

MINING CLAIM—ALUMINA—AGRICULTURAL CLAIM.

JORDAN *v.* THE IDAHO ALUMINIUM MINING AND MF'G. CO.

Alumina is not such a mineral as will except the land containing the same from settlement and entry as agricultural land, or warrant the allowance of a mineral entry thereof.

Secretary Smith to the Commissioner of the General Land Office, May 18, 1895. (P. J. C.)

Your office, by letter of December 24, 1892, to the local officers at Coeur d'Alene, Idaho, acknowledged receipt of their letter of December 6, preceding, in which was enclosed the "papers pertaining to mineral entry No. 125, filed September 19, 1892, by the Idaho Aluminium Mining and Manufacturing Company, for its placer claim, containing 104.24 acres, designated as survey No. 1001;" also the protest of Patrick Jordan against said mineral application, alleging, among other things, that he was residing upon said land, and claimed it by virtue of settlement thereon under the laws of the United States, and that he intended to acquire title to the same as soon as it should be surveyed, reciting the value of his improvements thereon, and alleging that the same contains no valuable mineral deposit whatever.

It appears that the local officers rejected said application, for the reason that protestant alleged that there was a suit then pending in the State court between the parties to determine the character of the land, and they being undecided as to what course to pursue, asked for instructions.

By said letter of December 24, 1892, your office directed that a hearing be ordered for the purpose of determining whether the land embraced in the application was valuable for minerals, or more valuable for mining than for agricultural purposes.

None of the papers in connection with this entry or protest are before me, but these facts I glean from the correspondence above referred to.

A hearing was accordingly had before the local officers, at which the testimony taken before a State court in the controversy between these parties was, by stipulation, submitted as the testimony to be considered in this case. As a result of the hearing, the local officers decided that the land was worthless for agricultural purposes, and "chiefly valuable for fire clay deposits and the manufacture of aluminium."

The agricultural claimant appealed, and your office, by letter of November 28, 1893, reversed the judgment of the local officers, whereupon the mineral applicant prosecutes this appeal, assigning numerous errors, both of law and fact.

The testimony submitted is very unsatisfactory for any purpose, and it is especially so for the purpose of ascertaining the quantity of land claimed by the agricultural claimant, its location, or its character. There are over five hundred pages of typewritten testimony taken, as

stated above, in the trial of the case in the State court, where there were maps or plats introduced as exhibits, claiming to define the boundaries of the land, not one of which have been transmitted to this office. There is page after page of testimony descriptive and explanatory of these exhibits in connection with this controversy. Other exhibits, such as the amended location certificate, deeds of transfer, and similar documents, are referred to, but none of them accompany the record.

There is some claim made to the effect that the agricultural claimant is holding more than a quarter section of land, but I am unable to determine whether this be a fact or not, or whether the excess over one hundred and sixty acres, granting, for the sake of argument, that there is a greater amount, conflicts with the mineral claim, or in what way, or to what extent there may be adverse holdings. Whether or not it is material to decide this question at the present time, because the land is unsurveyed, may or may not be important to the mineral claimant. In any event, however, the agricultural claimant will not be permitted to take more than one hundred and sixty acres, and by his declaratory statement made and filed under the State laws of Idaho; this is the amount that he claims. So that in any event, he would be restricted to that amount.

The question as to the mineral character of the land, as presented by this testimony, is rather a novel one. By the notice of location it is claimed that the land is taken for "fire clay and kaolin and aluminium. The same is taken for the manufacture of fire bricks, tiles, terra cottá, and other useful articles."

It is conceded by both sides to this controversy that there is an immense deposit of clay on the land, and there is some testimony offered by the mineral claimant which tends to show that this clay is valuable for the manufacture of pressed brick, but no other commodity is touched upon in the testimony except that it contains alumina, from which may be manufactured commercial aluminium. The experts testifying on both sides of this controversy claim that it does not contain kaolin. I think it is shown by a fair preponderance of the evidence that alumina does not exist in paying quantities on the tract.

But be that as it may, the presence of a deposit like this would not impress a mineral character upon the land that would reserve it as mineral and exempt it from settlement and entry under the homestead laws. In other words, alumina is not such a mineral as contemplated by Congress that would exclude the land from agricultural entry.

It is a matter of common knowledge, I apprehend, that aluminium exists in more or less varying quantities in all clays throughout the country. To hold this character of land subject to mineral entry would be opening a method for the appropriation of the public land that would be disastrous to those seeking homes under the homestead laws.

For this reason your office judgment is affirmed.