

MRS. HALLIE GRIFFIN

IBLA 73-187

Decided September 6, 1973

Appeal from decision of the Arizona State Office, Bureau of Land Management, canceling homestead entry Phoenix 03135.

Affirmed.

Homesteads (Ordinary): Cancellation of Entry! ! Reclamation  
Homesteads: Generally

Where an ordinary homestead was canceled and years later was reinstated, but notice thereof was returned unclaimed, and where subsequently the entryman, as an assignee of a farm unit within a reclamation project, obtained a patent for the farm unit, he thereby is no longer qualified to perfect any other homestead entry either under the Reclamation Act or the general homestead laws, and it is proper to cancel the prior homestead entry, as the Reclamation Act contemplates that one person or family shall acquire only one farm unit and the reclamation homestead regulations provide that a farm unit within a reclamation project is the equivalent of a homestead entry of 160 acres outside of a reclamation project. The purpose or objective of the act and the regulation is to preclude a person or family from ultimately obtaining patent to lands in more than one farm unit or obtaining patent to lands in both a farm unit and an ordinary homestead.

Patents of Public Lands: Effect

Whether issued by mistake or inadvertence, a patent issued under authority of law vests

title in the patentee and removes the land from the jurisdiction of this Department, and, in the absence of fraud in the issuance of the patent, the United States is precluded from commencing suit to cancel the patent more than 50 years after its issuance.

APPEARANCES: Paul Hunter, Esq., of Yuma, Arizona, for appellant.

#### OPINION BY MRS. LEWIS

Mrs. Hallie Griffin, widow of Rufus N. Griffin, has appealed from a decision of the Arizona State Office, Bureau of Land Management, dated October 18, 1972, which canceled homestead entry Phoenix 03135, embracing Lot 4, NE 1/4 SE 1/4, S 1/2 SE 1/4, sec. 35, T. 9 S., R. 25 W., G. & S.R. Mer., Arizona.

On December 27, 1904, Rufus N. Griffin was allowed this entry under Section 2289 of the Revised Statutes, 43 U.S.C. § 161 (1970), subject to the provisions of the Reclamation Act of June 17, 1902, 43 U.S.C. §§ 371 et seq. (1970). After notice, the entry was canceled on July 15, 1912, for the reason that the entryman failed to submit final proof within the statutory life of the entry.

After reconsideration and in accordance with the Act of June 25, 1910, 36 Stat. 864, the Commissioner of the General Land Office reinstated homestead entry Phoenix 03135, by decision dated April 16, 1918. The reason was that at that time no action could be initiated to perfect the homestead entry as water had not been made available from the Yuma Irrigation Project (within which the entry lay) and no farm unit plat of the land had been approved. Neither would the Bureau of Reclamation consent to revocation of the withdrawals to permit perfecting of the entry under the provisions of the general homestead laws.

The record indicates that Griffin did not receive notification that his homestead entry had been reinstated. Apparently acting on the premise that he was eligible to make a second homestead entry, Griffin took assignment of part of a reclamation homestead entry, Phoenix 015779, and on December 23, 1921, received patent number 840217 for Farm Unit "E" consisting of NE 1/4 SE 1/4 sec. 35, T. 10 S., R. 25 W., G. & S.R. Mer. The patent was issued subject to the Act of August 9, 1912, 43 U.S.C. § 541 et seq. (1970). In his affidavit accompanying the assignment, Griffin averred that he was not claiming any other farm unit or entry under the Reclamation Act

of June 17, 1902, as amended. Thus, the effect of that statement was to renounce whatever rights he had in homestead entry Phoenix 03135, even though no action was then taken by the district land office to implement this de facto relinquishment.

The Arizona State Office decision found that Rufus N. Griffin upon taking title to Farm Unit "E" on December 23, 1921, immediately lost his right to the subject homestead entry Phoenix 03135 under either the reclamation or homestead laws; that the entry could have and should have been canceled when patent issued to Mr. Griffin for Farm Unit "E", and the fact that this entry was not canceled earlier does not reinstate in his heirs the rights lost when he acquired Farm Unit "E". The grounds were that the applicable law and regulation permit a person or family to obtain only one farm unit within a reclamation project and such person or family is thereby precluded from making another homestead entry either within or without a reclamation project. The decision, thereupon, canceled homestead entry Phoenix 03135.

Appellant argues on appeal:

\* \* \* that in accordance with the law quoted by the Bureau that if any entry is to be void, forfeited or otherwise cancelled, it is the entry allegedly made in patent number 840217 which was made subsequent to the valid entry on the land embraced by homestead entry 03135.

Her argument is not persuasive. She misconstrues the effect of a land patent. Issuance of a land patent vests title to the land therein described in the patentee, and this Department no longer has jurisdiction over it. Doris L. Ervin, A-29393 (July 8, 1963). If the patent was issued erroneously, the United States could bring suit to cancel it only within the six year period immediately following date of issuance. 43 U.S.C. § 1166 (1970). Inasmuch as more than 50 years have elapsed since issuance of patent No. 840217 to Rufus N. Griffin for Farm Unit "E", the NE 1/4 SE 1/4, sec. 35, T. 10 S., R. 25 W., G. & S.R. Mer., the statute of limitations precludes the possibility of the United States now commencing suit to cancel the patent, there being no evidence of fraud. Sylvan A. Hart, A-30832 (December 1, 1967).  
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1/ This is not to say that the appellant may not file an application conforming to the procedures in 43 CFR 1821.6. Such application

Appellant also asserts that the United States should be estopped from any action to forfeit the entryman's rights in the light of its actions in willfully failing to notify the entryman of his reinstatement and deliberately enticing and permitting the entryman to make an alleged improper entry upon the land embraced by patent number 840217.

The serial register sheet for homestead entry Phoenix 03135 contains the following notations:

4-16-18 "F" reinstated entry ! Cy sent.

5-18-18 Notice returned unclaimed.

These notations dispel any idea of willfulness, since they disclose that notice of reinstatement of the entry was sent to Mr. Griffin. Unfortunately Mr. Griffin did not receive the notice.

We have examined the records for reclamation homestead Phoenix 050951 which includes the application for patent filed by Rufus N. Griffin for Farm Unit "E". As stated above, in his affidavit, dated June 4, 1921, filed in support of his application for patent, he deposed that he was "not claiming any other farm unit or entry under the reclamation act of June 17, 1902 \* \* \*."

Section 23 of the reclamation homestead regulations 2/ in effect at that time provided:

A person who has made homestead entry for any area within a reclamation project can not make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is

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fn. 1 (cont.)

must be supported by an abstract of title showing present ownership by the applicant of the tract sought to be eliminated from the patent and a duly recorded conveyance to the United States of the tract erroneously entered and patented. If this course is chosen, we must point out that even if the original entry Phoenix 03135 is reinstated, no patent for any part of the entry may be granted until (1) full compliance has been made with the reclamation homestead requirements; (2) a Farm Unit has been established for some or all of the entry; and (3) water for irrigation is available from the Yuma Project. 2/ Circular No. 756, 48 L.D. 113 (1921).

disqualified from making an additional entry within a reclamation project, as every entry within a project is either made for or is subject to conformation to a farm unit, which is the equivalent of a homestead entry of 160 acres of land outside of a reclamation project.

The State Office decision quoted from Henry C. Taylor, 42 L.D. 319-320 (1913), wherein the Department construed the regulation to mean "that a person who has exercised his homestead right by the entry of a farm unit within a reclamation project thereby exhausts that right and can not make another homestead entry either within or without a reclamation project, under the general laws; \* \* \*." The Reclamation Act contemplates that one family shall acquire only one farm unit. Robert C. Newlon, 41 L.D. 421 (1912). The purpose or objective of the act and regulation is to preclude a person or family from ultimately obtaining patent to lands in more than one farm unit or obtaining patent to lands in a farm unit and an ordinary homestead. We are constrained to adhere to that objective and find that, in the circumstances of this case, it is immaterial that the filing of the assignment of the reclamation homestead entry and application for patent of Farm Unit "E", for which patent issued, was subsequent to the earlier entry. Upon the issuance of a patent for Farm Unit "E" to Rufus N. Griffin on December 23, 1921, he no longer was qualified to perfect any other homestead entry either under the Reclamation Act or the general homestead laws.

Accordingly, the decision of the Arizona State Office, Bureau of Land Management, properly canceled homestead entry Phoenix 03135.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Member

We concur:

Douglas E. Henriques  
Member

Joseph W. Goss  
Member

