

Editor's note: 78 I.D. 47; Appealed -- aff'd, sub nom. Evans v. Morton, Civ. No. 1-71-41 (D. Idaho July 27, 1973), aff'd, No. 74-1075 (9th Cir. Mar. 12, 1975)

DAVID H. EVANS
v.
RALPH C. LITTLE

IBLA 70-9

Decided February 19, 1971

Homesteads Ordinary: Military Service -- Reclamation Homesteads:
Generally

The credit for military service which an heir of the original reclamation homestead entryman may use may be applied to both the obligation under the homestead law to cultivate and under the reclamation law to reclaim 1/4 of the irrigable area within three full irrigation seasons.

1 IBLA 269

IBLA 70-9	:	Idaho 01073 (A-31044)
DAVID H. EVANS	:	Cancellation of reclamation
v.	:	homestead entry set aside
RALPH C. LITTLE	:	and case remanded
	:	Cancellation reversed
	:	and contest dismissed

SUPPLEMENTAL DECISION

In David H. Evans v. Ralph C. Little, A-31044 (April 10, 1970), the Department set aside a decision of the Branch of Land Appeals, Bureau of Land Management, which affirmed the cancellation of reclamation homestead entry Idaho 01073 of David H. Little; it then remanded the case to a hearing examiner for a determination of whether Walter R. Cupp, the original entryman, was entitled to at least one year's credit for cultivation for his service in the armed forces of the United States.

In lieu of a hearing, Little has submitted evidence which establishes that Cupp served more than 17 months on active duty with the armed forces of the United States from July 15, 1916, to October 20, 1916, and from September 10, 1918, to November 29, 1919. Evans does not dispute the facts of Cupp's service, but asserts that such service does not warrant any change in the determination that Little's entry should be canceled.

The Department's decision held that if Cupp had enough service to substitute for one year's cultivation the credit could be supplied by Little as his heir to the third year's obligation, the one year, the decision had found, for which the statutory requirements had not been satisfied. For a reclamation homestead entry subject to the Reclamation Extension Act of August 13, 1914,

43 U.S.C. 440 (1964), the entryman must satisfy not only the cultivation requirements of the homestead act, but must, in addition, reclaim one quarter of the irrigable area of his entry within three full irrigation seasons.

Evans points out that the decision of the Department cited regulations in effect as of its date and asks that the effect of Cupp's service be determined by the regulations in effect from 1949 through 1953. The pertinent regulation then in effect was 43 CFR 181.2(b) (1949 ed.) ^{1/} It states descriptively the same information cited, to wit:

A soldier . . . with more than 12 and less than 19 months service . . . must cultivate one-sixteenth of the area the second year; . . .

The regulation sets out requirements based on the assumption that the entryman will file final proof as soon as he can. If he does not, he must show that the requirements for residence and cultivation have been met or satisfied by military service for each year of the entry until final proof is filed, but he can apply the service credit for cultivation to any year of the entry. Bullwinkle - Vogler, 63 I.D. 172 (1956); Earl D. Deater v. John C. Slagle, A-28121 (May 24, 1960). So here, Little can allocate Cupp's credit for one year's cultivation to the third entry year. Thus Little has been protected from the consequences of failure to cultivate in the third irrigation season. Thereafter Little's own military service relieves him of any obligations to cultivate the entry so long as he remains on active duty.

In addition to the cultivation requirement imposed by the homestead law, Cupp was, as we have seen, also obligated to reclaim at least 1/4 of the irrigable land in the entry within three full irrigation seasons, a period ending on October 15, 1953. David H. Evans et al., 63 I.D. 352, 355 (1956). The pertinent regulation provides that while credit for military service may be claimed in connection with entries made under the reclamation law, the entryman will not be entitled to receive a final certificate or patent until the requirements of the reclamation law have been met. 43 CFR 230.53 (1949), now 43 CFR 2515.7(c), 35 F.R. 9578 (formerly 43 CFR 2211.7-6(c) (1970)). In other words, an entryman who is entitled to credit for

^{1/} Now 43 CFR 2096.1-4(b)(2), 35 F.R. 9543 (formerly 43 CFR 2033.1-4(b)(2) (1970)).

military service must meet the reclamation requirements but he may postpone his obligation by reliance upon credit for military service. It would indeed be anomalous to excuse an entryman from the requirement that he cultivate 1/8 of the entry in the third entry year and yet require him to reclaim 1/4 of the entry that year, particularly when reclamation encompasses cultivation and more. 43 CFR 2515.7(g), 35 F.R. 9579 (formerly 43 CFR 2211.7-6(g) (1970)).

Since Little can avail himself of Cupp's service credit and apply it to the third year's obligation of both cultivation and reclamation, the entry cannot be in default for failure to meet either requirement. Thus, a contest based on a charge that the entryman failed to reclaim 1/4 of the entry within three full irrigation seasons must be dismissed.

The contestant also asks that it be determined whether Little was granted an extension of one year within which to begin work on the entry. The prior decisions assumed that he had although the record was not complete.

It is unnecessary to resolve this point more exactly. As the heir of a deceased reclamation entryman, Little was relieved of the cultivation and residence requirements of the homestead law. 43 CFR 2515.6(a), 35 F.R. 9577 (formerly 43 CFR 2211.7-5(a) (1970)). There was therefore nothing he was bound to do the second entry year. His first requirement, to reclaim 1/4 of irrigable land within three full irrigation seasons after entry, did not mature until October 15, 1953. As has been ruled above, he may substitute Cupp's military service for one year of that obligation. Accordingly, it is of no consequence whether or not Little received an extension.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the departmental decision of April 10, 1970, is vacated; the Bureau of Land Management decision is set aside, and the contest is dismissed.

Martin Ritvo, Member

We concur:

Anne Poindexter Lewis, Member

Francis E. Mayhue, Member

