

co-claimant to the ground embraced in the Last Chance lode during the period from 1895 to 1909, in no wise affects his right to a patent to the claim, under the provisions of section 2332, Revised Statutes.

The decision appealed from is accordingly reversed and the case remanded for further and appropriate action.

### STANISLAUS ELECTRIC POWER CO.

*Decided September 4, 1912.*

#### PLACER MINING CLAIM—LOCATION BY CORPORATION.

A corporation, regardless of the number of its stockholders, may lawfully locate no greater placer area under the mining laws than is allowable in the case of an individual, namely, twenty acres.

#### PURPOSE OF MINING LAWS.

It is the purpose of the mining laws to reserve from disposition and to devote to mineral sale and exploitation only such lands as possess mineral deposits of special or peculiar value in trade, commerce, manufacture, science, or the arts.

#### BUILDING STONE LOCATION—ACT OF AUGUST 4, 1892.

The act of August 4, 1892, authorizing the location of land chiefly valuable for building stone under the placer mining laws, applies only to deposits of stone of special or peculiar value for structural work, such as the erection of buildings, and such other recognized commercial uses as demand and will secure the profitable extraction and marketing of the product; and has no application to the vast deposits of low-grade rock in the public domain which possess no special or peculiar value for structural purposes, and are useful only for rough work in the immediate vicinity.

#### MINERAL APPLICATION—GOOD FAITH.

In passing upon a mineral application for patent, the good faith of the applicant and the use to which he has devoted or may intend to devote the land is a proper element for consideration by the land department as incidental to, and throwing light upon, the real value and character of the land.

#### STIPULATION BY SPECIAL AGENT.

The Department can not recognize as binding upon it any stipulation entered into at a hearing by special agents and attorneys for the parties in interest which may preclude the consideration in the case of any question vital to the validity or regularity of the claim involved.

#### SHOWING REQUIRED BY APPLICANT FOR PATENT OR ENTRYMAN.

It is incumbent upon an applicant for patent or entryman to submit such evidence as may be required by law, regulations, or ruling of the land department, to show that the land is of the character subject to his claim, and that he has complied with the law and regulations with respect thereto.

#### ADAMS, *First Assistant Secretary*:

March 1, 1906, Winfield Dorn, G. M. Murphy, and B. E. Westervelt located the Eagle placer mining and building stone claim, alleging the land to be chiefly valuable for building stone. October 25, 1907, they conveyed same to the Stanislaus Electric Power Company, a corporation.

April 15, 1908, the company, by E. E. Carpenter, its attorney in fact, filed application for patent for the said claim, described as the N.  $\frac{1}{2}$ . NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 24, T. 4 N., R. 16 E., and lot 3, Sec. 19, T. 4 N., R. 17 E., M. D. M., Sacramento, California, serial No. 0116, containing a total area of 41.63 acres.

The application for patent alleges that the claim is chiefly valuable for building stone. It was accompanied by the affidavit of the agent of the company, wherein it is stated that the land included within the application—

is almost wholly composed of ledges of unstratified, extremely hard rock, which is a species of granite, which contains no trace of any valuable metal. Said stone is valuable for building stone for use as foundations of buildings, walls, abutments, and is valuable for use where strong rough work is required; that there is upon said claim no timber or other vegetation of any value, except as follows: scattering pine and oak trees upon the said flat and upon the rocky slopes of the canyon; the soil being composed of sand, the residue of granite decomposition, and not valuable for agriculture; that the middle or main fork of the Stanislaus River passes over and through said land, and that the quantity of water in said river varies from 5,000 miners' inches of low water to 500,000 miners' inches during the season of the highest water.

The claim is within the exterior limits of the Stanislaus National Forest, and a protest against the building-stone application was filed by the Forest Service, Department of Agriculture. April 9, 1909, the Commissioner of the General Land Office issued citations for a hearing, upon the following charge, based upon the reports of forest officers:

That title to the land embraced within the said Eagle placer stone claim is not being sought in good faith for mining purposes, but for water-power purposes.

Hearing was had upon this charge and on consideration of the record the register and receiver, August 12, 1910, recommended a dismissal of the proceedings, finding, in substance, that the burden of proof rested upon the Government; that the entry should not be canceled except upon a clear preponderance of evidence showing fraud, and that the evidence fails to afford ground for such action, but, on the contrary, shows that contestee acted in good faith and used and contemplates the use of the stone upon the claim in the construction of dams, ditches, etc. March 11, 1911, the Commissioner of the General Land Office reversed this recommendation, and held the application for rejection, on the ground that the evidence shows the main purpose of the company is to secure the land for use in the development of electrical power through diversion of the water of the Stanislaus River at that point; that the principal value of the land is for a water-power site, and that the value of the stone is incidental merely to this power development, without which it has no appreciable value. The Commissioner concluded that the title to the land

is not being sought in good faith for mining purposes, but for water-power purposes, and therefore held the mineral application for rejection.

Appeal from this latter decision brings the case before this Department.

The circumstances attending the location indicate, the evidence given at the hearing shows, and counsel for the company admit that the location made by Dorn *et al.* was in the interest and for the benefit of the Stanislaus Electric Power Company.

The placer mining laws expressly limit the area which a single individual may embrace in a location to not exceeding 20 acres, and this Department and the courts have held that a corporation, regardless of the number of its stockholders, may lawfully locate no greater area under the placer mining laws than is allowable in the case of an individual. Igo Bridge Extension Placer (38 L. D., 281); Gird *et al. v.* California Oil Company (60 Fed., 531); Durant *v.* Corbin (94 Fed., 382); Cook *et al. v.* Klonos *et al.* (164 Fed., 529). Consequently, the location upon which this application is based is invalid, at least as to the excess above 20 acres.

Title is sought under the specific provisions of the act of Congress approved August 4, 1892 (27 Stat., 348), which provides:

That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims: *Provided*, That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this act.

Two points of difference exist between this act and the general mining law applicable to mineral deposits:

(1) That the act of 1892, *supra*, requires the lands to be "chiefly" valuable for building stone, and

(2) That lands though chiefly valuable for building stone are not to be withheld or excluded from reservations or donations for school purposes or to States.

The evidence submitted shows that the deposit of stone upon this claim is of a low grade of granite, suitable, as stated in the affidavit accompanying the application for patent, for strong rough work in foundations, walls, and abutments; that the deposit is not confined to the land applied for but that it exists for miles in every direction.

The formation in question is shown by Folio No. 51 of the Geological Survey series—geology of the Big Trees Quadrangle—to underlie approximately two-thirds of that quadrangle. In fact, geological surveys show that granitic rocks are widely distributed in eastern and northern California, comprising approximately three-fifths of the area of the Sierra Nevadas. It is not alleged by applicant that this deposit of stone possesses particular or peculiar value

as a building stone, or that it is susceptible of or valuable for any use other than that described as rough work. This is supported by the testimony submitted both by the Government and the defendant, such testimony, however, being meager.

It appears from the record that the defendant company's principal business is the development, transmission, and disposition of hydro-electric power, and that within the limits of this claim the company has constructed a diversion dam, which diverts the water of the Stanislaus into a flume or ditch, which, in turn, conveys it to a reservoir some 15 miles below, where it is utilized in a power plant belonging to the company for the purpose of generating electricity. The evidence indicates that the company has another project under contemplation, i. e., to take water out of the river some distance above this claim, convey it by means of a ditch or flume to a power house to be located upon this claim or in its vicinity, and thereafter to convey the water through the flume first mentioned to the existing power house below.

The nearest railroad to the placer claim is about 35 miles distant, and there is no nearer market for stone. No attempt has been made by the company to market any of it, and its only use has been in the construction of the diversion dam and of the intake at the head of the flume first described. In fact, the testimony of defendant indicates that the purpose of the location was to secure stone for construction in connection with the power development.

The evidence submitted as to the value of the land in the placer claim for a power-development site is meager and somewhat unsatisfactory, but it is admitted that within the limits of the claim is a flat or level area which could be utilized to advantage for a power house and other structures in connection therewith. It is true that the only witness for the defendant intimates that other locations for a power house might be found along the river, but I am satisfied from the evidence submitted and from the location of the structures already built and being utilized by the company, that this particular tract of ground is an advantageous and desirable site for a power house and other structures, and in fact is, because of the topography, especially valuable both for a dam site and a power-house site, being so situated as to provide the best natural division of the stream into power units.

In the case of *Conlin v. Kelly* (12 L. D., 1), this Department held that stone useful only for general building purposes was not subject to appropriation under the mining laws. The character of the material there considered was—

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.

Following this decision the act of August 4, 1892, *supra*, was passed, the House Committee on Public Lands in its report upon the bill, referring to the Conlin *v.* Kelly case, stating that the object of the proposed law was to direct that building stone be included within the definition of the term "mineral."

In the case of McGlenn *v.* Wienbroeër (15 L. D., 370), decided October 12, 1892, the Department, after referring to Conlin *v.* Kelly, stated that an act was approved August 4, 1892, "which would allow the entry of lands such as are described in the Conlin case under the placer mining laws."

It will be noted that defendant company in its proofs accompanying the application for patent has, in describing the deposit of stone upon this claim, followed almost literally the description of the deposit involved in the case of Conlin *v.* Kelly.

The issue raised in the notice for hearing attacks only the good faith of the applicant and does not directly raise the question of the value of the deposit of stone or its enterability under the act of 1892, *supra*. However, this is a question which it is the duty of the Department to determine in this and other cases of application to enter lands, whether the record presented is the result of a hearing had or whether it be the *ex parte* presentation of the case by the mineral claimant in its application for patent. The good faith of the applicant and the use to which he has devoted or may intend to devote the land is a proper element for consideration as incidental to, and throwing light upon, the real value and character of the land sought.

As hereinbefore indicated, it is apparent that the company is already using a portion of this land in the development of hydroelectric power, and the facts strongly tend to show that it is to be further utilized in connection with the development of additional power. No use has been made of the deposit of stone upon the claim, except in connection with the power development; no demand or market for the same is shown to exist outside of this power development and the character of the stone is shown to be such that its extraction and removal to distant points would be unwarranted and unprofitable.

The avowed purpose of the general mining laws was to promote and encourage the development of the mineral resources of the United States, and the conditions imposed by the mining laws upon locators and applicants for patent were designed to secure preliminary development at least of such resources.

While, as stated by the Supreme Court of the United States in *United States v. Iron Silver Mining Company* (128 U. S., 673), the fact that land may possess incidental advantages other than its

valuable mineral deposits will not preclude its disposition under the mining laws, yet it is the undoubted purpose of those laws, which should be enforced by this Department so far as possible in its disposition of the public lands, to insure the extraction and exploitation of mineral deposits rather than the primary nonmineral use of the lands. Furthermore, it is the undoubted purpose, intent, and scope of the mining laws to reserve from other disposition and to devote to mineral sale and exploitation only such lands as possess mineral deposits of special or peculiar value in trade, commerce, manufacture, science, or the arts. Stone of such character as may be used in building foundations, fences, abutments, or other rough work is widely distributed, not only through California and the States containing public lands, but throughout the eastern States. It can not be contended that land from which stone is removed by the farmer in the course of his agricultural operations, which stone he may utilize in constructing fences or in rough work upon his farm, is mineral land, or that his farm is a mine within the meaning of the general mining laws or of the act of August 4, 1892.

The Department is convinced that said act, as it permits the entry of lands chiefly valuable for stone, under the placer mining laws, was intended to and does apply only to deposits of stone of special or peculiar value for structural work, such as the erection of houses, office buildings, and such other recognized commercial uses as demand and will secure the profitable extraction and marketing of the product. The deposit herein involved is clearly not of this nature, as hereinbefore shown. It has no commercial value. It could not be transported and marketed at a profit. Its only use is that stated in the application for patent, and to which it has been devoted by the applicant company, simply to the extent of its power-development needs upon the claim itself or in the immediate vicinity.

It is not intended to hold that such forms of granite as that described in the case of Northern Pacific Railway Company *v.* Soderberg (188 U. S., 526), which involved a deposit of granite susceptible of, and which was being quarried and disposed of for, structural purposes at a profit, is not enterable under the mining laws, but it is held that the vast deposits of low-grade rock in the public domain which possess no special or peculiar value for structural building purposes is not subject to disposition under the placer mining laws and the act of August 4, 1892, *supra*.

That the deposit upon this claim is of the character last described is shown not only by the statement of the applicant company in its application for patent and accompanying papers and by the evidence submitted, but by the disclosed fact that the company is utilizing and designs to utilize the land for another purpose, viz, the development of hydroelectric power.

Considering the entire record, the Department is convinced that it is shown and established that the land is not chiefly valuable for building stone, and as a consequence is not enterable under the act of August 4, 1892, *supra*. The pending application will therefore stand rejected, and the decision appealed from is affirmed.

It is noted that the special agent representing the United States and the attorney representing the defendant orally stipulated or agreed at the hearing that no question arises as to the sufficiency of the expenditures made upon the claim by applicant company, and this so-called stipulation is referred to in appellant's brief. This Department can not recognize the binding force upon it or upon the Commissioner of the General Land Office of any stipulation entered into at a hearing by special agents and attorneys for parties in interest which may preclude the consideration in the case of any question vital to the validity or regularity of the claim. The fact that the question may not be in issue through the charges made or evidence adduced at the hearing does not warrant any such stipulation or preclude the Department from requiring of applicants or entrymen such proofs or evidence in support of their claims or entries as may be required or necessary under the law and regulations applicable.

Considerable discussion of the question of burden of proof occurs in the briefs and arguments submitted in this case. Whatever may be said of the practice or rule of the Department in this respect, the fact remains that it is in every case incumbent upon an applicant for patent or entryman to submit such evidence as may be required by the law, regulations, or ruling of the Department in order to show that the land is of the character subject to his claim; and that he has complied with the law and regulations with respect thereto.

The General Land Office will in future be governed by the views as to stipulations and proof above expressed.

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#### STANISLAUS ELECTRIC POWER CO.

Motion for rehearing of departmental decision of September 4, 1912, 41 L. D., 655, denied by Assistant Secretary Laylin, May 2, 1913.

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#### WILLIAM S. McCORNICK.

*Decided March 3, 1913.*

#### COAL LANDS—DEPARTMENTAL REGULATIONS.

Section 2351 of the Revised Statutes specifically authorizes the Commissioner of the General Land Office to issue all needful rules and regulations to carry the coal-land laws into effect; and applicants and entrymen under such laws are charged with knowledge of the existence of regulations issued pursuant to such authority.