EUREKA TOWNSITE CASE

Decided by the Local Land Officers After Weeks of Weary Waiting.

FULL TEXT OF THE OPINION.

The Registrar and Receiver Rule in Favor of the Entry and Against the Miners.

The Eureka townsite case which recently occupied the attention of the registrar and receiver of the local land office, has at last been decided in favor of the applicants for the entry of the townsite and dismisses the protest filed by St. L. Pewerat et al. It was accidentally left out of our columns last evening but is herewith given in full:

STATEMENT.

On November 17, 1890, Hon. Charles Doty, probate judge of Juab county, Utah, offered for filing in this office his preliminary statement covering certain lands of land which, after excluding certain mineral claims, contained 172.83 acres in trust for the use and benefit of the citizens of the town of Eureka.

This filing was rejected for the reason that the application did not show the number of lots, subdivisions and for the further reason that while the tracts applied for were alleged to be non-mineral in character, no mention was made of certain mineral locations were excluded, "thus leading to the conclusion that the land is wholly mineral and no entries on townsite entry." No appeal was taken from this rejection.

On January 23d, 1891, the said Probate Judge Doty filed an application to purchase the tracts first above mentioned, containing 160 acres. Attached to this application is the affidavit of Judge Doty, corroborated by Dugald McMillan and Milton T. Price, setting forth that application was made for the use and benefit of the citizens of Eureka; also a statement as to the number of inhabitants and the improvements in the town, and further alleging that while certain mineral entries had been made of ground included in the townsite application, and mineral applications for other ground within the townsite were pending in this office, yet all the ground applied for by the townsite patents was much fairly non-mineral and had been used for townsite purposes long prior to the mineral applications.

Prior to this application there had been filed the corroborated affidavit of John Dryerd, alleging generally that all the lands embraced in Judge Doty's filing were mineral.

Going back some time we find by the records of this office an application for a patent for the Grand Central, North Extension, Zaria Valley and Ridge claims (ground within the disputed territory) had been filed on November 20, 1890, and later on pending the preliminary proceedings following applications were filed:

Last Chance mining claim June 12, 1891.

White Tom mining claim, July 28, 1891.

Home Run mining claim, December 19, 1891.

On February 26, 1891, and afterwards subsequent papers purporting to be protest and adverse claims were filed by many of the claimants in Eureka against these mineral application. These were all rejected as such on the ground that (adopting a strange mineral right) they would not be considered as adverse claims while the pendency of the townsite. From this action no appeal was taken in one case which was decided by letter of February 5, 1891, sustaining the office.

On February 9, 1891, this office gave notice that the proof in support of the townsite application would be considered on June 1, 1891, and also ordered for the same day a hearing to determine:

First—As to the mineral or non-mineral character of the land.

Second—As to the prior occupancy and use as between the parties represented by the townsite application and those claiming under the mineral law.

On June 1, 1891, the case was called and continued to August 12, 1891.

On the last named date the case being again called the townsite applicant, Judge Doty, presented his proof in the form of an affidavit setting forth the number of inhabitants, the character of the improvements, etc. In this affidavit it is expressly conceded that the ground contained within the claims of the North Extension, Zaria Valley and Ridge Consolidated and the Last Chance is mineral in character and is excluded from the townsite application.

On the same date other protests against the townsite application being filed by numerous mineral claimants, a continuance was taken to September 15, 1891. During that time this office received the General Land Office of the pending action and requested a stay of proceedings as to mineral entries Nos. 1891 and 1892.

The question then having come up of the jurisdiction of this office to order a hearing all proceedings were stayed until the receipt of the honorable commissioner's letter "N" of September 28, 1891. By this letter it was ordered that the hearing proceed, and the attention of this office was called to the decision in the Woodruff townsite case, letter "G," September 15, wherein it was held that the application to enter townsites should be made by the district, and not by the probate judge, and that the scope of the inquiry concerning the case at bar should be confined to the following points:

First—Whether the lands embraced in the townsite application or any portion thereof were known to be valuable for mineral at the date of said application, January 23, 1891, and if any are found to be valuable clearly designate the same.

Second—Whether the lands or any portion thereof were ascertained to be valuable for mineral subsequent to said townsite application, and prior to their use and occupation for townsite or business purposes, and if any are so found, the same should be identified and stated.

After due notice had been given to all parties concerning the above rulings by the department, the date of hearing was again fixed for December 30, 1891.

On that date the townsite applicants filed an amended application made by John W. Blackburn, judge of the First Judicial District of Utah, within which district the ground in dispute is situated.

Attached to the amended application is an affidavit made by Judge Blackburn affirming and approving all that had been previously done in the matter by Judge Doty, and especially excluding the Zaria Extension, Zaria Valley and Ridge Consolidated.

In the meantime other mineral claimants having joined the prior protestants, the case was prosecuted with and heard on the lines laid down in the instructions of the honorable commissioner.

The Bonanza noted claims known as the McGhee vein, interest having been excluded from the application, the attorneys representing that interest withdrew from any active participation in the case, the other mineral claimants and protestants being represented by Bird & Lowe, and the townsite applicants by Judge J. G. Sutherland and O. F. Davis.

Decision of the Register and Receiver.

The taking of the testimony in this case commenced on December 30, 1891, and with the exception of a few short adjournments lasted from day to day until March 26, 1892. During this time nearly eight hundred pages of testimony was taken and numerous exhibits offered showing how slowly the ground was possessed. Practically the meeting was confined in scope to the two propositions laid down in the letter "N" of the honorable commissioner, and during our term of office no case has been heard involving greater interest and none has had a more careful consideration.

As to the first proposition, as to whether the land embraced in the townsite or any portion of it were known to be valuable for mineral at the date of said application, January 23, 1891, we must hold that the preponderance of the evidence is clearly in the negative. The clear inference to be drawn from all testimony that we have been able to find bearing on the subject is certainly to the effect that in an issue between a mineral and agricultural claimant the matter as to be determined is whether, at a present fact, the ground is more valuable for mineral or townsite purposes, and the numbers of the claim cannot be determined by the amount and value of the mineral actually produced. In support of this proposition several decisions in like cases are quoted.

Whatever might be the prospective value of the protesting claims in this case, it is nowhere shown in the evidence that they at the time of the townsite application, possessed any mineral value or actual producing mines.

The second proposition is similar to the first, except that the time in which the actual discovery of valuable mineral may have taken place is extended to a period subsequent to the application and prior to the hearing. On this proposition we must hold the same as on the first, that no such showing was made, and that the almost unanimously conceded fact that no one of any marketable value had been produced being taken to mean follow that the ground, as a present fact as far as shown by the evidence, is more valuable for agricultural than for mineral purposes, and that no valuable mineral discoveries were made prior to its occupancy for townsite and business purposes.

Our decision is that the protests offered by the mineral claimants should be dismissed, and the proofs offered by the townsite applicants should be accepted and entry allowed.

FRANK H. HOBBS, Registrar.
HENRY SPERRY, JR., Receiver.

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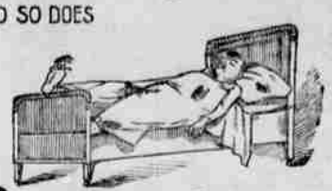

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