possible, the controversies which existed and to determine a permanent policy, and, if possible, a wise one, in regard to the use of the water, Congress, on the 31st of May, 1870, passed an act entitled "An act in relation to the Hot Springs reservation in Arkansas," seeking to deal finally and conclusively with the whole subject. This is usually called the act of June 11, 1870, as it became a law without the signature of the President on that date. The public surveys did not extend to that portion of the country until 1838. Recognizing prior to that time the general importance of a wise policy in regard to these springs, Congress, in the act of April 20, 1832, set aside four sections of land containing these springs, as near the center thereof as may be, as a reservation. But as the value of the property was great the claims instituted against it were numerous, and the litigations and disputes were seemingly interminable. The Government, by the act in question, generously submitted its claim to final adjudication, along with the claims of others; and as this act is an important point in the history of this matter, it is here given in full, as follows:

AN ACT in relation to the Hot Springs reservation in Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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, in Hot Springs County, in the State of Arkansas, 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: *Provided,* That no such suits shall be brought at any time after the expiration of ninety days from the passage of this Act, and all claims to any part of said reservation upon which suit shall not be brought under the provisions of this Act within that time shall be forever barred.

SEC. 2. *And be it further enacted,* That all such suits shall be by petition in the nature of a bill in equity, and shall be conducted and determined in all respects, except as herein otherwise provided, according to the rules and principles of equity practice and jurisprudence in the other courts of the United States, and for the purposes of this Act the Court of Claims is hereby invested with the jurisdiction and powers exercised by courts of equity so far as may be necessary to give full relief in any suit which may be instituted under the provisions of this Act.

SEC. 3. *And be it further enacted,* That notice of every suit authorized by this Act shall be executed by the delivery of a true copy thereof, with a copy of the petition to the Attorney-General, whose duty it shall be, for and in behalf of the United States, to demur to or answer the petition therein, within thirty days after the service of such process upon him, unless the court shall, for good cause shown, grant further time for filing the same.

SEC. 4. *And be it further enacted,* That if two or more parties claiming the same lands under different titles shall institute separate suits under the provisions of this act, such suits shall be consolidated and tried together, and the court shall determine the question of title, and grant all proper relief as between the respective claimants, as well as between each of them and the United States.

SEC. 5. *And be it further enacted,* That if, upon the final hearing of any cause provided for in this act, the court shall decide in favor of the United States, it shall order such lands into the possession of a receiver, to be appointed by the court, who

shall take charge of and rent out the same for the United States until Congress shall by law direct how the same shall be disposed of; which said receiver shall execute a sufficient bond to be approved by the court, conditioned for the faithful performance of his duties as such, render a strict account of the manner in which he shall have discharged said duties, and of all moneys received by him as a receiver as aforesaid, which shall be by said court approved or rejected accordingly as it may be found correct or not, and pay such moneys into the Treasury of the United States; and he shall receive such reasonable compensation for his services as said court may allow; and in case of a failure of said receiver to discharge any duty devolving upon him as such, the court shall have power to enforce the performance of the same by rule and attachment.

But if the court shall decide in favor of any claimant, both as against the United States and other claimants, it shall so decree, and proceed by proper process to put such successful claimant in possession of such portion thereof as he may be thus found to be entitled to; and upon the filing of a certified copy of such decree with the Secretary of the Interior, he shall cause a patent to be issued to the party in whose favor such decree shall be rendered for the lands therein adjudged to him: *Provided*, That either party may within ninety days after the rendition of any final judgment or decree in any suit authorized by this act, carry such suit by appeal to the Supreme Court of the United States, which court is hereby vested with full jurisdiction to hear and determine the same on such appeal, in the same manner and with the same effect as in cases of appeal in equity causes from the circuit courts of the United States: *And provided further*, That in case the judgment or decree of the Court of Claims in any such suit shall be adverse to the United States, the Attorney-General shall prosecute such appeal within the time above prescribed; and the taking of an appeal from any such judgment or decree shall operate as a supersedeas thereof until the final hearing and judgment of the Supreme Court thereon.

J. G. BLAINE,

Speaker of the House of Representatives.

SCHUYLER COLFAX,

Vice-President of the United States and President of the Senate.

Received by the President May 31, 1870.

As is well known, elaborate proceedings were had under this act by various claimants before the Court of Claims, and that court decreed that none of the claimants were entitled to this property or any part of it, and that the lawful title was vested in the United States. Appeal was taken from this decision and the matter was carried before the Supreme Court of the United States. After able arguments by counsel the Supreme Court affirmed the decree of the Court of Claims, and this decision of the court of last resort has always been held as the just and final settlement, after so many years of litigation, turmoil, and hindrance of development, of the question of title. This decision, in what is known as the Hot Springs cases, was rendered in October, 1875, and is found on page 699, vol. No. 92, U. S. Rep.

In the act of June 11, 1870, which has been given in this report, provision was made for the appointment of a receiver for this property to take charge of and rent out the same for the United States, in case, upon final hearing, the court should decide in favor of the United States, and such receiver was so to act until Congress further direct how the same shall be disposed of.

Following up this policy we have the act of March 3, 1877, entitled "An act in relation to the Hot Springs Reservation in the State of Arkansas." That act repeals so much of the act of June 11, 1870, as provides for the appointment of a receiver by the court, and then it proceeds to elaborate a general policy in regard to the Hot Springs. It provides for the appointment by the President of the United States of 3 discreet, competent, and disinterested persons as a board of commissioners, who are directed to meet at Hot Springs, in the State of Arkansas, and to carry out the provisions of the act. Section 3 of the act provides as follows:

That it shall be the duty of said commissioners, after examination of the topography of the reservation, to lay out in convenient squares, blocks, lots, avenues, streets,

and alleys, the lines of which shall correspond with the existing boundary lines of the occupants of said reservation as near as may be consistent with the interest of the United States, the following-described land, to wit: South half of section twenty-eight, the south half of section twenty-nine, all of sections thirty-two and thirty-three in township two south, range nineteen west; the north half of section four, the north half of section five in township three south, range nineteen west, in the county of Garland and State of Arkansas, and known as the Hot Springs Reservation.

Thus it will be seen that the present city of Hot Springs, so long kept back by the unsettled condition of titles, etc., was now for the first time to be laid off in a systematic manner, preparatory to that improvement which was to be expected upon the settlement of title to the land and of the policy that was to be pursued in regard to the water. Then section 4 provides as follows:

Before making any subdivision of said land, as described in the preceding section, it shall be the duty of said board of commissioners, under the direction and approval of the Secretary of the Interior, to designate a tract of land, included in one boundary, sufficient in extent to include, and which shall include, all the hot or warm springs situated on the land of the aforesaid, and to embrace, as near as may be, what is known as Hot Springs Mountain, and the same is held reserve from sale, and shall remain under the charge of a superintendent, to be appointed by the Secretary of the Interior.

It was not intended, however, that this water should be a tax upon the Government any more than that it should be monopolized to the deprivation of the people. Therefore—

It is provided, however, that nothing in this section shall prevent the Secretary of the Interior from fixing a special tax on water taken from said springs sufficient to pay for the protection and necessary improvement of the same.

Upon this point there has been subsequent legislation, not necessary to quote, as it adheres to the same general policy and simply defines limits upon charges for water, etc.

The act from which quotations have been made proceeds to declare how lands may be acquired other than those permanently reserved by the Government, and it does not further concern the subject of this report except in section 14 of said act, which says:

That the money arising from the sale of the land shall be paid into the Treasury in the same manner as other moneys arising from the sale of public lands, and held for the purpose herein specified and at the further disposal of Congress; and the money arising from water rents shall be under the control of the Secretary of the Interior, to be expended by him for the purpose hereinbefore stated, an account of which shall be annually rendered to Congress, showing the amount received, the amount expended, and the amount remaining on hand at the end of each fiscal year.

Sufficient has been quoted to show that after all the delays which had previously taken place, covering the most extreme demands of indulgence, Congress at last adopted this additional act of grace in reopening the courts upon this subject and bidding claimants to come forward and sue the Government. Only at this late day had it finally sought to give repose to property, to meet the demands of progress, and the interest even of mercy itself, by providing for the final settlement of the question of title, and again declaring a permanent policy in regard to the use of these invaluable waters.

These two cardinal questions, the question of title to the property and the question of the policy to be pursued in regard to the hot water being considered as finally settled, and provision being made for the growth of the city upon orderly lines, people speedily began to make permanent and costly improvements. This has gone on until now the city of Hot Springs has grown from a wretched straggling village of a few hundred people to a beautiful city of 12,000 or 13,000 inhabi-

tants, with railroad communication with all the world, and with a visiting population of from 60,000 to 70,000 people a year. The prosperity of this place, and the value of all property and improvements there, are now dependent almost exclusively upon the future policy that may be pursued in regard to the hot water. Any bill which proposes to leave the people undisturbed in their titles, but yet proposes to change the policy in regard to the water from one of distribution to one of monopoly, is a mockery if the people are told that they are not to be disturbed. Now all the rents, etc., over and above what is necessary to defray the expenses of administration are turned to the care of the water and to the improvement and keep of the adjacent grounds.

This would substitute therefor a monopoly of this water; under which the revenue derived therefrom will go to private parties; the charges for baths could be made as high as they like, and the facilities for bathing could only be controlled solely in the interest of an individual or a corporation who may own the water, and who may thereby restrict its use to only such bath-houses and such hotels as the individual or corporation may own. Appended to this report are some of the protests and remonstrances emanating from the citizens of Hot Springs when they heard that a bill was pending in Congress proposing to transfer this water from the Government to private individuals, and thereby to change the policy now pursued in regard to it from one of cheap distribution to the public, yet without a cent of cost to the Government, to one of private monopoly.

It will be clearly seen, therefore, that when it is proposed to waive the statutes of limitation and the sovereignty of the United States, and again open the courts in regard to this property, that it is no longer simply a question between the claimants upon the one hand and the Government upon the other. But it is now a vital question between the claimants upon the one hand and the people and investors at Hot Springs upon the other, and in the magnificent improvements of bath-houses, hotels, business blocks, and municipal facilities at that place there is invested capital from all over the Union.

Therefore, although the Government has been slow and indulgent in the past, yet it can not now fail to regard the interests and unquestionable rights of these citizens. They have grown up under the acts of Congress and the decision of the Supreme Court of the United States. For more than fifty years this doubt and contention ran on. If what has at last been done is yet to be set aside, it may well be asked, what can be expected to stand? Law, courts, long indulgence, menace of renewed strife, the rights of Government, the rights of the whole people, and the peace, prosperity, and sacred rights of all this community, protest against such a course.

It is in the light of this history of the case and the present condition in which it exists that the peculiar claims of the present claimants must be further considered, if, indeed, they ever really had any claim at all.

The first internal inquiry that seems to present itself about this case is its origin. They claim under an alleged perfect Spanish grant to one Don Juan Filhiol by Estevan Miro on the 22d of February, 1788. Estevan Miro was then the governor-general of that territory under the Government of Spain.

That grant reads as follows:

[From the land archives.]

The governor intendent of the provinces of Louisiana and Florida west, inspector of troops, and etc.

Considering the anterior surveys made by the surveyor of this province, Don Carlos Trudeau, concerning the possession given to Don Julian Filhiol, commandant of this post of the Ouachita, of a tract of land of one square league, situated in the district of Arkansas, on the north side of the river Ouachita, at about two leagues and one-half distant from said river Ouachita, and understanding that this land is to be measured so as to include the site or locality known by the name of Hot Waters, as is besides expressed by the figurative plan and certificate of said surveyor, Trudeau, above named, and recognizing this mode of measurement, we approve of this survey, using the faculty which the King has placed in us and assign in his royal name unto the said Julian Filhiol the said league of land in order that he may dispose of the same and the usufruct thereof as his own.

We give these presents under our own hand, sealed with the seal of our arms, and attested by the undersigned, secretary of His Majesty in this Government and intendency.

In New Orleans, on the 22nd of February, 1788.

ESTEVAN MIRO.

By mandate of His Excellence.

ANDRES LOPEZ ARMESTO.

The foregoing is the alleged origin of this grant.

One reason advanced why the courts should now be opened to these claimants, as proposed by the pending bill, is that the grant upon which their claim is based was lost about the year 1841 and not found until the year 1883. (See Exhibit 1, p. 10, memorial of the heirs.) This would seem to be a continuing difficulty.

Yet, in report No. 263, of the Committee on Private Land Claims, Forty-third Congress, first session, in discussing the reasons why these claimants did not bring suit under the act of June 11, 1870, and in extenuation of the failure of the claimant to take that course, the committee says:

From necessity their appearance in court must be by attorney. They were timely in the employment of such attorney, but their attorney, as charged by them, was delinquent. Whether this delinquency of the attorney was from accident or design, we do not think it ought to be visited upon the claimants as a forfeiture of their rights, whatever they may be. (Memorial to present Congress, p. 7.)

A great deal has occurred to change the nature of the case before Congress. The nature of these changes have been stated previously in this report. It can hardly be assumed that Congress can be held responsible for the custody of documents, or for the fidelity of counsel, or for the execution of contracts between claimants and their attorneys at any time; nor can this reasonably be brought up at remotely subsequent periods, to the grave inconvenience and injury of the other and innocent parties, as a justification for Congress in waiving the statutes of limitation.

But it is interesting to note that when this case was argued before the Court of Claims (No. 17196) the contention of counsel was upon very different ground. Upon page 30 of the argument of William E. Earle, then, as now, counsel for these claimants, it is stated in reference to the act of June 11, 1870, as follows:

Now, it must be manifest that Congress had in contemplation in extending that jurisdiction the particular class of cases involved in the claim for the specific lands described in the section, to wit, the 4 sections of land.

Again, it is stated on page 31:

Our case now, and our case then, is not and would not have been such a case as that contemplated by the act.

It may be said that, if the 4 sections of land referred to were not the whole of the square league claimed by the Filhoil heirs, it was at least a part, a large part, and by far the most valuable part of that property, and any objection that they would not sue for the part because they could not sue for the whole, would under these circumstances, hardly be a valid one. But it is quite impossible to reconcile the position taken at one time, that suit was not brought because of delinquency of counsel, with the position taken at another and subsequent time, and argued at great length, that suit was not brought because of the deliberate refusal of the claimants to participate in proceedings under the act.

Another objection urged by counsel before the Court of Claims in the brief from which quotation has been made was that the limitation in the act of June 11, 1870, was ninety days. This was deemed wholly insufficient. It is difficult to see how this could be sufficient for all claimants except those holding the most ancient claims, and who, consequently, had enjoyed the largest opportunity for getting their affairs into readiness. But it may also be noticed in this connection that the time fixed in the pending bill in which proceedings can be had is ninety days, the same period that was considered so insufficient before.

It was argued at great length in the case alluded to that no action was required at the hands of Congress in regard to this claim, because it is a "perfect" grant, and yet we have these proceedings to cure apparent defects, arising either from the nature of the case or from the lack of due diligence on the part of the claimants. In the suit previously alluded to the court went off on the question of jurisdiction, and the case was in consequence dismissed. But assuming all that is alleged at the present time to be true, though so abundantly contradicted by those who allege it, the lack of diligence of attorneys upon the former occasion, or upon many former occasions, and the loss of this grant in 1841, only to be found in 1883, yet it does not follow that Congress and the people are to be held forever responsible for the misfortune or negligence of claimants and their attorneys.

But there is a striking element of weakness in this case that does not belong to any of the other claims of which we have knowledge. This is a claim emanating from the Spanish occupation, and it is proper to inquire into the manner in which the claimants conformed to the law relating to settlement and proof of such land after it became a part of our possessions. Under the act of March 2, 1805 (2 Stat., 324), the territory of Orleans was divided into two land districts, for each of which a register was appointed; but for the district of Louisiana (which included the present State of Arkansas) an officer was created called the recorder of land titles, who continued for many years to exercise important functions in regard to the public lands in the district, even after the appointment of the surveyor and of registers and of receivers under the general land laws. In speaking of this act (p. 714 Hot Springs Cases, 2 Otto) the Supreme Court says:

The act referred to required every person claiming land, whether by *complete* or *incomplete* title, within a limited time, to deliver to the registers of Orleans, or to the recorder of land titles of the district of Louisiana, a notice of his claim, with a plat of the tract claimed, and also his grant, order of survey, or other written evidence of his claim; which documents the registers and recorders, respectively, were to record in proper books. Claims not so presented and recorded within proper time were to be barred as against grants from the United States.

The act further provided for the appointment of two additional persons from each district to act with the register or recorder as a board of commissioners to examine and decide upon the claims which should be presented; whose duty it was, after

deciding, to report their decision to Congress, and to deposit the same, with all the evidence and documents, in the offices of the register and recorder, respectively, within whose district the lands lay.

At a later period the additional commissioners were dispensed with, and the powers of the board were vested in the register and recorder, respectively. The report of these commissioners and the act of Congress confirmatory thereof formed the basis of the titles derived from the French and Spanish authorities, and this constitution of the office and duty of the recorder of land titles in the district of Louisiana led to the importance subsequently attached to the return and registration of other surveys in the same office. It was there that the officers of the Government looked, or were supposed to look, after all authentic claims to land in the district. No lands were supposed to be appropriated or segregated from the public domain unless recorded or registered there.

Now, it is not claimed that this grant was registered or recorded, as the law required, after or before this Territory became a part of the United States. Thus it must be held, after a reasonable time provided for by the statute for establishing in a lawful manner the property rights which existed under the foreign Government when there has been no form of compliance with such requirements, that then such lands became a part of the public domain, or Indian lands, as the case might be. It seems that the Spanish Government did not recognize any title in the Indians to land. Our Government did, to which feature of the case as bearing upon this claim reference will subsequently be made. It seems clear, therefore, that by failing to comply with any and all the laws relating to the proof of ownership, this land became a part of what we may call the public domain, subject, according to our policy, to ownership by the Indians, or by the Government, and hence subject to all such disposition by the Federal Government as pertains to absolute ownership and sovereignty.

When we bought these lands of the French we made this provision for the ascertainment of what land belonged to private parties. The other lands were a part of the public domain, subject to sale or other disposition, and from the sale of which we long derived a large part of our public revenue. Thus it would seem that so far as these claimants are concerned, they deliberately slept upon their rights and opportunities, if, indeed, they ever had any rights, and fairly and fully forfeited all their right, title, and claims to this land by failing to have their grant recorded within the limit fixed by Congress; and this is a late day to ask for exemption from any such lawful and reasonable penalty.

But it seems that we twice purchased this land for a money consideration, and acquired a perfect title as against all who may claim therein, either from the Spanish or the French governments. The first purchase was from the French, to which allusion has just been made. The second purchase was from the Quapaw Indians, under the treaty of August 24, 1818. There being no claim made to this land, and the law clearly conveying it to the public domain, or to the Indians, after our purchase from France, it passed into the possession of this tribe, under our policy. And in the treaty referred to they ceded it to us in the following terms, in article 2 of said treaty, p. 176, "Indian Treaties:"

The undersigned chiefs and warriors, for themselves and their tribe or nation, do hereby, for, and in consideration of, the promises and stipulations hereinafter named, cede, and relinquish to the United States, forever, all the lands within the following boundaries, namely: Beginning at the mouth of the Arkansas River; thence extending up the Arkansas to the Canadian Fork, and up the Canadian Fork to its source; thence south to Big Red River, and down the middle of that river to the Big Raft; thence a direct line so as to strike the Mississippi River 30 leagues in a straight line below the mouth of the Arkansas.

To the cession of this and other territory they make the following exception:

Beginning at a point on the Arkansas River, opposite the present post of Arkansas, and running thence a due southwest course to the Washita River; thence up that river to the Saline Fork; and up the Saline Fork to a point from whence a due north course would strike the Arkansas River at Little Rock; thence, down the right bank of the Arkansas to the place of beginning.

This embraces within the Territory, ceded to the United States for a money and other consideration, the county in which the Hot Springs are situated. Therefore, in addition to the sovereignty we lawfully acquired by our purchase from France, and the due operation of law, we subsequently acquired, if possible, what may be termed a more perfect sovereignty or ownership of this land by the purchase of the unquestioned and unquestionably lawful claim of the Quapaws. Certain it is that after all these lapses and transactions without occupation or protest, or any form of compliance with law, there is no ground upon which Congress can be asked to open up and undo the past in deference to any claim anterior to the treaty with France.

It seems that in 1824 suit was begun in the U. S. court, at Little Rock, in the then Territory of Arkansas, under this claim; but no proceedings were had; and perhaps for the reason no law had been complied with, if there be no more serious reasons, upon which to lay the foundation for judicial proceedings.

In the memorials presented to the committee by these claimants it is stated on page 2 that—

Your memorialists further represent that the Spanish colonial law forbade any public officer having authority to receive acknowledgment of and pass deeds for the conveyance of land, to pass such deeds or receive the acknowledgment thereof, unless they knew the vendor had title to the land proposed to be sold, and that the law being thus the said Don Juan Filhoil did sell and convey the land as described in the said grant of February 22, 1788, to Narcisso Bourgeat by the deed passed before Don Vincent Fernandez Texeiro, lieutenant of the regiment of infantry of Louisiana and military and civil commandant of the district and jurisdiction of Washita, which deed was witnessed by the Senor Baron de Bastrop, and Don José Pomet, who signed the act in the presence of Don Alexander Brearo and Don Carlos Betin, all of whom were the principal men in Ouachita at the date thereof, and that the said Narcisso Bourgeat retroceded the same land sold to him by the said Don Juan Filhoil, including the land in the grant of February 22, 1788, to the said Don Juan Filhoil, by deed passed before I. Poydras, judge of the court in the parish of Point Coupée, July 17, 1806 (duly certified copies of said deed are printed herewith), and that the said Don Juan Filhoil never thereafter parted with his title to the said land.

Now, it is interesting to turn to the deeds of cession and retrocession just alluded to, and see what they have to say in regard to this land. The deed of cession is exhibit No. 10, upon page 20 of the memorial, and is as follows:

Know all men by these presents, that I, John Filhoil, captain and commandant of the militia of this post, have well and duly sold unto my son-in-law, Narcisso Bourgeat, resident of this district, a tract of land eighty-four arpents front and forty in depth, on each side of the stream called the source of the Hot Springs, about two leagues from where it flows into the Ouachita River, having the source of the Hot Springs as a center, the boundary lines on the east and west running parallel to their full depth and bounded on both sides by public lands, being the same property acquired by me by grant from Stephen Miro, then governor of the provinces, under date of December 12, 1787.

The deed then goes on to give the terms of the sale, etc.; but the only part relating to the subject of this inquiry is that which describes the property. The deed is duly certified by A. J. Dayius as a copy of the original, duly recorded on the 17th of July, 1806, No. 2607.

Now we proceed to the deed of retrocession from Bourgeat to Filhiol, which is Exhibit No. 12, p. 22, of the memorial. It is as follows:

I, the undersigned, Narcisso Bourgeat, do, by these presents, retrocede to John Filhiol a tract of land three leagues front and one in depth, situated on the bayou Darquelon; also a tract one league square, situated at the mouth of the Hot Springs Creek where it flows into the Ouachita, being the same property which he sold to me by act passed before Vincent Fernandez Texiero. etc.

This is duly signed by Bourgeat, on the 17th of July, 1806, and certified to by J. Poydras, judge of the court of the parish of Pte. Coupée.

It will be observed, as shown by quotation from the memorial, that the Spanish law was very particular in regard to admitting deeds to record. No public officer was permitted to "receive acknowledgment of and to pass deeds for the conveyance of lands to pass such deed, or receive the acknowledgment thereof, unless they knew the vendor had a title to the lands proposed to be sold." It can but excite remark that these parties should be very particular to record their deeds of cession and retrocession and never have recorded the original grant. But, assuming, for the sake of argument, that the recording official knew the parties to be the owners of the land they were conveying, then the question arises, what land did they own? The deed of cession speaks of the grant made to John Filhiol by Estevan Miro under date of December 12, 1787. But reference to the copy of the alleged grant, heretofore given, shows that it was made, if made at all, on the 22d of February, 1788.

The deed of cession also speaks of the land as a tract of land 84 arpents front and 42 in depth on each side of the stream called "the source of the Hot Springs." This does not conform to the previous description of 1 square league of land.

The deed of cession further speaks of this land as about two leagues from where it flows into the Ouachita River, while the alleged original grant speaks of it as about $2\frac{1}{2}$ leagues distant from the said river, Ouachita.

And then when we come to the deed of retrocession, heretofore given, how does it describe the land? No one can pretend that the tract in question is the tract herein described as 3 leagues front and 1 in depth, situated on Bayou Darquelon. But the only other tract herein described (and we are told that herein is to be found, in the most lawful and responsible manner, a description of "the lands as described in the said grant of February 22, 1788") is a tract 1 league square, situated at the *mouth* of the Hot Springs Creek, where it flows into the Ouachita. Certainly, if this be true, then the most northernmost limit of this tract would be nearer than a mile and a half of the most southernmost limit of the tract claimed under this bill.

It is claimed that this grant was lost in 1841, but it was not lost prior to that. Why was it never put upon record? Why was it not produced as a basis for these transactions? Why was it not produced by these people, trained in land laws, some of them at least high officials, and made a matter of record under the laws of the United States? They recorded all other documents, why not this? It was reported by Lewis and Clark that Don Juan Filhiol was said to lay claim to this property, but that it was not believed that he had a lawful claim to it. And it would seem from these utterly conflicting and contradicting deeds, purporting to convey the same property, as if they were simply conveying it out of mind, giving vague and conflicting descriptions, and thus casting upon the whole claim the gravest doubts of authenticity.

The following communications are herewith reported:

DEPARTMENT OF JUSTICE,
Washington, D. C., April 12, 1894.

SIR: In response to your letter of the 10th instant asking for information respecting a claim to the Hot Springs property, in Arkansas made by the heirs of Don Juan Filhiol under an alleged Spanish grant, I have the honor to state that, on examination of the records and files of this Department, I find nothing therein relating to said claim.

Other claims to the said property have been submitted to and considered by some of my predecessors in office (*see* 5 Opin., 236, 237; 6 Opin., 697); all of which, however, were, at a later period, judicially investigated and finally determined in what are known as the "Hot Springs Cases," agreeably to the provisions of the act of May 31, 1870. These cases are fully reported in 10 Court of Claims Rep., 289, 433; 11 *ibid.*, 238; 92 U. S., 698, to which I beg to refer you for more particular information in regard to the claims here referred to, if such information is desired.

I am, sir, very respectfully,

RICHARD OLNEY,
Attorney-General.

Hon. C. R. BRECKINRIDGE,
House of Representatives.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 14, 1894.

SIR: Referring to your letter of the 10th instant in relation to the subject of claims to the Hot Springs property in Arkansas, I have the honor to state that since my response of the 12th instant the case of Roland M. Filhiol, administrator, *v.* The United States (28 C. C. R., 110) has been brought to my notice, and I now beg to call your attention thereto in further response to your letter.

A full statement of the case appears in the report cited above.

I am, sir, very respectfully,

RICHARD OLNEY,
Attorney-General.

Hon. C. R. BRECKINRIDGE,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
Washington, April 16, 1894.

SIR: Your letter of the 10th instant has been received, requesting to be advised as to what the records of the Department show regarding the alleged Spanish grant to Don Juan Filhiol, embracing the Hot Springs, in the State of Arkansas.

In response thereto, I have the honor to transmit herewith a copy of a letter from the Commissioner of the General Land Office, to whom the matter was referred for report, giving the information desired.

In this connection it is proper to add that the case of R. M. Filhiol, administrator of Don Juan Filhiol *v.* The United States, No. 17196, Court of Claims, for certain profits realized by the United States from the rental and lease of the Hot Springs Reservation, Arkansas, amounting to \$36,726.60, was disposed of on the 31st of January, 1893, by judgment being rendered in favor of the United States.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

Hon. CLIFTON R. BRECKINRIDGE,
U. S. House of Representatives.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., April 14, 1894.

SIR: I am in receipt, by departmental reference of the 11th instant, for "consideration and immediate report," of a communication addressed to you on the 10th instant by Hon. Clifton R. Breckinridge of the House of Representatives, asking to

be informed as to what is shown by the records of the land department, regarding the alleged Spanish grant to Don Juan Filhiol, embracing the Hot Springs in the State of Arkansas.

Mr. Breckinridge states that "if the record is voluminous, a citation of opinions, cases, and dates, will enable me to look them up and answer my purpose."

In reply, I have the honor to report that a thorough examination has heretofore been made of the files and records here relating to the aforesaid claim, and the results of such investigation were embraced in two reports by this Bureau to the Department, dated June 5, 1890, and October 21, 1891, respectively (copies herewith).

The last-mentioned report was made upon a call from the Department of Justice for all papers, etc., in the Department of the Interior bearing upon the Filhiol title, for use in the case of "*R. M. Filhoil v. The United States*, No. 17196," pending in the Court of Claims.

I am not advised as to the result of said suit, and had supposed that the case was still before the Court of Claims.

It is believed that the history of this ancient claim, as set forth in the inclosed copies of reports, together with the references to executive documents, statutes, and extracts from the American state papers, will supply Mr. Breckinridge with the information he desires in the premises.

All of which is respectfully submitted, and the letter referred is herewith returned.

Very respectfully, your obedient servant,

S. W. LAMOREUX,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 5, 1890.

SIR: On the 26th ultimo there was referred to me S. 2116, entitled, "A bill to refer the claims of the heirs of Don Juan Filhiol, to certain lands in Arkansas, to the Court of Claims."

In the accompanying letter Hon. Samuel Pasco, of the Senate Committee on Private Land Claims, desires to be furnished with copies of all papers in this office pertaining to the case, and requests an expression of views as to "the justice and equity of this claim."

In reply I have the honor to state, that said "Filhiol" claim is alleged to involve the Hot Springs of Arkansas, now the property of the United States.

What other lands were originally claimed, in excess of those embracing said thermal springs, I am unable to say. The claim is alleged to have been a complete grant for one square league.

There are no original papers, except letters connected with the case, found on file here; and it is not understood that *any papers claimed to be the original muniments of title* were ever produced by the interested parties, in court or elsewhere, since the Territory was ceded to the United States.

The only information that can now be supplied the committee is from the limited correspondence had with this office in the matter; such executive documents as allude to the claim and certain portions of the American State Papers hereinafter alluded to.

The claimant first had an opportunity to assert his claim under what is commonly known as the "Missouri Act," of May 26, 1824 (4 Stat., 52).

From memoranda found here it is evident that one Ball, proceeding by petition, brought said claim before the superior court of Arkansas, sitting at Little Rock, at its October term, 1824, in the cause entitled, "*James Ball, complainant, v. The United States, etc., defendants*," and that the case was dismissed November 3, 1829, and Ball ordered to pay the costs, as shown by the docket.

Sam. C. Roane was the district attorney at that time, and afterwards brought bills of review in the notorious "*Bowie cases*" and others, and succeeded in having the confirmations of a large number of claims set aside on the ground of fraud by the same court which made the confirmations.

In an open letter to Grammont Filhiol, communicated "for the Arkansas Gazette," May 17, 1830, Mr. Roane plainly asserted that this claim to the Hot Springs was fraudulent in its inception.

(See copy herewith of printed slip marked D, and deposition of J. McLaughlin.)

In Duff Green's edition American State Papers, vol. 5, p. 364, under the caption of "Fraud in land titles in Arkansas," will be found a letter from Mr. Roane to the Commissioner of the General Land Office, dated July 20, 1829, in which he states, amongst other things, that he went to Louisiana at his own expense and "did procure testimony in the case of *James Ball v. The United States*, for a large claim,

including the celebrated Hot Springs on the Ouachita, and clearly proved the claim a forgery," etc.

The American State Papers are made evidence of what they purport to show by acts and resolutions of Congress.

Isaac T. Preston was an agent appointed by the President to investigate certain fraudulent claims in Arkansas Territory. I can find no evidence that he investigated the Filhiol case apparently because it had no foundation in fact, as shown by the records, and was considered disposed of by the action taken by the district attorney and the court.

Juan Filhiol had a number of claims, as shown in the State Papers, and the records of correspondence in this office relate principally to those cases in *Louisiana* (see vol. 2, Green's Ed., p. 637 *et seq.*) and not to the one now under consideration.

Attention is called to Senate Ex. Doc. No. 70, Thirty-first Congress, first session, being a report of the Secretary of the Interior in answer to a Senate resolution relative to the Hot Springs of Arkansas.

On page 3 is a statement by Commissioner Butterfield, showing that this office had no evidence that this alleged Spanish claim had ever been filed before a board of United States commissioners, or otherwise brought to the notice of the Government; also that there was no evidence on the files of the surveyors-general at St. Louis and Little Rock of such a grant, etc.

In the House of Representatives, Forty-third Congress, first session, the Committee on Private Land Claims made a favorable report (No. 263) on H. R. 608, extending the time for filing suits in the Court of Claims to establish title to Hot Springs Reservation.

Said report recites the various favorable points in the case, as set up by the Filhiol heirs; but the fact that the claim *had had a day in court* under the act of 1824, is not stated.

Another opportunity to assert the claim appears to have been afforded by the act of June 17, 1844 (5 Stat., 676).

Under the act approved June 11, 1870 (16 Stat., 149), the parties had two years within which to bring suit in equity, but failed to do so.

So far as the lands involving the Hot Springs are concerned, the Court of Claims subsequently rendered a decree in favor of the United States, which decision was affirmed by the Supreme Court, at its October term, 1875; thus finally determining the controversies which existed concerning the title to the lands, in favor of the Government.

On March 3, 1877, Congress passed an act providing for a board of commissioners to adjudicate certain claims to the Hot Springs Reservation. Section 5 of that act provides that such "*claimants and occupants shall file their claims under the provisions of this act before said commissioners within six calendar months after the first sitting of said board of commissioners, or their claims shall be forever barred,*" etc.

Regarding the justice and equity of the claim, I am unable to express a favorable opinion, in view of what little knowledge of the case is in possession of the Land Department.

The legal title to the Hot Springs of Arkansas has been settled by the highest tribunal in the land, and the claim to that extent is *res adjudicata*.

If Filhiol ever had a valid and complete title under a former government, which was protected by treaty stipulations or the laws of nations, his successors in interest seem to have failed to establish the fact by their own laches.

The present claimants are estopped by the record, and estopped by conduct, in my opinion.

If, however, in the judgment of Congress, the present parties in interest ought to be allowed further opportunity to establish an equitable claim in court, they should be debarred from disturbing existing titles and adjudications, and be restricted to a money indemnity in lieu of lands in place.

Very respectfully, your obedient servant,

W. M. STONE,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., October 21, 1891.

SIR: I am in receipt by departmental reference of a communication addressed to you by the Assistant Attorney-General of the United States on the 22d ultimo being a request for all papers, etc., in the Interior Department, bearing upon the title of one Don Juan Filhoil to a certain tract of land in Garland County, Ark., known as the Hot Springs Reservation; for use in the case of *R. M. Filhoil v. The United States*, No. 17196, pending in the Court of Claims.

This request I am directed to consider and make report thereon, accompanied by verified copies of such papers, etc., bearing upon the subject of the claim referred to as the records and files of this office afford.

I have the honor to report that after a careful examination of the files and records of the private land claims division and other official records of the American State Papers, indices, and abstracts of correspondence, Congressional documents, etc., very little matter can be found in reference to this alleged grant of lands in the present State of Arkansas.

Don Juan Filhiol, it is represented, was a Spanish officer on duty at the post of Ouachita, La. (who died at Monroe, in said State, about the year 1821), and to whom several grants of land were made, in recognition of his military services, by Miro, governor-general of the Province of Louisiana at the time.

It seems proper to call attention to the several claims in the name of "Filhiol" (Juan, John, and Jean), that appear in the American State Papers. These claims are for lands in Louisiana, and the records of this office show considerable correspondence in relation to them. Mention of those claims is found in the State Papers, Gales and Seaton's ed., as follows: Vol. 2, pp. 768, 771, and 815; vol. 3, pp. 600 and 601; vol. 4, p. 873.

This last is an adverse House report on claim of Grammont Filhiol; evidently a misprint.

June 5, 1890, this office made a report to you on S. 2116, entitled "A bill to refer the claims of the heirs of Don Juan Filhiol to certain lands in Arkansas, to the Court of Claims."

A certified copy of said report is transmitted herewith, and, as upon further examination of the official records, nothing additional has been discovered bearing upon the case, I can only concur in said report of the acting commissioner and add a few suggestions.

From what information this office has in the premises, it is not believed that any papers claimed to be the original muniments of title, or grant of the Hot Springs to one Don Juan Filhiol, were ever produced by the interested parties, in court, or before any board of commissioners having jurisdiction of the claim, unless such original papers have now been exhibited to the Court of Claims.

From memoranda found, and the old court records on file here, there is a strong presumption that this identical claim was asserted under what is commonly known as the "Missouri Act" of May 26, 1824 (4 Stats., 52).

One Ball, it would seem, proceeding by petition, brought the claim before the superior court of Arkansas, sitting at Little Rock, at its October term, 1828, in the cause entitled "James Ball, complainant, v. The United States etc., defendants," and the case was dismissed in the year 1829, as shown by the court docket, and complainant ordered to pay the costs.

The text of the petition has not, so far, been found here, but Sam. C. Roane was the district attorney at that time, and he, in an open letter to Grammont Filhiol, communicated for the Arkansas Gazette, May 17, 1830, asserted that this claim to the Hot Springs involved in the case of Ball v. The United States was fraudulent and the grant papers forgeries. I find also a copy of an open printed letter to the Commissioner of the General Land Office by Grammont Filhiol, dated at Monroe, La., April 15, 1830, setting forth the merits of the controversy from his standpoint.

In Gales and Seaton's edition American State papers, vol. 6, p. 38 *et seq.*, will be found matter relating to frauds in the adjustment of land titles in Arkansas. At page 41 appears a communication dated July 20, 1829, from Sam C. Roane to Commissioner Graham, in which the said district attorney alleges that he went to Louisiana at his own expense, "and did procure the testimony in the case of James Ball, assignee of John Filhiol v. the United States, for a large claim, including the celebrated Hot Springs on the Ouachita, and clearly proved the claim a forgery," etc. Congress has made the American State Papers evidence of what they purport to show.

Attention is called to Senate Ex. Doc. No. 70, Thirty-first Congress, first session, being a report of the Secretary of the Interior in answer to a Senate resolution relative to the Hot Springs of Arkansas.

The Committee on Private Land Claims, House of Representatives, Forty-third Congress, first session, made a favorable report (No. 263) on H. R. 608, being a bill extending the time for filing suits in the Court of Claims, to establish title to the Hot Springs Reservation in Arkansas.

The Filhiol claim seems to have had a day in court under section 14 of the act of May 26, 1824. (4 Stats., 52.)

The provisions of this act were revived and extended for the term of five years by the act approved June 17, 1844. (5 Stats., 676.)

Under the provisions of the act of June 11, 1870 (16 Stats., 149), all persons 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, in Hot Springs

County, in the State of Arkansas," had an opportunity to institute suit, in the nature of a bill in equity, against the United States in the Court of Claims, "and prosecute to final decision any suit that may be necessary to settle the same: *Provided*, That no such suits shall be brought at any time after the expiration of ninety days from the passage of this act, and all claims to any part of said reservation upon which suit shall be not brought under the provision of this act within that time shall be forever barred."

By act of March 3, 1877. (19 Stat., 377), Congress made provision for a board of commissioners to adjust claims to the Hot Springs Reservation, etc. Under the fifth section said commissioners were to hear any and all proof offered by claimants to certain parcels of the land involved: "*Provided*, however, that such claimants and occupants shall file their claims, under the provisions of this act, before said commissioners within six calendar months after the first sitting of the said board of commissioners, or their claims shall be forever barred," etc.

The final report of said commissioners, with accompanying schedules of claimants to lots and blocks, is printed in Senate Ex. Doc. No. 21, Forty-sixth Congress, second session.

The decree of the Court of Claims upon the title to the Hot Springs, which decree was affirmed by the Supreme Court of the United States at its October term, 1875; and whatever bearing it may have upon the ancient claim now brought forward, is only mentioned *pro forma*.

The Department of Justice is doubtless familiar with the subject.

If the case of Ball *vs.* The United States, under the act of 1824, is considered of importance, it is proper to state that the court records, etc., were forwarded here officially, and the original bill of lading is found amongst the papers.

All of which is respectfully submitted.

The certified copies furnished herewith are shown in the inclosed schedule, and the letter of the Assistant Attorney-General is herewith returned.

Very respectfully, your obedient servant,

THOS. H. CARTER,
Commissioner,

THE SECRETARY OF THE INTERIOR.

In view of all the foregoing, the committee conclude, after full discussion and careful consideration, that this bill should not pass. All claimants have had their day in court; and these claimants, with at best a claim of very doubtful authenticity, have, if they had an authentic claim, been neglectful of their opportunities to a remarkable degree.

As the rights of the present population and property-holders of Hot Springs have been insisted upon with earnestness and force, and as representations have been made that they would not be injured by the proposed legislation, and that they were to a considerable extent indifferent about it, it is proper to state that a most intelligent delegation of leading business and professional men, representing the various commercial bodies and other organizations of Hot Springs, appeared before the committee and ably and earnestly opposed the reopening of the "Hot Springs case." Various communications from citizens are herewith presented as an appendix to this report.

APPENDIX.

RESOLUTION INTRODUCED BY ALDERMAN B. GROSS, AT A MEETING OF THE CITY COUNCIL OF HOT SPRINGS, HELD APRIL 9, 1894.

Whereas it is reported, that from source to us unknown, representations have been made to the Judiciary Committee of Congress, attempting to show that it is not the sentiment of a majority of the citizens of Hot Springs, Ark., that the Boatner bill now before the committee should be rejected by Congress; and

Whereas we are well acquainted with the opinions and wishes of our constituents in the respective wards of this city, and know that the public sentiment of this

city is overwhelmingly opposed to the passage of said bill or any other bill of a similar nature: Therefore,

Be it resolved, That we earnestly protest against the passage of the Boatner bill, and again appeal to our representatives in Congress to use every effort to secure from the Judiciary Committee a report adverse to the passage of said bill by Congress.

Unanimously passed April 9, 1894.

The above is a correct and true copy of the "record of council proceedings," and I do so certify.

[SEAL.]

WM. L. GORDON,
City Clerk.

HOT SPRINGS, ARK., April 10, 1894.

RESOLUTIONS OF THE CHAMBER OF COMMERCE.

To the Judiciary Committee of the House of Representatives, Washington, D. C.:

Whereas, It is reported from the City of Washington that representations have been made to the Judiciary Committee of the House of Representatives that a majority of the members of the Hot Springs Chamber of Commerce and of the citizens of Hot Springs are indifferent as to the defeat of the Boatner bill, whereby the Filhiol claimants ask the Government to waive its sovereignty so as to permit said claimants to file their suit in the U. S. Court of Claims, wherein they seek to contest the title of the Government to the permanent Hot Springs Reservation, and

Whereas, Said representations are untrue and are calculated to work great injury to the citizens of Hot Springs, the Government of the United States, and the people at large, for whose benefit and accommodation the waters of this resort should be forever preserved, husbanded, and equably used and distributed, and

Whereas, It is the unanimous sentiment of the membership of the chamber of commerce, with but one exception, that said Boatner bill should not become a law, and this is the sentiment of the entire city as far as ascertained by a careful canvass and discussion of the subject, with the exception of but one dissenting voice, above-referred to, that of Hon. E. W. Rector, therefore, be it

Resolved, by the Chamber of Commerce of Hot Springs (an organization incorporated under the laws of the State of Arkansas, and comprising nearly 100 representative business men of the city of Hot Springs), That we do most emphatically protest, for reasons specified in the memorial recently presented to Congress, and signed by every property-holder to whom it was presented, against a favorable consideration and report on the bill by the Judiciary Committee, in attestation to which we hereby attach our respective names.

R. L. Williams, mayor.
Geo. W. Baxter.
Wm. J. Little.
Wm. H. Barry, pres. health department.
J. P. Mellard, pres. Chamber of Commerce.
C. S. Williamson.
R. Murray.
C. S. Bell.
Joe Mazzia.
John D. Ware.
W. L. Babcock.
Thos. W. Milan.
Jno. J. O'Brien.
C. G. Conners.
J. J. Sutton.
B. A. Hearon.
Ed. Hogaboom.
J. A. Smith.
Word H. Mills, secy. Chamber of Commerce.
E. P. Gaines, real estate and insurance agt.
Dr. D. D. Dennis.
Samuel Hamblen, atty. at law.
A. C. Jones, sec. Valley Ice Company.
J. Kerstine, mchrt.
Joseph Molen, hotel keeper.
J. A. Townsend, merchant.
Jno. B. Varnadore.
J. Davis Oseer, editor Thomas Cat.
Chas. D. Greaves, attorney.
D. Beitler, wholesale grocer.
C. Birnbaum, wholesale grocer.
C. E. Harrell, druggist.
Chas. F. Payne, mdso.
S. A. Sammons.
Whittington Stearns & Co., wholesale hardware.

C. U. Dunbar, furnished rooms.
A. S. Sitten, merchant and manufacturer.
M. Mascarty, merchant.
A. F. Sanders, physician.

I am opposed to the Boatner bill allowing a contest of title of the U. S. to the H. S. Reservation. Leland Leatherman, chancellor.
Z. W. Lakenan, county and probate judge.
A. Eshart, baker.
J. H. Gordon, dry goods.
T. J. O'Neill.
J. W. Van Vliet.
W. J. Cupps.

I am opposed to the Boatner bill, or any other opening up in the courts titles to the Hot Springs Reservation. Alf. Whittington, real estate.
E. Burgauer.
Wm. L. Gordon.
W. W. Waters, real estate.
Chas. N. Rix, cash'r Ark. Nat'l Bank.
J. L. Wadley, ed. Daily News.
Frank C. Place, county clerk.
W. R. Woody, circuit clerk.
O. S. Propkitt.
R. N. Haupt, sheriff.
D. C. Rugg.
Ed. H. Johnson.
George R. Erbro.
Jno. J. Sumpter.
J. B. Wood.
John Loughran.
A. J. Murphy.
Geo. G. Latta, atty.
S. C. Law, merchant.

The undersigned hereby certifies that Capt. J. P. Mellard is elected as delegate from the Chamber of Commerce to Washington in the interest of Hot Springs as against the Filhiol claim.

[SEAL.]

WARD H. MILLS,
Secretary.

HOT SPRINGS, ARK., April —, 1894.

The Honorable Committee on Judiciary, Fifty-third Congress :

GENTLEMEN: We the citizens of the city of Hot Springs, Ark., being advised that your honorable committee has under consideration a bill known as the Boatner bill, the effect of which would be to give standing in the courts to a certain claim known as the Filhiol claim to the Hot Springs Reservation and other property;

And being further advised that the parties urging the this bill for favorable report by your committee persistently and falsely represent to your honorable committee, that the citizens of Hot Springs are not opposed to the control of the hot water passing from the hands of the Government and into the hands of a syndicate, which we understand has already been formed to take charge of it;

And viewing with apprehension and alarm any kind of legislation the tendency of which would be in any manner to change the control of the hot water from the Government;

We appeal to your honorable committee and to each member of it individually not to permit any bill to be reported the effect of which would be to disturb titles to property here or to in any manner interfere with the complete and entire control by the Government of all the reservations and all the hot water;

And being alarmed and apprehensive for the public welfare, we have publicly assembled in mass meeting and present the following resolutions as expressive of the sentiment of the citizens of Hot Springs upon this important subject:

Resolved, That we, the citizens of the city of Hot Springs, in public mass meeting assembled, do most earnestly protest against the enactment of any law which will in any manner effect or change the complete and unqualified control by the Government of all the hot water and all the Government reservations at Hot Springs, Ark., as now defined by law.

Resolved further, That we denounce as false and slanderous any statement made to your honorable committee that any citizens of Hot Springs, except those interested in this claim as principals and attorneys and their immediate relatives, are in favor of the passage of the Boatner bill or any other of like nature.

Resolved further, That it is the desire of this meeting to particularly impress upon the minds of your honorable committee that Hot Springs has grown from a very small village to a city of 12,000 inhabitants under the protection of the Government and in the firm belief that its control of the reservations and hot water would never pass from it, and the further fact that a large amount of money—say \$15,000,000—has been invested here in valuable improvements, which would be seriously jeopardized by the passage of this bill, and that most, if not nearly all, of this amount has been invested under the belief that the Government would never surrender control of any of its property at Hot Springs, especially the hot water, as that is the basis of all property values here.

Resolved further, That much of this property is under mortgage, and any disturbance of the titles or any change of the Government's control would cause foreclosures to be made at such a rate as to be practically ruinous to the property owners of this community and destroy the usefulness of Hot Springs as a health resort.

We desire to impress upon the minds of each member of your honorable committee our firm belief that the passage of the Boatner bill or any other of that nature would be so utterly ruinous and disastrous that it would result in riot and bloodshed.

Resolved further, That we give it unqualifiedly as our opinion that the basis of our prosperity heretofore, and the only safety for our prosperity in the future has lain, and does lie in the continued control by the Government of its property as at present, and we most sincerely and earnestly protest against the passage of any law that disturbs the present peaceable conditions as they exist here now.

HOT SPRINGS, ARK., April 10, 1894.

This is to certify that a mass meeting of bona fide citizens and residents of Hot Springs, Ark., was held at the opera house in said city on the night of April 10, 1894, and at said meeting the undersigned were respectively elected as chairman and secretary of said meeting; and we certify that, by a unanimous vote of persons present at said meeting, Charles N. Rix, esq., and George W. Baxter, esq., were elected as a committee of citizens to visit the city of Washington to aid and cooperate with Hon. C. R. Breckinridge and other Representatives in Congress in defeating the pending bill in reference to the Filhiol claim; and we further certify that at

said meeting and at said place, by the unanimous vote of the persons present, the above and foregoing resolutions were adopted.

Given under our hand, as president and secretary of this meeting, this 10th day of April, 1894.

JNO. J. SUMPTER,
Chairman.
WORD H. MILLS,
Secretary.

HOT SPRINGS, ARK., March 31, 1894.

The House of Representatives, Washington, D. C.:

The undersigned, citizens and residents of Hot Springs, Ark., respectfully protest against the passage of House bill No. 5160, whereby the Filhiol claimants ask the U. S. Government to waive its sovereignty, for the purpose of permitting and authorizing said claimants to file their suit in the Court of Claims against the United States, wherein they seek to contest the title of the United States of America to the permanent Hot Springs Reservation.

Your petitioners state, that for a period of more than fifty years the ownership of and titles to said estate was claimed by divers parties, and the Congress of the United States finally passed an act authorizing and warning all claimants thereto to file their claims and set up their titles in the Court of Claims. (See act June 11, 1870.) In pursuance thereof, divers parties brought their suits, and after tedious litigation it was finally determined and adjudged by the Supreme Court of the United States that the title to said land remained in the United States of America.

After said decision by act of Congress, all of that part of the lands involved in said suits (out of which flows the hot water) was, with other lands, forever reserved from sale, and a commission was appointed to pass upon and determine the rights of the occupants of said premises.

Your petitioners believe that the concession of the Filhiol claimants, granting a quit claim to all persons claiming through or under the United States, is a delusion and a snare, designed to seduce our attention from the gravity of the calamity threatened by said bill. Instead of accepting the amnesty offered by said claimants, the holders and owners of property in Hot Springs invite them to a contest over the validity of the title to private property here, feeling confident that any claim they might have once had has been forever barred by lapse of time. But we earnestly protest against the United States waiving its sovereignty for that purpose.

Your petitioners believe it is impossible that any person claiming under Spanish grant can have a valid claim to any lands in Hot Springs, because of the great lapse of time since said grant and the notice heretofore given to claimants by proceedings of Congress, commission, and litigation in courts.

While said claimants with a semblance of generosity consent that all individual interests shall remain free from their claims, at the same time they seek title to that which is the basis of all values in property here.

Your petitioners represent that large investments have been made and improvements have been erected here at the expense of millions of dollars, upon the faith of bath house and water privileges granted by the United States Government, which will be a total loss and valueless if the right to withhold a continuance of such privileges shall pass into private discretion and power.

That the mere passage of this bill and the filing of the suit authorized thereby will have the effect to destroy all values and involve what is now a prosperous and progressive city in bankruptcy, ruin and desolation.

Your petitioners believe that the said claim is without merit, but the proceedings sought to be brought under the provisions of this bill will inflict an injury upon this city impossible to estimate in dollars or to describe in language.

Wherefore, we pray your honorable body to reject said bill and thereby avert the disaster which now threatens us, and your petitioners will ever ask and pray.

Chas. N. Rix, Cash. Ark. Nat'l Bank.
Jno. W. Pennel, shoe dealer
J. J. Gillis, police officer.
C. W. O'Bryan, Ark. Nat. Bk.
T. A. Buchanan, Ark. Nat. Bk.
Tom J. Pettit, Ark. Nat. Bk.
W. J. D. McCarter, Ark. Nat. Bk.
Fred N. Rix, Ark. Nat. Bk.
W. A. Woodcock, United States Hotel.
L. B. Deacon, builder.
Jno. B. Foote, City Sav. Bk. & Tr. Co.
A. G. Russell, with C. G. Orr.
D. A. Donaldson, with Martin & Pollard.
S. H. Hitt, Prest. Arlington Hotel Co.
A. S. Garnett, M. D., resident physician.

G. C. Guawry, M. D., resident physician.
M. A. Eisele, druggist.
R. M. Smith, ticket agent, H. S. Ry.
E. N. Davis, M. D.
John Hunt, alderman, 2nd ward.
D. Picchi, fruit dealer.
J. W. McLaughlin, grocer.
J. W. Longworth, real estate owner.
C. S. Williamson, real estate owner.
A. L. Gaines, real estate owner.
Louisa Blasiell, real estate owner.
Fannie G. Williamson, real estate owner.
Wm. L. Gordon, real estate owner and broker.
Wm. J. Little, merchant.
T. J. Evans, merchant.

- Geo. R. Belding, merchant.
 G. P. Kennan, merchant.
 A. Kirkham, builder and contractor.
 R. B. Bancroft, druggist.
 Jno. J. Sumpter, real estate and ins. agt. and atty.
 Jno. J. Sumpter, Jr., real estate and ins. agt. and atty.
 L. C. Anderson, abstractor of titles.
 S. J. Erickson, bookkeeper.
 E. S. Pickel, painter.
 T. E. Holland, M. D.
 H. C. Howard, dentist.
 J. D. Kimbell, attorney, member legislature.
 C. B. Webb, Hotel Josephine.
 J. E. Hart, contractor and civil engineer.
 C. Birnham, merchant.
 A. J. Murphy, att'y-at-law.
 S. C. Law, clothier.
 D. F. Parker, livery and real estate.
 Ed. Hogaboom, banker.
 W. W. Wright, cashier City Savings Bank and Trust Company.
 J. P. Mellard, real estate.
 C. S. Mellard, insurance.
 J. A. Townsend, merchant.
 R. E. Hill, marble.
 T. Kingfisher, merchant, and R. E. owner.
 H. C. Smith, city collector.
 Wm. Parkhurst, capitalist.
 J. H. Woodcock, real estate agt. and broker.
 Joe Mazzia, merchant.
 Joseph Molen, alderman 3d ward.
 P. J. Ledwedge, contractor and builder.
 Whittington, Stearns & Co., wholesale hardware.
 W. N. Moore, real estate.
 Samuel Hermblen, att'y at law.
 W. A. Lakeman, merchant.
 W. P. Walsh, ex-mayor.
 Charles Cutter, publisher "Cutter's Guide."
 E. S. Rockwood, bookkeeper.
 J. L. Goodbar, retired merchant.
 M. Mendel, merchant.
 Henry Cohn, merchant.
 M. Moscourtz, merchant.
 Thad Taylor, merchant.
 J. H. Putnam, M. D.
 J. M. Schwartz, merchant.
 T. F. Kimbell, editor "Graphic."
 J. W. Millvine, plumbing business.
 John Cressey, resident physician.
 Louis Senilltte, hotel keeper.
 John M. Harrell, attorney at law.
 W. P. Passmore, druggist.
 Edward Ledwidge, builder.
 John Kelly, contractor.
 C. S. Bell, capitalist.
 T. F. Teague, chief of police.
 J. W. Alford, constable.
 W. A. Spivey, D. C.
 W. O. Palmer, clerk.
 Michael Dwyer, contractor.
 Louis T. Grenier, salesman.
 James M. Anderson, clerk.
 D. S. Ryan, W. U. manager.
 J. J. Mooney, contractor.
 Geo. W. Watson, alderman 5th ward.
 Jim Tom Story, journalist and printer.
 J. O. Thompson, M. D.
 Wm. H. Gaines, "oldest inhabitant."
 Will. H. Garland, bookkeeper, Sithers & Dave.
 Geo. P. Shepherd, painter.
 J. D. Richardson, merchant.
 Robt. H. Lower, druggist.
 W. P. Blake, jeweler.
 J. W. Ross, physician.
 A. Erhart, bakery.
 D. Bettler, grocer.
 Simon Shultice, dealer in grain.
 Jno. T. O'Brien, merchant tailor.
 The Park Hotel Co., by Ed. Hogaton, pr.
 Garland Gas Lt. Co., by Ed. Hogaton, v. pr.
 Hot Springs Electric Lt. Co., Ed. Hogaton, v. pr.
 Hot Springs Water Co., Ed. Hogaton, v. pr.
 Ward H. Mills, sec'y Chamber of Commerce.
 W. H. C. Broadus, sec'y. Business Men's Club.
 Otto Neubert, furniture dealer.
 E. A. Douglas, stationer.
 W. F. Hansley, P. M.
 R. S. Dean, clerk.
 A. S. Sithen, merchant and manufacturer.
 R. Murray, Transfer Co.
 I. A. Foye, jeweler.
 C. H. Cox.
 Chas. Fletcher, property owner.
 W. H. Graves, merchant.
 J. K. Cortun, mcht.
 John H. Avery, real estate and ins. agent.
 Jas. E. Golladay, clerk.
 M. C. Tombler, mangr. H. S. Elect. Lt. Co.
 A. W. Borland, groceries and grain.
 J. H. Gordon, dry goods.
 T. W. Gibbs, mfr. lumber, sash, doors.
 C. P. Battler, M. D.
 D. W. Corrington, bookkeeper.
 T. J. Goodwin, merchant.
 Miss Pearl Keyes, photographer and pen artist.
 W. F. Bassett, A. and N. G. Hospital.
 Robt. Moffat, bookkeeper.
 Jas. M. Park, M. D.
 H. C. Wallace, M. D.
 C. W. Fry.
 L. B. Durnil.
 Wm. H. Barry, president health department.
 J. W. Mooney, manager Magnesia bath-house.
 Mary E. Mooney.
 J. A. Pettit, Palace bath-house.
 S. D. Cain, president Waverly Hotel Company.
 W. E. Work, manager New Hot Springs bath-house.
 R. F. Parker, assessor of Garland County.
 Rev. P. H. Garaghty, pastor Catholic church 24 years.
 F. H. Hawes, ex-P. M.
 O. L. Kirkpatrick.
 F. W. Vaughan.
 P. S. Bentz, sect'y Kentucky L. and T. Co.
 S. D. Doty, jeweler.
 S. B. Nolly, manager Eastman bath-house.
 John D. Ware, real estate and insurance.
 Rev. J. A. Dickson, Presby. pastor.
 S. E. Johnson.
 Fink and Vasse, wholesale grocers.
 State Exchange Bank, banking.
 S. H. Amis, prop'r Hotel Sumpter.
 D. C. Richards, merchant.
 Henry Flowers, police judge.
 W. D. Beall, Murray, T., & Co.
 E. A. Shippey, M. D.
 John Loughran, Alhambra hotel.
 W. W. Eastman, Hotel Eastman.
 Chas. B. Platt, Hotel Eastman.
 J. R. Gifford, Hotel Eastman.
 L. H. Carhart, prop. Ozark bath-house.
 William Sumpter, ex-alderman.
 Jno. Schwartz & Son, merchants.
 P. J. Ryan, dry goods merchant.
 B. Gross, undertaker.
 A. Mendel & Co., merchant.
 Gus. Strauss & Co., clothiers.
 Leo Blumenthal, gents' furnisher.
 E. B. Brown, H. S. R. R. Express Co.
 J. J. Walker, M. D.
 B. L. Martin.
 Chas. Ganatt & Son, jewelers.
 R. O. Blaydes, M. D.
 S. Mendel & Bro., merchants.
 O. A. Johnston, druggist.
 H. Tellheimer, merchant.
 A. G. Belding, salesman.
 A. F. Sanders, M. D.
 G. Bertram Pike, treas. Pike Mfg. Co.
 W. M. West.
 D. W. Claiborne, clerk, property owner.
 W. J. Cripps, alderman 2d ward.
 C. R. Rowles, dealer in meats.
 C. G. Bush, J. P.
 Chas. C. Spooks, grocerman.
 And. J. Hill, ex. p. m.
 Gray & Hansley, dry goods.
 L. Stone, dry goods.
 C. Gabagan, ex-alderman.
 H. McCafferty, dry goods.
 Ed. H. Johnson, accountant.
 Geo. Belding, real estate.
 Henry C. Baker, M. D.
 D. T. Taylor, M. D.
 Housley Bros., merchants.
 E. T. Housley, merchant.

- C. J. Webb, merchant.
 J. H. Ward, merchant.
 H. Haythorne white, Metropolitan hotel.
 W. F. Gibbons, grocer.
 R. L. Williams, mayor, city mayor.
 M. L. Hildreth, butcher.
 Eli K. Simpson, farmer.
 A. J. Walsh, chief fire dept.
 A. Marx, merchant.
 Woodcock Bros., grocers.
 R. B. Jagger, real estate.
 Bancroft, Weber & Co., druggists
 Chas. G. Orr, paints, oils, glass, and paper.
 F. A. Peak, dentist.
 J. W. Skief, citizen.
 W. J. Wood, grocer.
 D. Greaves, abstractor.
 Cooper & Woods, stationers.
 Henderson & Gaines, real estate and insurance.
 A. U. Sill, treas. Hot Springs Chemistry Co.
 N. M. Moody, lumber business.
 N. L. Grissam, hotel business.
 D. H. Barker, market gardener.
 W. A. Kirk, justice of the peace.
 E. Dan Patten, architect.
 Mary C. Ordway, land owner.
 Thos. W. Milan, ticket broker.
 Hugh Calhoun, miner.
 C. A. Bayley, boots and shoes.
 B. F. Bayley, boots and shoes.
 C. D. Bancroft, bath house owner.
 Geo. W. Baxter, real est. agt.
 L. W. Baxter, real. est. agt.
 K. O. H. Burkstaff, bath house prop.
 Chas. Peterson, furniture dealer.
 Ed. S. Weaver, book store.
 S. A. Summons.
 W. L. Babcock, hardware.
 Robt. Nixon, dairyman.
 Thomas Bergman, restaurant.
 Alf. Whittington, merchant and real estate.
 M. G. Thompson, M. D.
 James P. Martin, men's furnishings and tailoring.
 C. H. Olsen, clerk.
 L. B. Jones, tailor.
 David Wood, tailor.
 Chas. Frenk, tailor.
 P. H. Donaldson.
 C. C. Lemly, druggist.
 D. C. Rugg, real estate.
 C. H. Weaver, bookseller.
 W. R. Smith, bookseller.
 L. D. Beldin, real estate.
 S. M. Allen, pro. of Alternative Magnesia Spring.
 T. H. Olmstead, grocer.
 Geo. Merol.
 J. L. Bryan, grocer.
 H. E. Schultz, grocer.
 W. H. Blahuz, butcher.
 George Ryan, butcher.
 B. T. Bearden, painter.
 C. W. Rockafellow.
 A. C. Jones, ice dealer.
 R. H. Smiley, druggist.
 J. O. Rowhes, clerk.
 E. P. Whittington, merchant.
 M. G. McCulloch, ins. agt.
 R. H. Nettler, clerk.
 W. J. Marshall, proprietor of Illinois House.
 C. V. Traynor, prosecuting atty. 7th judicial circuit.
 Jno. W. Jones, deputy circuit clerk.
 Cyrrus Johnson, deputy. U. S. M.
 S. H. Tate, deputy sheriff.
 Reb. Haupt, sheriff Garland Co., Ark.
 J. H. Deraby.
 T. C. Parks, butcher.
 John A. Moore, hotel keeper.
 Chas. D. Greaves, attorney.
 B. P. Lockett, farmer.
 Zack Phillips, farmer.
 W. K. Medlock.
 P. C. Boyd, farmer.
 W. T. Rogers, farm and merchandise.
 F. H. Rowe.
 W. W. Usserey.
 Jonathan Fulton.
 T. E. Hampton.
 A. M. Duffie.
 A. Carl, atty.
 J. S. Townsend, atty. at law.
 W. O'Connor, D. S.
 Geo. H. Lower, druggist.
 Frank C. Place, county clerk.
 C. Floyd Huff, atty. at law.
 W. R. Woodydy, circuit clerk.
 H. Russell.
 B. H. Randolph.
 Wm. H. Martin, attorney.
 Z. W. Lakeman, county and probate judge.
 Trenton Barnard, merchant.
 Edgar A. Nickels, real estate.
 J. D. McNeil, dairyman.
 T. Mader, tailor.
 Tony Arminio, tailor.
 John Palmer.
 Gordon Runyon.
 Joe Leroy.
 R. H. Rouse, alderman, Sixth ward.
 I. W. Smith, carpenter.
 S. A. Burroughs, merchant.
 Chas. E. Maurice, bath-house owner.
 W. G. Maurice, bath-house owner.
 Jno. Beckett, clerk.
 A. P. Aldrich, contractor.
 I. A. Busch, contractor.
 H. James, justice of the peace.
 F. W. Rowles, salesman.
 W. M. Wilson, supt. Gas Co.
 B. F. Jenkins, transfer.
 S. E. Cross, watchmaker.
 J. M. Blake Co., jewelers.
 E. P. Gaines, real estate and insurance agt.
 Charles J. Andrae.
 Dr. D. D. Dennis.
 F. W. Gregory, frt. agt. H. S. R. R. Co.
 D. D. Page, atty at law.
 H. F. Kirkpatrick, segt. police.
 J. E. Dickson.
 R. E. Fitzgerald, restaurant.
 F. H. Madden, Eastman Hotel (cashr.).
 R. J. Roy, merchant tailor.
 W. S. Pollard, druggist.
 O. J. Short, physician.
 H. E. Holmes, saloon.
 H. O. Reno, editor Sentinel.
 H. K. Smith, hardware.
 J. P. Olsen, music teacher.
 E. Eisele, drug clerk.
 Nathan Cohn, merchant tailor.
 Howard D. Mitchell, civil engineer.
 Ed. S. Adams, barber shop, first class.
 Fred E. Johnson, Sentinel (daily).
 Henry H. Hunt, shoe clerk.
 A. U. Williams, physician and surgeon.
 J. M. Green, builder.
 W. S. Sorrells, druggist.
 Sorrells & Corr, druggists.
 M. W. Squire, cigar dealer.
 Chas. E. Fox, cashr. Arlington Hotel Co.
 Fred Sammons, merchant.
 Monahan & Hart.
 W. J. Miller, rector of St. Luke's Church.
 T. Shannon, saloon and bldg. house.
 A. T. B. Odén, masseur in U. S. Hospital.
 Alfred Newhouse, clerk.
 J. S. Wadley, ed. and prop. Daily News.
 John Anderson.
 T. J. Grant.
 J. W. Van Vliet.
 C. F. Beck, steward Hotel Pullman.
 B. Filippi, manager Hotel Pullman.
 Phillip A. Helfrich.
 J. P. Henderson, atty at law.
 E. Burgauer, furniture and capitalist.
 R. H. Taylor, M. D.
 Jno. J. Sumpter, jr., real-estate and insurance agt.
 G. W. Hughes, manager for Armour Packing Co.
 E. T. Klein, druggist.
 T. J. Laughlin, Ivy stable.
 M. H. Jodd, brick manufacturer.
 J. F. Kennedy.
 F. Dengler.
 Geo. G. Lattas, attorney.
 James L. Barns, Imperial Bath-house.
 John L. Slight.
 J. Davis Oream, editor Arkansas Thomas Cat.
 Ike C. Vandere.

John Geary.
 C. U. Dunbar.
 E. E. Stubbs.
 L. D. Cooper, merchant.
 Texas Produce Co., wholesale produce and beer.
 W. W. Waters, land owner.
 W. J. McTague, land owner.
 W. E. Moore, merchant.
 G. W. Tatum, bookkeeper.
 C. T. Morrison, saddler.
 W. H. Lay, contractor.
 H. R. Vaughan, salesman.
 J. B. Fordyce, mngr Palace bath house.
 John Hanslay, merchant.
 J. E. Hayden, mineral water and soda.
 T. G. Evans, dairyman.
 Ben. Holling, restaurant.
 Giorejio Sargianoni.

B. D. Rapley, bookkeeper.
 Leland Leatherman.
 J. M. Keller, resident physician.
 D. D. Shipley, merchant.
 J. S. Gebhart, M. D.
 Otto Newbert, furniture dealer.
 Charles L. Whipple, hotel keeper.
 Robt. C. Henderson, clerk B. & L.
 W. L. Beaty, the Keeley Institute.
 Wm. M. Stigler.
 John Baldwin.
 W. W. Poer, grocer.
 R. F. Russell.
 T. J. O'Neill.
 M. Hannan.
 T. R. Patrick.
 L. D. Richardson, gen'l supt. Hot Springs R. R. Co.

STATE OF ARKANSAS, *County of Garland:*

I, J. D. Kimbell, a notary public for the county of Garland, residing in the city of Hot Springs, Ark., duly commissioned and acting, do certify that I am personally acquainted with nearly all the signers to the foregoing petition, and that I verily believe that each and all of their signatures are genuine, and that they are bona fide citizens and residents of Hot Springs, Ark.

Witness my hand and official seal as such notary public this 3d day of April, 1894.
 [SEAL.]

J. D. KIMBELL,
Notary Public.

My commission expires September 4, 1895.

RESOLUTION.

Whereas it has come to the knowledge of the city government of the city of Hot Springs, Ark., that there is now pending in Congress a bill for the relief of the Filhiol heirs or claimants, whereby said claimants are seeking permission to enter their suit against the United States of America for the land known as the permanent Hot Springs reservation; and

Whereas it is greatly to the interest of the city of Hot Springs and to the world at large that the control of the hot water flowing from the springs upon said reservation shall forever remain under the control of the United States of America; and

Whereas there has been circulated in Hot Springs a petition or memorial to Congress against the passage of said act: Therefore,

Be it resolved by the city council of the city of Hot Springs, Ark., That we heartily approve and endorse said petitions with all the declarations and statements therein contained.

And be it further resolved, That we offer this as an official expression of our disapproval of said bill and the proceedings sought to be brought thereunder.

Be it further resolved, That the city clerk be, and is hereby, instructed to forward to Hon. C. R. Breckinridge and Hon. W. L. Terry a copy of this resolution.

Unanimously adopted April 2, 1894.

WM. L. GORDON,
City Clerk.

STATE OF ARKANSAS,
County of Garland, City of Hot Springs, ss:

I, Henry C. Baker, a practicing physician for twenty-seven years, now a resident of the city of Hot Springs, but formerly, for the past twenty-five years, a resident of Hot Spring County, first at Rockport and afterwards at Malvern, do hereby testify as follows:

That, during the time that the claims of individuals to the lands embraced in the original Hot Springs Reservation were being filed in the Court of Claims of the United States, a certain man (whose name I do not remember) claiming to represent the heirs of Don Juan Filhiol, came to the town of Rockport, then the county site of Hot Spring County, for the purpose, as he stated, of filing the claim of said heirs under an old Spanish grant to the said above-described property.

After thoroughly examining the records of the county and finding that nothing appeared of record in regard to said Filhiol claim, while the claims of Gaines, Rector, Hale, and others had been properly recorded according to the requirements of the law, he remarked to me that as neither he nor the heirs had the necessary proofs to make their claim of any value, he deemed that it would be a waste of both time and money to enter into litigation with the Government for said property, and that he had concluded to abandon the prosecution of said Filhiol claim.

Since that time I have never heard anything more of the Filhiol claim until within the past few days.

HENRY C. BAKER, M. D.

Sworn and subscribed to before me, Ed. H. Johnson, an acting and duly qualified notary public in and for the county of Garland and State of Arkansas, on this the 10th day of April, 1894.

[SEAL.]

ED. H. JOHNSON,

Notary Public for Garland County and State of Arkansas.

(My commission expires June 6, 1897.)

HOT SPRINGS, ARK., March, 1894.

The House of Representatives, Washington, D. C. :

The undersigned, citizens and residents of Hot Springs, Ark., respectfully protest against the passage of House bill No. 5160, whereby the Filhiol claimants ask the United States Government to waive its sovereignty for the purpose of permitting and authorizing said claimants to file their suit in the Court of Claims against the United States, wherein they seek to contest the title of the United States of America to the permanent Hot Springs reservation.

Your petitioners state that for a period of more than fifty years the ownership of and titles to said estate was claimed by divers parties, and the Congress of the United States finally passed an act authorizing and warning all claimants thereto to file their claims and set up their titles in the Court of Claims. In pursuance thereof divers parties brought their suits, and after tedious litigation it was finally determined and adjudged by the Supreme Court of the United States that the title to said land remained in the United States of America.

After said decision, by act of Congress, all of that part of the lands involved in said suits out of which flows the hot water was, with other lands, forever reserved from sale, and a commission appointed to pass upon and determine the rights of the occupants of said premises.

Your petitioners believe that the concession of the Filhiol claimants, granting a quitclaim to all persons claiming through or under the United States, is a delusion and a snare, designed to seduce our attention from the gravity of the calamity threatened by said bill. Instead of accepting the amnesty offered by said claimants, the holders and owners of property in Hot Springs invite them to a contest over the validity of the title to private property here, feeling confident that any claim they might have once had has been forever barred by lapse of time. But we earnestly protest against the United States waiving its sovereignty for that purpose.

Your petitioners believe it is impossible that any persons claiming under Spanish grant can have a valid claim to any lands in Hot Springs, because of the great lapse of time since said grant and the notice heretofore given to claimants by proceedings of Congress, commission, and litigation in courts.

While said claimants, with a semblance of generosity, consent that all individual interests shall remain free from their claims, at the same time they seek title to that which is the basis of all values in property here:

Your petitioners represent that large investments have been made and improvements have been erected here, at the expense of millions of dollars, upon the faith of bath-house and water privileges granted by the United States Government, which will be a total loss and valueless if the right to withhold a continuance of such privileges shall pass into private discretion and power.

That the mere passage of this bill and the filing of the suit authorized thereby will have the effect to destroy all values and involve what is now a prosperous and progressive city in bankruptcy, ruin, and desolation.

Your petitioners believe that the said claim is without merit, but the proceedings sought to be brought under the provisions of the bill will inflict an injury upon this city impossible to estimate in dollars or to describe in language.

Wherefore we pray your honorable body to reject said bill and thereby avert the disaster which now threatens us, and your petitioners will ever ask and pray.

E. C. Harp, druggist.

W. H. Moyston, ex circuit clerk.

T. M. Baird, physician.

H. C. Rogers, physician.

O. S. Field, bookkeeper.

J. R. Bogan, clerk.

Lyman F. Hay, manager The Arlington.

J. D. Hays, M. D., resident physician.

J. D. McKown, arch't and C. E.

J. G. Lonsdale, real estate.

J. C. Sorensen, upholster and harnessmaker.

Frank Maw, tea and coffee merchant.

Alf. Amand, M. D., physician.

Jos. S. Horner, M. D., resident physician.

Cooper Bros., livery.

John H. Gaines, M. D.

Edwin Rice, carpenter.

J. F. Spurlin, county treasurer.

A. E. Dow, lumber dealer.

Geo. W. Bray, city jailor.

John Jordan, policeman.

P. J. Roy, merchant tailor.

E. C. Homfrert, tailor.

J. M. Roren, tailor.

John Mornahan, tailor.

John Chalmers, tailor.

[NOTE.—Part 1, the report of the majority, has not been submitted.]

HEIRS OF DON JUAN FILHIOL.

JULY 20, 1894.—Ordered to be printed.

Mr. BOATNER, from the Committee on the Judiciary, by unanimous consent, submitted the following

VIEWS OF THE MINORITY:

[To accompany H. R. 5160.]

The undersigned, being unable to concur in the report of the committee in this case, submits to the House the following as his view in relation thereto.

C. J. BOATNER.

The heirs of Don Juan Filhiol, citizens of Louisiana, Mississippi, and Texas, claim title under a perfect Spanish grant made February 22, 1788, to 1 square league of land in the State of Arkansas, "on the north side of the river Ouachita, at about $2\frac{1}{2}$ leagues' distance from said river Ouachita, and understanding this land is to be measured so as to include the site or locality known by the name of Hot Waters," whereof juridical possession was given him on December 6, 1788, by Carlos Trudeau, the surveyor-general of the province. The grant is tested by the secretary of the governor, and the three signatures have been compared with recognized genuine originals, and there can be no question of their genuineness.

Don Juan Filhiol was the military and civil commandant of the post of Ouachita for many years, and his life forms a part of the early history of Louisiana.

A bill similar to the one now pending was introduced by Mr. Eustis in the Senate during the Fiftieth Congress and referred to the Committee on Private Land Claims. In that committee the question was raised that under one of the acts of Congress of March 3, 1805, April 21, 1806, March 3, 1807, or May 26, 1824, the holder of a perfect grant was required to present it for confirmation to a board or to the district court; and it now appears that a report to that effect was made by the Commissioner of the General Land Office to said committee, and, apparently in consequence thereof, the committee never made a report upon said bill.

From an inspection of the acts themselves it will be manifest that no such presentation was required under any of them. The instructions given by the Secretary of the Treasury to the register of Louisiana in relation to his duties under these acts, dated March 30, 1805, contain his direction that perfect grants were not required to be filed before the Board of United States Commissioners or before any officer or court.

In addition thereto, however, the matter has been judicially construed by the Supreme Court, and the same conclusion has been reached. (*See the following cases: United States v. Roselius, 15 How.,*

30; *Freimont v. United States*, 17 How., 542; *Botiller v. Dominguez*, 130 U. S., 238.)

In consequence of this nonaction on the part of the Senate committee, and in order to obtain judicial findings in accordance with the rules laid down by the Supreme Court, the holders of this title filed their petition in the Court of Claims for rent. The record in the case shows that the Government was well represented, both in taking the testimony and in the management of the case before the court, where it was fully and elaborately tried. Subsequently a reargument was ordered and had thereon, and on December 31, 1892, the court rendered its opinion, in which it says:

The findings of fact may be briefly stated as follows:

The decedent, Don Juan Filhiol, departed this life in 1821; claimant was appointed administrator as alleged in said petition; said decedent was a native of France, and came to New Orleans in 1779; joined the volunteers when Spain took possession of Florida and Pensacola; in 1783 was appointed by the King of Spain commandant of the army and militia assigned to duty at the post of Ouachita under the orders of Don Estovan Miro, governor-general of the Province of Louisiana; that he received from said Miro the grant or instrument in writing, described as Exhibit B to said petition, which purports to be a grant of the land in controversy; that the land and particular surveyor of the Province of Louisiana gave to said decedent the certificate or instrument in writing, described as Exhibit D to said petition, (which is claimed by petitioner as having the effect of putting said decedent in the actual possession of the land in suit); that in the year 1802 the said decedent sold to his son-in-law, and in 1806 received from him, a deed of retrocession, as shown in Exhibit H of the petition. Aside from the legal effect of what might be presumed from the certificate of the surveyor, it does not appear that the said decedent or any of his heirs, tenant, or assigns ever had actual possession of the land described in the grant from Miro to the said decedent.

The said decedent claimed said land, and after his death his heirs continued to claim title to it, until the bringing of this suit by claimant. In the year 1828 an agent of the heirs commenced suit in the superior court of the Territory of Arkansas in his own name. It does not appear that he had any title to the land or any connection with the interest of the heirs except that of agent. This suit was instituted under the act of 1824, and was dismissed by the court because of the failure of the plaintiff to file the grant under which he claimed. Between said time and 1841 the heirs, for the purpose of prosecuting their rights, placed the papers in relation to their claim in the hands of Rezin P. Bowie, who was a land agent and who died in the year 1841. Shortly after his death search was made for the papers belonging to the heirs of said Filhiol, but they could not be found. About the year 1883 another search was instituted, which resulted in finding among the effects of said Bowie the papers upon which this suit is brought, and which appear at length in the pleadings and findings. In the year 1869-'70 the heirs of decedent caused to be introduced into the House of Representatives a bill to confer jurisdiction on the Court of Claims to determine their right to the land in dispute; the bill failed to become a law. The parties in interest failed to assert any right under the provisions of the act of 1870 (16 Stat. L., 14) or the act of 1877 (19 Stat. L., 377), and were not parties to the judicial proceedings under said statutes.

There was no contract for rent, and the Government having taken possession as owner in 1877, after the decision in its favor adverse to the settlers who were claiming under the land laws of the United States and who had previously occupied it, there could be no "implied contract" under the jurisdictional act of the court, and the court, holding that it was not given jurisdiction under the Tucker Act, dismissed the petition.

In this connection the court says that the findings show that the defendants took possession of the land in controversy, claiming the right of ownership, and have continuously held it, claiming it as property of the United States, and that, therefore, if the United States had no title to it or right justifying possession, it was a wrong on the part of the defendants, and any proceeding founded upon that taking or incident to it is an action sounding in tort within the meaning of the act entitled "An act to provide for the bringing of suits against the United States."

This grant being perfect—that is, requiring nothing else to be done to it—carried an absolute title, and neither the retrocession by Spain to France nor the cession by France to the United States could in any way impair its force and validity or otherwise affect it. That property which had been granted could not be ceded (*Strother v. Lucas*, 12 Pet., 410; *Dent v. Emmeger*, 14 Wall., 308).

The United States took possession of this property in 1877, for many years prior to that time it having been occupied adversely by sundry persons who claimed to own it under a New Madrid certificate and under the land laws of the United States, claiming adversely to the United States, and they and those holding under them having exclusive possession and absolute occupation. The rights of all of them were decided adversely under the act of 1870, and, as above stated, in 1877 the United States for the first time obtained possession.

It is manifest that the United States acquired no title by the act of French cession as against the Spanish title of the Filhiols, for the title had passed out of the Spanish King in his grant to Filhiol prior to his retrocession to the French, under and by virtue of which the French ceded to the United States. Then, has anything happened or been done whereby the United States acquired title since it took possession in 1877, or whereby that complete title of the Filhiols has been impaired?

There are but three modes in which the United States can acquire title, to wit: (1) By cession under treaty; (2) by purchase or contract for agreed price; (3) by condemnation under the right of eminent domain for Government use.

Article 5 of the amendments to the Constitution expressly provides that no person shall be deprived of "property without due process of law, nor shall private property be taken for public use without just compensation."

The distinction between prescription and the statute of limitations is marked. Prescription presumes the loss of right by abandonment, or that no right adverse to the party in possession ever existed. The statute of limitations is, as its terms indicate, an artificial barrier interposed to the assertion of legal rights judicially, for reasons of public policy. From the cases cited and for the reasons given, it seems to be very clear that, however unequal the contest between a citizen and the Government, neither defense can be interposed in this case with ultimate success.

It is manifest that the United States can never acquire title by prescription. It is limited to act under the Constitution. It is a government of limited powers; and it is too manifest for discussion that, in the face of the fifth amendment, the United States can never constitutionally and legally acquire property by prescription; and if it possesses property otherwise than in the mode prescribed by the Constitution, it does so simply by the right of power and force, and without constitutional authority. (*See Meigs v. McClung*, 9 Cr., 16; *Wilcox v. Jackson*, 13 Pet., 498. *See also Lee v. United States* (Arlington case, by Justice Miller), 106 U. S., 196.)

The United States may hold property by refusing to allow itself to be sued; but that is not acquiring title. As Mr. Justice Miller said in a similar case (*Klein*, 13 Wall.):

The proceeds remain in a condition where the owner can not maintain a suit for its recovery and the United States can obtain no perfect title to it.

If the grant made to Don Juan Filhiol, the commandant of the Ouachita, by Governor Miro, is valid, then it is protected by a solemn treaty of the United States with France (article 3 of the treaty of 1803) as well as by the law of nations (*Strother v. Lucas*, *supra*).

A change of government does not affect preexisting rights of property, and these titles were not required to be presented to any board or court. (*United States v. Roselius, supra.*)

It is a notorious fact that there are many thousands of citizens in Louisiana, Arkansas, and Missouri who are to-day holding their homes under a similar title to this, the simple difference being that the United States has never by force taken possession of theirs.

In the ninth finding in the case above referred to the Court of Claims finds the fact that the lands in this section were surveyed in 1838 by the United States. We have also seen that at the time of the death of Rezin P. Bowie, their attorney, in 1841, he had possession of the grant papers of the Filhiols, "Don Juan Filhiol himself having departed this life in 1821;" so that the reason why no suit was brought from the time that the public lands were surveyed until the finding of the grant papers a few years ago is fully and entirely explained by the adjudicated facts in the case above referred to. The circumstances exculpate the Filhiols from every suggestion of laches. Indeed, it is important to note in this connection that the United States was not in possession through any officer or agent until it took possession by the military in 1877, and since then, if the Government could acquire title by prescription, the twenty years have not elapsed.

PERFECT GRANT MADE BY COMPETENT AUTHORITY.

The sole authority to make grants and to make distribution of the royal lands was vested in the governor by royal decree of the King of Spain of August 24, 1770, and there remained until taken from him by the royal decree of October 22, 1798. (*Vide* No. 12 of instructions in 2 White, 230; No. 14, 2 White, 180; *Choppin v. Michel*, 11 Robinson (La.), 233; *De Armet v. Mayor of New Orleans*, 5 La., 132.)

It is true the King took from the governor this authority, but that was by decree of October 22, 1798, ten years after the Filhiol grant was made.

As is shown by a number of decisions of the Supreme Court of the United States the usual practice was that an applicant for a grant filed a request or petition for it, and, if allowed, a grant was made in general terms, and a survey was then made, as provided by the instructions cited above. If the survey was approved a formal grant was then made. This constituted a "perfect grant." (*See United States v. Hernandez*, 8 Pet., 486; *United States v. Hanson*, 16 *id.*, 200; *United States v. Boisdore*, 11 How., 92.)

Now, an examination of the grant and of the certificate of judicial possession in this case shows that this was exactly what was done and the grant recites and approves the survey.

A grant which was complete under the Spanish government of Louisiana required no confirmation to give it validity under ours. (*Vargner v. Elkins*, 17 La., 220, 2 How., 318; *Nixon v. Hamilton*, 20 La., 515.)

A confirmation of title by the commissioners of the United States can not avail against a complete title under the Crown of Spain. (*White v. Walls*, 5 Martin (La.), 652.)

NEEDED NO AID OF THE UNITED STATES AUTHORITIES TO VALIDATE THEM.

A complete title to the land ceded by France to the United States needed no legislative confirmation. (*Magnire v. Tyler*, 8 Wall., 650.)

Perfect titles made by Spain were intrinsically valid and needed no sanction from the legislative or judicial departments of the Government. (*United States v. Wiggins*, 14 Pet., 334.)

It is too manifest to require argument that people holding complete or perfect grants before the cession to the United States have never been under any obligation to seek judicial recognition of their title. Much realty is so held in Louisiana to-day, and the grants merely are recorded as ample muniment of title, and are the sole title, and they never had any judicial recognition, but which, under the laws of Louisiana, are what is legally designated as "authentic," and that proves itself.

THE PRESENT STATUS OF THE PROPERTY.

Except possibly for the use of the Army and Navy Hospital, the power of the General Government under the Constitution to carry on a bath-house leasing business is involved in great doubt. But, be this as it may, the Congress of the United States clearly has no right, year after year, to expend large sums of money on the improvement of the creek and of the roads, and in ornamentation of the grounds of this reservation, for the mere benefit of the individuals who gather enormous profits by running the bath-houses.

These baths are rented by the Government at the rate of \$30 per tub per annum, and the gross amount realized thereby is \$16,780. After deducting salaries, etc., the net amount of income is \$10,380 (*see* current report of Secretary of Interior, 69), which is "held and expended by the Department in carrying on improvements on the Hot Springs Reservation."

It is claimed that there are 45,000 annual visitors at these baths, and \$10 for baths would surely be an exceedingly small average amount by each, and it is believed that twice that sum would be an underaverage. But at an average of \$10 for each visitor there is \$450,000 realized, all of which, over \$16,780, is profit to the bath-house lessees, and that \$16,780 goes entirely into the expense of managing the property and its improvement. Manifestly, the whole property is run for the benefit of the bath-house lessees—certainly the United States has no interest therein.

The Army and Navy Hospital at Hot Springs is run out of the annual appropriations for Army and Navy hospitals.

The following table shows the permanent investments made by the Government in the improvement of the creek, roads, grounds, hospital buildings, reservoir, etc.:

To improve Hot Springs Creek (22 Stat., 329)	\$33,744.78
To improve Hot Springs Creek (23 Stat., 208)	75,000.00
To improve Hot Springs Creek (23 Stat., 498)	8,000.00
Army and Navy Hospital (23 Stat., 504)	32,500.00
To improve Hot Springs Creek (24 Stat., 239)	20,000.00
Army and Navy Hospital (24 Stat., 245)	27,000.00
Army and Navy Hospital (24 Stat., 265)	8,952.00
Hot Springs reservoir (25 Stat., 527)	36,000.00
Repair of hospital, etc. (25 Stat., 915)	8,490.00
Improvement of Hot Springs (26 Stat., 40)	3,200.00
Army and Navy Hospital (26 Stat., 515)	2,000.00
Improvement of Hot Springs (26 Stat., 523)	5,000.00
Construction of roads (26 Stat., 972)	5,000.00
Hot Springs reservoir (27 Stat., 373)	30,000.00
Army and Navy Hospital grounds (27 Stat., 376)	7,960.00
	<hr/>
	302,846.78
For Hot Springs commissions, etc (19 Stat., 356)	27,500.00
For deficiency for above commissions (20 Stat., 12)	15,000.00
Salaries of clerks, etc., for above commissions (20 Stat., 415)	12,000.00
	<hr/>
Total	357,346.78

In addition to this sum by direct appropriation the following items are also permanent investments, to wit:

Amount of certificates issued by Hot Springs commissions for condemned buildings (Report of 1880, p. 4).....	\$74,696.00
Amount accruing from sale of public lots under offering of 1891, and available for improvement of Hot Springs under act of March 3, 1877.	74,255.00
Amount received from water and ground rents, and expended for salaries, improvements, etc.....	105,742.65
Total	254,693.65

Making a total permanent investment of \$612,040.43.

The superintendent, in his report for the current year, makes the following estimate as needed for additional improvements:

Hot-water supply	\$9,719.44
Hot Springs Mountain.....	35,323.85
West Mountain.....	32,656.60
North Mountain.....	12,700.00
Lake reserve.....	48,780.00
Hot Springs Mountain.....	62,557.70
West Mountain.....	98,374.80
North Mountain.....	12,750.25
Hot-water supply	24,574.50
Creek arches.....	19,995.00
Total	357,412.14

LIABILITY OF THE UNITED STATES TO SUIT.

There can be no doubt or question of the legal right of the Filhiols to maintain an action in the courts of the State or the United States against the superintendent or other parties in possession under the United States to recover this property, as we shall presently see by a brief examination of a few cases adjudicated by the Supreme Court of the United States, and their reason for presenting this bill will thereafter be shown.

The case of *Meigs v. McClung* was an action of ejectment for a tract of land above the mouth of the Hiawasse in territory which had been ceded to the United States by North Carolina. The action was based on a patent prior to the cession, and in this respect is entirely analogous to the position which the Filhiols occupy, as they hold a perfect grant prior to the retrocession of the territory by Spain to France, as well as prior to the cession by France to the United States, which grant is expressly protected by the treaty of San Ildefonso and by article 3 of the treaty of 1803, whereby the United States acquired Louisiana.

In the *McClung* case the United States was in possession of the *locus in quo* as a military post, had expended \$30,000 on the barracks, and had been in possession from 1788 to 1815. The suit was brought by the owner against the military officer in possession holding for the United States. The opinion in the case was delivered by Chief Justice Marshall, and in concluding it he says:

The land is certainly the property of the plaintiff below, and the United States can not have intended to deprive him of it by violence and without compensation.

Another important point in this case is as to the validity of service upon the Government officer in possession to bring the United States into court. That point is specially considered by Mr. Justice Miller in the *Arlington Case* (106 U. S., 211). With his accustomed thorough-

ness Justice Miller had hunted up the original record in the case, and on this particular point he says:

The very question now in issue was raised by these officers, who, according to the bill of exceptions, insisted that the action could not be maintained against them, "because the land was occupied by the United States troops and the defendants as officers of the United States, for the benefit of the United States, and by their direction." They further insisted, says the bill of exceptions, that the United States had a right, by the Constitution, to appropriate the property of the individual citizen.

The case of *Wilcox v. Jackson* (13 Pet., 509) was an action of ejectment in the State court of Illinois, brought against the military commandant of Fort Dearborn military reservation, claiming solely as such on behalf of the United States. The purpose of the action was to recover a portion of the reservation. The case being decided adversely to the United States below, Wilcox sued out a writ of error to the Supreme Court of the United States.

The post was established in 1804, and was from that time used and abandoned by the Government from time to time. The plaintiff's grantor had made a preemption in 1835, having been in possession of the small inclosure since 1819. The Supreme Court held that the defendant in error had acquired no title. The point of the sufficiency of the service upon the Government officer in possession to bring the United States into court does not seem to have been expressly made in this case, as it was in the *McClung* case; but on page 515 the court says:

Wilcox, the defendant in the original suit, did not claim or pretend to set up any right or title in himself. He held possession as an officer of the United States, and for them and under their orders. This being the state of the case, the question which we are now examining is really this, whether a person holding a register's certificate without a patent *can recover the land as against the United States*.

Service upon the Government officer in possession, then, was sufficient to bring the United States into court. The case was so construed by Mr. Justice Miller in the *Arlington* case.

The *Arlington* case (*United States v. Lee*, 106 U. S., 196) was an action of ejectment against the two Government officers in charge of the national cemetery and of Fort Myer, brought by Gen. Custis Lee to recover the *Arlington* estate, which had been sold for direct taxes and bid in by the United States, and thereafter it was used as a soldiers' cemetery and as a military post. The opinion of the court was delivered by Mr. Justice Miller, and embraces some 36 pages. The point was expressly made, and strongly pressed, that service upon the Government officers in possession was not sufficient to bring the United States into court, and thus to try its title. In this vigorous and elaborate opinion this proposition is expressly considered and overruled, and it is held upon the decided cases that such service was sufficient to bring the United States into court to test its title. It was held that the title was insufficient, and judgment was rendered in favor of Gen. Lee, from whom the Government subsequently purchased the property.

These decided cases reported by the Supreme Court show clearly that the United States can be made a party in a suit by the Filhiols by service on the superintendent in charge, or upon any one in possession holding as lessee under the United States. The *Meigs-McClung* case shows that a title prior to the cession must prevail against the United States, and that though the owner has never had possession and though the United States has been in uninterrupted actual possession for Government purposes involving the public protection and welfare for twenty-eight years, not only can a suit be maintained, but the owner must recover.

Nevertheless the heirs of Filhiol fully understand and appreciate how unequal the contest is between a private citizen pursuing his legal rights against the Government, how difficult it is for an individual to obtain justice as against a wealthy and powerful Government, and, desiring to avoid the long and expensive litigation to which they would be subjected, they ask the passage of this bill.

The bill is modeled on the act of 1870, which referred the claimants of the same property, under the land laws of the United States, to the Court of Claims, with the right of appeal to the Supreme Court, and with the provision for the Attorney-General's appearing and for speeding the cause in both courts. It differs from that bill, however, in the material particulars that it gratuitously concedes to the United States water and land for its hospitals and protects its grantees. These concessions are important and valuable to the Government. This bill is in the nature of a compromise. It provides, by reference to the Court of Claims, for carrying the whole case directly and specially to the Supreme Court for final adjudication. It is important to all parties—the Government and its grantees, as well as the holders of this title—that it should be adjudicated as speedily as possible.

As we have seen, this bill makes liberal and large concessions to the United States and its grantees as the price of a speedy determination of litigation, and the bill therefore is a compromise one; but the committee rejects it and reports adversely.

To say nothing of the wrong and injustice to the citizen, whose rights the Government is at all times bound to protect, here is a case in which that Government, for a great national consideration (the free navigation of the Mississippi), has solemnly plighted its honor as a nation in a treaty to protect this and all such titles, which peculiarly makes it a gross indecency that the United States should, through any law of its own making, impede the judicial administration of justice, and by the abuse of power retain and hold on to private property to which it has no shadow of legal right. The position of the Government is exactly analogous to the conduct which right-thinking people condemn in the highwayman.

THE PRETENSE OF PROBABLE FRAUD.

During the consideration of this bill by the committee there was read before it a letter dated June 5, 1890, from William M. Stone, Acting Commissioner of the General Land Office, purporting to be responsive to a letter from a member of the Senate Committee on Private Land Claims. The attempted legal argument by Mr. Stone against the claim presented has been fully answered in this report by reference to decided cases; but he placed much stress upon the fact that one Ball, as agent of the Filhiols, filed in his own name a claim under the act of May 26, 1824, for this property, in the district court of Arkansas, and adds that it was "dismissed November 3, 1829, and Ball ordered to pay the costs, as shown by the docket."

This indicates that Mr. Stone had the docket before him; but he suppresses the truth as to why it was dismissed, and very ingeniously and disingenuously suggests thereby that said petition was dismissed upon its merits. The decision of the Court of Claims in the suit for rent, however, says:

The suit was instituted under the act of 1824 and was dismissed by the court *because of the failure of the plaintiff to file the grant under which he claimed.*

This docket entry is important as showing that the original grant itself was lost at that time, to wit, November 3, 1829, otherwise the fact stated by Mr. Stone is wholly without consequence, as the cases herein cited conclusively show that the acts of 1824 and 1844 did not confer jurisdiction of perfect grants.

Mr. Acting Commissioner Stone calls attention also to an open letter by District Attorney Roane to Grammont Filhiol, communicated for the Arkansas Gazette of May 17, 1830, in which he asserted that the claim was fraudulent in its inception, but he ignores the answer of Mr. Filhiol on file with Roane's letter. Roane claimed that he "clearly proved the claim a forgery," and a man called "Judge" McLaughlin did make an affidavit that he himself was connected with sundry fraudulent transactions in relation to deeds (not grants) about the time of the cession, antedating the same, and that one Juan Pierre Landerneau made to one Juan Filhiol a deed to the Hot Springs, and John Filhiol to one Burgat. But, besides the self-confessed infamy of McLaughlin to contradict him there is the genuine grant by Governor Miro, witnessed by his secretary, and the genuine certificate of juridical possession by Surveyor-General Trudeau; also the cession by Don Juan Filhiol to Narcisso Bourgeat, dated November 25, 1803, executed before Lieut. Fejiero, then the civil and military commandant of the post, and witnessed by Baron Bastrop and Joseph Pomet, names well known in the history of that country, which cession was duly recorded in the parish of Pointe Coupee on July 17, 1806, under number 2607.

There is also the retrocession by Narcisso Bourgeat to Don Juan Filhiol, of this and another tract of land, on July 17, 1806, executed before J. Poydras, judge of the court of the parish of Pointe Coupee, which is also registered and recorded in the land office of the State of Louisiana.

Surely no more complete answer could be given to the absurd and false statements in the letter of Mr. Stone above referred to.

The honorable positions filled by Don Juan Filhiol, and the civil and military services which he rendered, show quite conclusively that he could have got anything he wanted from the Spanish Government by asking for it, that he was a man of distinction and high character, and they indicate the absurdity and stupidity of the charge of forgery coming from such a man as McLaughlin has shown himself to be.

THE APPLICATION OF FILHIOLS FOR EXTENSION OF TIME.

The parties whose titles were held invalid, under the act of 1870, were accorded a day in court by that statute and their case expedited, and the whole act was shaped to cover their cases, which had been pending for years in the Department of the Interior, and were readily brought within the ninety days allowed. While these cases were still pending before the court (*see* the conclusion of the appendix to this report), the Filhiols endeavored to secure the passage of a bill allowing them to go into court at the same time. The bill was favorably reported, but appears not to have been reached on the calendar. The report is interesting and important, and I make it an appendix hereto.

THE ACTION OF THE COMMITTEE

Refuses the right under this bill to sue in the Court of Claims, with an appeal on the whole case, law, and facts to the Supreme Court of the United States, the cause to be speeded in both courts. And now let us

see from the indisputable facts, taken from the official reports of the Secretary of the Interior, in whose interest and in whose behalf it is intended by the political branch of the Government that this great wrong shall be perpetrated. Whatever be the view of the committee, we have seen that the injustice of this action is not in the interest of the United States, but is solely in the interest of the bath-house lessees.

There is not less than \$450,000 annually paid for baths at Hot Springs. Of this sum the Government gets \$16,780 in the form of rent for tubs and ground rent of the Arlington Hotel, every dollar of which is spent in salaries and improvements. The balance goes to the bath-house lessees, who furnish not even towels or service of attendants.

[House report No. 263, Forty-third Congress, first session.]

The Committee on Private Land Claims, to which was referred the bill (H. R. 608) extending the time for filing suits in the Court of Claims to establish title to the Hot Springs Reservation, in Arkansas, report thereon as follows:

The descendants of Don Juan Filhiol claim title to a tract of land known as the Hot Springs tract, situated in the State of Arkansas. Their memorial shows that there are missing links of title, or at least such a cloud upon the title that they are induced to ask Congress either to confirm their title or to allow them thirty days to bring their suit in the Court of Claims to establish it.

A former act of Congress, June 11, 1870, gave these parties ninety days within which to bring their suit. They failed to bring it within the time; hence their application for the further extension of time.

In support of their claim, they say that their ancestor, Don Juan Filhiol, was an officer in the Spanish army in the war between Spain and England, and acted as the commandant of the post of Ouchita, in the province of Louisiana, then belonging to Spain; that, as a recompense for this and other military services, sundry grants of land were made to him, among the number the Hot Springs tract, by Don Estovan Miro, then Spanish governor-general of the province of Louisiana, and who was authorized to make such grants; that the grant to the Hot Springs tract bears date 12th December, 1787, but the original grant is not produced before the committee. The reason given for its non-production will be alluded to in another connection.

The memorial further states that Don Juan Filhiol sold said Hot Springs tract to his son-in-law, Narcisso Bourjeat, by deed dated November 25, 1803, and a copy of such deed is exhibited. That said Bourjeat resold said land to Don Juan Filhiol, by deed bearing date July 17, 1806, and a copy of such deed is produced.

It is further stated that Don Juan Filhiol was married in 1782; had three children; that his wife died before he died, and that he died in the year 1821, about 81 years of age, and that memorialists are his lineal descendants.

They further state that Grammont Filhiol, son of Don Juan Filhiol, has, from time to time, for the last fifty years, employed different agents and attorneys to prosecute their claim, but that they had either neglected to do so, or they, by collusion with others, endeavored to secure the land for themselves.

The deed from Don Juan Filhiol refers to a grant from Don Estovan Miro, as the basis of the claim of Don Juan Filhiol. This recital, however, would only be evidence as between parties and privies to the deed, and would not be evidence to establish the existence of the original grant as against strangers and adverse claimants.

The original grant remains unaccounted for, except by a probability that is raised by circumstantial statements that it was burned at the time the old St. Louis Hotel was burned, in New Orleans, in 1810, or that it was sent to the governor-general of Cuba, or was sent to the home government of Madrid.

The memorialists have filed with the committee a paper purporting to be a copy of a grant answering the description of what they allege was the original. There is also a copy of a certificate and figurative plan, accompanying the supposed copy of the grant, made by Don Carlos Trudeau, surveyor-general of Louisiana under the government of Miro and Carondelet.

The evidence of Lozare shows that Don Juan Filhiol during his life claimed the land. Other evidence shows that he leased the springs to one Dr. Stephen P. Wilson about the year 1819; but there is no evidence before the committee to show that Don Juan Filhiol, or any one claiming under him, ever had the actual possession of the land.

By the report of the Hon. Thomas Ewing, the Secretary of the Interior, June 24, 1850, Senate Executive Document No. 70, Thirty-first Congress, 1849-'50, vol. 14, it appears that the Interior Department had the whole subject of the Hot Springs before it, and to which reference is made for the detailed history.

We, however, may allude to the leading facts presented in the report:

One Francis Langlois claimed title to the "Hot Springs" by virtue of a New Madrid location certificate, dated November 26, 1818, pursuant to the act of Congress, February 17, 1815, for the relief of the citizens of New Madrid County, Missouri Territory, who suffered by the earthquake.

S. Hammond and Elias Rector applied to the surveyor of public lands for the State of Illinois and Territory of Missouri for an entry or donation of land to include the Hot Springs on the 27th January, 1819.

The widow and children of John Perceval filed in the office of the Interior Department in 1838, or some year prior thereto, a caveat to suspend the issuance of a patent to any other claimants and setting up a claim for themselves under the pre-emption act of 1814, and showing by proof that John Perceval had possession of land as early, perhaps, as 1814, and held the possession to the time of his death; and that his widow and children, by themselves or tenants, had held the possession up to the filing of their caveat.

About the year 1841 Ludovicus Belding and William and Mary Davis set up a claim to the land.

On the 1st March, 1841, Congress passed "An act to perfect the titles to the lands south of the Arkansas River, held under New Madrid locations and pre-emption rights under act of 1814."

These lands had not been subject to location and pre-emption prior to 24th August, 1818, the date of the Quapaw treaty, which extinguished the Indian title.

On the 26th April, 1850, Hon. S. Borlan, as agent of Grammont Filhiol, set up a claim of title to the Hot Springs, based upon the Spanish grant before alluded to, and applied to the Department for time to prepare and present the claim. This was the first time the claim was brought legally to the notice of the Government.

On the 20th April, 1832, Congress passed an act reserving the Salt and Hot springs from entry or location, or for any appropriation whatever.

The Department of the Interior was much embarrassed in the disposition of these conflicting claims. The opinion of the Attorney-General was invoked. He decided in favor of the Langlois claim on the 29th April, 1850, but it does not appear that the Filhiol claim was prepared for his action at the time. But before the patent could issue caveats were filed and suspended the issuance; and no patent has issued from the Government since that time.

It does not appear that any steps were taken for the settlement of these claims from the year 1850 to 1870. In 1870 Congress passed the act authorizing the different claimants to have their titles adjudicated in the United States Court of Claims, and allowing them to bring suits.

On the 26th day of May, 1824 (4 U. S. Stat., p. 52, sec. 1), Congress authorized claimants to lands in Missouri, under any French or Spanish grant, concession, warrant, or order of survey, legally made, granted, or issued before the 10th March, 1804, and which was protected or secured by the treaty between the United States and France on 3d April, 1803, might petition the district court of Missouri and have such claims established.

By the fourteenth section of this act the same provision was applied to similar claimants in the Territory of Arkansas, and was to continue in force until 1830.

This act was revived by section one, act of June 17, 1844 (5 U. S. Stat., 676), and continued in force five years from date of its passage.

The Supreme Court of the United States held these acts only conferred jurisdiction on the courts to hear and determine upon imperfect grants. (9 Howard, p. 127; 11 Howard, p. 609.)

It is contended that the Filhiol grant, assuming the existence of such grant, did not fall within the jurisdiction of the court, as it was not an "imperfect grant," but a perfect grant which had been lost, mislaid, or suppressed. The jurisdiction of the court being limited by statute, it, perhaps, would not have stretched the jurisdiction far enough to have set up and established the existence of the missing grant so as to give effect to it. The whole train of decisions on kindred questions show that the courts of the United States have confined themselves quite rigidly to the authority conferred by act of Congress.

On the 22d June, 1860, Congress passed an act for the final adjustment of private land claims in the States of Louisiana, Florida, and Missouri, *but by a singular omission did not include Arkansas*. This act authorized the courts to determine the cases according to equity and justice.

In 1801 Spain, by the treaty of Saint Ildefonso, ceded the territory of Louisiana to France. By treaty of April 30, 1803, France ceded Louisiana to the United States, the United States claiming the river Perdido as the eastern boundary, while the

Spaniards claimed the Mississippi as the western boundary, and held possession to the Mississippi, except the island of New Orleans, until 1810, when the United States took possession by force.

Spain continued to make grants and concession of lands to persons within the disputed territory until 1810, but both Congress and the courts declared all such grants made after the treaty of Saint Ildefonso in 1801 actually void. These parties claimed also that the United States were bound to perfect any incomplete titles according to the stipulations of the treaty of cession of the Floridas by Spain February 22, 1819. But Congress and the courts in like manner held that this treaty did not embrace the disputed lands.

After Congress and the courts had been worried more than a half century with these claims, and the mind of Congress being affected with the idea that many of these claims rested upon a well-grounded equity, by the act of June 22, 1860, enlarged the jurisdiction of the courts to cases of *equity* as well as *law*.

Parties came in under this act and had their claims adjudged valid which had been previously adjudged void.

The case of the United States *vs.* Lynd (11 Wallace R., 632) embodies the history of the Congressional and judicial proceedings in these cases.

This committee has been unable to perceive any reason why Congress did not extend the provisions of the act of 1860 to private land claims in the State of Arkansas. To remedy the omission, however, Congress passed the act of 1870, which opened the doors of the Court of Claims to claimants from Arkansas, and within the time allowed by the act the claimants have all commenced their proceedings, except the Filhiol heirs.

The committee might indulge in some criticisms on the want of due diligence on the part of the Filhiol heirs; but the want of diligence is more apparent than actual.

From necessity their appearance in court must be by attorney. They were timely in the employment of such attorney; but their attorney, as charged by them, was delinquent. Whether this delinquency of the attorney was from accident or design, we do not think ought to be visited upon the claimants as a forfeiture of their rights, whatever they may be.

There have been great embarrassments from the want of proper tribunals to determine the various perplexing questions growing out of private land claims. The claimants could not be held responsible for the defects of these tribunals. Ancestors have spent their lives pursuing their claims through land offices, through Cabinet offices, through Congress, and through the inferior and appellate courts, without success, and have left their descendants to renew the contest under the disadvantage of loss or weakening of evidence from lapse of time.

After the purchase of the Floridas, in 1819, and the extinction of all the asserted claim of Spain to any part of the territory between the Perdido and Mississippi rivers, and the extinction of Indian titles, Congress has manifested a liberal disposition by the passage of different remedial acts (even extending to cases previously adjudicated, as in the Lynd case, 11 Wallace).

Your committee, keeping in the line of this liberal policy, feel warranted in recommending the passage of the bill. They do so the more readily as *the contest is still pending in the Court of Claims, where the rights of all parties may be finally settled by the judgment of the court.*