

DECISIONS  
RELATING TO  
THE PUBLIC LANDS.

---

PRE-EMPTION—MINERAL LAND—BUILDING STONE.

CONLIN *v.* KELLY.

Stone that is useful only for general building purposes does not render land containing the same subject to appropriation under the mining laws, or except it from pre-emption entry.

*First Assistant Secretary Chandler to the Commissioner of the General Land Office, January 2, 1891.*

I have considered the case of B. M. J. Conlin *v.* Wm. Kelly on appeal by the former from your decision of May 25, 1889, dismissing his contest against the pre-emption cash entry of the latter for the NW.  $\frac{1}{4}$  Sec. 14, T. 102 N., R. 58 W., Mitchell, South Dakota land district.

On November 19, 1879, Kelly filed pre-emption declaratory statement for this land and on July 29, 1880, made cash entry for the same.

On January 20, 1887, Conlin filed an affidavit of contest against the same alleging that the filing and entry were fraudulent and made for the purpose of speculation and to secure title to the land because of valuable mineral deposits thereon, and that the entry was made for the benefit of another party. Upon due notice a hearing was had and the local officers recommended the dismissal of the contest, from which Conlin appealed.

Your office on May 25, 1889, dismissed the contest, but upon different grounds from that upon which the local officers based their decision. An appeal was taken by Conlin from your decision, and thus the case is before this Department.

The testimony shows that there is upon this land a ledge of unstratified, extremely hard, flesh colored rock, a species of granite, which contains no trace of any valuable metal. It is a common stone in South Dakota, is of some value as a building stone, being used for foundations of buildings, cellar walls, bridge abutments and other places where strong, rough, work is required; but owing to its extreme hard-

ness and the fact that it is unstratified and breaks with an irregular fracture, its commercial value is not very great, as yet, although it is claimed that this will soon be greatly increased.

On the charge that the entry was made for another party, there was but little testimony taken, the greater part of over four hundred pages being directed to the stone on the land.

You say in your decision that :

There is no doubt that this quarry or rock is mineral within the provisions of the law, and the decisions thereunder (H. P. Bennett, jr., 3 L. D., 116) ; and as such, subject to entry as a placer claim, there being no veins of quartz or rock in place containing any of the precious metals.

I cannot concur in this statement in your opinion. The case you cite is not a decision of this Department, but a letter from Commissioner McFarland to the local officers at Leadville, Colorado.

Section 2329 (Revised Statutes), which uses the words "claims usually called 'placers' including all forms of deposits, except veins of quartz and other rock in place, shall be subject to entry" etc., is a part of the mining laws and should be considered in connection therewith. It is apparent that the deposit therein spoken of means a deposit having some especial value, other than that of a mere "stone quarry" for general purposes.

Counsel for appellant have furnished an extensive and interesting brief in the case, and they attempt to show that this stone in question is "jasper" and of peculiar value as a mineral. It is sufficient to say upon this point, that the evidence shows that its use is such that any good free stone, lime stone, or granite could supply its place.

I have examined the authorities cited, but am unable to find anything in them, or in any other authority, that supports the proposition that a common stone quarry is subject to mineral entry as a "placer mine." In the "Dells Mining Company" mineral entry, the papers in which case are in evidence herein, it appears that a mineral entry was allowed on a tract of land similar to, and in the vicinity of, the tract in controversy, but it is not pretended that the case was ever considered by this Department.

In the case of *Maxwell v. Brierly* (10 C. L. O., 50) cited by counsel, it was shown upon the hearing that the land was of little value for agricultural purposes, and it had been returned as mineral. It lay upon a precipitous mountain side, only about thirty acres of it could be tilled or irrigated, and this was in parcels of a few acres each. Its chief value consisted in a lime stone ledge, stone of which was used as a flux in neighboring smelting furnaces and for manufacturing into lime. This Department held that the tract was subject to entry under the mineral laws. The land was in a mineral belt, no other stone would serve as a flux in a furnace or for making lime.

In the case of *John F. Krohn* (10 C. L. O., 342) cited by counsel, the land had been returned as agricultural, but it was in the vicinity of

valuable placer mines, and upon the hearing it was shown to contain valuable deposits of gold in the form of nuggets, and that it could be mined to advantage, and upon this being proven the tract was held to be subject to entry as a "placer" mine.

"Placers are superficial deposits which occupy the beds of ancient rivers or valleys." *Monax v. Wilkinson* (2 Montana Rep., 42). They are, "held and worked in accordance with the local mining laws adopted and in force in the mining district where they are located." *Strange v. Ryan* (45 Cal. Rep., 33).

Valuable mineral, as gold, silver, copper, etc., intermingled with, or imbedded in "rock in place" is called a "lode," and the rock is quarried, not for the stone but the valuable mineral it contains. "In placer mining land no fact is better established than that the surface is essential to its development as mining ground." *Case of Townsite of Deadwood, Sickles Mining Laws and Decisions*, 356.

Congress seems to have recognized the fact that a stone quarry is not a "placer mine" and it passed an act June 3, 1878 (20 Stat., 89) providing for timber and stone entries. The stone in the tract in controversy has no peculiar property or characteristic that gives it especial value, such as attaches to gypsum, lime stone, mica, marble, slate, asphaltum, borax, auriferous cement, fire clay, kaolin or petroleum. Its characteristic appears to be its hardness, and its value, in this particular mine, appears to be its proximity to the town of Alexandria, which has come into some prominence, having been chosen as a county seat since the entry in question was made.

It is simply a quarry of stone for general building purposes and as such not subject to entry as a "placer" under the mineral law.

For this reason and there being no satisfactory proof that the entry was made for another than the entryman, your decision dismissing the contest is affirmed.

---

FORFEITURE OF RAILROAD LANDS—ACT OF SEPTEMBER 29, 1890.

[Circular.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., January 3, 1891.

*Registers and Receivers of United States Land Offices:*

SIRS: Your attention is called to the provisions of an act of Congress entitled: "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," approved September 29, 1890, (26 Stat., 496) a copy of which is hereto attached, containing eight sections.

The first section provides for the forfeiture of all lands heretofore granted to any State, or to any corporation, to aid in the construction of a railroad, opposite to and coterminous with the portion of any such