

RALPH PAGE

IBLA 70-65 Decided May 11, 1971

Mining Claims: Patent – Mining Claims: Withdrawn Land

To be entitled to a patent to mining claims on public land withdrawn from entry subsequent to the original location, an applicant other than the original locator must show not only that the claims were in fact located prior to the date of withdrawal and that the lands claimed are those originally located, but also that he is the successor in interest to and has an unbroken chain of title from the original locator.

Mining Claims: Title – Mining Claims: Withdrawn Land

Where the title asserted by an applicant for a patent to mining claims is based on adverse possession commencing after the lands included in the claims were withdrawn from entry, such title is of independent origin and relates back only to the beginning of the adverse holding and does not transfer to the applicant the title of the former owner. Accordingly, the applicant does not have an unbroken chain of title from the original locator and any rights obtained by his adverse possession are defeated by the prior withdrawal.

IBLA 70-65 : Idaho 0164792

RALPH PAGE :

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: Mineral patent application
: rejected in part
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: Affirmed

DECISION

Ralph Page has appealed to the Secretary of the Interior from a decision of the Office of Appeals and Hearings, Bureau of Land Management, dated May 20, 1969, affirming a decision of the Idaho land office, dated September 9, 1965, which rejected in part the appellant's mineral patent application as to certain lode mining claims situated in sec. 11, T. 20 N., R. 4 W., B.M., Idaho. The four mining claims with which this appeal is concerned are part of the Lime Peak Group described by Mineral Survey No. 3570 and are situated in Adams County, Idaho.

On June 4, 1965, appellant filed his application seeking mineral patent to the above mentioned claims together with other claims not considered since they did not include land within sec. 11. Pursuant to Power Site Classification No. 78,

dated June 18, 1924, sec. 11 had been withdrawn from appropriation under the mining laws. Section 2 of the act of August 11, 1955, 30 U.S.C. § 621 (1964), conditionally opened lands in power site classifications to mining location. Therefore, a mining claim located before August 11, 1955, on land within an existing power site classification is null and void ab initio because the land was not then available for mining location. Armin Speckert, A-30854 (January 10, 1968). Sec. 11 was also included in a first form reclamation withdrawal for the Hells Canyon Project, effective February 12, 1952. Mining claims located on land previously withdrawn for reclamation purposes are also null and void ab initio. Grace Kinsela, 74 I.D. 386 (1967). Both withdrawal orders remain in effect.

In support of his application for mineral patent, the appellant submitted an abstract of title which shows that all four claims were located in the early 1900's. The abstract shows a chain of title to the four claims up to September 22, 1934. The chain of title ends at this point. In 1945, certain parties named Hill and Murphy located four different mining claims which are admitted by appellant to have "jumped" the four claims involved in this appeal. Thereafter, Murphy conveyed his interest in the

four claims in question to Hill and, in 1952, Hill conveyed one-half interest to appellant. In 1957, appellant filed a forfeiture notice.

The four claims located by Murphy and Hill were null and void ab initio, as the land was not then available for location due to the imposition of the Power Site Classification in 1924. Therefore, the transfers between Murphy and Hill and Hill and appellant were ineffectual and conveyed no interest or title. Similarly, appellant gained nothing by Hill's "forfeiture." Appellant alleges that he has occupied and worked the ground since June 26, 1952, the date of his deed from Hill. It is important to note that the Hells Canyon withdrawal was effective more than four months prior to appellant's alleged occupancy.

In April of 1963, appellant filed a complaint in the District Court of the Seventh Judicial District of the State of Idaho seeking to quiet title in the Lime Peak Group. On July 8, 1963, the court entered its decree quieting possessory title to these claims in appellant subject to the paramount title of the United States. The appellant's supporting documentation to his application for patent reflects that the quiet title action was based on his adverse possession of the

claims. He emphasizes that he is not seeking title by adverse possession under Revised Statute § 2332 (1875), 30 U.S.C. § 38 (1964), but argues that the quiet title action was based upon the "lost grant" theory, and therefore his adverse possession for the statutory period transferred to him the good title held by the original owners.

Under the "lost grant" theory, title by adverse possession is often said to rest upon a presumed grant or conveyance or on the presumption of a lost grant. In emphasizing that his adverse possession of the claims passed the title held by the former owners to him, appellant argues that the "gap in the chain has been bridged by adverse possession under Idaho law" and "the adverse possession confirmed by the court decree operates to transfer the title just as effectively as a deed." Therefore, appellant states, the real issue in this case is whether his adverse possession of the claims, confirmed by the court decree, served to transfer to him the title of the original locators.

The effect of the decree of the Idaho court establishes appellant's right to possession only. He must still make the proof required by law to entitle him to patent. Perego v. Dodge, 163 U.S. 160 (1896); Duffield v. San Francisco Chemical Co., 198 F. 942 (D. Idaho 1912), rev'd on other grounds, 205 F. 480 (9th Cir. 1913);

Alice Placer Mine, 4 L.D. 314 (1886). Under the facts in the instant case, to be entitled to patent the applicant must show that he is the successor in interest to the original claimants having an unbroken chain of title from them. Richard R. Fancher et al., A-30840 (November 13, 1967); John H. Lawrence et al., A-30321 (February 3, 1965). Therefore, the crucial issue raised on this appeal is whether the decree of the Idaho court quieting title in appellant gave him an unbroken chain of title from the original locators. We are constrained to answer this question in the negative.

The great weight of authority is that title acquired by adverse possession is a new and independent title by operation of law and is nowise in privity with any former title. Pearson v. Hasty, 137 P.2d 545 (Okla. 1942); 3 AM. JUR. 2D Adverse Possession § 240 at 338 (1963); Annot. 147 A.L.R. 232 (1943). Nor is such title based upon the presumption of a grant from the original owner, notwithstanding the cases which frequently refer to title by adverse possession as being "as effectual as a conveyance from the owner," "tantamount to a conveyance," or "as full and complete as could be conferred by the owner of the fee." 2 C.J.S. Adverse Possession § 200 at 804 (1936). Once the title obtained by adverse possession is matured, it relates back only to the beginning of the adverse holding. Davis v. Haines, 182 N.E. 718 (Ill. 1932);

Lagonda Nat'l Bank v. Robnett, 147 N.E.2d 637 (Ohio 1957); 3 AM. JUR. 2D Adverse Possession § 242 at 342 (1962); 2 C.J.S. Adverse Possession § 203 at 805 (1936).

The adverse possessor forms a new stock of descent. He does not take through the former owner. 5 G. Thompson, Commentaries on the Modern Law of Real Property, § 2541 at 510 (1957 replacement). The ordinary decree quieting title does not have the effect of transferring to the plaintiff as against a stranger to the suit the title theretofore held by the defendant. 74 C.J.S. Quieting Title § 105 at 160 (1951). Nor did the decree of the Idaho court in the instant case have such effect.

In any event, the negative effect of the appellant's adverse possession should not be confused with the positive consequence of a conveyance of title by a true owner to an adverse possessor. While his adverse possession vested him with a possessory title, good against other claims, it is not effective as against the United States. His title is not derivative from the former owners, but relates back only to the inception of his adverse possession. Thus, appellant does not have an unbroken chain of title from the original locators and the link in the chain cannot be provided by the quiet title suit brought in state court.

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 decision appealed from is affirmed.

Francis E. Mayhue, Member

We concur:

Edward W. Stuebing, Member

Martin Ritvo, Member.

