

JOHN C. BRINTON

IBLA 73-219

Decided September 18, 1973

Appeal from decision of California State Office, Bureau of Land Management, rejecting application R 4871.

Affirmed as modified.

Act of July 6, 1960! ! Act of April 28, 1930! ! Conveyances:
Generally! ! Exchanges of Land: Forest Exchanges

Section 3 of the Act of July 6, 1960, 74 Stat. 334-35, revoked the authority of the Secretary of the Interior to reconvey lands which had been conveyed to the United States in exchange for forest lieu selection rights. Therefore, an application for a quitclaim deed under section 6 of the Act of April 28, 1930, 43 U.S.C. § 872 (1970), for such lands must be rejected.

Administrative Practice! ! Applications and Entries:
Generally! ! Color or Claim of Title: Generally! ! Color or Claim of Title: Applications

A color of title application which is not on a form prescribed by the Director, Bureau of Land Management, and is not accompanied with a \$ 10 filing fee, as required by regulation 43 CFR 2541.2(a), is not acceptable for filing. The Bureau should return such an application to the applicant notifying him of the deficiencies.

Color or Claim of Title: Generally

A color of title application will not be allowed to patent until this Department is satisfied that the land is, in fact, public land belonging to the United States subject to the Color of Title Act and that the applicant has met the requirements of the Act.

APPEARANCES: Alvan A. Fisher, Esq., Banning, California, for appellant.

OPINION BY MRS. THOMPSON

This appeal in behalf of John C. Brinton arises from the following circumstances:

On July 18, 1972, Brinton filed an application to purchase the NE 1/4 sec. 31, T. 2 S., R. 1 E., S.B.M., Riverside County, California, under the Color of Title Act of December 22, 1928, as amended, 43 U.S.C. § 1068 (1970). The application was not on a form approved by the Director, Bureau of Land Management, with accompanying information indicated on such form, nor did a \$ 10 filing fee accompany the application, as required by the regulation pertaining to color of title applications. 43 CFR 2541.2(a)(1)(2) and (4). At that time, the Bureau of Land Management's State Office in Sacramento, California, should have returned the application to the applicant as unacceptable for filing and notified him of those deficiencies. Instead, it gave the application serial number R 4871 and thereafter erroneously closed the case file without notice to the applicant. Upon inquiry from the applicant's attorney, a letter from the State Office dated November 2, 1972, informed him that the required filing fee had not been received, that the Government no longer had jurisdiction over the land applied for because it had been patented, and therefore the case had been closed. In response, the applicant's attorney indicated that although the land was included in a deed to the United States for forest lieu selection exchange no exchange was made, therefore, title has not been accepted by the Government. He also indicated that the Government has never issued a quitclaim deed to the original grantor or his successors, and the land is public domain "constituting a cloud on the applicant's title." He requested either that a quitclaim deed be issued to Brinton or that his petition be considered further, with advice as to the filing fee and other requirements.

By decision of December 1, 1972, the Bureau's State Office treated the application as a request for a quitclaim deed under section 6 of the Act of April 28, 1930, 43 U.S.C. § 872 (1970), denied it, and rejected application R 4871.

It is true this Department no longer has authority under the Act of April 28, 1930, to reconvey lands deeded to the United States for exchange under the Acts pertaining to forest lieu selection rights: Act of June 4, 1897, 30 Stat. 11, 36, as amended and supplemented by the Acts of June 6, 1900, 31 Stat. 588, 614; March 3, 1901, 31 Stat. 1010, 1037; March 3, 1905, 33 Stat. 1264; and the Act of September 22, 1922, 42 Stat. 1017. Section 3 of the Act of July 6, 1960 (Public Law 86-596), 74 Stat. 334-35, expressly repealed the Act of September 22, 1922, and also expressly stated that "no reconveyance of lands to which section 1 of this Act applies [those which had been conveyed to the United States in exchange for forest lieu selection rights] shall hereafter be made under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. § 872)." Therefore, an application for a quitclaim deed under the 1930 Act must be rejected as to lands conveyed to the United States in exchange for forest lieu selection rights. Masonic Homes of California, 4 IBLA 23, 78 I.D. 312 (1971).

Appellant basically questions rejection of the application under the Color of Title Act. He generally contends that consideration was not given to the facts in his application, that he has not been given an opportunity to furnish additional information or documents, and that he has been denied his property rights without due process of law. He requests a hearing.

We have referred to the procedural deficiencies in the color of title application. To clarify the status of the application confused by the Bureau's treatment, the application is rejected for failure to comply with regulation 43 CFR 2541.2(a). In view of this, appellant's request for a hearing is denied. The rejection of this application however, is without prejudice to the filing of a new application in compliance with the regulation.

It is premature to decide questions pertaining to the status of the land before a new application is filed. However, in view of what has preceded the disposition of this appeal, a few instructive comments shall be made.

Before this Department issues a patent pursuant to a color of title application, it must be satisfied that the land is, in fact,

public land belonging to the United States subject to the Color of Title Act, and that the applicant has met the requirements of the Act. The consequences of this for the applicant are threefold. First, he must show with a sufficient abstract of title and information that the land was reconveyed to the United States. He would need to show the entire chain of title to the land. This he has not done. 1/ Second, for a class 1 color of title claim he would have to show that the land was held under color of title for 20 years with permanent improvements or cultivation before any withdrawal of the land which would take it out of the category of land subject to the Color of Title Act. Margaret H. Erling, A-30437 (December 16, 1965). Thus, if the land was conveyed to the United States to be part of a national forest and upon receipt of the deed the lands by operation of law became a part of the forest, a color of title claim would have to be initiated before the land became a part of the forest. Cf. Asa V. Perkes, 9 IBLA 363 (1973); see Nina R. B. Levinson, 1 IBLA 252, 78 I.D. 30 (1971). See also Margaret C. More, 5 IBLA 252 (1972); Lester J. Hamel, 74 I.D. 125 (1967); Solicitor's Opinion of October 4, 1965, M-36684, 72 I.D. 409 (1965). This would require a showing of a chain of title initiated prior to the issuance of the quitclaim deed to the United States. 2/ Third, the applicant must meet the other requisites of the Color of Title Act as to good faith, etc.

Copies of the pertinent regulation and required application forms may be obtained by the applicant from the Bureau's State Office at Sacramento. 3/ If the applicant files a new application which meets the procedural requirements of the regulations, careful consideration should be given to the merits of his application before

1/ We note that if the quitclaim deed to the United States was by an individual acting as an agent or attorney in fact for the railroad company to which patent had issued, rather than a grantee of the land, the rights of the railroad company may have been satisfied by section 321(b) of the Transportation Act of 1940, 54 Stat. 954. See E. L. Cord, 10 IBLA 363, 80 I.D. __ (1973). Consideration for the quitclaim deed to the United States would have been fully effected.

2/ See 43 CFR 2450.0-5(b) for the requirements for a class 2 color of title claim. Both classes of claims cannot be held in "peaceful, adverse possession" within the meaning of the Color of Title Act if initiated while the land was withdrawn or reserved for federal purposes. Id.

3/ For the applicant's information, we note that recent legislation, the Act of October 25, 1972, Public Law 92-562, 86 Stat. 1176, authorizes quiet title proceedings in the federal courts against the United States in certain circumstances.

final action is taken by the Bureau. It is also appropriate for the Bureau, sua sponte, to request the Office of the Solicitor to make a title determination as to the lands in question here.

Accordingly, 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 as to the rejection of application R 4871 for the reasons given herein, and is modified to that extent.

Joan B. Thompson
Member

We concur:

Douglas E. Henriques
Member

Anne P. Lewis
Member

