

the hearing the local officers found the land to be more valuable for mineral than for other purposes and recommended that the listing be canceled to the extent of the conflict.

Subsequently the railroad company filed an application to reopen the case, and the local officers being in doubt as to whether they had jurisdiction to grant the same, forwarded the motion to your office for instructions. Your office called for the entire record, which was forwarded, and considered the matter of the protest on its merits without passing upon the question as to whether the case should be reopened.

It was held by your office, under date of October 2, 1896, that fire clay did not fall within the meaning of mineral lands so as to exclude land containing this deposit from the operation of the grant to said company.

From this decision the protestant has appealed.

At the request of your office this case has been advanced and made special for the reason that it involves an important question which should be settled.

The question is, whether fire clay is a mineral within contemplation of the exceptions to the grant to the Northern Pacific Railroad Company, excluding therefrom "mineral lands."

In the recent case of Pacific Coast Marble Co. v. Northern Pacific R. R. Co. *et al.* (25 L. D., 233), it was held that whatever is recognized as a mineral by the standard authorities, whether of metallic or other substances, when found in the public lands, in quantity and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, must be treated as coming within the purview of the mining laws; and further, that lands containing valuable mineral deposits, whether of the metalliferous or fossiliferous class, of such quantity and quality as to render them subject to entry under the mining laws, are "mineral lands" within the meaning of that term as used in the exception from the grant to the Northern Pacific Company for railroad purposes, and to the State for school purposes.

The deposit in that case was marble instead of fire clay as in the case at bar, but the reasoning applies fully to the present case. On the authority of said decision, therefore, it is held that land valuable for its deposits of fire clay is subject to location and entry under the mining laws of the United States, and is included in the exception of "mineral lands" from the grant to the Northern Pacific Railroad Company.

This raises the question, then, as to whether the tract here involved is more valuable for mineral than for other purposes.

As stated above, the hearing was *ex parte*, the railroad company making default.

In its motion to reopen the case the company alleges that an agreement was entered into between J. H. Scales, a special agent of the General Land Office, representing the government, and Tom Cooney,

the attorney for the Northern Pacific Railroad Company, to postpone the hearing to April 16, 1896; that the said special agent wished to examine the tract and this could not be done until the snow was off the ground; and that owing to a multiplicity of duties the said special agent overlooked the important matter of notifying the local officers of the agreement for postponement.

It does not appear that Alldritt, or his attorney, was consulted or notified in any way of this agreement to postpone the hearing. The register and receiver had appointed a time for the hearing and notified the parties. Alldritt appeared at that time and submitted testimony. It would be unjust to him to put him to the expense of another hearing on account of an agreement for postponement that neither he nor his attorney knew anything about. The hearing was regular in every respect, was had at the time appointed by the local officers, and as the company does not make a sufficient showing to warrant the reopening of the case, the motion is denied.

It appears from the testimony that the land involved is rocky and wholly unfit for agricultural purposes; that there are not more than two acres of grass growing land thereon; that it is underlaid with fire clay of a superior quality, which crops out in various places; and that the land is more valuable for mineral than for other purposes.

Your office decision is accordingly reversed and the company's list will be canceled as to the land here involved.

MINING CLAIM—OIL LANDS—RAILROAD GRANT.

UNION OIL COMPANY (ON REVIEW).

Lands chiefly valuable on account of the petroleum deposits contained therein are of the character subject to entry under the mining laws, and are not subject to selection as indemnity under a railroad grant wherein "mineral lands" are excepted from the operation of the grant.

Under the mining laws of the United States but one discovery of mineral is required to support a placer location, whether it be of twenty acres, by an individual, or of one hundred and sixty acres, or less, by an association of persons.

The case of *Ferrell v. Hoge et al.*, 18 L. D., 81, overruled.

The Southern Pacific R. R. Co. is not entitled to make indemnity selections within the forfeited primary limits of the Atlantic and Pacific grant.

Acting Secretary Ryan to the Commissioner of the General Land Office,
(W. V. D.) November 6, 1897. (A. B. P.)

This is a motion for review of departmental decision of August 27, 1896, in the case of the Union Oil Company (23 L. D., 222). The motion has been duly entertained, and properly matured for consideration.

On January 16, 1894, the Union Oil Company made mineral entry No. 140, covering 78.82 acres of land, situated partly in section 1, T. 4 N., R. 20 W., and partly in section 6, T. 4 N., R. 19 W., Los Angeles,